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**(1977) 04 BOM CK 0013**

**In the Bombay High Court**

**Case No :** Criminal Revision Application No's. 85 and 86 to 96 of 1975

The State of Maharashtra

APPELLANT

Vs

Morarji Hirji Maru

RESPONDENT

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**Date of Decision :** 06-04-1977

**Acts Referred:**

Constitution of India, 1950 — Article 20

Essential Commodities Act, 1955 — Section 1, 3, 6, 6A, 6B

**Citation :** (1979) 81 BOMLR 87 : (1978) MhLj 260

**Hon'ble Judges :** Deshmukh, J;Aggarwal, J

**Bench :** Division Bench

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## **Judgement**

Deshmukh, J.—These twelve revision applications involve facts which are identical and points of law which are common. Hence they are heard together and disposed of by this common order.

2. The facts are not in dispute. There is a big godown in Broach Galli, Bombay. The open space inside the godown has been notionally divided into Galas and Gallis by drawing lines. The respondents have various galas as their places of business. To give the facts of Revision Application No. 85 of 1975, which are representative in character, it would appear that Gala No. 5 of "L" Galli was notified by the respondent-accused as, his place of business as detailed in condition 2(a) of the licence issued to him as an authorised dealer under Clause 3 of the Maharashtra Foodgrain Dealers' Licensing Order, 1963. This is issued u/s 3 of the Essential Commodities Act, 1955. Every dealer under these provisions has to notify the place of business and get it entered upon his licence. If he wants to change the place of business or to add any more places of business, he has to notify within forty-eight hours the change of place and get it endorsed upon his licence. Not to do so, but to use any other place for business, which is not so notified, is an offence. It means that the breach of Rule is made punishable u/s 7 of the Essential Commodities Act. The Essential Commodities Act will be hereinafter referred to as "the Act" and the Maharashtra Foodgrain Dealers' Licensing Order, 1963, will be referred to as the "Order".

3. Raids were conducted on August 12, 1972, at the said godown in Broach Street. The respondent was found to have stored 92 bags, of wheat in Galas, Nos. 6 and 7 in "E" Galli instead of Gala No. 5 of "L" Galli which was his notified place of business. The wheat was seized. It was produced before the Collector u/s 6A of the Act and after dealing with it u/s 6B the Collector passed his order of confiscation on September 22, 1972. Against that order all the twelve respondents filed their appeals before the Principal Judge of the City Civil Court under the provisions of Section 6C of the Act. The Principal Judge heard and disposed of five appeals by his order dated April 19, 1974. As he found that the principles of natural justice were not observed as required by Section 6B of the Act, he set aside the order of confiscation and remanded those matters for reconsideration according to law. The remaining seven appeals are still pending on his file.

4. The twelve respondents were simultaneously prosecuted under the provisions of Sections 7 and 8 of the Act. Those prosecutions resulted in conviction. The learned Metropolitan Magistrate by his order dated October 31, 1974, awarded a very light sentence of fine of Rs. 100 on the ground that the offences were purely technical and there was no deliberate intention to conceal the commodity or to make excessive profit. He also formed an opinion that it was not necessary to forfeit or confiscate the goods. Purporting to act, therefore, under the provisions of the proviso to Clause (b) of Sub-section (1) of Section 7 of the Act as it stood before the amendment, by Act XXX of 1974, he directed the return of the seized goods to the respective respondents.

5. Against this composite order of confiscation and return of property to the accused persons, the State Government filed twelve appeals for enhancement of sentence and presented twelve revision applications for setting aside the order of disposal of the property and to direct forfeiture thereof. Though all these matters were placed for hearing before a learned single Judge of this Court, he preferred to hear the appeals which are reported in the case of *The State of Maharashtra Vs. Morarji Hirji Maru*, All the appeals were dismissed as the learned Judge was satisfied that the reasons given by the learned trial Judge were correct and the offences were purely technical. So far as the revision applications were concerned, he found that they involved an important question of law which should be decided by a larger Bench. Hence he referred them to a larger Bench. In this manner we are hearing the present revision applications.

6. Two main questions and one subordinate question have been raised by the learned public prosecutor for our consideration. They are: (1) whether the Magistrate had power at all to pass an order of return of goods in question to the accused, though they were convicted. In other words, could the Magistrate act u/s 7 of the Act as it stood on August 12, 1972 when the offence was committed or was obliged to follow the provisions of the amended Section 7 as it stood on October 31, 1974 when the criminal cases were heard and disposed of; (2) when the Collector had already passed an order of disposal of the goods u/s 6A of the

Act and the parties are permitted to seek remedies u/s 6C, can the Magistrate pass an order of disposal of property u/s 7 of the Act? If there are two such orders on record, which of them should prevail over the other; and (3) if the Magistrate had the discretion to pass the impugned order has he exercised that discretion properly? These are the three questions which are agitated before us.

