

(1983) 12 BOM CK 0012

In the Bombay High Court

Case No : Criminal Revision Application No's. 410 and 412 of 1983, Criminal Writ Petition No. 398 of 1983 and Criminal Application No. 868 of 1983

The Administration of Dadra and Nagar Haveli and others

APPELLANT

Vs

C.B. Shah and another

RESPONDENT

Date of Decision : 19-12-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 153, 165, 166, 4, 4(2)

Citation : (1983) 12 BOM CK 0012

Hon'ble Judges : S.J. Deshpande, J

Bench : Single Bench

Judgement

1. The learned Sessions Judge having jurisdiction over Dadra and Nagar Haveli at Silvassa has disposed of two Criminal Revision Applications Nos. 2 and 3 of 1983 by a common judgment on 6th July, 1983. The final order in these revision applications is that :

"The impugned orders in Criminal Misc. Applications Nos. 11 of 1983 and 12 of 1983 on the file of the Lower Court are set aside and it is hereby directed that the Lower Court shall decide both these applications on merits. Pending decision of both these applications by the Lower Court the Collector is directed not to dispose of the said cement bags in any manner through any agency and the seizing authority shall take steps for preservation of the said cement bags from rain"

2. Briefly stated the proceedings arose out of an application made by one C. B. Shah a partner of M/s Bharat Printers & Cement Products and permit holder of the cement, to the learned Chief Judicial Magistrate, Dadra and Nagar Haveli at Silvassa inviting him to pass an order to release 78 bags of cement which were illegally seized by the authorities.

3. This application was made on 27th April, 1983. The contents of the application are as follows :

"I respondent (Champaklal B. Shah and others) is the proprietor of M/s Rajkamal Products. I have kept cement bags in my Rajkamal Biscuit Factory, because the labourers may not utilize the cement for production purpose. The same has been seized unauthorisedly by police officer Silvassa and others. So I have not committed any offence punishable under Sections 3 and 7 of the Essential Commodities Act and Dadra and Nagar Haveli Cement Distribution Control Order, 1981. That cement is seized only for the mala fide intention of politics. The said stock of cement is allotted for the construction purpose. The said cement will be spoiled if it will be kept for a long period and also it will be spoiled because rainy season is coming very fast. Looking to the above fact I request your Honour to release 78 bags of cement as may deem fit by the Court on Bond."

This application was originally in Gujarati language. It was not filed as the part of the paper book at all. The undue long hearing, which has taken place to which I will refer later, will show how the highest Court is invited to adjudicate on substantial question of law without placing necessary, basic and relevant facts on record at the material time.

4. This application dt. 27th April 1983 was given and it appears that the Assistant Public Prosecutor concerned was given notice of this application and he has given his say on this application saying as follows :

"Objected as the said cement is seized under E.S. Act. Power to release the same is with Collector, reported to the Collector and proceedings are going on."

This application was heard by the learned Chief Judicial Magistrate, Dadra & Nagar Haveli at Silvassa and he rejected this application by his order dated 9th May, 1983. The learned Magistrate relying on the provisions of sub-section (6) of S. 6A of the Essential Commodities Act found that the jurisdiction of the Criminal Court is barred. So he rejected the said application.

5. Against the rejection of this application M/s. Bharat Printers and Cement Products through C. B. Shah and Jethmal Bhagwandas Shah filed Criminal Revision Application No. 2 of 1983. Said C. B. Shah also filed Criminal Revision Application No. 3 of 1983 separately before the learned Sessions Judge and these revision applications as stated above were disposed of by the learned Sessions Judge by a common judgment. The learned Sessions Judge held that the preliminary objection in regard to the point of jurisdiction of the Criminal Court raised by the learned Magistrate is not well founded. The learned Sessions Judge relying on (sic) the following observation allowed the revision applications :

"Once it is held that the seizure was illegal in each of the two cases it cannot be said that the essential commodity, viz. the cement bags, was seized in pursuance of an order made under S. 3, Essential Commodities Act, 1955 in relation thereto and consequently the requisite condition for operation of the bar created under S. 6E of the Act does not come into play."

