(1997) 04 PAT CK 0034

In the Patna High Court

Case No : Criminal Revision No. 56 of 1991 (R)

The State of Bihar — APPELLANT

Vs

Purshotam Lal Kejriwal and Another — RESPONDENT

Date of Decision : 11-04-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 258, 260, 262, 468
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1998) 1 BLJR 450

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narayan Roy, J.—This revision application is directed against the order dated 27.11.1990 passed by the Special Judge, (E.C. Act), stopping the proceeding against the opposite party Nos. 1 and 2 exercise of her power u/s 258 of the Code of Criminal Procedure (hereinafter referred to as the ''Code'').

2. The short facts giving rise to this application are as under:

On 2.2.1984, a first information report was lodged by the District Panchayat Raj Officer, Ranchi before the Officer-in-charge Kotwali Police Station, Ranchi, stating therein, inter-alia, that the godown situate in Upper-Bazar in the town of Ranchi allegedly belonging to the opposite party Nos. 1 and 2 was inspected and many of the irregularities were found including that of violation of display order, non-maintenance of registers and carrying on business in a godown not incorporated in the licence of the opposite party Nos. 1 and 2 for dealing in wholesale business of edible oil Banaspati and Sugar.

3. Accordingly, a case u/s 7 of the Essential Commodities Act (hereinafter referred to as the ''Act'') was instituted against opposite party Nos. 1 and 2 and the police after investigation, submitted the charge-sheet against the opposite party Nos. 1 and 2. Consequently thereof, cognizance of the offence was taken

by the Special Judge (E.C. Act), Ranchi on 11.6.1990. During the pendency of the case, the opposite party Nos. 1 and 2 filed an application u/s 258 of the Code of Criminal Procedure (hereinafter referred to as the Code) before the learned Special Judge, Ranchi for stoppage of the proceeding against them u/s 7 of the Act. The petition aforesaid was taken up for hearing on 15.11.1990 and the matter was heard at length in presence of the parties and by the order impugned dated 27.11.1990, the learned Special Judge (E.C.Act) stopped the proceeding against the opposite party Nos. 1 and 2 in exercise of its power u/s 258 of the Code. It appears from the order-impugned that the proceeding was stopped on the grounds (I) that the prosecution was barred by limitation u/s 468 o the Code (II) the firm was not made an accused in the first information report and (III) the District Panchayat Raj Officer was not the competent officer to lodge the first information report against opposite party Nos. 1 and 2 u/s 7 of the Act.

4. Learned Counsel appearing on behalf of the petitioner, submitted that the power as envisaged u/s 258 of the Code was not execrable by the learned Special Judge as the same was exercisable in certain and specially in a summary trial tribal by the Magistrate. Learned Counsel further submitted that the prosecution, in any view of the matter, was not barred by limitation as the opposite party Nos. 1 and 2 were being prosecuted u/s 7 of the Act, where the maximum sentence is seven years and specially for the reasons that the petitioner was found dealing in his business in a godown not incorporated in the licence. The learned Counsel also stated that the District Panchayat Raj Officer was the competent authority to launch the prosecution against the opposite party Nos. 1 and 2 for contravention of Section 3 of the Essential Commodities Act punishable u/s 7 of the Act.

5. Mr. Agarwal, learned Counsel appearing on behalf of the opposite party Nos. 1 and 2, on the contrary, contended that the prosecution was hopelessly barred by limitation as the opposite party Nos. 1 and 2 were to be punished for a maximum sentence for two years in view of the proviso to Clause (f) of Section 1AA of the Act.

6. Mr. Agarwal further contended that the opposite parties were not found dealing in the godown unauthorisedly and an intimation was already given to the supply authorities about the existence of the godown in question and since the other violations were coming under Clause (h) and I of Sub-section 2 of Section 3 of the Act, the learned Special Judge has rightly exercised her jurisdiction for stoppage of the proceeding as there was no sufficient materials against the petitioners.

7. In this case, the questions, which emerge for consideration are as to whether the power as envisaged u/s 258 of the Code was exercisable by the learned Special Judge (E.C. Act) and whether the prosecution launched against the opposite party Nos. 1 and 2 was hopelessly barred by limitation u/s 468 of the Code in view of the proviso to Clause (f) of Section 12AA of the Act and whether it was a fit case for discharge of the accused persons.

