
(1974) 12 AHC CK 0028
In the Allahabad High Court

Sri Bharat Mahey and Others

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 18-12-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 4, 401, 451, 452
Essential Commodities Act, 1955 — Section 3, 5, 6A, 7

Citation : (1975) CriLJ 890

Hon'ble Judges : P.N. Bakshi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.N. Bakshi, J.—This application in revision has been filed on behalf of M/s. Hindustan Lever Ltd., Bombay against an order of the Judicial Magistrate, 1st Class, Meerut, dated 5th July, 1974, passed in Crime No. 390 of 1974, pending against the accused for offences under Sections 3/7 Essential Commodities Act read with Rule 114 of the Defence of India Rules. In connection with this crime 23,570 tins of Dalda of 2 kg. each and 4 tins of Dalda of 4 kg. each were seized on 15-6-1974 by the Police from the godown of M/s. Bishambhar Dass Devi Dayal, situate near Madhuri Cinema, on Meerut-Delhi road. The Station Officer, Police Station Railway Road submitted a report on 17th June, 1974, with respect to the seizure for obtaining orders for disposal of the ceased property. On 18th June, 1974, an. application was moved u/s 451/ 459, Criminal Procedure Code on behalf of the Hindustan Lever Ltd., represented by Sri Bharat Mahe,. Branch Manager, praying that the goods be released in favour of the Company, to whom they belonged. It was alleged in this connection that goods were stored in the godown of M/s. Bishambhar Dayal Devi Dayal, who were only the clearing and forwarding agents of the Company and had no right, title or interest in the property. It was also prayed in this connection that the soaps, toilets etc., which had also been seized by the Police along with the Dalda tins aforesaid may also be released in favour of the Company. The Judicial Magistrate Meerut rejected the claim of the company for the release of the Dalda tins in its favour. As for the

release of soaps, toilets etc, the Judicial Magistrate was of the opinion that as per report of the Station Officer dated 27th June, 1974, no such articles were seized by the Police. With regard to the distribution of the seized tins of Dalda the Judicial Magistrate has in his order, chalked out a scheme for the disposal of the dada tins to various authorities detailed therein at the old rates. Dissatisfied with the above order of the Judicial Magistrate Meerut dated 5th July, 1974, Criminal Revision No. 1021 of 1974 has been filed in this Court.

2. I have heard learned Counsel for the parties at considerable length and have also perused the impugned order. As mentioned above, the application dated 18th June, 1974 was moved on behalf of the company u/s 451/458, Criminal Procedure Code, The Court below has rightly held that Section 451, Criminal Procedure Code is inapplicable to the facts of the present case, inasmuch as it contemplates order for the custody and disposal of the property pending trial. He has further correctly held that Section 458, Criminal Procedure Code also does not apply because it lays down the procedure with regard to the disposal of the property when no claimant appears within six months. He has, however, treated the application as one u/s 457, Criminal Procedure Code and has passed the impugned order under that section. There is no dispute that the case is still in the investigation stage. It is also not disputed that the revision in High Court has been filed under Sections 397/401 of the Code of Criminal Procedure 1973 and therefore the provisions of the new Act would be applicable.

3. A preliminary objection has been taken on behalf of the State that the impugned order had been passed u/s 457, CrI.P.C. and that being an interlocutory order it cannot be revised in view of Section 397(2) of the new Code, He has submitted that according to the terms of the order the price of the tins of Dalda will remain in custody of the court and that the final order with regard to the disposal of the proceeds would be passed after the conclusion of the trial. I have been referred to the report of the Station Officer dated 17th June 1974 filed u/s 3/7 of the Essential Commodities Act read with Rule 114 of the Defence of India Rules, which was submitted to the Judicial Magistrate Meerut for orders. It was mentioned in this application that Dalda tins were likely to be spoiled on account of the hot season and that some of these tins of ghee were leaking, as such immediate orders were solicited for disposal of those tins. Counsel for the State has submitted that u/s 6A of the Essential Commodities Act it was obligatory upon the State to apply to the authority concerned for the speedy disposal of property which has been seized under the provisions of the Act. He has further submitted that the impugned order passed by the Judicial Magistrate is in the nature of interim order and the proceeds of sale would remain in deposit in court till the final conclusion of the trial. As such he contends that the order in question* which has been challenged in this Court is an interlocutory order and is not revisable under the new Code of Criminal Procedure.