The learned Sessions Judge, however, in regard to those 78 bags of cement,

which are involved in this case, although it was noticed that all the stock was seized by the police and the Collector was also seized of the matter, found that there was no seizure memo on record. The first information report which is on record at page 9 of the paper book of Criminal Revision Application No. 410 of 1983 was taken to be the basis for finding out, whether the seizure was by the authorities, who were permitted to seize under the Control Order or by the police. Relying on the recitals in the first information report that 78 bags of levy cement was found out in the Biscuit Bakery, which is near the house of Shri C. B. Shah i.e. applicant and the said cement was seized in the presence of panchas for further investigation and also the said cement has been given to supply godown, the learned Sessions Judge was pleased to hold that the seizure was not in accordance with the provisions of S. 6A of the Essential Commodities Act and essential commodity is not seized under S. 3 of the Act and if it is not seized under S. 3 of the Act, the provisions of S. 6E of the Act do not come into operation. The learned Sessions Judge has also held that the seizure made by the Collector was illegal. He also referred to certain clauses of the order to which I will refer later and he held that the initial condition or operation of S. 6E of the Act is lacking in this case, and therefore, there is no bar of jurisdiction. Concluding in this manner, the learned Sessions Judge sent back the case to the lower Court i.e. Chief Judicial Magistrate with a direction to deal with the matter afresh as the matter was rejected initially by the Magistrate on the ground of want of jurisdiction.

6. This order was made by the learned Sessions Judge on 6th July 1983 and the matter went back to the learned Magistrate for decision according to law. It appears that the learned Magistrate after remand, numbered this remand matter as Misc. Application No. 11 of 1983 and after hearing the parties allowed the application and the prayer of the original applicants was granted and directed the release of the cement bags on executing supratnama of Rs. 4000/- with a condition that the property or its value would be produced whenever called upon by the Court. This order was passed by the Chief Judicial Magistrate, Dadra and Nagar Haveli at Silvassa on 1st August 1983. This order of the learned Magistrate covers the release of 78 bags of cement also.

7. After this decision, the State filed Criminal Revision Application No. 5 of 1983 on 5th August 1983 and on 6th August 1983 obtained stay of the order dt. 1st August 1983 in regard to the release of cement bags, which was passed by the learned Magistrate.

8. Being aggrieved by this stay order, the applicant Champaklal B. Shah filed Criminal Application No. 868 of 1983 and in that criminal application a rule was issued and when the rule was issued, it appears that connected writ petition No. 398 of 1983 was already filed on 10th August 1983, which is included in another group of matters, by Jethamal Bhagwan Das Shah. It was also directed that the Criminal Revision Application No. 5 of 1983 which was pending before the learned Sessions Judge was to be called for by this Court and to be heard along

with the said Criminal Revision Application. Therefore by the order of this Court the same was transferred to this Court, which is numbered as Criminal Revision Application No. 412 of 1983, for disposal. It is in these circumstances that the revision pending before the learned Sessions Judge against the order of the learned Magistrate dated 1st August 1983 is pending for disposal before this Court.

9. At this stage, it may be noted here that during the pendency of Criminal Application No. 868 of 1983, the remand order passed by the learned Sessions Judge dated 6th July 1983 was challenged by the Administration of Dadra and Nagar Haveli and two others by filing Criminal Revision Application No. 410 of 1983 on 7th September 1983 praying for restoration of the order passed by the learned Chief Judicial Magistrate dated 9th May 1983 dismissing the application for release of the cement bags. As a result of this remand order, the learned Magistrate again heard the matter and decided the application afresh giving his judgment on 1st August 1983 to which I have referred earlier.

10. In short, Criminal Application No. 868 of 1983 is directed against the grant of stay dated 6th August 1983 in Criminal Revision Application No. 5 of 1983 before the learned Sessions Judge, which was subsequently transferred to this Court and numbered as Criminal Revision Application No. 412 of 1983 and Criminal Revision Application No. 410 of 1983 is directed against the remand order dt. 6th July 1983 passed by the learned Sessions Judge. The judgment in this case will cover Revision Application No. 410 of 1983, Criminal Revision Application No. 412 of 1983 and Criminal Application No. 868 of 1983.

11. At this stage, it would be useful to mention certain other facts which have been brought on record. It appears that on 13th April 1983, 484 cement bags from M/s Bharat Printers and Cement Products, 45 cement bags from M/s Rajkamal Confectionary and 78 bags of cement from M/s Rajkamal Cement Products and also 20 bags of cement from Mahalaxmi Cement Products as either their nominee or agents, in all 627 bags of cement have been seized. In this group of three matters, I am concerned with the seizure of only 78 bags of cement as the present application of the applicants (Bharat Printers represented by C. B. Shah and Rajkamal Cement Products) are claiming the release of these 78 bags of cement in this application dated 27th April 1983.

12. After the seizure on 13th April 1983 78 bags of cement were seized from the Rajkamal Bakery. It is said that this seizure was actually made from the house of the applicants, although there is some controversy about the fact that the house and bakery are situated nearby. It is alleged that the seizure of these 78 bags was made by a Labour Officer under the panchanama. However, the whole record relating to the seizure panchanama and seizure report are not strictly made part of the record of the Courts below. I have permitted the learned counsel for the Administration to refer to this record in this Court.

