
(1995) 12 GUJ CK 0014
In the Gujarat High Court

State of Gujarat	Vs	APPELLANT
Jalaram Agencies and Others		RESPONDENT

Date of Decision : 21-12-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 11, 12AA(1)(e) , 7, 7

Citation : (1998) 3 GLR 1952

Hon'ble Judges : M.H. Kadri, J;K.J. Vaidya, J

Bench : Division Bench

Judgement

K.J. Vaidya, J.—Whether the trial Court, after the receipt of complaint against the respondent-accused before it, right at the very threshold of its preliminary inquiry while trying to find out whether it was empowered to take cognizance of the alleged offence punishable u/s 7 of the Essential Commodities Act, 1955, (for short "The Act") was justified, firstly in summarily dismissing the complaint on the alleged ground that the complainant was not duly authorised either by the State Government or the Central Government as for that purpose, the Collector cannot be said to be the "State" as required u/s 12AA(1)(e) of the Act, and secondly, that too without giving fair and reasonable opportunity to the complainant to prove his due authorisation in said regard? In other words, whether such important questions which many a time are mixed questions of law and fact can be decided without anything brought on the record on mere oral arguments? These, in short and substance, are the two important questions that arise for our consideration in the backdrop of the following facts-situation.

2. According to the complainant Mr. J.D. Dave, Dy. Mamlatdar (Civil Supply), the respondent No. 1 - M/s. Jalaram Agencies, Petrol Pump, Mendarda (Junagadh) and four others who incidentally happen to be its partners and the manager were doing the business of selling petrol and diesel under the licence No. 23 issued by authorities under the Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order, 1981 (for short "Order of 1981"). That on 16-7-1993, he in the company of the panch witnesses inspected the petrol pump of the

respondents, and after taking the samples of petrol and diesel, seized the same and ultimately forwarded it to the Forensic Science Laboratory which on analysis was reported back to have difference of 0.0049 density of the petrol, which was clearly beyond the statutory limits prescribed and accordingly was not up to the statutory standards stipulated for petrol. In this view of the matter, since the accused committed breach of the licence condition No. 5 issued under the Order of 1981, and the Rule 2 of the Motor Spirit & High Speed Diesel (Prevention of Malpractices, Supply & Distribution) Order, 1990 amounting to an offence punishable u/s 7 of the Act, on case papers being placed before the Collector, Junagadh, the complainant by his order bearing Ref. No. Food A.D./ Namuna-21/93 dated 28-2-1994 was authorised to file a complaint against the respondents before the Court.

3. Accordingly on 29-4-1994, when the aforesaid complaint was presented before the Special Court at Junagadh, after registering the same as Special Case No. 1 of 1994, the matter was fixed for preliminary hearing so as to find out whether the complainant was duly authorised to file the complaint or not. Thereafter, after hearing the learned A.P.P., the learned Special Judge by an Order dated 3-6-1994 dismissed the complaint in substance holding that the Collector was neither a State Government nor the Central Government so empowered or authorised to give direction to file complaint. Not only that but under the provisions as contained in Section 12AA(1)(e) of the Act, the concerned public servant or the officer should be duly authorised by notification in this regard issued by the appropriate Government, as the case may be. If any complaint is filed in absence of this, the Court cannot take cognizance of the offence. It further appears that when this preliminary point was argued by the learned A.P.P., and ultimately decided by the learned trial Judge the complainant was not called upon to remain present before the Court, to make good his case by producing relevant material on the record !! It is this careless conduct of the case by learned P.P., and resultant slipshod order which has been challenged before us by way of present appeal raising quite an important and interesting question of interpretation of Sections 11 and 12AA(1)(e) of the Act and as to how, when such questions are raised, the trial Court is expected to conduct itself !

4. At the very outset, we make it absolutely clear that so far as the impugned order dismissing the complaint is concerned, it certainly does not amount to an acquittal giving any rise or right to file an acquittal appeal under the Code. Rather, the proper remedy under the circumstances would have been, either u/s 397, 401 and or Section 482 of the Criminal Procedure Code, 1973, by way of Misc. Criminal or Criminal Revision Application. But this being merely a matter of technicality and accordingly though we could have directed the office to re-register the case as Misc. Criminal or Criminal Revision Application, as the case made out by the learned A.P.P., we have refrained from doing the same as it has no bearing whatsoever on our ultimate decision on the point involved.

