
(2014) 12 BOM CK 0236

In the Bombay High Court

Case No : Criminal Writ Petition No. 905 of 2012

Vasant Annarao Bhosle

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 452, 456, 457 — Essential Commodities (Amendment) Act, 1974 - Section 4 — Essential Commodities Act, 1955 - Section 14, 3, 6-A, 6-A(3), 6-E

Citation : (2015) 2 BomCR(Cri) 86

Hon'ble Judges : T.V. Nalawade, J.

Bench : Single Bench

Advocate : V.B. Deshmukh, for the Appellant; S.R. Palnitkar, APP, for the Respondent

Final Decision : Dismissed

Judgement

T.V. Nalawade, J.—The petition is filed to challenge the order made by the learned Ad hoc Additional Sessions Judge, Osmanabad in Criminal Revision Application No. 116/2011. The learned Additional Sessions Judge has set aside the order made by the learned Judicial Magistrate, First Class of interim custody of food grains seized under section 3 of the Essential Commodities Act, 1955. The order was made by the learned Judicial Magistrate First Class on 19-7-2011 and it appears that interim custody was given accordingly by the Tahsildar on 17-8-2011. The criminal revision application came to be decided on 4-7-2012. The learned Counsel for the petitioner submitted that as the custody was already given, the revision has become infructuous and the learned Additional Sessions Judge ought not to have decided the matter. This proposition is not at all acceptable. Propriety or legality of the order made by the learned Judicial Magistrate can always be ascertained by the Sessions Court.

2. If the scheme of the provisions of the Essential Commodities Act 1955 (for short, "The Act") is seen it can be said that only the Collector has the power with

regard to interim or final disposal of the essential commodity seized under section 3 of the Act. There is provision like section 6-E showing that there is bar of jurisdiction in this regard and no Court, even this Court is expected to use its power when the Collector has seized the matter. This is because satisfaction of the Collector is required for confiscation of the essential commodity and also the vessel, vehicle etc. seized along with the essential commodity. The Collector has ample power to dispose of the property which is subject to speedy and natural decay even without issuing notice to the person from whom the property is seized and without issuing notice to the owner if the owner is known. Rights of the owner or the person from whom the property is seized are protected by the Act itself. The provision of section 6-A(3) (Maharashtra Act) shows that after the acquittal, the person from whom property is seized or the owner can get property or value of the property. Thus it is up to the Collector to decide as to whether the property is liable to be confiscated or not. The Criminal Court is not expected to venture into this area for the purpose of making interim order of disposal of the essential commodity. The Act says that the decision of the Criminal Court needs to be considered. Though there are provisions like sections 456 and 457 of the Criminal Procedure Code, those provisions cannot be used by Criminal Court in view of the provisions of the Special Act. Even the scope to use power under section 452 of the Code is subject to other provisions of this Act.

3. The learned Counsel for the petitioner placed reliance of the case reported as 2009(4) Bom.C.R. (Cri.) 261(A.B.) (Krishidhan Seeds Ltd. v. State of Maharashtra).

4. This Court has carefully gone through the case reported as State of Madhya Pradesh and others Vs. Rameshwar Rathod, , on which reliance was placed by this Court in the case (cited supra). In that case the crime was committed in the year 1972 (Crime No. 42/1972). In connection with that crime the vehicle was seized on 10-12-1974. The Apex Court held that provision of section 6-A as it stood on 15-3-1972 only were applicable to the case and section 4 of the Amendment Act of 1974 was not applicable as the amended provisions were not in force on the date of offence. In view of these circumstances, the Apex Court held that the Criminal Court had the power to pass order under the provisions of sections 456 and 457 etc of the Criminal Procedure Code and that power was not ousted by the Amendment Act. The provisions which are now in force are already quoted and discussed by this Court.

5. This Court has already observed in the Criminal Writ Petition Nos. 863/2012, 864/2012 & other connected matters that there is no such powers with the Magistrate. The Magistrate who is expected to try the accused for the offences under the Act is not expected to make inquiry for prima facie purpose as to whether the essential commodity is liable to be seized under section 3 of the Act. But the Magistrate is expected to proceed with the matter if prima facie case is made out. Whether the property is liable to be confiscated or not can be decided only by the Collector and not by the Magistrate. The power of interim disposal of

such property is also with the Collector and so the Magistrate cannot take over such power and pass interim order. In view of the provision of section 14 of the Act person who feels that he is entitled to the custody of the property needs to claim property in Criminal Court and he needs to discharge the burden imposed by section 14 of the Act which is as under:

"14. Burden of proof in certain cases.--Where a person is prosecuted for contravening any order made under section 3 which prohibits him from doing any act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he has such authority, permit, licence or other document shall be on him."

Only when there is such defence and the property is claimed and the defence is accepted by the Criminal Court and acquittal is given, the accused can get relief of custody. In such a case even if there is order of confiscation, he can get custody. If he does not claim the custody of the property by taking defence as per section 14 then even after the acquittal, such person will not be entitled to get the custody of the property.

This Court has already decided the matters like Criminal Writ Petition No. 863/2012 and other connected matters by taking similar view. This Court holds that there are no merits in the present matter. The petition stands dismissed.