
(1985) 12 GUJ CK 0003
In the Gujarat High Court

State of Gujarat	Vs	APPELLANT
Patel Shankerlal Bhabhaidas		RESPONDENT

Date of Decision : 17-12-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 193, 193
Essential Commodities Act, 1955 — Section 12A, 12A, 12AA(1)(d), 12AA(1)(e),
12AA(1)(e)

Citation : (1987) 1 GLR 192

Hon'ble Judges : M.B. Shah, J

Bench : Single Bench

Judgement

M.B. Shah, J.—In this group of revision applications a common question of law which arises for determination is whether the Special Court, constituted u/s 12A. of the Essential Commodities Act, 1955, hereinafter referred to as "the Act," has jurisdiction to take cognizance of the complaint which may be filed before it directly or that it can take cognizance of the offence only if the case is committed to it by a Magistrate.

2. At the outset, it should be noted that there is no provision under the Essential Commodities Act which provides that Special Court shall take cognizance of the matter only if the case is committed to it by some other Court. That means there is no provision which is similar to Section 193 of the Criminal Procedure Code. Section 193 reads as under:

193 Except as otherwise expressly provided by this Code by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

It expressly provides that no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under the Code except as otherwise expressly provided by the Code or by any other law for the time being in force. The Essential Commodities

Act does not provide for committal proceedings as provided u/s 193 of the Criminal Procedure Code. It is also clear that if otherwise is expressly provided by the Code or by any other law, then the Sessions Court can take cognizance of any offence as a Court of original jurisdiction. There is no reason to hold that Special Court constituted u/s 12A of the Act for speedy trial of the offence is not a Court of original jurisdiction and it could take cognizance of the matter only if the case is committed by a Magistrate.

3. Section 11 of the Act provides that no Court shall take cognizance of any offence punishable under this Act except on a report 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. Section 12A empowers the State Government for the purpose of providing speedy trial of the offence to constitute as many Special Courts as may be necessary. Section 12-AA reads as under:

12-AA. (1) Notwithstanding anything contained in the Code,-

(a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under Sub-section (2) or Sub-section (2-A) of Section 167 of the Code, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers-

(i) when such person is forwarded to him as aforesaid, or

(ii) upon or at any time before the expiry of the period of detention authorised by him;

that the detention of such person is unnecessary, he may, if he is satisfied that the case falls under the proviso to Section 8, order the release of such person on bail and if he is not so satisfied, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court, may, subject to the provisions of Clause (d) of this sub-section, exercise, in relation to the person forwarded to it under Clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise u/s 167 of the Code in relation to an accused person in such case who has been forwarded to him under that section;

(d) save as aforesaid no person accused of or suspected of the commission of an offence under this Act shall be released on bail by any Court other than a Special Court or the High Court:

Provided that a Special Court shall not release any such person on bail-

(i) without giving the prosecution an opportunity to oppose the application for such release unless the Special Court, for reasons to be recorded in writing, is of opinion that it is not practicable to give such opportunity; and (ii) where the prosecution opposes the application, if the Special Court is satisfied that there appear reasonable grounds for believing that he has been guilty of the offence concerned:

Provided farther that the Special Court may direct that any such person may be released on bail if he is under the age of sixteen years or is a woman or is a sick or infirm person, or if the Special Court is satisfied that it is just and proper so to do for any other special reason to be recorded in writing;

(e) a Special Court may, upon a perusal of police report of the facts constituting an offence under this Act take cognizance of that offence without the accused being committed to it for trial;

(f) all offences under this Act shall be tried in a summary way and the provisions of Sections 262 to 265 (both inclusive) of the Code shall, as far as may be, apply to such trial:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act, with which the accused may under the Code, be charged at the same trial:

Provided that such other offence is, under any other law for the time being in force, triable in a summary way:

Provided further that in the case of any conviction for such other offence in such trial, it shall not be lawful for the Special Court to pass a sentence of imprisonment for a term exceeding the term provided for conviction in a summary trial under such law.

(3) A Special Court may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned in, or privy to, an offence under this Act, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall, for the purposes of Section 308 of the Code, be deemed to have been tendered u/s 307 thereof.

(4) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail u/s 439 of the Code and the High Court may exercise such powers including the power under Clause (b) of Sub-section (1) of that section as if the reference to "Magistrate" in that section included also a

reference to a "Special Court" constituted u/s 12-A.