5. This now takes us to the material question involved, viz., whether the trial

Court was justified in summarily dismissing the complaint at the back of complainant without further affording reasonable opportunity to him to produce the notification in question on record of the case vouching due authorisation to file complaint as warranted by Section 12AA(1)(e) of the Act ! Accordingly, assuming even that the complaint filed by the concerned Civil Supply Officer as rightly or wrongly apprehended by the learned Judge was not duly qualified, competent and authorised u/s 12AA(1)(e) of the Act to file the same on the material available on the record then even whether the trial Court was justified on this simple count in straightaway mechanically dismissing the complaint without giving the concerned complainant a fair and reasonable opportunity to produce the relevant notification or any other material authorising him to file a complaint available on the record?

5.1. With a view to appreciate the crux of the problem involved centering around the interpretation of Sections 11 and 12AA(1)(e) of the Act, it is indeed necessary first of all to have a brief look at the relevant sections, which are reproduced as under for immediate reference:

Section 11: Cognizance of Offences:

No Court shall take cognizance of any offence punishable under this Act except upon a complaint in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code (45 of 1860), or any person aggrieved or any recognized consumer association; whether such person is a member of that association or not.

Explanation: For the purposes of this section and Section 2AA, "recognized consumer association" means a voluntary consumer association registered under the Companies Act 1956 (1 of 1956), or under any other law for the time-being in force.

Section 12AA(1)(e): Offences triable by the Special Courts:

(1) Notwithstanding anything contained in the Code:

(a) xx xx xx

(b) xx xx xx

(c) xx xx xx

(d) xx xx xx

(e) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act or upon a complaint made by an officer of the Central Government or a State Government authorised in this behalf by the Government concerned or any person aggrieved or any recognized consumer association whether such person is a member of that association or not take cognizance of that offence without the accused being committed to it for trial;

6. To start with the first question, it is indeed quite true that when Sections 11

and 12AA(1)(e) of the Act specially place certain embargo as a condition precedent in absence of which no Court shall take cognizance of any offence, then it is indeed the first and foremost duty of the Court not to take cognizance of any offence, till of course the requisite statutory conditions, namely, the complaint is filed by an officer of the State Government or the Central Government (as the case may be) duly authorised in this behalf by the appropriate Government. In the instant case, the State Government!! In this regard, it further appears that at the initial stage, when the Act came into existence in the year 1955, so far as the provision regarding taking cognizance of offence was concerned the same was made in Section 11. Section 12AA(1)(e) was not in existence at all at the relevant time. Thereafter, the Act came to be amended twice. First by The Essential Commodities (Special Provisions) Act, 1981, i.e., Act 18 of 1981 enforced on 26-9-1981 and second - by The Essential Commodities (Special Provisions) Act, 1993, i.e., Act 34 of 1993 w.e.f., 27-8-1992, and as a result, Section 12AA(1)(e) came into being and accordingly, holds the field today, temporarily keeping Section 11 in abeyance, out of operation for the stipulated period shown in the Amending Acts. In this view of the matter, for want of proof of proper authorisation by the State Government, not to take cognizance of the offence u/s 12AA(1)(e) of the Act is indeed quite all right and one thing but at the same time after registering the complaint as a special case to dismiss it for want of proof of proper authorisation without affording reasonable opportunity to the complainant to produce a notification in question empowering the Collector to authorise any of his subordinate public servant to file complaint, in our opinion is altogether quite a distinct and different thing which being ex facie quite bad and illegal is not permissible to the trial Courts. To clearly appreciate this subtle basic difference between the two, viz., firstly, registering the offence/case on the basis of complaint and thereafter, secondly, taking of the cognizance of the alleged offence on the basis of the same such complaint is required to be clearly understood !! Prima facie, the Court can be said to have taken the cognizance of offence, when pursuant to the allegations in the complaint it issues process against the accused named. But as we know before issuing the process against accused person, the trial Court is ordinarily required to satisfy itself in the first place, whether the allegations made in the complaint constitute the offence, and in second place whether it is empowered to take cognizance of the offence. Thus, in between registering the case on the basis of allegations in complaint on the one hand, and thereafter issuing processes against the accused on the other hand, there is a space to exercise the judicial discretion where the duty is casted (sic.) upon the Court to scrutinize whether the complaint discloses prima facie case, and if yes, whether it is empowered to take cognizance and for that purpose the complainant was duly authorised !! In between these two patent aspects, there is indeed one more latent but unavoidable important aspect, namely, the aspect of role of judicial discretion, pragmatism and activism in other words an approach of right thinking, prudent man of not mechanically chucking-off complaint for serious offences !! Ordinarily, when any person files a complaint, he/she in the first