4. On the other hand Sri Shanti Bhushan counsel appearing for the applicant has

submitted that the impugned order is not an interlocutory order but is a final order. He has submitted that by virtue of the impugned order the tins of Dalda would be finally disposed of at a particular fixed rate, as prescribed by the Government and that in the event of the success of the applicant in this revision the corpus of the tins cannot be restored", back to him. He asserts that the proceeds of sale cannot represent the corpus and in the event of the petitioner's success he would be entitled in law to sell away the tins of Dalda at the enhanced price permissible under law subsequent to the seizure of the articles. He also pointed out that the impugned order affects a complete disposal of the Dalda tins to the various authorities detailed therein at fixed price, In short his submission is that qua the tins of Dalda the impugned" order is a final order and not an interlocutory order as submitted by the counsel for the State. He has also referred to Section 457(1) of the Criminal Procedure Code (New), which lays down:

457 (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced⁴ before a Criminal Court during an inquiry or trial, the Magistrate may make" such order as he thinks fit respecting

- (a) the disposal of such property, or
- (b) the delivery of such property to-the person entitled to the possession, thereof, or
- (c) if such person cannot be ascertained, respecting the custody and production of such property.

Learned Counsel for the applicants submits that the second and the third alternatives envisaged u/s 457(1),. Criminal Procedure Code do not apply in. so far as the impugned order is concerned, inasmuch as they relate to the passing of interim orders regarding temporary delivery, custody and production of the case property. Learned counsel submits that if at all the first alternative with regard to the disposal of such property is applicable. On this ground also he contends that the impugned order for the disposal of Dalda tins should be construed to be a final order passed u/s 457(1), Criminal Procedure Code.

5. I have Riven my thoughtful consideration , to the preliminary objection that has been raised on behalf of the State, but I am not inclined to accept the same. The impugned order to my mind finally disposes of the tins of Dalda. It is not an interim arrangement for the delivery, custody or production of the case property, as and when required by the court. The corpus of the tins as submitted by the applicants counsel will cease to exist by sale of the goods. They will become irrecoverable after the sale. In the event of the petitioner's success it will not be possible for him to dispose of the Dalda tins at the enhanced price which law permits him. As such it cannot be said that the sale proceeds would adequately represent the corpus of the property in question. The court is authorised to pass interim orders u/s 457(1), Criminal Procedure Code by delivery of the case

property to the person entitled to possession or if such person cannot be ascertained the court can pass interim orders for the custody and production of such property. If the owner of the property is unknown then u/s 457(2), Cr.P.C. the Magistrate is entitled to detain the property and issue a proclamation requiring any person laying a claim to appear before him and to establish the same. Under Section 458(1) Cr. P. C, if no person is able to establish his claim within a period of six months and if the person from whose possession the property is found is unable to show that it is legally acquired by him, the Magistrate may direct that such property shall be at the disposal of the State - Government for sale and its proceeds dealt with in the manner prescribed by law. Thus on a reading of Secs. 457 (1)(2) and 458 (1), Criminal Procedure Code the position is clear that both final orders and temporary orders with regard to the disposal of the property are contemplated under these two sections. By no stretch of imagination can the impugned order be deemed to be in the nature of an interim order. To my mind it is a final order regarding the disposal of the goods in question. As such, I am of the opinion that the revision filed by the applicant in this Court will not be barred on the ground that it is an interlocutory order passed in a proceeding which is not revisable, ;

6. The next question in controversy between the parties is as to whether the impugned order of the Judicial Magistrate Meerut dated 5-7-1974 is sustainable in law. As already mentioned the contention of the learned Counsel for the State is that the impugned order has been passed under the provisions of Section 457(1), Criminal Procedure Code (new). On the other hand, it is contended by the applicants' counsel that in view of the fact that the case against the applicant is pending investigation for offences u/s 3/7 of the Essential Commodities Act read with Rule 114 of the Defence of India Rules, the proper forum for obtaining orders for the disposal of the essential commodity would be the Collector as laid down in Section 6A of the Essential Commodities Act. He submits that the Essential Commodities Act being a special Act, it will override the general provisions of the Code of Criminal Procedure, which is a general statute governing procedure. Section 6A of the Essential Commodities Act runs as follows:

Where any essential commodity is seized in pursuance of an order u/s 3 in relation thereto it may be produced, without any unreasonable delay, before the Collector of the district or the presidency town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector, if satisfied that there has been a contravention of such order may order confiscation of the essential commodity so seized:

Provided that without prejudice to any action which may be taken under any other provision of this Act, no food-grains or edible oil-seeds seized in pursuance of an order made u/s 3 in relation thereto from a producer shall, if the seized foodgrains or oilseeds have been produced by him, be confiscated under this section,

7. Reliance for this submission is placed upon a decision of the Mysore High Court reported in *The State Vs. Abdul Rasheed*, . It has been laid in that case as follows:

Where a statute specifies a particular mode of enforcing a new obligation created by it, such obligation can as a general rule be enforced in no other manner than that provided by the Statute. The amended provisions of Section 6A of the Act impliedly limit the powers of the criminal court in the matter of disposal of foodgrains etc., which are seized in contravention of the Act and orders whether or not prosecution is instituted against the accused. Even after the prosecution is instituted, the criminal courts get power of disposal of foodgrains only after the enquiry or trial is over as provided under various clauses of the orders made u/s 3 or 5 of the Act.

Under Sub-clause (7) of Rule 125 of the Defence of India Rules the Magistrate's powers are limited. Firstly he has to make arrangement for temporary custody; secondly, if no prosecution is instituted and no forfeiture is made he is entitled to return the property to the person from whom it is seized. This section puts limitation on the power of the Magistrate and he cannot exercise power conferred under the Criminal Procedure Code.

8. It may be mentioned in this connection that the above mentioned ruling applies on all fours to the facts of the present case. Rule 125 of the Defence of India Rules, 1962, is equivalent to Rule 114 (9) of the Defence of India Rules, 1971. Further Section 517 of the Old Criminal Procedure Code of 1898 is equivalent to Section 452, Criminal Procedure Code of 1973. For a consideration of the question in hand reference may, therefore, be made to Rule 114 (4) of the Defence of India Rules. This rule runs as follows:-

Any article or things seized under the authority of any order made under Clause (q) of Sub-rule (3) shall be conveyed without delay before a Magistrate who may give such directions as to their temporary custody as he thinks fit, so, however, that where no prosecution is instituted for a contravention of the order in respect of the articles or things seized within a period in his opinion reasonable and no action is taken for adjudging forfeiture of the articles or things under Sub-rule (1), the Magistrate shall direct their return to the person from whom they were seized; and subject to the foregoing provisions of this sub-rule, the provisions of the Code of Criminal Procedure, 1898 (5 of 1898), shall so far as they may be applicable apply to any search or seizure under the authority of any such order as they apply to any search or seizure under Chapter VII of that Code.

A reference to the above rule indicates that it authorises the Magistrate with respect to the seized article to give directions for their temporary custody as he thinks fit. The rule also lays down that where no prosecution is instituted for a contravention of the order in respect of the articles or things seized within a reasonable period the Magistrate shall direct their return to the person from whom they are seized and the provisions of the Code of Criminal Procedure 1898

shall so far as they may be applicable apply to such decision. Thus the authority vested in the Magistrate to pass suitable orders under Rule 114 (9) is confined to the temporary custody of the seized article, It nowhere contemplates the passing of the final order for the disposal of the property pending investigation, inquiry or trial. In my opinion, therefore, the impugned order passed by the Judicial Magistrate travels far beyond the scope of the authority vested in him under the aforesaid rule, even if the provisions of the Code of Criminal Procedure is held to be applicable in the restricted circumstances) mentioned in the said rule.

9. In this connection reference may also be made to the relevant provisions of the Criminal Procedure Code, 1973 affecting the jurisdiction of courts in cases where any special law or" enactment is passed by the Legislature,

Section 4(l). All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law-shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiry into, trying or otherwise-dealing with such offences.

(5) Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, any special form of procedure-prescribed, by any other law for the time-being in force, or any special jurisdiction-or power conferred, or any special form of procedure prescribed, by any other law for the time being in force,

Reading both these sections together, the-conclusion is irresistible that if there exists any special law or if any special jurisdiction or power is conferred upon the court or if any form of procedure is prescribed in the special law then the provisions of the special law would override-the provisions of the general law or procedure.

10. Section 6A of the Essential-Commodities Act runs as follows:

Where any essential commodity-is seized in pursuance of an order made under S, 3 in relation, thereto it may be-produced, without any unreasonable delay, before the Collector of the district or the Presidency-town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector, if satisfied that there has been a contravention of such order may order confiscation of the essential commodity so seized:

Provided that without prejudice to any action which may be taken under any other provision of this Act, no food-grains or edible oil-seeds seized in pursuance of an order, made u/s 3 in relation thereto from a producer shall, if the seized foodgrains or oil-seeds have been produced by him, be confiscated under this

section.

