
(1990) 2 OLR 432

Orissa High Court

Case No: Criminal Rev. No"s. 599 and 649 of 1987

Shri Sohanlal Bagri

APPELLANT

Vs

The State of Orissa

 Shri

Paramananda Sahu Vs

RESPONDENT

The State of Orissa and
Another

Date of Decision: Sept. 14, 1990

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 468, 468(3)
- Essential Commodities (Special Provisions) Act, 1981 - Section 12AA, 12AA(1)
- Essential Commodities Act, 1955 - Section 11
- Penal Code, 1860 (IPC) - Section 21

Citation: (1990) 2 OLR 432

Hon'ble Judges: D.P. Mohapatra, J

Bench: Single Bench

Advocate: R.P. Kar and N. Paikray, in Criminal Rev. Nos. 599, 600, 628, 649 and 650 of 1987 and B.K. Sahu, Criminal Rev. 677/87, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

D.P. Mohapatra, J.

The common question that falls for determination in all these revision petitions relates to the legality/validity of the cognisance orders passed by the Special Judge, Cuttack. The applications filed by the accused to set aside the said orders and to drop the criminal cases against them having been rejected by the Special Judge, they have" filed these revision petitions assailing the said orders.

2. The factual backdrop of the case may be shortly stated thus: The Inspector of Supplies who inspected the business premises of the Petitioners submitted reports to the Chief judicial Magistrate, Cuttack ("C.J.M." for short) on different dates in 1983 and 1984 alleging, inter alia, that they had violated certain conditions in the licences issued to them under different control orders under the Essential Commodities Act like the Orissa Rice and Paddy Control Order, 1105 and The Orissa Wheat and Wheat Products Control Order, 1988, the Orissa Pulses, Edible Oil Seeds and Edible Oil Dealers" (licensing) Order, 1977, the Orissa Declaration of Stocks and Prices, of Essential Commodities Orders, 1973 and the Orissa Essential Foodstuffs (Prevention of Hoarding and Requisitioning of Stocks) Order, 1974.

On receiving the prosecution reports the C.J.M. forwarded them to the Special judge, for taking cognisance of the offence in view of the provisions in Section 12-AA which was introduced in the Act by the Essential Commodities (Special Provisions) Act, 1981 (Act 18 of 1981) and the Special Judge took cognisance of the offences. Thereafter came the decision of this Court in the case of Ranendra Kumar Swain and Anr. v. The State of Orissa reported in 53 (1985) CLT 324 wherein it was held, inter alia, that after coming into force of the Act 18 of the 1981, the offences covered under the Act can be tried only by the Special Court constituted for the area and necessarily, therefore, such Special Courts must follow the procedure prescribed in the amended provision and the Special Judge has no jurisdiction to take cognisance on the basis of the report/complaint submitted by the Inspector of Supplies since the report of the said officer cannot be equated with a "police report" as contemplated in Section 12-AA(1)(a) of the Act. In view of the said decision the Special Judge sent back the case records to the C.J.M. for taking cognisance and the said Court took cognisance of the offences and re-submitted the records to the Special Judge. In the meantime the provision in Section 12-AA(1)(a) of the Act was amended with effect from 9-8-1986 empowering the Special Court to take cognisance on the basis of the "police report" as well as upon complaint made by an officer of the Central Government or the State Government authorised in this behalf by the Government concerned without the accused being committed to it for trial. In view of the amended provision the Special Judge again passed order taking cognisance of the offences. The accused filed applications challenging the cognisance orders passed by the Special Judge mainly on the grounds that the amendment introduced by Act 18 of 1981 in September, 1986 does not apply to the case since the offences are alleged to have been committed prior to it and taking of cognisance was barred by limitation as per the provisions in Section 468, Code of Criminal Procedure. The Special judge negated both the contention and rejected the applications filed by the accused by the impugned orders.