13. On 18th April 1983, the Labour Enforcement Officer purporting to be the

Supply Officer made the complaint to the police in regard to certain bags of cement belonging to the applicants having 150 bags in number. This first information report is on record. According to this first information report, it was alleged that one Chhotubhai Mithalbhair Patel and the applicant Champaklal were shown as accused persons. It is further alleged in this first information report that 150 bags of cement which was allotted to Shah was given on loan to Rajkamal Company Masat and this cement according to the informant is misused. It was stated that this Champaklal Shah is the proprietor of Rajkamal Cement Products. He had demanded 1820 bags of cement for the construction of factory with necessary plan estimates. It is also further recited in the first information report that in pursuance of this application 250 bags of cement were given to him. In further para it is specifically recited that on 13th April 1983 at 16 hours to 16-30 hours on enquiry 78 bags of levy cement were found out in the Biscuit Bakery, which is near the house of Shri. C. B. Shah and it was mentioned that this cement was seized for further investigation, which was given to supply office godown.

14. On the basis of this information and taking the aid of these recitals in the first information report, the proprietors of Bharat Printers and Cement Products have made an application under S. 457 of the Cr.P.C. inter alia stating that they have got information that the police have seized these bags. The applicants relied on receipt issued by the Labour Enforcement Officer which is on record of the paper book in Criminal Application No. 868 of 1983. The recital of the receipt shows that on inspection on 13th April 1983 at Rajkamal Bakery 78 bags of levy cement were found and the same had been taken over. This receipt was given by the Labour Enforcement Officer, Department of Civil Supplies on 16th April 1983. The applicants-proprietors relying on this receipt and the recitals in the first information report in which the property is involved in the crime, made application under S. 457 of the Cr.P.C. for release of the said 78 bags of cement before the learned Chief Judicial Magistrate.

15. It appears that on 8th June 1983, another chapter seems to have been started by the Collector in regard to the alleged seizure of the cement. The Collector of Dadra and Nagar Haveli at Silvassa directed that 484 bags of cement which were seized were to be sold to the bona fide consumers with which I am not at present concerned.

16. The application dated 27th April 1983 was tried by the learned Magistrate without making any enquiry. The facts necessary for giving jurisdiction to the Magistrate under S. 457 of the Cr.P.C. will have to be first ascertained from the Statute. S. 457 of the Code falls in Chapter XXXIV of the Cr.P.C. under the heading "Disposal of property". There are other sections in this chapter which deal with different types of disposal of property. S. 451 deals with regard to the custody and disposal of property pending trial in certain cases. S. 452 deals with the disposal of property at the conclusion of trial. S. 453 is not relevant for our purpose. S. 454 provides the remedy for appeal against the orders under S. 452

or section 453. S. 455 also provides destruction of libellous and other matters and that too after conviction. S. 456 deals in the powers to restore possession of immovable property. Then comes S. 457 of the Code which is as follows :

"457. (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property. (2) if the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

17. This section provides the procedure in case the property is seized by any police officer and it is reported to a Magistrate and further such property is not produced before the Criminal Court during inquiry or trial. The words "during inquiry or trial" which are used in S. 457 are also common to Sections 451 and 452 of the Code. The requirement of S. 6E if analysed will be as follows : Sub-section (1) requires firstly that there must be seizure of the property, secondly the seizure must be by the police officer, thirdly, it must be reported to the Magistrate under the provisions of the Code and fourthly, such property must not be produced before the Criminal Court during an inquiry or trial. In regard to such property which is seized by the police officer and not produced before the Criminal Court, the Magistrate is authorised to pass an order for delivery of such property to a person who is entitled to possession and if such a person is not ascertained in regard to the custody of such property or in regard to the production of such property, Sub-section (1) of S. 6E of the Code provides for the delivery of the property or in alternative for the custody in case the person cannot be ascertained.

18. Sub-section (2) of S. 6E of the Code further provides that if the person so entitled is known, the property may be delivered to him on certain conditions and if such person is not known, the Magistrate may detain it and shall issue proclamation specifying the articles and requiring any person who may have a claim thereto to appear before him to establish his claim within six months from the date of such proclamation.

19. This S. 6E of the Code can be invoked only when three facts are established, that firstly there must be seizure of the property, secondly that seizure must be by the police officer and thirdly that the seizure must be reported to the Magistrate under the provisions of the Code. In this case, none of these three conditions exist either by way of an application or by any other record before this Court or in the Courts below. The applicants relied only on the receipt dated 16th

April 1983 issued by the Labour Enforcement Officer and the first information report which is numbered as Crime No. 54 of 1983. I have made reference to the first information report and also receipt dated 16th April 1983. If we look to the receipt which is on record, it is passed by the Labour Enforcement Officer and which states that on inspection on 13th April, 1983 78 bags of levy cement have been taken over. The receipt was given to the applicants by the Department of Civil Supplies, which is dated 16th April 1983.