7. In order to dispose of the first question, it would be necessary to have a look at the provisions of Section 7 of the Act as it stood on August 12, 1972 and as it now stands after June 22, 1974:

7. (1) If any person contravenes, whether knowingly, intentionally or otherwise, any order made u/s 3-

(a) he shall be punishable-

(i) in the case of an order made with reference to clause (h) or clause (i) of Sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which may extend to five years and shall also be liable to fine:

Provided that in the case of a first offence, if the Court is of opinion that a sentence of fine only will meet the end of justice, it may, for reasons to be recorded, refrain from imposing a sentence of imprisonment and in the case of a second or subsequent offence, the Court shall impose a sentence of imprisonment and such imprisonment shall not be less than one month; and

(b) any property in respect of which the order has been contravened or such part thereof as to the Court may seem fit including any packages, coverings or receptacles in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the property, shall be forfeited to the Government:

Provided that if the Court is of opinion that it is not necessary to direct forfeiture in respect of the whole or, as the case may be, any part of the property or any packages, coverings or receptacles or any animal, vehicle, vessel or other conveyance, it may, for reasons to be recorded, refrain from doing so.

The same section as it now stands after and from June 22, 1974 is as follows:

7. (1) If any person contravenes any order made u/s 3-

(a) he shall be punishable,-

(i) in the case of an order made with reference to clause (h) or clause (i) of Sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and, shall also

be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the property shall, if the court so orders, be forfeited to the Government.

8. It may be noted that the Act came to be amended on several occasions ever since it was passed in 1955. In the original Act Sections 6A to 6D were not there at all. They were introduced for the first time in the year 1966. For the first eleven years of its life, the Act had only Section 7 which was a penal section under which a prosecution was to be launched against the breach of any of the orders passed under the provisions of the Act, or orders passed under that Act. If we look to the section before the amendment of 1974, it is clear that it does not provide as to how the seized property was to be disposed of in the case of acquittal. It merely speaks of disposal of property when conviction takes place. Under Clause (b) ordinarily the seized goods are to be forfeited to Government. However, the proviso to that clause also enables the Court not to pass an order of forfeiture in case the Court is able to form an opinion from the circumstances of the case that it is not necessary to direct forfeiture in respect of the whole or part of the goods. If forfeiture is not to be directed, how to dispose of the property after conviction is obtained? In the same way, if acquittal is there what directions to give regarding the disposal of property. It is clear to us that all trials with regard to any of the offences either under the Indian Penal Code or any other law are to be conducted according to the provisions of the Code of Criminal Procedure, 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 was provided by Section 5 of the old Code which is Section 4 of the new Code. So far as the present cases are concerned, they had to be disposed of the trial Court under the provisions of the old Code. These were the cases of 1972 and were pending cases on April 1, 1974 when the new Code came into force. The disposal of these cases by the trial Magistrate has got to be under the provisions of the old Code. Ordinarily therefore reference to Code in this judgment will mean the old Code unless otherwise indicated.

9. That being so, the disposal of property in relation to which any offence appears to have been committed and which is the subject-matter of a trial before a criminal Court has got to take place according to the provisions of chap. XLIII and more particularly of Sections 516A and 517 of the Code. The application of these provisions is obviously subject to any other enactment for the time being in force, as has been indicated by Sub-section (2) of Section 5 of the Code.

Section 517 gives a general power of disposal at the end of an inquiry or trial by a criminal Court. When an inquiry or trial is so concluded the Court is authorised to make such order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

10. The Code has not directed as to what particular order should be passed. It has indicated what kind of orders can be passed and has left it to the judgment of the Court to choose an appropriate order in a given set of circumstances. Ordinarily, therefore, when an acquittal takes place needless to say that the property will be returned to the person from whom it is seized or to a person who proves before the Court that he is, entitled to the possession thereof. When conviction takes place, the Court may pass an order of destruction, confiscation or delivery to any person claiming to be entitled to its possession. Ordinarily when valuable property is not being either destroyed or confiscated it would be delivered to the person who is entitled to its possession. These general provisions were subjected to the provisions of Section 7 of the Act so far as the prosecutions under that Act were concerned. It would be clear that ordinarily after convicting an accused person under Clause (f) of Sub-section (1) of Section 7 of the Act, the Court can pass an order of forfeiture. Where, however, it does not want to forfeit in view of the proviso to that clause it will refrain from passing an order for forfeiture. That would not, however, be the end of the matter. A positive direction has, to be given for which there is no specific provision in the Act. That being so-, the provisions of Section 517 will automatically operate and the Court would be entitled to pass an order directing the delivery of the property to the person who is entitled to its possession.

