

(1988) 03 AP CK 0021
In the Andhra Pradesh High Court

The Public Prosecutor, High Court of A.P.

APPELLANT

Vs

Budde Sudhakar

RESPONDENT

Date of Decision : 09-03-1988

Acts Referred:

Essential Commodities (Special Provisions) Act, 1981 — Section 10, 11, 3, 4, 5
Essential Commodities Act, 1955 — Section 11, 2, 7
Penal Code, 1860 (IPC) — Section 21

Citation : (1988) 1 APLJ 353 : (1988) CriLJ 1470

Hon'ble Judges : Bhaskar Rao, J

Bench : Single Bench

Judgement

Bhaskar Rao, J.—This revision petition is filed against an order in S.T.C. No. 2 of 1986.

2. The facts of the case are that the Drug Inspector, Warangal, filed a complaint alleging that the accused who is the proprietor of M/s Sudha Medical Stores, sold 30 tablets of Ibugesic 400 mg. for Rs. 44-50 paise and collected excess of Rs. 9-64 paise under bill No. 1465, dated 23-6-1985 and thereby contravened Clause 21 read with Clause 29 of the Drugs Price Control Order, 1979, punishable u/s 7(1)(a)(ii) of the Essential Commodities Act, 1955. It was contended by the accused that u/s 12AA(1)(e) of the Essential Commodities Act as amended by Act, 18 of 1981, the complaint must be filed by the police only and only then the Court can take cognizance. The amended Act came into force and so Section 11 of the E.C. Act has no application. Therefore on the complaint filed by the Drug Inspector who is a public servant, cognizance cannot be taken. The Lower Court has thoroughly considered that and held that the complaint must be filed only as per Section 12-AA(1)(e) of the Act. In this case as the complaint was filed by the Drug Inspector u/s 11 of the E.C. Act the court has no jurisdiction to take cognizance. That order is challenged in this revision by the State. The learned Public Prosecutor contended that by introducing the amended Act the Legislature wanted that the cases should be tried speedily by the Special Court. That does not mean that the power conferred u/s 11 has been taken away. Both Section 11

and Section 12AA(1)(e) must be read harmoniously and the complaint filed by the Drug Inspector is maintainable and that the Court has to take cognizance if the Court is satisfied that a case is made out in the complaint. The learned Public Prosecutor also relied on a decision in *Vithal v. Asst. Director of Agriculture* (1987) 1 Andh LT 348.

3. The Counsel for the respondent contended that the judgment of the Lower Court is quite correct that there is no illegality and therefore the revision has to be dismissed.

4. In view of the above circumstances, the only point to be considered is whether the Trial Court can take cognizance of the offence under the complaint filed by the Drug Inspector, Who is a Public Servant. For that purpose, it is necessary to "extract Section 11 and other relevant provisions of the E.C. Act. Section 11 reads as follows:

11. Cognizance of offence : 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 I.P.C.

Section 12AA(1)(a)(e) : Offences triable by Special Courts (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 are, but such one of them as may be specified in this behalf by the High Court.

(b) xx xx xx xx(c) xx xx xx xx(d) xx xx xx xx (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.

5. It is contended that the amendment i.e. (Clause (e) to Section 12-AA introduced is self contained and the Special Court can take cognizance of the offence under the Act only on the report filed by the police as provided under Clause (e) of the Sub-section (1) of Section 12-AA and not by any other Public Servant as provided u/s 11. It must be noted that the object of amendment is to deal more effectively with persons indulging in hoarding, black marketing of, and profiteering, in any essential commodities and the evils of vicious inflatory prices and for matters connected therewith or incidental thereto. Section 2 of the Amendment Act provides that, during its continuance the provisions of the principal Act shall have effect only subject to Sections 3 - 11 of the Amending Act, though most of the Sections in the principal Act are drastically amended temporarily for the purpose of achieving this object. Section 11 of the principal Act is not touched and that being the position, the question is whether Section 12AA(1)(e) operates as complete bar for taking cognizance as provided u/s it which is also in operation. It must be noted that if the Legislature wanted to completely remove Section 11 it ought to have removed the same, but Section 11 is not touched. Therefore, it cannot be presumed that there is implied bar for

taking cognizance u/s 11. In *Vithal v. Asst. Director of Agriculture* (1987) 1 Andh LT 348 the. complaint was filed by an officer of the Agricultural Department and a similar objection was raised This Court held that the complaint filed by the Public Servant is maintainable and the Court can take cognizance. In view of the judgment of this Court, I do not want to follow the judgments of other High Courts.

6. In view of the above, I hold that the complaint filed by the Drug Inspector u/s 11 of the Essential Commodities Act is maintainable and the Special Court has got jurisdiction to take cognizance of the offence. The order under revision is set aside and the revision is allowed. The Lower Court is directed to proceed accordingly.