4. Section 12-AA(1) provides that notwithstanding anything contained in the Code, all offences under the Act shall be triable only by the Special Court constituted for the area in which the offence has been committed. So this section gives jurisdiction to try a case to a Special Court. Section 12-AA(1)(b) confers upon the Special Court similar powers which are conferred upon the Magistrate which he can exercise u/s 167 of the Criminal Procedure Code. But this Section 12-AA(1)(b) indicates that the entire Criminal Procedure Code is not made applicable or entire Section 167 would not be applicable but specific similar powers are conferred. It authorises the Magistrate to release the accused person on bail only if the case falls under proviso to Section 8 of the Act otherwise he is required to forward the accused to the Special Court having jurisdiction.

5. Clause (c) of the aforesaid section confers upon the Special Court the same power which a Magistrate having jurisdiction to try a case may exercise u/s 167 of the Code in relation to an accused person in such case who has been forwarded to him under that section.

This also indicates that the Special Court is the Court of original jurisdiction and the Court has to exercise the same power which the Magistrate may exercise.

6. Clause (d) of the aforesaid section confers upon the Special Court or the High Court powers which are similar to Section 437(1) & (4) of the Criminal Procedure Code. It provides that no person accused of or suspected of the commission of an offence under the Act shall be released on bail by any court other than a Special Court or the High Court. It prohibits the Special Court from releasing an accused on bail when the prosecution opposes the application for bail, if it appears to it that there are reasonable grounds for believing that he has been guilty of the offence concerned except in the case where the person is under the age of sixteen years or is a woman or is sick or infirm or if the Special Court is satisfied that it is just and proper so to do for any other special reason to be recorded in writing.

7. Clause (e) provides that a Special Court may, upon a perusal of police report of the facts constituting an offence under the Act, take cognizance of that offence without the accused being committed to it for trial, upon this section heavy reliance was placed by the learned Advocate for the accused for submitting that this clause indicates that there should be committal proceedings otherwise there was no necessity of giving a special power to the Special Court to take cognizance of the matter upon a police report without the accused being committed to it for trial. In my opinion, the submission of the learned advocate cannot be accepted for two reasons viz.:

(1) as stated above, there is no specific provision which in terms provides that Special Court shall take cognizance of the matter only if the accused is committed to it for trial. That is, there is no similar provision to Section 193 of the Code.

(2) This Clause (e) has to be read along with the other clauses i.e. Section 12AA(I)(b), (c) & (d) and also Section 167 of the Criminal Procedure Code.

Section 167 of the Criminal Procedure Code prescribes that whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of 24 hours fixed by Section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the prescribed diary relating to the case. This would mean that the Legislature intended to confer jurisdiction upon the Special Court to take cognizance of the matter upon police report as soon as the accused is forwarded to the Special Court under Clause (c) and try the accused even though he is forwarded under Clause (c). Under Clause (c) the Special Court is required to exercise the power which the Magistrate exercises u/s 167 of the Code at pre-trial stage of releasing the accused or remanding the accused to judicial custody. The Special Court which has Jurisdiction to try the case would have jurisdiction to take cognizance of the offence on the complaint filed by a public servant and public servant may be a police officer. Additionally the Special Court would have jurisdiction to take cognizance of the offence on the basis of the police report which is forwarded to him along with the accused by the Magistrate to whom the accused is forwarded under Sub-section (2) or Sub-section (2-A) of Section 167 of the Criminal Procedure Code.

8. Clause (f) provides that all offences under the Act shall be tried in a summary way and the provisions of Sections 262 to 265 of the Code shall, as far as may be, be made applicable to such trial. The proviso to this clause empowers the Special Court to pass a sentence of imprisonment for a term upto two years while u/s 262 of the Criminal Procedure Code when there is summary trial, sentence of imprisonment for a term exceeding three years cannot be imposed.

9. Section 12-AB confers appellate or revisional power on the High Court as provided in Chapters XXIX and XXX of the Criminal Procedure Code. Section 12-AC provides that save as otherwise provided in the Act, the provisions of the Code shall apply to the proceedings before a Special Court and for the purposes of the said provisions the Special Court shall be deemed to be a Court of Session. This section only means that at the time of proceeding before the Special Court the provisions of the Criminal Procedure Code will be applicable unless otherwise is provided under the Act and by a deeming fiction status of Sessions Court is conferred upon the Special Court. But this does not mean that the Special Court is Sessions Court and that Section 193 of the Criminal Procedure Code would be applicable and it can take cognizance only if the case is committed to it. This deeming fiction is created for empowering the Special Court to follow the provisions of the Code at the time of trial of the case.