instance, makes grievance about the alleged offence/s committed by the accused before the Court to examine it and ultimately vindicate the cause of justice in the light and on the basis of evidence either by convicting or acquitting the accused. Now in some special class of cases, if law requires previous sanction of the competent authority before any cognizance of the alleged offence can be taken, the Court indeed cannot straightaway issue process against any accused till of course it gets prima facie satisfied that there is due and proper sanction, authorisation to the complainant to prosecute the accused person !! At the same time, judicial wisdom warrants that merely because before issuing a process, if the Court doubts that the legal sanction is not granted or the complainant was not duly authorised to file the complaint, then in that case the same cannot be mechanically summarily dismissed as it has been done in the instant case. Courts in such cases, for want of proper sanction is neither entitled nor expected to decide the same on mere doubts. This sort of applications are to be decided after resolving and removing the doubts. In the second instance, the reason is while dismissing such complaints, the trial Court cannot afford itself to be oblivious to the tell-tale facts and circumstances, such as, that the alleged offence undoubtedly was and is a serious offence regarding the adulteration of petrol or diesel - essential commodities of absolute and indispensable utility of day-to-day ordinary life of the citizen. In the third instance, the complaint regarding the same was filed by a responsible public servant, viz., Deputy Mamlatdar who indeed would have no personal stake in filing a false complaint against any citizen. In the fourth instance, the complainant was supported by (i) Panch and (ii) Panchnama and also by F.S.L., report prima facie showing that it was not false or bogus case. In the fifth instance, in case such a sub-standard petrol is used, the ultimate victim can as well be some innocent citizen who has purchased petrol from said petrol pump, and accordingly for the alleged fault of the said petrol pump owner, some innocent vehicle owner/driver would be the victim to be punished for pollution !! Not only that but in the sixth instance such sub-standard quality of petrol/diesel also adds to the pollution problem which is fast going beyond control damaging the public health. To top all these instances, in the seventh instance, in a given case, taking into consideration the growing instances of utter remissness, inefficiency, lack of public spirit and accountability and the concern of concerned public servants in discharge of their ordinary respective duties, it is a matter of common experience that these days they are not that duty-conscious as they were and are otherwise ordinarily expected to be !! Under the aforesaid seven streamlined circumstances, in the eighth instance, if in view of the trial Court if at all there is, there was something missing by virtue of which it can be doubted that the complainant was not duly-authorised to take the cognizance of offence then in that case in the overall public interest, judicial pragmatism and public justice warrants that the complaint in question ought to be kept in abeyance for quite some reasonable time for enabling, directing the complainant to produce the required notification, authorisation, or circular as the case may be under or by virtue of which only the Court after being so satisfied can take cognizance of the alleged offence(s) and

proceed ahead with the trial against the accused. Now, not to bear in mind and apply the aforesaid eight crucial aspects, rather ignoring them altogether if on the alleged short ground of want of proof of sanction or the proper authorisation by the competent authority, on mere suspicion, doubt if the complaints are to be unilaterally, mechanically dismissed and thrown in the waste-paper basket and the Government is unnecessarily made to run from the one Court to the High Court, then it is not only unnecessary waste of public time consuming but by the time the matter is ultimately decided by the High Court, perhaps it is too late in a day which may ultimately seriously hamper, prejudice the prosecution case and thereby the ultimate public interest and the cause of justice involved in proving its case because in every criminal trial, the most essential factor is the time !! The success of prosecution very much depends upon how earliest the trial could be conducted after the commission of the alleged offence !! For that purpose, every hour, every day, every month, every year lost is the material loss to the prosecution and is drop by drop gain to the accused stifling the ultimate cause of justice !! Accordingly, it is the duty of Court to see that by passing some mechanical orders with clear index of non-application of mind, it does not become inadvertently, unwittingly an unwary party to the patent injustice to the public cause. Not to exhibit this sense of the duty-consciousness is simply unbecoming for any Magistrate, any Judge. Ordinarily, it is indeed quite true that when the concerned Court is not satisfied regarding due authorisation of filing of the complaint, the complaint can ultimately be dismissed. But then, such dismissal of a complaint does not amount to automatic acquittal. The complainant is always ultimately entitled to file a second fresh complaint on the basis of fresh sanction or proper authorisation to prosecute the accused. Now, when the complainant is ultimately entitled to file a fresh complaint after some times, then instead of entering into the avoidable multiplicity of prosecutions, it is always advisable to adjourn the case for some time, summon the complainant to personally remain present before the Court to explain the situation to him and giving him some reasonable time to produce necessary material on record to the satisfaction of the Court to take cognizance of the offence. In this regard, it needs to be clarified that irrespective of any request forthcoming on the record from the learned Public Prosecutor, the invariable duty is hereby cast upon the Court to put down in black and white its doubt and suspicion regarding the valid authorisation to file complaint, etc., offering the complainant reasonable time to make good and clear the doubt of the Court by producing relevant material on the record. This is one of the most important aspects of the case so far the trial Court is concerned. If the judicial officers are not conscious enough of their overall social accountability highlighted above, and remain only status-conscious, high-brow, stiff and unconcerned technocrat, they certainly and immediately disqualify themselves to be a Judge in the matter. Similarly, in case after taking legal opinion from the concerned senior P.P., if it is ultimately found by the Government that the complainant is not properly authorised, then in that case, instead of straightaway challenging the impugned order of dismissing the complaint before This Court, it is always advisable for the department to obtain