8. So far the first question is concerned, it appears to me that the power in envisaged u/s 258 of the Code is exercisable in certain summons cases exclusively triable by a Magistrate.

Section 258 of the Code runs ass under:

In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.

9. From reading of this section as a whole, it seems to me that this power is not to be exercised in general rather a restriction has been imposed for exercise of this power in certain cases exclusively triable by a Magistrate.

10. It is true that the proceeding u/s 12 AA is a summary proceeding, but the question is as to whether it will also come in the categories of certain cases as enumerated u/s 258 of the Code. The offence arising out of the act no doubt is triable as per the procedure laid down u/s 12 AA of the Act, but the Special Judge being not a Magistrate, in my opinion, is not authorized to exercise its power u/s 258 of the Code. Even though the Special Judge has the jurisdiction to exercise the power u/s 167 of the Code, which power is exercisable by a Magistrate but in view of Sub-section (1)(c) of Section 12AA of the Act, a power is conferred upon the Special Judge to exercise the jurisdiction only u/s 167 of the Code. In this connection, it would also be pertinent to see the provisions laid down u/s 12 AC of the Act.

Section 12 A C reads as under:

Save as otherwise provided in this Act, the provisions of the Code (Including the Provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provision, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

11. Section 12 AC starts with words, "save as otherwise provided in this Act." It necessarily, therefore, means that the Special Judge has to exercise the powers under the Code as provided in this Act itself.

12. Nowhere under the Act the Special Judge has been empowered to exercise the power as conferred u/s 258 of the Code save and except the provisions as laid down u/s 260 and 262 of the Code where the procedures of summary trials have been provided.

13. By necessary implications of the provisions of Section 12AA(1)(C) and 12AC of the Act, it must be held that the Special Judge (E.C. Act) has no jurisdiction to

exercise powers as envisaged u/s 258 of the Code as it was exercisable only in summons cases exclusively triable by a Magistrate.

14. The next question which arises for consideration is as to whether the prosecution is barred by limitation and it was a fit case for discharge of the accused persons. Even if the impugned order is not termed as an order u/s 258 of the Code, it may be treated as an order of discharge for which the learned Special Judge has jurisdiction.

15. It has been alleged in the first information report that the opposite party Nos. 1 and 2 were transacting their business in a godown which was not incorporated in the licence. It is a case of violation of the orders as enumerated u/s 3 of the Act punishable u/s 7 of the Act to a maximum term of seven years. In view of the maximum sentence as prescribed u/s 7 of the Act, the provision of Section 468 of the Code was not applicable.

16. Mr. Agarwal, learned Counsel appearing on behalf of the opposite parties in this context contended that in view of the proviso to Clause (f) Section 12AA of the Act, a sentence of only two years is to be passed in a summary trial and in that view of the matter, the provision of Section 468 of the Code shall very much apply to this case.

17. The contention raised by Mr. Agarwal is no more res integra and a Bench of this Court in the case of Ram Chandra Pansari v. State of Bihar (1988) PLJR 623, has held that notwithstanding the proviso to Clause (f) to Section 12AA of the Act, the offence continues to be punishable for a term upto seven years and the case, therefore, cannot be said to be a summons case and Section 167(5) of the Code has no application in the fact of this case and Section 7 of the Act cannot be said to have been repealed by implication on the ground of two years sentence limit prescribed by Section 12 AA of the Act.

18. In view of the findings and the legal proposition noticed above, the questions is answered in negative and it is held that the present prosecution is not barred under the provisions of Section 468 of the Code.

19. The residuary question now remains to be decided is as to whether it was a fit case for discharge.

20. I have already noticed the allegations leveled against the opposite party Nos. 1 and 2 in the first information report and the contravention of the provision of the E.C. Act alleged against them.

21. It appears to me that there are sufficient grounds for proceeding against opposite party Nos. 1 and 2 in the case and the learned Special Judge has wholly erred in recording the order of discharge also. The allegations levelled against opposite party Nos. 1 and 2, in my opinion, are to be tested on evidence and the process of trial in any view of the matter, could not have been cut short as it has been done by the impugned order. The order impugned, therefore, is not sustainable in law.

22. In the result, I allow this application and set aside the order impugned and remit back the matter to the Special Judge (E.C. Act) to proceed with the trial in accordance with law.