10. The learned Public Prosecutor has relied upon the Division Bench decision of the Patna High Court in the case of Nawal Kishore Agarwal and Others Vs. State

of Bihar, . In that case the Division Bench of the Patna High Court has interpreted the provisions of Sections 12AA and 12AC and has held that a Special Court under the Act can take cognizance of the offences under the Act either on a police report or on a complaint in writing by the public servant as contemplated u/s 11 of the Act. It has rejected the contention that in view of Clause (e) of Section 12AA(1) the cognizance can only be taken upon a police report and not by any methods of taking cognizance under the law. It further held that if this contention is accepted, then the same would virtually render a substantial part of Section 11 of the Act otiose barring cognizance on police reports. I entirely agree with the reasons given by the Division Bench of Patna High Court because Section 11 of the Act envisages that on a report in writing of the facts constituting an offence made by a person who is a public servant as defined u/s 21 of the Indian Penal Code, the cognizance of the offence can be taken by the Court. The Court has also relied upon the Division Bench decision of the Bombay High Court in the case of K.R. Bhat Vs. Emperor, , and has held that the power to try a case would necessarily include the power to take cognizance. Therefore, once the Special Courts are constituted for trying the offences under the Essential Commodities Act, then there is no reason to hold that the Special Court has no jurisdiction to take cognizance of the offence. The only limitation which is provided u/s 11 is that it shall not take cognizance of any offence except on a report in writing of the facts constituting the offence made by a person who is a public servant. This means Special Court cannot take cognizance on a complaint filed by a private individual.

11. The learned Public Prosecutor has also relied upon the decision of the Supreme Court in the case of A.R. Antulay Vs. Ramdas Srinivas Nayak and Another, , wherein the Supreme Court has interpreted the provisions of Section 8(1) of the Criminal Law Amendment Act. In paragraph 27 after discussing elaborately the powers conferred upon the Special Judge, the Court has held as under:

When taking cognizance, a Court of Special Judge enjoyed the powers u/s 190. When trying cases, it is obligatory to follow the procedure for trial of warrant cases by a Magistrate though as and by way of status it was equated with a Court of Session. The entire argument inviting us to specifically decide whether a Court of a Special Judge for a certain purpose is a Court of Magistrate or a Court of Session revolves round a mistaken belief that a Special Judge has to be one or the other, and must fit in the slot of a Magistrate or a Court of Session. Such an approach would strangle the functioning of the Court and must be eschewed. Shorn of all embellishment, the Court of a Special Judge is a Court of original criminal jurisdiction. As a Court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred by the statute setting up the Court. Except those specifically conferred and specifically denied, it has to function as a Court of original criminal jurisdiction not being hide-bound by the terminological status description of Magistrate or a Court of Session. Under the Code it will enjoy all powers which a Court of original criminal jurisdiction enjoys

save and except the ones specifically denied.

12. Applying the aforesaid ratio it is clear that the Special Court constituted u/s 12-A would be a Court of original criminal jurisdiction. u/s 12-AA(1)(a) it only can try the offences under the Act. No other Court has jurisdiction to try the offences under the Act. A Special Court would be a Court of original jurisdiction and its status is equated with that of Court of Sessions. Unless otherwise is provided under the Act it is required to follow the procedure prescribed in the Criminal Procedure Code.

13. Apart from the aforesaid aspect, if the contention of the accused that Special Court cannot take cognizance of the offence but only a Magistrate can take cognizance of the offence is accepted, then the whole purpose of amending the Act would be frustrated. Section 12-A in terms provides that the State Government may, for the purpose of providing speedy trial of the offences under the Act, constitute as many Special Courts as may be necessary for such area or areas. So the whole object is speedy trial of the case and for dealing more effectively with the persons indulging in anti-social activities likes hoarding and black-marketing and the evil of vicious inflationary prices. This avowed object of expeditious disposal of cases under the Act and that too by making them triable in a summary way as provided u/s 12-AA(1)(e) would be frustrated. Therefore also the contention of the learned advocate for the accused that in view of Section 12-AA(1)(c) only on a police report without waiting for the committal the Special Court can straightway take cognizance of the offence while in other cases on a report being filed by a public servant only the Magistrate can take cognizance and then he is required to commit the case to the Special Court, deserves to be rejected. As stated above, in my view, Clause (e) of Sub-section (1) of Section 12-AA was added with a view that when the accused is produced before the Special Court, for passing appropriate order under Clauses (c) & (d) of Section 12-AA(1) for remand or for releasing the accused, even at that pre-trial stage the Special Court can take cognizance of the matter and order for trial of the case immediately.