appropriate authorisation and file the same before the concerned Court.

7. These days, we are coming across several such cases where unfortunately we find the public prosecutors and Government pleaders entrusted with the cases don't discharge their duty efficiently for whatever reasons ! In this regard, it is indeed high time for the Home, Legal Departments to do the needful at the earliest by (i) arranging for some refresher courses, (ii) preparing "Public Prosecutor Manual" incorporating law officers-rule, circulars and various other directions to make them efficient and (iii) monitoring their performances at regular interval.

8. Now, taking into consideration the scheme of the Act as it stood in the year 1955 and thereafter by virtue of two amending Acts, firstly the Essential Commodities (Special Provisions) Act, 1981 and secondly, Essential Commodities (Special Provisions) Act, 1993, it appears that Special amendment for temporary period in the first instance for 15 years and thereafter in the second instance for further 10 years (w.e.f. 27th August, 1991) during this temporary period Section 11 seems to have been suspended and kept in abeyance till revived in future by the Parliament. This means that at this stage the fate of the case is governed strictly by Section 12AA(1)(e) and not Section 11. In this view of the matter, we feel that when Sections 11 and 12AA(1)(e) of the Act speak about the cognizance of offence to be taken by the Court under certain circumstances, the Court in a given case, even if it feels that the complainant is not duly authorised then it may not take cognizance, rather it shall not take cognizance and defer the ultimate decision to take cognizance of the offence till the relevant material is produced or positively declared before the Court that there was no other material regarding the sanction or authorisation except the one already produced before the Court, be it acceptable to the Court or not. Thus far and no further. But merely because according to the trial Court, there is no due, quite satisfactory authorisation, that does not of its own automatically vests powers in the Court to indiscreetly summarily throw away the complaint straightaway as in light of the aforesaid discussion the complainant who is a public servant deserves to be given a chance in overall public interest to satisfy the conscience of the Court that he is duly authorised by producing relevant material on record including the notification, circular, etc., as the case may be in support of written authorisation produced before the Court !! These sorts of questions like the present one are more often than not the mixed question of fact and law, and accordingly, no decision should be given without calling for relevant material brought on the record !! To throw away the complaint merely observing there was no satisfactory material available before the Court to take the cognizance of the offence without going deep into the matter is not only unnecessarily, hastily punishing the public administration, but in a way, ultimately it recoils and unnecessarily punishes the public interest, a cause of public justice!! Section 12AA(1)(e) of the Act does not say that if the complainant fails to produce the notification in question etc., alongwith the letter of authorisation, the complaint requires to be mechanically thrown off without any corresponding duty cast upon