11. The same legal position continues to operate even after Section 7 of the Act stands amended. However, the provisions of the Code would now be subjected to the provisions of the amended Section 7. The amended Section 7 is very much rigorous than the earlier Section 7. Not only there is considerable difference in the substantive sentences proposed to be imposed, but here is a drastic change in the approach to the order of disposal of property. Whereas under the old section in spite of conviction, return of the property to the accused was possible under certain circumstances; under the new section the provisions of Clause (b) of Sub-section (1) of Section 7 require the Court to forfeit the property to Government the moment any offence in respect of that property is held proved. The contravention of the provisions being held proved automatically lead to the order of forfeiture to Government. This is a very important change and affects the rights of accused persons unfavourably.

12. These being the provisions of Section 7 before and after its amendment in 1974, one has to consider which of these sections, will be applicable to the facts of the present case. In these cases the offence is committed on. August 12,

1972. But the accused are tried and the cases decided on October 31, 1974. According to the public prosecutor the order of disposal of property is a mere procedural matter and it cannot give any substantive right to the accused. The provisions of the amended Section 7 which were applicable on October 31, 1974 would alone be relevant.

13. It is not being doubted that the right to get back the property is a substantive right, The right to property itself being substantive the possibility of obtaining that property by the Court's order also becomes a substantive right. The gist of the argument of the learned public prosecutor is that that right is not being denied to the accused even after the amendment of Section 7. What is now being done is that the Collector has been appointed as the sole repository of the power to either forfeit or return the property to a person who contravenes the provisions of the Act or any orders made thereunder. This argument will have relevance when the second point is being considered. Suffice it to say at this stage, that in spite of the fact that Sections 6A to 6D were brought on record the unamended Section 7 continued to be there till June 1974 and even after June 1974 the amended section itself required the Court to pass certain orders regarding the disposal of the property. Undoubtedly, therefore, there are two officers who can pass orders in relation to the same property. How precisely their orders should operate in relation to the property in question will be most specifically answered when the second point is being decided. Undoubtedly, & 7 is the only section under which the penalty is -liveable when a prosecution is undertaken. We will decide in the first instance whether the penalty that could be imposed upon the accused person could be under the present Section 7 after its amendment in 1974 or under the earlier Section 7 as, it stood on August 12, 1972.

14. One may refer conveniently to the provisions of Article 20 of the Constitution. Clause (1) laid down that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. The time of the commission of the offence is relevant under this, Article for two specific purposes. The liability to be convicted for an offence would only relate to those laws which were in force on the date when a particular act was committed by the accused. Not only that but even in relation to that offence which is committed on a particular day, the penalty to be imposed cannot be greater than which might have been inflicted under the law in force at that time.

15. The penalty in a criminal matter consists of three items. The first is the liability to suffer substantive sentence, the second is the liability to pay a fine or in default to suffer further sentence and the third is the confiscation of the goods or property which is the subject-matter of the crime. This is the total penalty that is liveable upon an accused person. If that is so whatever penalty could have been imposed upon the present accused persons on August 12, 1972 must be

the only penalty to which they could be subjected. If one looks at the provisions of Section 7 which we have quoted above before and after its amendment, it is clear that the liability for penalty under the amended section is much higher and much more severe than the possible penalty under the earlier section. We have already pointed out earlier that not only the substantive sentence is increased with the possibility of laying down a minimum sentence but the property in relation to which any offence is committed is now bound to be forfeited to the State and no discretion is left at all in the Court in that behalf. This being so, the amended section contemplates a much higher penalty than the earlier Section 7.

16. If the present accused persons were to be sentenced under the amended Section 7, the trial Magistrate could not have passed the order of returning the property to the accused person, as he had no discretion to do so. That discretion was available only under the earlier Section 7. To subject the accused persons to penalty under the amended Section 7 is to subject them to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence, viz. August 12, 1972. In view of this constitutional fiat, we are satisfied that the only section relevant for the purpose of imposing penalty on the present accused persons was Section 7 of the Act before its amendment by Act 30 of 1974.

17. The learned Magistrate could act as he purports to have done under the provisions of Section 7 of the Act before its amendment by Act 30 of 1974 read with Section 517 of the Code. We would, therefore, reject the argument of the learned public prosecutor that the learned Magistrate committed an error in exercising discretion under the provisions of Section 7 as it stood before June 22, 1974. On the contrary we hold that that was the only section relevant and he undoubtedly had a right to exercise discretion under the proviso to Clause (b) of Sub-section (1) of Section 7. Whether this; discretion has been properly exercised by him will be considered when the third point raised before us is being disposed of.