20. In this connection, it will be remembered first that the seizure means to put in possession of or to take over possession. The possession which is referred to in the acts of the seizure is taking legal possession. If this receipt is examined, it is obvious that it can hardly be disputed that any police officer is involved in seizing this article. (sic) Assuming for a while, the police officer was with the party of the Civil Supplies department and the seizure has taken place, yet the seizure will not be the seizure by a police officer within the meaning of S. 6E of the Cr.P.C.

21. The second requirement of this S. 6E is that the seizure must be reported to the Magistrate, which fact is absent in this case. Because there is no record of the report to the Magistrate under the provisions of the Code which was to be made by the police officer. The first information report, which is on record is not the report within the meaning of S. 6E of the Code. If the seizure is ordinary, which falls under S. 51 or 52 of the Cr.P.C. it is not obligatory on the police officer to report the same to the Magistrate. The report of the seizure or any act if it can be referred to can be found out from Sections 102, 153, 165 and 166 of the Code. In the absence of any such report as provided in the above section, it would be difficult to show that there has been a report of the seizure to the Magistrate and the seizure was under the provisions of the Code as required under S. 6E of the Code. The whole argument of the learned Counsel for the applicants, Mr. Rajiv S. Mohite that since the police were kept at their house and when they went to the police and approached the Collector, both were indifferent to answer in what circumstances 78 bags of cement are seized and from this fact he has inferred that the police have seized the goods. As the first information report referred to 78 bags of cement, it was contended that this is sufficient ground for attracting the provisions of S. 6E of the Cr.P.C.

22. In my opinion, this is complete misreading of the provisions of S. 6E of the Code. S. 6E does not provide for detailed inquiry in regard to the title at all. At the most criminal courts get jurisdiction not by instituting of proceedings but by report or complaint of some commission of criminal acts. The jurisdiction of criminal courts cannot be invoked either by institution of proceedings or by any reference to certain documents, which caused the Court to take notice of such thing contained therein. In this case, the search which took place on 13th April 1983 relates to 78 bags of cement and it is on the footing that this search was taken in the presence of the police, perhaps by police officer along with the concerned authorities of Civil Supplies department and reference is given in the

first information report to this, so it is contended that this is the seizure by the police. I am afraid that this contention is without any substance.

23. In this case, the property is not seized by the police much less such seizure is reported to the Magistrate. It is also not found that it was the seizure under the provisions of the Cr.P.C. In the absence of any such conditions which require the existence in order that the Magistrate may pass some orders in regard to some property, it is difficult how the application given under S. 6E of the Code in this case can be made to the Magistrate in the present circumstances.

24. S. 6E of the Code mentions the words "during inquiry or trial". These words must refer to an offence which is either being inquired into or which is likely to be tried by the Magistrate. It was stated on behalf of the Administrator that as far as 78 bags of cement are concerned as yet there is no prosecution or there is no criminal proceeding which is to be started and if any first information reports are given, they are not referred to involving in any criminal offence as yet. Then there is another circumstance that the property i.e. 78 bags of cement physically are in the custody of the police. But they are actually under the control of the Civil Supplies department and it must be held that they are in legal possession of the Collector or Department of Civil Supplies. The property is not produced before the Court. In my opinion, with such a situation, recourse to S. 6E of the Code is not possible for the applicants.

25. The learned Counsel for the original applicant Mr. Mohite contended before me that in order that the provisions of S. 6E of the Code may be attracted, he can rely on the fact that the seizure is illegal as it is contrary to order under S. 3 of the Essential Commodities Act, 1955. The learned Counsel for the applicants therefore invited my attention to Clause 11 of the order under S. 3 of the Essential Commodities Act, 1955 issued by the Administrator of Dadra and Nagar Haveli on 21 st June 1981. The typed copy of this order is on record in other case but not part of the paper book in this case. So, the learned Counsel for the Administrator has handed over the compilation containing the provisions of the order. Clause 11 of the Order under S. 3 of the Act relates to disposal of cement which provides as under :

"..... Except with the prior permission of the permit issuing authority no person shall dispose of the cement covered by a permit in any manner other than that specified in the permit."

26. Clause 13 of the Order under S. 3 of the Act, which deals in powers of inspection, entry, search etc., is as under :-

"13. Power of inspection, entry, search etc.

