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**(2007) 01 GAU CK 0026**  
**In the Gauhati High Court**

State of Tripura and Another

APPELLANT

Vs

Ranjit Kumar Debnath and Others

RESPONDENT

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**Date of Decision :** 24-01-2007

**Acts Referred:**

Essential Commodities Act, 1955 — Section 15, 3, 7

**Citation :** AIR 2007 Guw 108 : (2007) 2 GLT 989

**Hon'ble Judges :** Maibam B.K. Singh, J;Aftab H. Saikia, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

A.H. Saikia, J.—Heard Mr. A. Ghosh, learned Counsel appearing for the State-Appellants as well as Mr. B. Das, learned Sr. Counsel assisted by Ms. S. Das, learned Counsel appearing for the plaintiff-respondent No. 1. Also heard Mr. P.K. Biswas, learned Assistant Solicitor General of India appearing for the Union of India/pro forma Respondents.

2. This First Appeal has been carried from the judgment and decree dated 21-9-2001 and dated 25-9-2001 respectively passed by the learned Civil Judge (Sr. Division) South Tripura, Udaipur in Money Suit No. 2 of 1996.

3. The Respondent No. 1 as the plaintiff had instituted the aforesaid money suit for compensation of Rs. 10,00,000.00 (Rupees ten lakhs) with interest thereon for damages caused to him by way of illegal seizure of saleable cloths etc., damages to his shop and business, mental and physical sufferance, harassment and lowering his image and dignity in the society. In paragraph 5 of the plaint the respondent-plaintiff pleaded that while he was doing his business strictly in accordance with the terms of the licence issued to him under the provisions of the Essential Commodities Act, 1955 (for short, the Act"), on 28-11-1992 at about 6 p.m., a contingent of the Border Security Forces (for short, "the B.S.F.") (Defendant No. 4), raided his shop and in his presence seized illegally and most arbitrarily all saleable clothes stored in his shop. No seizure list whatsoever

pertaining to such seizure of the articles and materials was supplied to him till the date of filing of the plaint i.e. 4-1-96. It was further alleged, inter alia, in the plaint that immediately after such seizure, simultaneously a criminal case was registered against the respondent including 10 others before the Court of learned Special Judge, South Tripura, Udaipur, being Special Case No. 12 (SC/B) of 1992 on the basis of Puran Rajbari P.S. Case No. 2 (12) 92 u/s 7(1)(a)(ii) of the Act, being registered in connection with FIR lodged on 8-2-92 by Respondent No. 3, Sri Sudip Kumar Roy, who was the then Director, Food and Civil Supply, Govt. of Tripura. This case was resulted in acquittal of the respondent No. 1 vide judgment and order dated 3-2-95.

4. Meanwhile, after such illegal seizure, the plaintiff/respondent No. 1 was refused to get the licence to carry out his business in cloths i.e. mill made, hawker, handloom etc. renewed by the concerned authority for the year 1993-94 for which he had suffered irreparable loss and misery in his business coupled with mental anxiety that was portrayed vividly in paragraph-21 of the pleadings of the plaint in a break up under the seven heads i.e. (a) the actual pecuniary loss directly sustained i.e. the actual amount of pecuniary value of the property wrongfully detained; (b) indirect pecuniary loss, i.e. loss of profit, loss of credit, loss of reputation, loss of business, etc.; (c) the value of time spent in establishing the right violated; (d) the actual expenses or costs of litigations at several places and several forums; (e) The mental sufferings, i.e. vexations, anxiety and worry; (f) the sense of wrong or insult felt by the plaintiff and his family members on account of the act and/or omission being done by the Defendants with malicious and deliberate intention and (g) compound interests at Bank rates for period from 28-11-92 till the date of filing money suit.

5. Contesting and refusing vehemently those allegations and contentions made by the plaintiffs, all the defendants including the State-Respondents as well as Union of India filed their respective written statements wherein they inter-alia categorically and straightway pleaded that the plaint as a whole did not disclose a case for granting such relief or reliefs for damages as compensation.

6. Insofar as the stand of the State/appellants is concerned, the suit was barred by limitation, not maintainable in the present form, bad in mis-joinder, hit by Section 15 of the Act which provides for the protection of action taken under Act by the concerned officer in good faith while discharging their official duties and accordingly the State/appellant prayed that the plaintiff was not entitled to get any such relief for damages by way of compensation under those heads mentioned in the plaint itself.