18. We will now go to the second point. It would appear from the facts narrated above that the Collector has already passed an order of forfeiture on September 22, 1972. In respect of five cases the order is set aside and the cases are remanded to the Collector for fresh determination according to law. The rest of the seven cases are still lying on the file of the Principal Judge, City Civil Court, Bombay. What is being argued is that the introduction of Sections 6A to 6D in the Act has, made considerable difference to the position of the Magistrate's right to pass certain orders regarding disposal of property u/s 7. To note briefly the provisions of this added section it would appear that as soon as any essential commodity is seized on the allegation of the breach of the provisions of the Act or orders passed thereunder, it is incumbent upon the officer seizing the goods to produce them before the Collector without any unreasonable delay. The Collector is then directed that if he thinks expedient so to do, he may inspect or cause to be inspected such essential commodity and whether or not prosecution is

instituted for contravention of such order, the Collector, if satisfied, that there has been contravention of order may order confiscation of the essential commodity so seized as also any package, covering or receptacle in which such essential commodity is found and any animal, vehicle, vessel or other conveyance used in carrying such essential commodity. There is a proviso which disentitles the Collector from ordering forfeiture in the case of certain commodities seized from a certain class of persons. We are not directly concerned with that proviso in this case. This order is to be passed obviously expeditiously and without loss of time.

19. Before such an order is passed, the Collector is required to observe the provisions of Section 6B which require him to issue a show cause notice to the person from whom essential commodity is seized by serving notice upon him in writing informing him of the grounds on which the essential commodity is proposed to be confiscated. He is then to be given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation. He is also to be given a reasonable opportunity of being heard in the matter. When this procedure is followed and the Collector chooses to pass an order of confiscation) the person aggrieved by the order of confiscation is given a right of appeal within one month of the date of the communication of the order to him to any judicial authority appointed by the State Government concerned and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming,, modifying or annulling the order appealed against.

20. The scheme of Sections 6A to 6C of the Act prima jade shows that the Collector has a discretion to confiscate or not to confiscate the essential commodity seized. If he does not confiscate, the matter ends there. If, however, he passes an order of confiscation, the aggrieved party is given a right of appeal. Having provided in this manner a procedure, Sub-section (2) of Section 6C becomes relevant and as some argument is based upon it by the learned public prosecutor, the said sub-section is reproduced below:

6C(2) Where an order u/s 6A is modified or annulled by such judicial authority, or where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made u/s 6A, the person concerned is acquitted, and in either case it is not possible for any reason to return the essential commodity seized, such person shall be paid the price therefore as if the essential commodity, had been sold to the Government with reasonable interest calculated from the day of the seizure of the essential commodity; and such price shall be determined,-

(i) in the case of foodgrains, edible oilseeds, or edible oils, in accordance with the provisions of Sub-section (3B) of section 3;

(ii) in the case of sugar, in accordance with the provisions of Sub-section (3C) of section 3; and

(iii) in the case of any other essential commodity, in accordance with the



precisions of Sub-section (3) of section 3.

21. The above Sub-section (2) of Section 6C specifically declares that the order passed u/s 6A is made subject to the occurrence of two events only, viz. the modification or annulment thereof by the judicial authority or the passing of an order of acquittal if a prosecution is undertaken against the same person for infringement of the Rules. It is clear that when the Collector expeditiously acts u/s 6A and confiscates the property, he would still put it into circulation. The very purpose of passing the Act is to avoid hoarding of essential commodities because there is shortage thereof or because artificial shortage should not be created. Such stocks of essential commodities as the country has must always be kept in circulation so that there is equitable distribution and not artificial hoarding leading to the creation of parallel economy in the black-market. It is, therefore, understandable that the Legislature was cautious to introduce the provisions of Sections 6A to 6D and vest certain powers in the Collector with a view to have early decision of the disposal of the essential commodities seized by the officers of the State. True, that Sections 516 and 517 of the Code being applicable such orders could also be passed by the Courts. Ordinarily it is common experience that it takes time for getting appropriate orders passed in the Courts. It may be, therefore, that the Collector has been nominated an authority under the added scheme of Sections 6A to 6D and has been directed to act without unreasonable delay in passing the orders of either confiscation of the whole or part of the essential commodity or release the same. In either case the property goes in the market for circulation either through the sale by the Collector or the normal trade channel. Simply because an order of confiscation comes to be passed under this provision it does not absolve the party concerned from the consequences of facing a criminal trial. That has been provided by Section 6D.

22. It would be now appropriate to consider whether these orders in any manner affect the powers of the criminal Court to pass an order with respect to the disposal of property when an offence is being agitated u/s 7 of the Act. We have already stated earlier that except in cases where the Court is acting u/s 516A of the Code, the order of disposal of property u/s 517 is to be passed only at the conclusion of the trial. Section 517 laid down that when an inquiry or a trial in any criminal Court is concluded the Court may make an appropriate order of disposal. Any order of disposal of the property u/s 7 of the Act could be passed only at the termination of the trial and not earlier. In this part of our judgment the reference to Section 7 is hereafter will always be to the section as it stood on August 12, 1972 in view of our earlier conclusion. The learned Magistrate seized of jurisdiction can acquit an accused person. If he does that he will direct that the property be returned to the accused person. However the Collector might have already passed an order of confiscation and also sold the property. How can the effect be given to the order of the Magistrate which requires the property to be returned?