(1) The Secretary or any other officer authorised by him or any officer of the police Department not below the rank of the Sub-Inspector or any officer of the Revenue or Civil Supply Department not below the rank of Supply Inspector and Aval Karkun,

(i) enter, inspect and search any place or premises, vehicle or vessel or other conveyances in which he has reason to believe that any contravention of the provisions of this order has been, is being or is about to be committed;

(ii) require the owner, occupier or any other person incharge of such place or premises, vehicle or vessel or other conveyances to produce any books, accounts or other documents relating to trade in cement;

(iii)

(iv) search, seize and remove stocks of cement held in contravention of the provisions of this order or conditions of the license issued and thereafter take or authorise the taking of all measures necessary for securing the production of stocks of all cement and the vehicle or vessel or other conveyance so seized, in a court and for their safe custody pending such production;

(v) the provision of S. 100 of the Cr.P.C. 1973 relating to search and seizure shall so far as may apply to searches and seizure under this order."

27. Relying on these provisions especially sub-clause (i) of clause 13 of the order under S. 3 of the Act relating to search, it was contended by the learned Counsel for the applicants that unless there is reason to believe that any contravention of the provisions of this order has been, is being or is about to be committed, there cannot be said to be any search and if there is any search, in the absence of such contravention, it is illegal. Assuming that in this particular case there is no such record of search placed before the courts below, the learned Counsel for the applicants made a grievance that no such record of search or seizure was placed before the authorities. However, it appears that at the stage of hearing of these revision applications, the learned Counsel for the Administrator Mr. B. N. Agrawal invited my attention to certain seizure report although it is not placed an record and it was contended that the seizure has been made by the Labour Enforcement Officer of the Department of Civil Supplies under Clause 13(i) of this order. Without going into the merits of this contention, it is obvious that the seizure of 78 bags as I have earlier held was not made by the police officer at all. Once it is held that it is made not by the police officer, then it is concluded whether or not the seizure has taken place under the provisions of any other Act. Even if it is found that such a seizure is to a certain extent irregular as contended by the learned Counsel for the applicants and even if it is shown that it is illegal, it is not possible to accept the contention that such illegal seizure of goods especially of essential commodity in this case can confer any jurisdiction on the Magistrate u/s 457 of the Cr.P.C. to deal with it. If the applicant was aggrieved by the illegal seizure, such grievance that the seizure is illegal could not have been made before the Magistrate because the Magistrate exercising his power under S. 457 of the Cr.P.C. has no jurisdiction to deal with any such seizure of any property made by any officer. In my opinion, the whole foundation of the case made by the applicants on the basis of illegal seizure before the Magistrate was not justified and I will hasten to add that the provisions of the Essential Commodities

Act 1955 are quite specific and definite on this point.

28. It is true as contended by the learned Counsel for the applicants that no record of seizure or search list along with other details was placed before the authorities below and therefore the applicants had no chance to meet or object to those records. Assuming for a while, though it is not necessary for me for the purpose of this judgment to go into it, that the seizure made by the officer relying on Clause 13(i) of the order under S. 3 of the Essential Commodities Act is illegal, I do not think that the illegal seizure by the authorities can confer any jurisdiction on the Magistrate to deal with the property seized by the authorities following the provisions of Clause 13(i) of order under S. 3 of the Act of 1955.

29. In this connection, it will be useful to refer to the judgment of the Supreme Court where it has been found that if the seizure is defective and it is found to be illegal such seizure is not inadmissible. This judgment is reported in *Shyam Lal Sharma, etc. Vs. State of Madhya Pradesh*, . It must be noted that seizure in this case is not the seizure covered under the provisions of Sections 153, 165 and 166 of the Cr.P.C. In this view of the matter, the grievance that the seizure was illegal, therefore contention that the goods which were seized by the authorities could be dealt with by the magistrate under S. 457 of the Cr.P.C. cannot be accepted.

30. Ordinarily, criminal Court will not have jurisdiction in respect of the matters which do not directly relate to the commission of offence or intended to be part of the commission of offence. All such inquiries in regard to the orders for disposal of property must be understood to mean the property which is likely to be involved in the offences, or which is discovered by the police in the course of investigation of an offence and reported to the Magistrate, it is only in such case that the criminal Court can get jurisdiction under S. 457 of the Cr.P.C. or allied sections given in chapter XXXIV of the Code.

31. A good deal of argument was however addressed before me on the question of seizure of 78 bags of cement on 13th April 1983 and it was contended that since the police have seized the bags, the Magistrate has got jurisdiction to deal with it. As I have already indicated above that the jurisdiction of the Magistrate under S. 457 of the Code does not rest merely on one fact that the seizure was made by the police officer, which is absent in this case for the simple reason that the receipt dt. 16th April 1983, which I have referred to with a fear of repetition does not show that the seizure was made by the Police Officer as such. In case where essential commodity even seized by the police officer, it will be difficult to assume that he is at that time exercising powers under Cr.P.C. because under Clause 13(i) of the Order under S. 3 of the Essential Commodities Act, the police officer not below the rank of Sub-Inspector is authorised to search, inspect etc. In my opinion, by mere mentioning police officer in Clause 13(i) of the Order under S. 3 of the Act. it cannot be said that ordinary jurisdiction of police officer is available to him to attract the jurisdiction of the Magistrate under S. 457 of the Cr.P.C.