the Court also to call for relevant material. The production of notification in support of its legal authorisation is always a matter of evidence which at the initial stage Court may insist upon primarily and ordinarily when disputed and challenged before the Court but when not so disputed in a given case, it would indeed be quite premature and unjust to irresponsibly throw away the complaint on some unconfirmed apprehensions and doubts!! This duty jurisprudence in the first instance of the Court and in the second instance of the prosecution is required to be properly understood. There was indeed a time, in old good days followed till the recent past when the question was as if of the duty of the prosecution only and the Court was not required to do anything except that of playing a role of "Referee" in the boxing match !! In other words "an arm-chair critic" !! That duty was required to be discharged by the prosecution alone and none else !! Not that ultimately this concept of overall burden and accountability fixed upon the prosecution has no substance to be borne in mind but at the same time now much neglected unwritten doctrine of "judicial activism and accountability" is fast coming up and gradually gaining ground in the overall interest of the public justice, where care is indeed taken to see that overdose of technicality does not cripple and kill the cause of justice. The reason is with all-around deterioration in discharge of public duty because of bureaucratic red-tappism, corruption, nepotism and unconcerned approach of some of the public servants, even some of the Public Prosecutors also sometimes indirectly as alleged helping the accused the cause of justice has come to the receiving end with all serious setbacks ! It is here that every Court has to stand by alert and guarantee justice to people, sometimes robbed by the mal-public-administration and often victimized by hard, crude hopeless technocrat approach often believed and proved to be quite antithesis of the substantive justice. And accordingly, it is here that the Court has to initiate activism, exhibit accountability and stand by justice. This pragmatism and wisdom, height and spirit of justice no Court can afford to lose sight of, if indeed it wants to sustain its credibility with the people of its capacity to deliver the substantial justice. The Courts of the Magistrates and the Sessions Courts are the grass-roots of the Administration of Justice - directly in contact with common man. The entire image and prestige of the Administration of Justice accordingly depend upon the impression, image and-prestige of this grass-root level. Courts. Accordingly, it is all the more important for these Courts to conduct sensibly which may not only retain the faith of the people in the Administration of Justice, but strengthen it still further !! The dismissal of such complaint is not a matter of taking pride or pleasure of scoring the disposal, but it should be a matter of great concern, shame and distress when such fast escalating offences under the Essential Commodities Act against the public interests are brought to the notice of the Court and yet go unpunished, let off of the hook for want of proper care and overall sense of public accountability on the part of the concerned Court. In this view of the matter, all the subordinate Courts are hereby directed henceforth not to be over-enthusiastic, rash and remiss in mechanically dismissing such complaints under the Special Acts in cavalier (sic.) fashion on mere unconfirmed doubts or

suspicions that the concerned complainant is not duly authorised to file the complaint barring the Court to take cognizance of alleged offence !! Once again, at the cost of repetition, it may be pointed out that if it is prima facie felt that the complainant is not duly authorised, then the Court should stop there and there, and specifically direct the complainant that the case shall be listed on the Board for the issuance of the process against the accused only when he (complainant) makes an application with relevant material satisfying conscience of the Court that he is duly authorised. In case if the complainant despite this reasonable opportunity given to him plays foul with the Court direction and do not do anything by producing the necessary notification, circular, authorisation, etc., then in that case the Court would be quite justified and at liberty in dismissing the complaint and while doing so, the Court shall state reasons for dismissing complaint, a copy of which shall at once be shall be forwarded to (i) the concerned head of the Department, and (ii) to the concerned Secretary of the State Government at Gandhinagar, with a permission to Reporters of Newspapers to see the judgment and even publish it. This is necessary to expose inefficient Government officer and the public administration to have in direct check on them !! In the present-day context Courts not discharging its duty on the aforesaid lines would be utterly failing in its duty, taking into consideration the just expectation of people for justice from the Court.

9. That takes us now to equally important main question whether in the instant case, the complainant was duly authorised u/s 12AA(1)(e) of the Act or not? According to this section, a Special Court may, upon (i) perusal of the police report of the facts constituting offence under the Act, or (ii) upon the complaint made by an officer of the Central Government or the State Government authorised in this behalf, or (iii) any aggrieved person, take cognizance of the offence without the accused being committed to it for trial !! Accordingly, bearing in mind the requirements of this section, on perusing the complaint in the instant case, it appears that the learned A.P.P., has produced a circular dated 7-2-1980 issued by the Food & Civil Supplies Department, which duly authorises all the Civil Supplies Officers of the Government to file the complaint. It is not disputed that the complainant is not a Civil Supplies Officer, an officer of the State Government !! In this view of the matter, prima facie at the very outset, it would indeed be quite strange to hold that the present complainant was not duly authorised to file the complaint. This is what prima facie appears to us. The matter does not and cannot rest here as the record also shows that Mr. Guru Prasad Mahapatra, Collector, Junagadh by his Order dated 28-12-1994 had directed the present Deputy Mamlatdar (Civil Supplies) to file the complaint. In this view of the matter, the learned Special Judge prima facie has acted quite hastily and indiscreetly in dismissing the complaint !! It is indeed quite true, quite ideal if ordinarily alongwith the complaint, the complainant had annexed the relevant notification circular, etc. etc., issued by the appropriate Government as well as the Order passed by the Collector authorising him to file the complaint. But as stated above, merely because that was not annexed, that could not have

been made the ground to prematurely and indiscreetly dismiss the complaint. At this juncture, what we find is that circular is issued. We have also indeed no doubt to prima facie hold that necessary authorisation to file complaint must have been given under some notification, unless it was conclusively found to be not so. In that view of the matter, the prosecution deserves to be given an opportunity to produce the said notification in question on record of this case before the Court to put an end to the doubt on the point.