23. The provisions of Sub-section (2) of Section 6C quoted above lay down that

in that event the property in specie not being available for any reason, not only the price of the commodity but a reasonable Interest thereon has to be paid to the person entitled to the possession of the commodity. This is how the trial Court's order to hand back the commodity would be implemented. The same result would follow if in an appeal u/s 6C(1) the appellate authority were to annul or modify the order of the Collector, There is no provision, however, in that sub-section as to how the order of the Magistrate should be implemented when he convicts an accused person but chooses to direct the property to be handed back to him under the proviso to Clause (b) of Sub-section (1) of Section 7.

24. The learned public prosecutor built up an argument on this position and said that the Collector's order of forfeiture has to yield to the Magistrate's order only in the case of there being an order of acquittal or has to yield to any order of modification or annulment which may be passed by the appellate authority. In no other case is the Collector's order vulnerable. On this interpretation he requests us to hold that the provisions of the proviso to Clause (b) of Sub-section (1) of s,. 7 have been impliedly superseded by the Legislature. On an harmonious construction of these two provisions and with a view to avoid any conflict between the two authorities it should be held that the Collector's order, which is prima facie the final order should stand modified only in the case of two contingencies provided by Sub-section (2) of Section 6C.

25. In order to support this approach he referred us to two judgments; one is of the Mysore High Court and the other of the Kerala High Court. In our view the question that has arisen before us, viz. of the conflict of the orders passed by the Collector forfeiting the property and the Magistrate directing return of the property in spite of the confiscation, never fall for consideration before either of these Courts. Both the Courts had to deal with a situation pending the final hearing and disposal of the criminal case. In *State v. Abdul Rasheed* AIR[1967] Mys. 231 two loads of rice bags were seized from the accused and produced before the trial Magistrate under two different challans. The accused applied to the Magistrate for custody of the rice bags pending the trial as the goods belonged to him. Before these applications were disposed of, the sub-inspector of police applied to the Court for permission to produce all the attached rice bags, before the Collector for disposal of property and for future action u/s 6A of the Act. This application was opposed on behalf of the accused. However, the learned Magistrate permitted the sub-inspector to take away the goods and produce them before the Collector. The accused filed a revision application to the Court of Session. While allowing the application the learned Sessions Judge observed that the trial Magistrate appears to have abdicated his function and it was not permissible that the middleman property be transferred to the Collector. When a further revision application was carried to the High Court by the State, the learned Judge held that the powers of the Court regarding the disposal of property under & 517 of the Code of Criminal Procedure arise only at the conclusion of the trial. This was not an offence under the Indian Penal Code but was an offence under some other Act. Though the Code of Criminal Procedure

applied to such trials the procedure was also subject to the provisions of any other law for the time being in force as laid down by Section 5(2) of the Code. That being so if some other law required that the seized goods should be produced before the Collector for dealing with it and the Collector was authorised to, pass certain orders, it would be unlawful to refuse such a permission. On that view the High Court set aside the Sessions Judge's order and restored, that of the trial Magistrate. However certain observations at the conclusion of the judgment seek to indicate that the Collector's order of disposal of the property would be subject to the final orders of the Magistrate. There was no occasion at that stage to make these observations and no particular reasons have been assigned for the same. It is entirely different that our conclusion at the end. of this judgment is going to be that the orders passed by the Collector in every case would be subject to the final orders passed by the Magistrate. This judgment therefore does not assist the public prosecutor at all.

26. In the other case before the Kerala High Court the facts were slightly different. In *State of Kerala Vs. C.K. Assainar*, the accused was being prosecuted under the provisions of Sections 7 and 8 of the Essential Commodities Act. The goods seized were produced before the Collector though a challan was filed in the Magistrate's Court. The accused applied for a direction to transfer the goods from the Collector to the Court. It was opposed by the public prosecutor. The trial Magistrate directed production! of the property. In revision application carried to the High Court almost for the same reasons adopted by the Mysore High Court, the learned single Judge of the Kerala High Court allowed the revision application of the State and quashed the order of the Magistrate requiring production of the seized essential commodity before the Court. Here also what orders should be passed pending the hearing and disposal of a criminal case was the only occasion but the learned Judge has made observations that the occasion for the trial Court to pass a final order would arise only when the case is concluded and not earlier and the Collector's order may have to yield to the final order of the Court. Far from assisting the public prosecutor these judgments emphasise the fact that the new sections added in the Act in 1966 take care of the goods in the intervening period before the conclusion of the criminal trial and to that extent they do seem to affect the right of the criminal Court, They do not support the proposition of the public prosecutor before us that the order of the Collector is to be treated as final and binding subject only to the modification contemplated in the two distinct cases provided by Sub-section (2) of Section 6C. On the contrary, we find that two judgment of the same learned single Judge of the Allahabad High Court take the view that the provisions of Sections 6A to 6C of the Act are merely provisional and provide for a situation pending the final hearing and disposal of a criminal trial u/s 7 of the Act.