32. I may in summary point out that in the matter of disposal of property, under S. 452 of the Code, the provisions deal with order for disposal of property after conclusion of trial and in any case if there is non-compliance with the formalities of the search and there is some irregularity, such as absence of witnesses even, I do not think that the search will become illegal but that will only mean that it will weaken the evidence of the prosecution in the case before the competent Court where the matter should be tried.

33. In this case, the learned Counsel for the Administrator relied on the provisions of S. 6A and S. 6B as well Sections 6C and 6E of the Essential Commodities Act, 1955. S. 6A provides as follows :

"6A. (1) Where any essential commodity is seized in pursuance of an order made under S. 3 in relation thereto a report to that effect shall without any unreasonable delay be sent to the Collector within whose jurisdiction the seizure is made, and the Collector may, if he thinks it expedient so to do, inspect or cause to be inspected such essential commodity, and whether or not a prosecution is instituted for the contravention of such order, the Collector, if satisfied that there has been contravention of the order, may order confiscation of -

(a) the essential commodity"

34. Section 6B of the said Act provides that no order of confiscation shall be made without the notice to the concerned person, who is affected by this order and he has been given reasonable opportunity of being heard in the matter within such reasonable time as the case may be, specified in the notice. S. 6C of the Act provides for appeal against the order of confiscation. S. 6D deals with award of compensation. Then comes S. 6E of the Act which is as follows :

"6E. Whenever any essential commodity is seized in pursuance of an order made under S. 3 in relation thereto, the Collector or as the case may be, the judicial authority appointed under S. 6C shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, any other Court, tribunal or authority, shall not have jurisdiction to make orders with regard to the possession, delivery disposal or distribution of such property."

35. The learned Counsel for the Administrator relied on the specific provisions of S. 6E of the Essential Commodities Act and contended that the bar enacted under S. 6E is quite specific and comprehensive to restrict any other Court to pass any order in regard to the essential commodity which is seized in pursuance of S. 3 of the Act.

36. The learned Counsel for the applicant contended before me that in order that the Collector may have jurisdiction to seize the commodity, it must be first found whether the commodity is seized in pursuance of the order under S. 3 of the Act in relation thereto. It was contended by the learned Counsel for the applicants that if it is shown that the commodity is not seized under S. 3 of the Act and in

pursuance of that order there is no seizure, the Collector will have no jurisdiction.

37. This contention even if it is accepted, that the essential commodity is not seized under S. 3 of the Act, the question whether such seizure is without authority of law or illegal or void cannot be determined by the Magistrate making an enquiry for passing an order for disposal under S. 457 of the Cr.P.C. This would be totally against the provisions of ordinary criminal law. The Code of Criminal Procedure is the general law, which provides procedure for the matters in general. Under S. 4(2) of the Cr.P.C. it must be borne in mind that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. This section is corresponding to S. 5 of the old Cr.P.C. Looking to the provisions of sub-section (2) of S. 4 of the Cr.P.C. it is obvious and clear that if a special law provides in regard to certain things or machinery or certain provisions, it is the special law which will prevail and general law will have to be to that extent abrogated as the general must yield to the special. In this case there is obvious clash of the jurisdiction between the Magistrate and the Collector. Once it is found that the Collector has assumed the jurisdiction under special statute either by following provisions under that Statute or by any Act under that Statute, it is impossible to say that the general provisions of the Cr.P.C. will be attracted. When A special Statute, vests certain power in absolute terms to deal with a particular subject it alone will have to be given precedence in case of conflict of jurisdiction with similar provisions in another general law. The law contained in the Code of Criminal Procedure and the provisions contained in Essential Commodities Act will have to be considered in conjunction and they will have to be reconciled. In case of exercise of jurisdiction in respect of essential commodity under the Essential Commodities Act, 1955, once it is found on record that the Collector has under the said Act assumed jurisdiction, the Magistrate will not have any power to pass any order in regard to the seizure of the essential commodity under the Essential Commodities Act.

38. The intention of the Parliament seems to be that by enacting S. 6E of the Essential Commodities Act, by way of mandatory command, it debars any other Court, tribunal or authority to deal with the disposal, delivery, distribution and possession of the essential commodity. The basic fact which gives jurisdiction to the Collector is not the manner in which he seized the commodity but the existence of an essential commodity which falls under the provisions of Essential Commodities Act.

39. I have stated earlier that even if illegality in seizure is found in a particular case, in my opinion, objection to it or any grievance for that purpose cannot be decided or determined at all by the Magistrate while exercising powers under S. 457 of the Cr.P.C.

