
(2011) 09 J&K CK 0021
In the Jammu And Kashmir High Court
Case No : Criminal Ref. No. 03 of 2009

State of Jammu & Kashmir	Vs	APPELLANT
Mushtaq Ahmad Ganai		RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 28, 29, 29(2), 30, 432
Essential Commodities Act, 1955 — Section 12(A), 7(1)(a)(2)

Citation : (2011) 3 JKJ 65

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Judgement

Virender Singh, J.—Conflict between Section 30 of the Code of Criminal Procedure and Schedule II under the head ""Offences Against

Other Laws"" vis-a-vis trial by the Court and the law as laid down in State v. Ashok Kumar & Ors. has prompted the court of learned Sessions

Judge Srinagar to refer the matter to this Court for opinion while having recourse to Section 432 of the Code. As per part of the Schedule II under

the head ""Offences Against Other Laws"", it is provided that where the punishment for the offence is imprisonment of seven years or upwards same

is to be tried by the Court of Sessions as reflected in Column 6th of the said Schedule. Some of the offences under Essential Commodities Act are

punishable with imprisonment which may extend upto seven years so as per Schedule referred the offence is triable by the Court of Sessions. In

the Central Code of Criminal Procedure under the head ""Offences Against Other Laws"" when the imprisonment is not more than seven years the

case is triable by the Magistrate of the First Class.

2. The position vis-a-vis trial of the cases by the court as reflected in the If

Schedule is subject to the control as contained in Section 30 of the Code. Section 29(2) of the Code reads as under:-

When no court is so mentioned, it may be tried by the High Court or subject as aforesaid by any Court constituted under this Code by which such offence is shown to be triable in the sixth column of the Second Schedule under the heading offences against the other laws.

3. The position of Section 29 is controlled by Section 30 which reads as under:-

Offences punishable with imprisonment not exceeding seven years. Notwithstanding anything contained in sections 28 or 29, a Chief Judicial

Magistrate or where there is no Chief Judicial Magistrate, the Additional District Magistrate shall have the powers to try as a Judicial Magistrate all

offences not punishable with death or imprisonment for life or imprisonment for a term not exceeding seven years.

4. The plain language of Section 30 provides that when an offence is punishable with imprisonment for a term not exceeding seven years same is

triable by the Chief Judicial Magistrate. The position of the law being clear, there is no requirement of declaring the part of the Schedule II under

the head ""Offences Against Other Laws"" as invalid and inoperative. Therefore, in terms of Section 30 the offences carrying imprisonment of not

exceeding seven years are triable by the Chief Judicial Magistrate.

5. The flashback which has given rise to such a situation is precisely required to be noticed.

Offences punishable under the Essential Commodities Act 1955 were to be tried by the Magistrate of the First Class. In the year 1981 the

Essential Commodities (Special Provisions) Act, 1981 came into force in terms whereof various provisions of the Act of 1955 were

amended/substituted. In terms of Section 12(A) of the Act Special Courts were constituted for trial of the said offences. Session courts were

notified to be the Special Courts, accordingly, from the year 1981 cases were tried by the Special Courts.

The said Act of 1981 was initially to remain in force for five years but finally its application was extended upto fifteen years which expired in the

year 1996, then, Essential Commodities (Special Provisions) Ordinance 1997 was promulgated followed by the Essential Commodities

Amendment Ordinance 1998. Both the two ordinance lapsed so were not

replaced by any enactment, therefore, Special Courts established in terms of Section 12 (A) of the Special Provisions of the Act 1981 ceased to function.

The position for trial of the offences was, therefore, relegated to the position obtaining in terms of the provisions of Essential Commodities Act

1955. This position is also clear from the Hon'ble Apex Court's judgment reported in 2001 Criminal Law Journal 4772 wherein it has been held

that after lapse of two ordinance 1997 and 1998, the consequential position that followed was that the cases registered under the Essential

Commodities Act 1955 were to be tried by the Magistrate having jurisdiction as it was being done prior to enactment of Essential Commodities

Special Provisions Act 1981.

The position of the cases registered under Essential Commodities Act 1955 continued to be presented before the Special Courts perhaps on the

premise that for some of the contravention of the orders issued u/s 3 of the Act were punishable with imprisonment extending to seven years.

6. The Single Bench of this Court in the judgment rendered in case State v. Ashok Kumar & Ors. has held that the offences u/s 7(1)(a)(2) EC Act

are to be tried by the Court of Sessions because punishment prescribed there for extended to seven years. But while rendering the judgment it

appears that the controlling position of Section 30 of the Code has not been noticed and while relying on the part of the II Schedule under the head

Offences Against Other Laws"" it has been held that the offence which carry punishment to the extent of seven years are triable by the Court of

Sessions, same law in view of the clear position of Section 30 of the Code of Criminal Procedure does not hold good.

7. In the judgment rendered by the Hon'ble Apex Court reported in 2001 Cri LJ 4722, it has been held that after lapse of two ordinances the

cases registered under Essential Commodities Act 1955 are to be tried by the Magistrate having jurisdiction because in the Schedule under the

head ""Offences Against Other Laws"" in the Central Code the offences carrying imprisonment of not more than seven years were triable by the

Magistrate of the First Class and it is in that backdrop it was held that Magistrates having the jurisdiction will try the offences registered under the

Essential Commodities Act 1955, whereas, in terms of Section 30 of the State

Code which overrides Section 29 as well as II Schedule offences

carrying imprisonment upto seven years are shown triable by the Chief Judicial Magistrate. It is in that backdrop it was clear that the cases

registered under Essential Commodities Act were not exclusively triable by the Sessions Court.

8. The controversy now no more survives because Schedule II for the chapter offences against other laws has been amended and brought at par

with the Central Code. Said amendment reads as under:-

In the Code of Criminal Procedure, Samvat 1989, for the Chapter ""Offences against other Laws"" appearing at the end of Schedule II, the

following Chapter shall be substituted, namely:

Offences Against other Laws

Offences Cognizable or Bailable or By what court

non-cognizable non-bailable triable

1. 2. 3. ! 4.

If punishable with death, Cognizable Non-bailable Court of Sessions.

imprisonment for life or

imprisonment for more than 7

years

If punishable with Cognizable Non-bailable Magistrate of the First Class.

imprisonment for 3 years and

upwards but not more than 7

years

If punishable with Non- Bailable Any cognizable Magistrate.

imprisonment for less than 3

years or with fine only.

9. It is now clear that the offences against other laws punishable with imprisonment for not more than seven years are triable by the Magistrate of

the First Class. Thus, under the Essential Commodities Act 1955 any offence which shall be punishable with imprisonment upto seven years i.e.

including seven years are to be tried by the Judicial Magistrate First Class within whose jurisdiction occurrence has taken place.

10. The references stand answered accordingly.

Copy of this judgment shall be circulated among all the judicial officers of the State.