
(2007) 01 J&K CK 0002
In the Jammu And Kashmir High Court

State	Vs	APPELLANT
Ashok Kumar and Others		RESPONDENT

Date of Decision : 31-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 5
Essential Commodities Act, 1955 — Section 3, 7

Citation : (2007) CriLJ 4731 : (2007) 2 JKJ 1

Hon'ble Judges : J.P. Singh, J

Bench : Single Bench

Judgement

J.P. Singh, J.—These seven references have been made by Learned Sessions Judge, Udhampur with the recommendation that Orders

passed by Learned Judicial Magistrate, 1st Class, Chenani in File Nos. 12/Challan, 61 /Challan, 70/Challan, 45/challan, 69/Challan, 141/Challan

and 48/Challan committing these cases to the Sessions Judge be set aside because the orders, according to the Learned Sessions Judge were

contrary to what had been held by Hon'ble Supreme Court of India in State of Tamil Nadu Vs. Paramasiva Pandian, .

2. Relying on Paramsiva Pandians case (supra) Learned Sessions Judge has held that with the lapse of two ordinances issued under the Essential

Commodities (Special Provisions) Act, the Special Judges had ceased to o perate and the cases under the Essential Commodities Act were

triable, as before, by a Magistrate rather than the Special Judge.

3. I have examined the judgment of Hon'ble Supreme Court of India and the recommendations made by Learned Sessions Judge, Udhampur.

Paramsiva Pandians case, in my opinion, would not be applicable to the cases registered under the Essential Commodities Act, 1955 in the State

of Jammu and Kashmir because there is marked difference in the Schedule forming part of the State Code of Criminal Procedure and the Schedule

forming part of the Central Code of Criminal Procedure. The Schedule forming part of the Central Code of Criminal Procedure prescribes that

offences against other laws if punishable with death, IMPRISONMENT FOR LIFE OR IMPRISONMENT FOR MORE THAN SEVEN

YEARS, would be triable by court of Sessions and if the offences were punishable with imprisonment for three years and upwards, but NOT

MORE THAN SEVEN YEARS, these would be triable by a Magistrate of the 1st Class. The State Code of Criminal Procedure, on the other

hand prescribes that offences against other laws if punishable with death or IMPRISONMENT FOR SEVEN YEARS OR UPWARDS, would

be triable by Court of Sessions and if punishable with imprisonment for three years and upwards, but less than seven years, would be triable either

by Court of Sessions or by Judicial Magistrate of the 1st Class.

4. In terms of Section 5 of the State Code of Criminal Procedure, the Court which has to try the offences under the Ranbir Penal Code and against

other laws is that Court which is mentioned in the IIInd Schedule appended to the Code of Criminal Procedure. It is the Code of Criminal

Procedure and its Schedule, which would thus determine as to by which Court the offences against other laws and Ranbir Penal Code would be

triable. Central Code of Criminal Procedure and its Schedule would not have any application to the offences committed within the State of Jammu

and Kashmir.

5. Paramsiva Pandians case is thus required to be considered in the light of the provisions of the State Code of Criminal Procedure rather than the

Central Code of Criminal Procedure. Section 7 of the Essential Commodities Act, 1955 provides punishment of one year and fine u/s 7(1)(a)(i)

when the violation pertains to an order made with reference to Clause (h) or Clause (i) of Sub-section (2) of Section 3 and for rest of the offences

including the one punishable u/s 7(1)(a)(ii) for violation of any other order, the punishment prescribed is imprisonment for a term which shall not be

less than three months, but which may extend to seven years and also to fine.

6. Thus considered offences punishable u/s 7(1)(a)(ii) are to be tried by Court of Sessions because the punishment prescribed therefore extends to

seven years and offences punishable u/s 7(1)(a)(i) shall be triable by a Judicial Magistrate, 1st Class. The police challans in question, do not

indicate that the violation pertained to the infraction of Section 7(1)(a)(i) of the Essential Commodities Act, 1955 and in that view of the matter,

these challans were not triable by the Judicial Magistrate, 1st Class. All that the police challans indicate on the other hand is that the accused had

committed offences punishable u/s 3/7 of the Essential Commodities Act, 1955. Although the police challans do not specifically indicate specific

infraction of Section 7 of the Essential Commodities Act, 1955, yet it may be inferred from the police challans that the cases pertained to the

violation of Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 punishment wherefor would be up to seven years.

7. In this view of the matter, the Learned Sessions Judge was not right in holding that the cases were triable by Judicial Magistrate, 1st Class,

Chenani. Paramsiva Pandians case, has thus been misapplied by the Learned Sessions Judge without taking into consideration the provisions of the

State Code of Criminal Procedure and its Schedule. There is thus no force in these references which are accordingly declined.

8. Learned Sessions Judge, Udampur shall treat the orders of the Learned Judicial Magistrate, 1st Class, Chenani as orders of committal and

shall proceed with the trial of these cases in accordance with law.

A copy of this judgment shall be placed on each reference file.