27. In *Kishori Lal Bihani Vs. The Addl. Collector and District Magistrate, Kanpur and Others*, , as also in *B.R. Jagannath v. Dist. Magistrate, Meerut* [1970] A.T.R. All. 396 similar conclusions are drawn. We may point out that this question did not pointedly arise in either of these cases. However, in the first case the learned

Judge was dealing with a question whether mens rea was a relevant element in proceedings u/s 6A, as it was undoubtedly u/s 7. In the other case constitutionality of those sections was under challenge on the ground that the State seem to have been vested with a discretion to prosecute or not to prosecute a particular person. In that case the result would be that the Collector may forfeit the goods and choose not to prosecute so that the occasion for the exercise of the discretionary power of the Court may not arise at all. Though the occasions were different the scheme of Sections 6A to 6D has been examined by the learned Judge and he has come to the conclusion that they do not seem to represent a substitute or an alternative scheme for Section 7 but those provisions are purely provisional and meant for the speedy disposal of essential commodities pending the usual long drawn trials in Courts.

28. Examining the scheme of the Essential Commodities Act, 1955 as a whole, we think that the liability created under this Act is two-fold. When any Orders or Rules are breached in relation to certain essential commodities they are liable\* to be seized and produced before the Collector for disposal under the scheme of Sections 6A to 6D. That is one liability. In addition, it is possible that the same person will be prosecuted for the breach, which is an offence under the provisions of Sections 7 and 8 of the same Act. So far the incurring of the liability is concerned, Sections 6A to 6D are not obviously in substitution of Section 7. Then again the provisions of Section 7 contemplate a regular criminal trial with all the attendant facilities of challenging the evidence that may be led before a Court of law. The nature of inquiry before the Collector is undoubtedly different. It can be described at best as a summary inquiry where the principles of natural justice alone need to be observed. When any commodity is seized on the allegations that there has been a breach of certain Orders or Rules and produced before the Collector, the Collector has to satisfy from the records whether it appears to be so. The moment he thinks that there has been a contravention of certain Orders or Rules, he issues a show cause notice as contemplated by Section 6B of the Act and call upon the person concerned to make a representation in writing within a reasonable time as to why the commodity should not be confiscated. In addition the person concerned is also to be given a reasonable opportunity of being heard. In this procedure before the Collector, the officer who seized the goods or any other agency of the State does not prove initially certain facts, nor does the procedure contemplate any right of the accused to demolish the evidence of the prosecution even while it is being led. In other words merely by observing the principles of natural justice a speedy order in relation to essential commodity is required to be passed by the Collector. There can therefore be no comparison between the procedure laid down for the hearing by the Collector and the elaborate procedure of a trial before a Magistrate under the Code. A summary inquiry for a limited purpose of immediate orders in the interest of keeping the essential commodity in circulation and to avoid its deterioration or destruction by passage of time cannot be considered to supersede or substitute regular full fledged judicial trial when

an offence is being proved against the accused persons.

29. We are thus satisfied that the provisions of Sections 6A to 6D of the Act have a very limited function to perform. This being so the order of the Collector in any case would always be subject to the final order passed by the Magistrate u/s 1. Why is it then that the Legislature has added Sub-section (2) to Section 6C? The reason is obvious. That sub-section does not deal with or cover all possible cases of the disposal of property under the final orders of the Magistrate at the conclusion of the trial.

30. So far as the procedure under the new scheme under the provisions of Sections 6A to 6C is concerned, the judicial authority to be appointed by the State is an appellate authority over the Collector himself. By Sub-section (1) of Section 6C that judicial authority has been vested with the power to pass such orders as it may think fit,, confirming, modifying or annulling the order appealed against, The appellate order therefore supersedes the order of the Collector completely and only effective order would in that case be the appellate order. This is one case in which the Collector's order gets modified or annulled.