14. Same view is taken by the Kerala High Court in the case of T.V. Abdal Nazar and Anr. v. P.K. Mohammed Kutty and Anr. 1985 (2) Crimes 646.

15. However, the learned advocate for the accused relied upon the decision of Rajasthan High Court in the case of Ram Prasad Sharma and Sons. Vs. State of Rajasthan, , where the Court has held that the provisions of Section 12-AA(1)(e) are mandatory and are having overriding effect over Section 11 to achieve the object laid down in the Amending Act No. 18 of 1981 and the Court has further held that the Special Judge has no jurisdiction to take cognizance of the matter and directed the Supply Officer to lodge FIR at the police station. With respect, it is difficult to agree with the reasons given by the learned Judge. As discussed above, if Sections 11, 12-A and 12-AA are read together, it is clear that the Special Judge would have jurisdiction to take cognizance of the matter on a report filed by a public servant. Section 12-AA(1)(e) additionally empowers a

Special Judge to take cognizance of the matter on police report without waiting further at the pre-trial stage when the accused is forwarded to him for passing appropriate order u/s 12-AA(1)(d). This Section 12-AA(1)(e) is an enabling section and there is no prohibition in taking cognizance by any method other than a police report. By interpreting Section 12-AA(1)(e) in the manner in which the Rajasthan High Court has interpreted it, some part of Section 11 would become otiose and that is not permissible.

16. In this view of the matter, it is held that Special Court constituted under the Essential Commodities Act will have jurisdiction to take cognizance of the offence on the basis of the complaint filed by a public servant or on the basis of the police report. It is not necessary that the case should be committed to it by the Magistrate or that only Magistrate can take cognizance of the offence and is required to commit the case for trial in the Special Court.

17. Criminal Revision Applications Nos. 265/85, 266/85, 267/85, 268/85 & 269/85 arise out of the judgment and order passed by the Additional Sessions Judge & Judge, Special Court, Rajkot (Shri B.K. Bhatt) on 20th February 1985. By the said order the learned Judge has directed that in the complaint filed in Special Cases Nos. 3/1984, 4/1984, 1/1985, 6/1984 and 5/1984 respectively he has no jurisdiction to take cognizance of the matter and, therefore, it should be returned to the complainant. This order requires to be quashed and set aside.

18. Criminal Revision Application No. 270 of 1985 arises out of the judgment and order passed by the Additional Sessions Judge & Judge, Special Court, Rajkot (Shri B.K. Bhatt) on 20th February 1985. By the said order the learned Judge has discharged the accused by holding that he had no jurisdiction to take cognizance of the complaint filed in Special Case No. 2 of 1984 by complainant Vasanlal Maganlal Rajpara, Supply Inspector, Rajkot. and, therefore, it should be returned to the complainant. In view of what is stated above, this order requires to be quashed and set aside.

19. Criminal Revision Applications Nos. 27 of 1984, 28 of 1984 and 29 of 1984 arise out of the judgment and order passed by the Additional Sessions Judge, Bhavnagar, on 5th December 1983 in Criminal Cases Nos. 4 of 1983, 3 of 1983 & 5 of 1983 respectively. The learned Additional Sessions Judge and Special Court has held that the Court has no jurisdiction to take cognizance of the complaint by holding that on a police report only the Court can take cognizance and in view of Section 193 of the Criminal Procedure Code it can take cognizance only if the case is committed to it. In view of the aforesaid discussion, the orders passed by the learned Additional Sessions Judge in the aforesaid criminal cases are required to be quashed and set aside.

20. In the result, Criminal Revision Applications Nos. 265 of 1985, 266 of 1985, 267 of 1985, 268 of 1985, 269 of 1985 & 270 of 1985 are allowed. The impugned order dated 20-2-85 passed by the Additional Sessions Judge & Judge, Special Court, Rajkot, in Special Cases Nos. 3 of 1984, 4 of 1984, 1 of 1985, 6 of

1984, 5 of 1984 and 2 of 1984 respectively returning the complaint to the respective complainants is quashed and set aside.

21. Criminal Revision Applications Nos. 27 of 1984, 28 of 1984 & 29 of 1984 are allowed. The order dated 5-12-83 passed by the Additional Sessions Judge, Bhavnagar, in Criminal Cases Nos. 4 of 1983, 3 of 1983 & 5 of 1983 respectively returning the complaints to the complainant is quashed and set aside.

In all these matters the Special Court is directed to dispose of the aforesaid cases within three months from the date of the receipt of the writ of this Court.