7. The Union of India and others in their written statement projected their cases with the plea that the B.S.F. were not at all liable to pay any such compensation as they did not act in any manner so as to cause such damages so referred to in the plaint. According to them, they performed their official duties only on the basis of the search warrant dated 27-11-92 issued by the SDM, Belonia, Tripura on request of Civil Administration to conduct such raid in the area concerned

including the shop of the plaintiff/respondent on receipt of specific information that a large quantity of goods like sugar, dal, sarees etc. were stocked in 7 to 8 godowns in Rajnagar market, South Tripura unauthorizedly without any licence/valid documents with an aim to smuggle out those goods to Bangladesh. On that count alone, their liability to pay compensation so slapped by the trial Court may be set aside. Their specific stand is that immediately after the seizure of the illegal goods so hoarded in the shop of the plaintiff, they handed over the same to the custom authority at Belonia.

8. On the basis of the pleadings so exchanged by and between the parties the trial Court framed as many as seven issues which are as follows:

- 1) Is the suit maintainable in its present form and nature?
- 2) Whether there is any cause of action to file the suit?
- 3) Whether the claim of the plaintiff is barred by limitation?
- 4) Whether the suit is bad for misjoinder and non-joinder of necessary parties?
- 5) Whether the plaintiff is entitled to get compensation to the tune of Rs. 10,00,000/- from the defendants as prayed for?
- 6) Whether the defendants are jointly and severally liable to pay up the compensation as prayed for and whether the defendants Nos. 4 and 5 are exclusively liable?
- 7) What other relief or reliefs the parties are entitled to?

9. The trial Court examined as many as two witnesses on behalf of the plaintiff and one witness in respect of the defendants and having considered the material evidence on record as well as the document exhibited, it came to the finding that the plaintiff/respondent was entitled to recover compensation of Rs. 10,00,000/- (Rupees ten lakhs) considering the sufferings caused to him financially, mentally, physically and socially in respect of his reputation and considering the obstructions created in the rolling of capital of the plaintiff by taking away the articles from his shop and also keeping in view the insult felt by the plaintiff.

10. The learned Counsel representing the appellants as well as Pro forma defendants/Union of India have forcefully contended that by no stretch of imagination the plaintiff/respondent herein was entitled to get any such compensation as damages because on the face of the judgment itself it would reflect that the entire findings of the trial Court were based on no evidence and the same were passed by taking glaringly erroneous approach. No single allegation so raised in the plaint could be proved by the plaintiff by adducing any convincing material evidence either oral or documentary. They have placed their respective arguments challenging the impugned judgment basically on the 5 (five) counts; namely (i) the suit was ex-facie time barred; (ii) the suit was not maintainable as the same was hit by application of Section 15 of the Act; (iii) the actual amount of damages so claimed by the plaintiff was not supported by any

material evidence; (iv) no relief can be claimed against the Union of India/the B. S. F. as they performed their duties as per request of the Civil administration to carry out the raid and (v) the business of the plaintiff was never stopped as licence was renewed vide order dated 18-3-93 and 7-3-93 as per instruction of the District Magistrate and Collector, South Tripura, Udaipur.

11. On the contrary, Mr. Das, learned Sr. Counsel representing the respondent No. 1, has strenuously argued that by illegal and arbitrary action meted out by the State/appellants as well as by the pro forma-respondent/Union of India to the plaintiff-respondent, he has been put to utter devastation in his business from the date of initiation Of illegal raid so made in his shop on 28-11-92 and as a result, he has been facing severe financial crisis accompanied by physical, mental, social stress. His entire business materials on which his means of livelihood have been founded, were seized and simultaneously a criminal case was also instituted against him which continued for about three years. Ultimately that criminal case against the respondent resulted in his acquittal on 3-2-95. Under such circumstances, the respondent as plaintiff has sought for justice in the trial Court for vindication of his right against the illegal seizure as well as malicious prosecution and as such the cause of action of the case has been shown to be arisen on 28-11-92 when the illegal raid was conducted and 3-2-95 i.e. the date of the judgment of the acquittal of the Special Court as noted above. It is contended that the trial Court was absolutely justified and right in awarding the compensation of Rs. 10,00,000.00 under the heads so mentioned in paragraph-21 of the plaint.

12. Having considered the extensive submissions advanced on behalf of the parties and also after going through the deposition of the witnesses P.W. 1, P. W. 2 as well as D. W. 1 including the relevant documents so produced as Ext. 1, Ext. 2 and Ext. 3, we would now like to proceed to decide all the issues so framed as follows:

(i) (a) Coming to issue No. 1 i.e. "Is the suit maintainable in its present form and nature?", it is seen that the whole case including the illegal seizure of the goods and the subsequent criminal case against the plaintiff/respondent was admittedly proceeded under the Act and all officers, involved in the process of raid, seizure and lodging F.I.R. acted in their good faith in consonance with Section 15 of the Act which provides:

Protection of action taken under Act - (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made u/s 3.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made u/s 3.