40. There is another reason to come to this conclusion. The Essential

Commodities Act itself provides a machinery for determination of the disposal of the property. As I have indicated above, the provisions of Ss. 6A, 6B and 6E of the Act are certainly by way of safeguard to any person whose commodity has been seized by following the provisions of the Essential Commodities Act. At the highest, the contention of the applicants can be formulated in this fashion, that the authorities under this Act have illegally acted and by their illegal act they have seized the commodity and therefore the Magistrate is competent to consider the case.

40A. I am afraid that this contention is also not well founded. In order that the Magistrate may give finding on this fact whether the seizure is illegal or not, he must have proper jurisdiction to deal with this subject. As I have shown above the jurisdiction of the Magistrate to deal with such property is limited by the conditions of this section and if such limited jurisdiction is to be expanded for the purpose of investigation into the factum and illegality of the seizure, the provisions of the Essential Commodities Act can be easily defeated by mere allegation that the police have seized the property and therefore the Magistrate is competent to pass the order in regard to the property. This, in my opinion, cannot be the intention of the Legislature while enacting S. 6E of the Essential Commodities Act. The bar, which is enacted under S. 6E of the Act is, quite absolute, definite and clear. It says that : "and notwithstanding anything to the contrary contained in any other law for the time being in force". This phrase clearly shows that even if there is any other law and even if other law provides for any such enquiry in regard to disposal of property, despite the existence of such provisions in any other law it is ineffective as being contrary to that one found in S. 6E of the Act. The provisions of that law will not apply and jurisdiction to make orders with regard to the possession of the property seized will vest only in the authorities provided by the Essential Commodities Act.

41. The learned Counsel for the applicants invited my attention to several authorities, which were in a very large number of decisions. However, I would not like to load or crowd this judgment with all the authorities cited before me and would confine myself only to the important and relevant authorities, which are as under :

- (1) The Collector, Central Excise, Allahabad and Others Vs. L. Kashi Nath Jewellers,
- (2) Hindustan Aluminium Corporation Ltd. Vs. Controller of Aluminium and Others, ;
- (3) M.G. Abrol and Another Vs. Amichand Vallamji and Others,
- (4) Narendra Kumar Vs. The State of Bihar and Others,

42. The points for which these authorities were cited were two. It was sought to be argued that there must be a reason to believe that there is contravention as provided under Clause 13(i) of the Order under S. 3 of the Essential Commodities

Act and there was no such reason to believe existing on 13th April 1983 as the receipt was given by the Labour Enforcement Officer to the applicants on 16th April 1983 which shows that on inspection on 13th April 1983, 78 bags were taken over and there was no reason to believe at all.

43. The other authorities were cited to show that in the existing jurisdiction, if it is found, that the seizure is illegal, the Court can certainly grant the relief to the party. I am referring to this fact only to show that the proposition that if the seizure is found illegal and any authority has acted beyond his jurisdiction, the action of such authority can be challenged, is beyond dispute. On the merits of this contention there is no quarrel with the proposition. Therefore, I do not propose to examine those cases. A short answer to this plea is that this can be done, but when and where, the question before me is not like that either the seizure is illegal or the seizure is proper in accordance with the Clause 13(i) of the Order under S. 3 of the Act, but, the question is whether the Magistrate can question the validity of this seizure and adjudicate on the factum of seizure and pass such order as provided under S. 457 of the Cr.P.C. In my opinion, in all these authorities the proceeding were not under S. 457 of the Code. They were proceedings either reached up to the High Court under the provisions of relevant Acts or they were challenged before the High Court on the ground of contravention of law under Art. 226 of the Constitution. The jurisdiction of the High Court to deal with these cases is quite independent and extraordinary jurisdiction or it is possible for this Court co decide, ignore, or challenge the illegal seizure which may result in deprivation of the property. But in an application under S. 457 of the Cr.P.C. it is not open for any person to enlarge the scope of the powers provided by the Statute by inviting the Magistrate to adjudicate on questions which do not fall strictly within his jurisdiction at all.

44. In this case, in my opinion, once the Collector has assumed the jurisdiction as it is found by the record of this case, the Magistrate's jurisdiction is gone and no Magistrate can now pass any order in respect. of essential commodity seized by the Collector following the provisions of the Essential Commodities Act.

45. The property which is the subject-matter for disposal under S. 457 of the Cr.P.C. must be understood to mean the property which is not produced before the Court and is seized by the police and for which there is report of the police in accordance with the provisions of the Code. None of these conditions as stated earlier are fulfilled in this case. Assuming, over these conditions are fulfilled, in my opinion, the word "property" used in S. 457 of the Cr.P.C. cannot be that of particular and comprehensive meaning and any properties or goods which are seized under the special enactments such as Customs Act, Gold Control Act etc. will not strictly come within the meaning of property given in S. 457 of the Cr.P.C. and as such the Magistrate exercising his powers under S. 457 of the Code will not be authorised to deal with the properties and pass any order in respect of those properties.