In view of Section 6A I am of the opinion that the Judicial Magistrate Meerut before whom the report of the Station Officer dated 17th June, 1974, was placed for obtaining orders was not the proper authority vested with jurisdiction to pass orders in respect thereto. It was the Collector of the District alone who could direct the disposal of the Dalda tins in question, if he was satisfied that there had been a contravention of the conditions of any order issued u/s 3 of the Essential Commodities Act.

11. It is not necessary for me to elaborate further on this question. Suffice it to say that I am supported in my view by a number of decisions. In *Pratap Singh and Others Vs. The State*, , it was held as follows:

The general provisions of Section 517 had not apply to cases under statutes in which special provisions for forfeiture have been made by the Magistrate. Therefore, Section 517 do not apply to cases under the Black Marketing Act.

12. In *Emperor Vs. Raghunath Krishna Ghanekar*, , a Division Bench of the Bombay High Court has also held as follows:

Where the Court wishes to exercise its power of forfeiture under Clause 7-A, it must be exercised under the specific provision to be found in that clause and not u/s 517 or Section 518, Criminal Procedure Code.

Where, therefore, the trial Court convicts an accused person for having contravened Clause 3, Food Grains Control Order, it should not make an order u/s 518, Criminal Procedure Code but should itself pass the order of forfeiture under Clause 7-A.

The position thus seems to be clear that the Collector of District Meerut, where the contraband goods were seized by the Police was the only competent authority to pass orders with regard to the final disposal of Dalda tins. Learned Counsel for the State is unable to show me any authority in opposition to the view taken by me, I, therefore, hold that the impugned order of the Judicial Magistrate dated 5-7-1974 is wholly illegal and without jurisdiction.

13. A question, however, arises as to what should be the appropriate order to be passed in the circumstances of the present case. The applicants' counsel has contended that Sub-rule (9) of Rule 114 of the Defence of India Rules, mentions that if within a reasonable period of time no action is taken for adjudging forfeiture of the articles the Magistrate shall direct their return to the person from whom they were seized. Relying upon this provision learned Counsel submits that the tins of Dalda should be released in his favour I am not inclined to accept this submission for two reasons. In the first place the tins of Dalda were not seized from the godown of the applicant i.e..M/s. Hindustan Lever Ltd.. on the contrary they were seized from the godown of Bishambhar Das Devi Dayal. The Hindustan Lever Ltd., have come forward with the case that M/s. Bishambhar Das Devi Dayal were the clearing agents of the .Company and they

themselves had no right, title or interest in the property. That is a question which may require investigation but giving the words of Rule 114 (9), Defence of India Rules, their plain and natural interpretation the conclusion is inevitable, that, if at all the property seized in the circumstances mentioned therein, can be returned by the Magistrate only to the person from whom it was seized and not to any person who may claim title or interest therein. There is yet another reason why I am not prepared to accept the contention of the applicant's counsel. I have already held above that the only appropriate authority for passing suitable orders in the circumstances of the present case was the Collector of the district, I have also held that the Judicial Magistrate Meerut had no power to pass the impugned order.. It is obvious that no order has yet been passed by the Collector nor has any application been moved before him either on behalf of the State or on behalf of the applicants. For this reason, therefore, it is not proper to deliver possession of the Dalda tins to the applicant at the present stage. I may, however, observe that it is-open to the applicant to move the Collector Meerut for passing suitable orders and". I have no doubt that the Collector Meerut would pass appropriate orders as the justice of the case demands.

14. Before parting with this case,, I would like to observe that the petitioners" grievance also is that soaps and cosmetics also have been seized by the impugned order. On a reading of the impugned order, I do not find that it includes a seizure of these articles. Learned counsel contends that the Dalda tins, soaps and cosmetics were all lying in the same godown, which had been locked by the police and in effect it amounts to the-seizure of the soaps and cosmetics also. As the impugned order is intended only to apply to the Dalda tins in question, I would like to clarify that it is not intended to apply to soaps and cosmetics which are lying in the godown of M/s. Bishambhar Dayal Devi Das who may take appropriate steps to remove these articles from the said godown. Soaps, cosmetics etc., have not been seized by the prosecution and as observed above they may. be removed by the person from whose possession they were seized.

15. In the result, therefore, this revision is allowed to the extent that the impugned order of the Judicial Magistrate, Meerut, dated 5-7-1974 is set aside but the stock of Dalda which had been seized by the police shall not be released in favour of the applicant except in due course of law as held by me above.