3. The main thrust of the argument of the learned Counsel appearing for the Petitioners was that on the date on which cognisance was initially taken the Special judge was not competent to take cognisance on the report of the Inspector of Supplies. In support of the contention reliance was placed on the decisions of this Court in the case of Ranendra Kumar Swain and Anr. (supra) and in the case of [Hindustan Cycle Store and Others Vs.](#)

[State of Orissa](#), wherein it was laid down that so long as the Special Provisions Act remains in force, the field of taking cognisance and trial, as provided in Section 11 of the Essential Commodities Act cannot be taken recourse to; in other words during the subsistence of the Special Provisions Act cognisance can be taken only on a "police report" u/s 12-AA(1)(a) and not otherwise.

4. Section 11 of the Act which deals with cognisance of offences provides that no Court shall take cognisance of any offence punishable under the 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 Indian Penal Code or any person aggrieved or any recognised consumer association, whether such person is a member of the association or not, Section 12AA which was introduced by Act 18 of 1981 deals with offences triable by Special Courts. It provides that notwithstanding anything contained in the Code (a) all offences under the 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 area, by such one of them as may be specified in this behalf by the High Court. Under (a) of the said section it is laid down that the Special Court may, upon a perusal of the police report of the facts constituting an offence under the Act take cognisance of that offence without the-accused being committed to it for trial.

5. From the discussions in the foregoing paragraphs, it is clear that, in till the cases cognizance orders have been passed both By the C.J.M. as well as by the Special Judge, once by the former and twice by the latter. As noticed earlier, challenge to the power of cognizance of the Special judge was raised on the ground that after introduction of the provisions in Section 12-AA of the Special Provision Act (Act 18 of 1981) he was competent to take cognizance of the offences under the Act in accordance with the provisions in Section 12-AA(1)(a) and not u/s 11 of the Act. Since these cases were initiated on the prosecution reports submitted by the Inspector of Supplies and not by police officers, the cognizance orders were bad. Strictly speaking the question is no longer relevant since in the meantime Section 12-AA(1)(a) has been amended empowering the Special Judge to take cognizance not only on police report, but also on complaint made by an officer of the Central Government or the State Govt. authorised in this behalf by the Government concerned and thereafter cognizance has again been taken by the Special Judge. It is not disputed that the Inspector of Supplies has been duly authorised by the State Government to act in the matter. Further, the controversy arising from the decided cases referred to earlier has also been set at rest by a recent decision of the Division Bench of this Court in Criminal-Appeal Nos. 177 and 178 of 1984 M. Surya Rao v. State of Orissa decided on 23rd August, 1990 wherein it has been categorically and specifically held that Section 12-AA(1)(a) does not restrict the powers of the Special Judge to take cognizance of an offence under the Act otherwise than on a police report as provided for u/s 11 of the Act and therefore the prosecution of the Appellants would not fail merely on that account. The Division Bench has further declared that the decisions of the learned Single Judges in [Hindustan Cycle Store and Others Vs. State of](#)

[Orissa, Ranendra Kumar Swain and Another Vs. The State of Orissa](#), and 1988 (1)

O.L.R. 501 Simadhri Biswanathan v. State have not been decided correctly. In view of the authoritative pronouncement of the legal position by the Division Bench of this Court there is no scope for accepting the contention raised on behalf of the Petitioners that the cognizance order passed by the Special Judge suffers from any illegality or invalidity.

6. The other question raised on behalf of the Petitioners relates to limitation. It was raised on the assumption that the offences were punishable with imprisonment not exceeding one year and therefore the period of limitation, as provided u/s 468, Code of Criminal Procedure, was one year and the last order of cognizance having been passed after expiry of the said period: it was barred by limitation. The Special Judge considering the a-negations contained in the prosecution reports held that some of the offences alleged to have been committed by the Petitioners were punishable with imprisonment for a term of seven years for which there is no prescribed period of limitation u/s 468. Considering the provisions in Sub-section (3) of Section 468 he held that the period of limitation is to be determined on the basis of the more severe punishment and therefore the question of limitation does not arise. The learned Counsel appearing for the Petitioners could not advance any satisfactory argument to assail the said finding of the Special Judge.

7. On the analysis and for the reasons discussed in the foregoing Paragraphs, there is no merit in these revisions petitions which are accordingly dismissed.

Petitions dismissed.