(b) In the instant case, it appears from the perusal of the pleadings of the parties and the testimony of the witnesses, namely P. W.-1 Shri Ranjit Kr. Debnath, P.W.-

Shri Tunu Lal Debnath and D.W. 1-M.L. Batham, the Deputy Commandant, B.S.F., presently Commandant, TCKS, Hazaribag, Bihar that on 28-11-92 the Deputy Collector of Belonia namely Santosh Biswas along with B.S.F. personnel including D.W.-1 came to the shop of the respondent and raided his shop by snatching away 430 Nos. of sarees which included cotton and synthetic worth about Rs. 42,220.00 according to Union of India and Rs. 87,550.00 as per P.W. 1 and the BSF personnel after seizure of those materials immediately handed over the same to the custom authorities. Besides, as per paragraph 23 of the written statement filed by the Union of India, it is seen that the B.S. F. performed their duties of such raid and seizure under the order of Civil Administration on being duly armed with search warrant dated 27-11-92 issued under the order and signature of SDM, Belonia, Tripura. It is also manifestly evident from an ordinary reading of the contentions made in paragraphs-4 and 5 of the plaint especially paragraphs-5 that the entire allegation of the plaintiff/respondent was against the BSF because it was claimed that it was only BSF personnel who raided the shop and seized illegally and arbitrarily the saleable goods without furnishing any seizure list which was significantly negated by the plaintiff himself in his deposition in cross wherein he testified that the B. S. F. only supplied him one copy (referring to the seizure list).

(c) For convenience sake, paragraph-5 of the money suit may be quoted as under:

That the plaintiff has been doing his business strictly in accordance with the terms of the licence (for which licences are necessary), on 28-11-1992 at about 6 p.m. a contingent of B.S.F. personnel led by the Deputy Commandant of the B.S.F. (Defendant No. 4), raided the shop of the plaintiff and in his presence seized illegally and most arbitrarily saleable cloths stored in his shop. No seizure list for the purported seizure has been supplied to the Plaintiff till today.

(d) Under such circumstances and also having regard to provision of Section 15 so quoted above, we have no hesitation to hold that this suit was not maintainable. It is amazing to notice that the trial Court did not enter into this aspect to discuss the scope of Section 15 of the Act when the competent officers including the B. S. F. who acted on request of the Civil Administration under the Act participated in carrying out their official duties of raid and seizure on the basis of specific information about hoarding of illegal items not being authorised to keep under the licence with sole purpose for smuggling of those goods outside India to a foreign country namely Bangladesh. It was noticed in the trial Court's judgment that in deciding issue No. 1 the Court passed the order in a very casual any cryptic manner and to cite such mechanical approach to this issue it would be better to quote the finding which reads as follows:

On perusal of the plaint, written statement, depositions of witnesses of both sides, it is clear that the instant suit is maintainable in its present form and nature. Hence issue No. 1 is decided in favour of the plaintiff.

(ii) Now let us examine whether there was cause of action to file the suit to decide the issue No. 2. In paragraph 2 of the pleadings it was stated that the cause of action arose within the jurisdiction of the Hon'ble Court for the first time on 28-11-1992 at about 6 p.m. when a contingent of the B. S. F. raided the shop of the plaintiff and seized commodities from his custody and finally on 3-2-1995 when the learned Court of Special Judge passed judgment and order acquitting the plaintiff on the charge under the Act. So far the first date i.e. 28-11-92 is concerned, in our opinion, the same can be safely accepted as the initial date for cause of action. However, we are constrained to approve 3-2-95, being the date of the judgment mentioned above as the final date for cause of action. When the first cause of action arose on 28-11-92. during the pendency of the criminal appeal as already discussed above which ended up in the acquittal of the plaintiff, there was no bar for institution of a money suit within the period of limitation of three years. In our humble opinion, the date of acquittal of criminal case would not give rise to any cause of action and accordingly this issue has been answered against the plaintiff/respondent No. 1.

(iii) With regard to Issue No. 3 pertaining to the limitation period, it is held that since the issue of cause of action has been decided, as observed above, holding that it arose only on 28-11-92 when the subsequent date of cause of action i.e. 3-2-95 was disapproved, the instant suit filed on 4-1-96 on expiry of 3 (three) years of limitation period was undoubtedly barred by limitation.