10. In view of the aforesaid discussion, we are of the opinion that the learned Special Judge has committed a patent and obvious error in dismissing the complaint on the mere suspicion that he was prevented from taking cognizance of the offence for want of proof of proper authorisation without affording the reasonable opportunity to the complainant to satisfy the Court by producing the relevant notification. We here at the cost of repetition make it clear that even if there is some hitch of taking cognizance of the offence, the Court would be entitled not to take cognizance of the offence only and only then when it is ultimately and finally satisfied that the concerned officer is not so authorised. But that does not automatically vests any power in the Court to mechanically throw away the complaint without making further honest, indepth, sincere efforts to find out the truth by affording the reasonable opportunity to the concern public servants pleading the public cause. The ultimate anxiety and concern of This Court is and for the said purpose of all Courts of the State ought to be that the cause of public justice should never be unnecessarily made to suffer for want of efficiency, sincerity and/or lack of public accountability of the concerned officer and/or on its part the Public Prosecutor in charge of the case. In fact when called upon to do justice if instead of appreciating the public cause involved if indirectly, inadvertently even one lends support to the accused letting down the cause of justice. Such irresponsible, de-registration of the complaint is simply impermissible disqualifying to be Judge in view of the discussions made hereinabove.

11. This Court is indeed quite conscious of the fact that this matter is merely at the admission stage and accordingly ordinarily if there is some substance in it and is required to be allowed, the same in the first stage is required to be admitted and notice issued to the respondent and thereafter only, at the second stage, respondent is heard before finally deciding!! But this ordinary, routine practice of issuing notice or Rule has indeed no relevance in peculiar facts and circumstances of the instant case. In the instant case, the trial Court has surprisingly dismissed the complaint without taking cognizance of the offence, that is to say quite prior to accused becoming party to the Court proceedings !! In this view of the peculiar special facts, respondent has indeed no locus standi right to be heard before This Court. This accordingly and indeed being purely a matter between This Court and the trial Court only, the respondent nowhere figures in between to open his mouth to have any say, rather right to address This Court holding the brief of the learned trial Judge who has committed patent error !! Not only this but as already held by This Court in a decision rendered in

the case of Gujarat Pollution Control Board Vs. Rushabh Industries, , we are quite conscious of the fact that this appeal is merely at the admission stage and accordingly, if the same was to be allowed and going to be decided against the respondents, notice is required to be issued to the respondents in the ordinary course. However, bearing in mind the gravity and seriousness of the alleged offence under the Act, the fanciful and indiscreet manner in which the complaint came to be thrown off, it cannot be said that such an indiscreet exercise of powers at the very threshold of the trial vested any right worth the name whatsoever in the accused to defend such patent lapse, illegal and indiscreet act of the learned Magistrate which has all the potency to turn into the miscarriage of justice, to take shelter behind him and thereby indirectly support unjust and illegally earned acquittal order!! In fact, having regards to the peculiar facts and circumstances of this case, This Court feels that it is indeed not necessary at all to issue notice to the other side by mechanically applying the principle of natural justice and that the matter can certainly be remanded to the trial Court without hearing the accused. Further, in such cases to issue notice/ Rule is time consuming process and many a times cases gather dust after issuance of the notice/rule, and in the meantime, the monster of, selling sub-standard essential commodities goes on damaging the social interest.

12. With this set of background in mind and further bearing in mind the fact that time and tide and selling of the substandard essential articles waits for none, it is indeed not necessary to issue notice to the other side. Further, by remanding the case, what This Court is doing is simply redressing the injustice done to the prosecution where the door of the justice was closed on face of it without giving reasonable opportunity to bring on record the relevant material. What was the right of the prosecution is given back to it by this Order which cannot be said in any way causing prejudice to the accused!!

13. In the result, this appeal is allowed. The impugned judgment and order passed by the learned Special Judge is quashed and set aside. The matter is remanded to the learned Special Judge with a direction to decide the same on merits according to law in the light of observations made in the judgment. Taking into consideration the fact that the alleged offence is of the year 1993, the learned Special Judge is directed to hear and decide the same as expeditiously as possible, preferably on or before 31st October, 1996.