31. There is another case where the prosecution may end in acquittal even though the Collector has passed an order of forfeiture which is either not appealed against or is confirmed by the appellate authority. In either of these cases when a trial Magistrate acquits the accused, the provisions of Sub-section (2) of Section 6C are attracted. However, what is the effect of that sub-section when either of these two orders are available which seek to modify the order of the Collector. That sub-section specifically provides that if either of these two orders come to be passed and for any reason whatsoever, the goods in species are not available,, how to give effect to these two orders? The effect to the order is to be given by " assuming that the commodity has been sold to the Government at the market rate along with the reasonable rate of interest. The special feature of this provision-is the payment of interest and this is the only limited purpose for which this section has been drafted.

32. Pausing here for a minute we would go back to the provisions of Section 516A of the-Code. That section deals with any property regarding which any offence appears to have been committed, or which appears to have been used for the commission) of any offence and is produced before any criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial. This is one power given to the Court pending the hearing and disposal in relation to the property produced before it. That section further contemplates that if the property is subject to speedy or natural decay or if it is otherwise expedient so to do, the Court may after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. It is in the limited number of cases where the property is subject to speedy or natural decay or the Court otherwise thinks that it is expedient to do so, the Court is authorised after recording such evidence as it thinks necessary to pass an order of disposal.

33. Apart from the new scheme introduced by Sections 6A to 6D it was always possible even under the Code to direct the disposal of the property pending the hearing and disposal of the case itself u/s 516A. It was also possible when offences are investigated and evidence is led before the Court that the prosecution may prove that the accused who was in possession of certain stolen goods converted them and the property in the converted form is traced and proved to be so. In either of these two cases, what shall the Court do at the conclusion of the trial? An explanation is, therefore, added to Section 517 which authorises the Court to direct delivery of the money of the converted form of property to the person entitled to its possession, when ordinarily the order passed would have been that the property in species be delivered to the particular person. That explanation therefore specifically says that in this section, viz. Section 517, the term "property" includes in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged and anything acquired by -such conversion or exchange, whether immediately or otherwise. The provisions of the explanation are of a general character and would include cases of conversion by the culprits before the detection of the offence as also conversion of property under the provisions of Section 516A after the production thereof before the Court and with the orders of the Court. In every possible case of conversion therefore the Court is in a position to do justice because of the explanation.

34. We have already held that the provisions of Sections 6A to 6D are of interlocutory character and provisional in nature and must always yield to the final order passed by the Court u/s 7. If, therefore, the Court directs that the property be returned to the accused in spite of the conversion and the property in species is not available because of the Collector's order of confiscation and sale, how can the trial Magistrate's order be implemented? We have no doubt that, that can be implemented by reading the provisions of Section 7 of the Act along with the provisions of Section 517 of the Code, including the explanation thereunder. However only in two cases covered by Sub-section (2) of Section 6C interest would be payable. In all other cases u/s 517 explanation, no interest need be paid.

35. When this approach was being discussed the learned public prosecutor brought to our notice a judgment of a learned single Judge of this Court in *Masnaji v. The State* (1971) 75 Bom, L.R. 262. In that case a truck was accosted on the road carrying ninety-nine bags of rice in contravention of the provisions of the Maharashtra Scheduled Food-grains (Stocks Declaration and Procurement and Disposal, Acquisition, Transport and Price Control) Order, 1966. Along with the challan in the Magistrate's Court, ninety-nine bags were produced and were directed to be kept in the Government godown. Later on they were sold with the Magistrate's order, who directed the sale with the permission of the Collector. After obtaining the permission of the Collector, the rice was sold and

the sale-proceeds were deposited in a Bank instead of permitting to lie in the Court deposit without any interest. The Magistrate convicted the accused. However, he directed, presumably under the proviso to Clause (b) of Sub-section (1) of Section 7, to return the rice bags to accused No. 3 but the form, of the order was to pay accused No. 3 the price of rice recovered minus the rent of Government godown before their sale. In the result the net sale proceeds of the rice were directed to be paid to accused No. 3. This order was set aside by the learned Sessions Judge at the instance of the State and the original accused No. 3 approached this Court by way of a revision application.

36. The learned single Judge of this Court set aside the order of the learned Sessions Judge and restored that of the trial Magistrate. However, while doing: so he has observed that the trial Magistrate presumably passed the order of refunding the sale-proceeds under the provisions of Section 517 of the Code. The State wanted an order of forfeiture under the provisions of Section 7(1)(b) of the Act. The argument addressed to the learned Judge was that the accused had committed an anti-social act and was convicted. Looking to the circumstances of the case, it was proper that the property in relation to which such an offence was committed be forfeited. This argument on merits has not been specifically refuted by the learned Judge. However, he finds himself unable to give any such relief to the State on the ground that the provisions of Section 7(1)(b) of the Act relating to the forfeiture of property apply only to property in species and not to the sale proceeds, thereof after their conversion. It is on this short ground alone that the learned Judge allowed the revision application of the accused and refused to consider the State's argument on merits because there was no provision under law to give relief to the State on the basis of such an argument.