13. Regarding issue No. 4, we do not find that due to non-joinder of custom authority in the suit as necessary party, as suggested by the learned Counsel for the appellant, the suit was bad for non-joinder. In our opinion, the custom authority was not a necessary party. It has come in the evidence that though those seized articles were handed over to the custom authority by the B.S.F., eventually articles so put under the custody of custom authority was directed to be handed over and taken care of under the District Collector in terms of the High Court's order which was passed for the purpose of disposal of those products by way of action sale and the sale proceed of which was also handed over to the respondent-plaintiff. It appears from the evidence of P. W. 1 that an amount of Rs. 18,745,00 was handed over to him as auction sale proceed by the D.M. in terms of the High Court order. Consequently this issue is decided in favour of the plaintiff/respondent No. 1.

14. Although the decision on issue Nos. 5, 6 and 7 are not necessary in view of the findings arrived at on issue Nos. 1, 2 and 3 above, this Court would like to put on record as to why the plaintiff was not entitled to get any relief to the tune of Rs. 10,000,00.00 (Rupees ten lakhs) estimated for compensation. Reasons are loud and clear. A plain reading of the plaint candidly reveals that the relief sought for was only against the BSF as emerged from paragraph-5 when there was no whisper anywhere in the pleading as regards this claim seeking against the State/defendants. That being so, this Court has no option but to hold that the plaint itself was vague and unclear. Since the Court cannot traverse beyond the

pleadings, we are of the considered view that the State-respondent are not at all liable to pay any compensation as no such relief has been sought specifically against them.

15. Now coming to the liability of the Union of India, it simply can be said that they performed, their official duties on the basis of the order of the Civil Administration by virtue of the search warrant so issued by the competent authority in good faith, and hence they cannot be saddled with liability of payment of such compensation. Accordingly, it can be safely held that the plaintiff was not entitled to get any relief. On the other hand, the State appellants along with pro forma-respondent/Union of India are not liable to pay any such amount as compensation.

16. At this stage, Mr. Das, has forcefully argued that since it was a case of malicious prosecution wherein appellant was illegally, intentionally, mala fide and with malice harassed and dragged to the Court for no fault of his, he was entitled to get compensation simply on the count of malicious prosecution as he was honourably acquitted from all the charges so levelled against, him under the Act.

17. We are sorry to say that this averments cannot be accepted in view of the fact that this criminal case was initiated for violation of the provision of the Act. Even in the judgment dated 3-2-95 passed by the Criminal Court itself, it has appeared from our close perusal that the learned Special Judge observed specifically and put on record his finding to this effect that "I do not say that these accused persons were not at all responsible for violation of any provisions under the Essential Commodities Act or orders made thereunder. But the prosecuting agency including the complainant and Deputy Collector are not at all conversant with the provision of the Essential Commodities Act or Rules/Orders made thereunder and they have showed their sagacity in implicating those accused persons in this case....

18. The elements of cause of action for malicious prosecution are (1) commencement of prosecution of proceedings against present plaintiff; (2) its legal causation by present defendant; (3) its termination in favour of present plaintiff; (4) absence of probable cause for such proceedings; (5) presence of malice therein; and (6) damage to plaintiff by reason thereof. (See Black's Law Dictionary with pronunciations - Sixth Edition).

19. In the instant case, in our considered opinion, no such elements particularly Clause 5 i.e. presence of malice were found to be present in the proceeding so initiated against the plaintiff. The instant criminal case was instituted by the competent authority only for alleged violation of the provisions of the Act because they were found in possession of such illegal materials, which were not duly authorised to be kept by them under the licence so issued under the Act. In that view of the matter, considering the attending facts and circumstances of the case, the criminal case launched against the plaintiff cannot be said to be a malicious prosecution.

20. On meticulous perusal of the impugned judgment, it appears that the same was passed mechanically and without proper application of mind, inasmuch as the trial Court even did not discuss, being the first Court of facts, any material evidence including the deposition of P. Ws. as well as Exhibits. Only finding recorded therein was that after due consideration of the evidence of witnesses and also Exhibits 1, 2 and 3, the plaintiff was entitled to get relief. It is seen that the trial Court scrutinised the deposition of D.W. 1-one Sunil Biswas who was, surprisingly, not even adduced as witness of the defendants in the instant suit when one M.L. Batham was only examined as D.W. 1 as being the witness for defendants.

21. In view of what has been discussed and observed above, all the issues are hereby answered accordingly.

22. In the result, that this appeal succeeds and stands allowed. Judgment and order passed by the learned trial Court is hereby set aside and quashed.