46. In the present case where the facts are fully established the inference from

them is very clear and I think that nothing will be gained by examining the authorities to which a reference is made during the arguments on behalf of both the sides. Therefore, I am not examining those authorities in detail. Suffice it to say that in a matter like this, the provisions of S. 6E of the Essential Commodities Act are quite clear and once it is shown by manner permissible by law, or the fact is brought to the notice of the Court that the action under the Essential Commodities Act is contemplated or is being taken by the Collector, the jurisdiction of the Magistrate under S. 457 of the Cr.P.C. will automatically cease.

47. In this view of the matter, the judgment of the revisional Court in this case is therefore not sustainable in law as revisional authority has gone discussing the illegality and validity of the seizure as if it was competent to go into the same in this case. The initial requirement of the seizure having not been made by the police officer in this case, the whole superstructure which is built up on that basis must fall down.

48. During the course of arguments, the learned counsel for the applicants was to certain extent very much sentimental when he brought certain facts to my notice and he submitted before me that the Collector in this case has acted in a very high-handed manner especially he brought certain letters to my notice which were addressed to the Collector from 13th April 1983 till he made an application to the Magistrate on 27th April 1983. He also invited my attention to certain letters, which are addressed to General Manager, Dadra and Nagar Haveli, Silvassa, and bunch of letters was presented before me and they were read out. They do speak of some suspicion of the applicants and little (sic) dissatisfaction with the manner in which the Collector has treated the applicants. It may or may not be true, it is desirable that the public authorities working under special statute vested with drastic powers of seizure of the property should bear in mind that their actions including actions of their subordinates in such matters, should as far as possible inspire good faith and full confidence and faithful compliance of the provisions of law. In my opinion, as I am not going into the merits of the grievance made before me, if such fear exists in the mind of the applicants, the authorities concerned will see that while deciding the matter in regard to the applicants' prayer, they will bear in mind this expressed apprehension of the applicants while dealing with their case.

49. The learned counsel for the Administrator invited my attention to certain authorities. However, as I have stated earlier, I am not dealing with those cases, because it is not necessary for me for the reasons which I have given above. Thus, I hold that the Magistrate has no jurisdiction to deal with the present seizure of essential commodity and the application given before the Magistrate under S. 457 of the Cr.P.C. cannot be said to be decided conferring jurisdiction on him to pass any order in regard to the essential commodity which is seized by the authorities under the Essential Commodities Act.

50. In the result, the rule is made absolute in Criminal Revision Application No. 410 of 1983. The order of the learned Sessions Judge, Dadra and Nagar Haveli at

Silvassa dated 6th July 1983 passed in Criminal Revision Application No. 3 of 1983 (with Criminal Revision Application No. 2 of 1983) is set aside and the order passed by the learned Chief Judicial Magistrate, Dadra and Nagar Haveli at Silvassa on 9th May 1983 in Crime No. 54 of 1983 is restored for different reasons.

51. Criminal Revision Application No. 412 of 1983 as was numbered for the proceedings in Criminal Revision Application No. 5 of 1983 filed before the learned Sessions Judge, Dadra and Nagar Haveli at Silvassa, which was subsequently transferred to this Court, is allowed and the order passed by the learned Chief Judicial Magistrate, Dadra and Nagar Haveli at Silvassa on 1st August, 1983 in Miscellaneous Application No. 11 of 1983 is set aside.

52. In Criminal Application No. 868 of 1983 the rule is discharged. However, for different reasons, the order passed by the learned Sessions Judge in Criminal Revision Application No. 5 of 1983 on 6th August, 1983 and that of the Chief Judicial Magistrate, Dadra and Nagar Haveli at Silvassa dated 1st August, 1983 passed in Miscellaneous Application No. 11 of 1983 is set aside.

53. Having regard to the facts and special circumstances of this case, I propose to make the following order in regard to the sale of the cement. I have heard the learned Counsel for the Administrator who has shown his willingness, but he expressed his apprehension that if the property involved in this case is not sold and some damage is caused to it, no grievance should be made by the applicants. The general approach in such case should be that the property be kept in proper custody with sufficient protection. I direct that till the applicant is heard in this matter in regard to the provisions of the Essential Commodities Act the property i.e. 78 bags of cement seized on 13th April 1983 will not be sold. If the applicant is ready and willing to take back the property on Supratnama or Juma Chitti the Collector may hand over the property to him.

54. Order accordingly.