37. In the earlier part of our judgment, we have already analysed the scheme of the trials of accused, or offences under the Penal Code as well as any other law for the time being in force. The procedure for all trials is under the provisions of the Code; subject only to such other special laws, as may be in the field. If the other laws provide a particular procedure that part of the procedure will be followed in preference to the Code, but where the field is open and not specifically covered by special law, the provisions of the Code will always be enforced for trying any case or holding any criminal inquiry. That being so, and the central Legislature being aware of this position, when drafting Section 7 as it stood before the amendment of 1974, they merely provided for two types of orders being passed under that Act.. One is the forfeiture under substantive portion of Clause (b) and the other is refraining from passing an order of forfeiture under the proviso to that clause, if the Court forms an opinion that it was not necessary to direct forfeiture in respect of the whole or part of it. When the Court, therefore, refrains from passing order of forfeiture, we have already stated elaborately earlier that it will go back to Section 517 and pass such appropriate orders as it deems fit. Section 517 thus being an integral part of the scheme of the trials before criminal Courts, where there is no specific provision to the contrary the provisions of Section 517 must always be considered relevant

and they must prevail.

38. In the circumstances, it would be again relevant to consider the language of the explanation to Section 517 of the Code which is absolutely general in its tenor. That explanation gives the definition of property and makes that definition inclusive, and when an offence appears to have been committed in relation to certain property, the property for the purpose of that trial before the Court does not necessarily mean the property as it was originally in possession or under control of any party, but also any property into or for which the same may have been converted or exchanged and anything acquired by such conversion or exchange, whether immediately or otherwise. We have already pointed out that the essential commodity which is the subject-matter of a charge u/s 7 may not remain in the same form but may get itself converted into two different ways. It may be that the trial Court itself passes an order u/s 516A as was done in the case before the learned single Judge under review, or the goods may be sold at the instance of the Collector who has passed an order of confiscation u/s 6A, In either of these cases, the money that would lie in the Court or with the Collector is the converted form of the original property as it was in the possession of the party, viz. the accused. The property in such converted form is included in the definition of property itself as it originally stood and therefore there is no difficulty in the way of passing an order u/s 7(1)(b) of the Act to direct either return or forfeiture thereof, as the case may be, when the Court is exercising powers under that section read with Section 517 of the Code. With respect, that view *taikea*, by the learned single Judge does not represent the correct law. We do not think that the learned public prosecutor can draw assistance from the judgment and induce us to pass an order contrary to the one which we are proposing to pass. This brings us to the consideration of the third point, which is purely on the merits of the matter, The conclusion so far reached would show that the learned Magistrate was acting u/s 7 before its amendment in 1974. He had, therefore, the discretion to exercise under the proviso to Clause (b) of Sub-section (1) of Section 7. He also had a right to direct the refund of cash amount, which represents the price of the goods sold in view of the fact that he was required to act u/s 7 read with Section 517 of the Code. The only question now survives for consideration: is whether that discretion has been properly exercised by the learned Magistrate. It would be appropriate here to point out that we have already indicated how the incidence of total penalty could be on an accused person in a criminal trial. Out of the three possible instances, viz. substantive sentence, fine and in default sentence, and forfeiture of property, the trial Magistrate has chosen to impose only a fine and that too a light fine. He has neither awarded substantive sentence nor directed forfeiture of property.

39. Feeling dis-satisfied with such an order, the State had filed the appeals, which are rejected by this Court. The sentence of fine alone is thus held sufficient by a learned single Judge of this Court agreeing with the reasoning of the learned trial Magistrate. A counter-part of the same process of imposing penalty is the forfeiture of the goods in respect of which an offence appears to have been



committed. While refraining from doing so, the learned Magistrate has given the same reasons, viz. the offence appears to be purely technical and there was no intention deliberately to flout the law or to sell the goods at higher rate. It may now be noted that undoubtedly no notice was given of the change of the place of business within forty-eight hours, but when raids were conducted all the goods which were stored in other Galas then notified were found recorded in the stock registers. However, an obvious error crept in by not applying for the change of place of business as required by condition No. 4 of the licence.

40. If the total penalty in law can be as we have indicated above and the sentence is normally and primarily within the discretion of the trial Court, the appellate and the revisional Courts having jurisdiction to revise that discretion must take into account the circumstances under which the trial Magistrate had acted. It must be shown that the exercise of discretion has really been indiscreet. In that case the appellate or the revisional authority would consider what different view needs to be taken.

41. In the circumstances of this case, we are satisfied that the order passed by the learned Magistrate is consistent with the facts and circumstances of the case and it was not necessary to forfeit these goods for the reasons already recorded by the Magistrate. We thus think that even on the merits, the State is not entitled to any relief and the revision applications fail and are rejected.

42. Rule discharged in all applications.