

(1986) 05 CAL CK 0019

Calcutta High Court

Case No: Criminal Rev. No. 784 of 1985

M/s. Siddheswari Distributors
and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: May 7, 1986

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 167, 167(5), 167(6), 260, 262
- Essential Commodities (Special Provisions) Act, 1981 - Section 3, 7, 7(1)(a)(i), 7(1)(a)(ii), 7(i)(i)(ii)

Citation: 91 CWN 289

Hon'ble Judges: S. Ahmed, J

Bench: Single Bench

Advocate: P. Roy, D.K. Sengupta, Himangshu De, Sachchidananda Mitra, P.K. Giri, S.K. Mahato and T. Dutta Guha, for the Appellant; Dilip Kr. Dutt as Amicus Curiae and Mrs. A. Bhose, R.B. Mahato and D.P. Sengupta for Opposite Party, for the Respondent

Judgement

S. Ahmed, J.

These five Revisional applications are taken up together for consideration as the same point of law is involved in all these cases. In all these cases, a point that required determination is if sec. 167(5) Cr.P.C. applied to cases for prosecution of offences under the provision of Essential Commodities Act. Learned Special Judges have found that section 167(5) does not apply as offences under sec. 7(i)(a)(ii) of the E.C. Act is not a summons case and learned special Judge are not Magistrate as contemplated u/s 167 Cr.P.C. Mr. Roy and Mr. Sen Gupta appearing for the petitioners have submitted that section 12AA of the Essential Commodities (Special provision) Act, 1981 has provided in sub section 1(a) that all offences under the Act (meaning E.C. Act) shall be triable only by the special court constituted according to the provisions of the said Act. Clause (c) of the said sub section has provided that the special court may subject to the provisions of clause (d) of the section, exercise in

relation to the person forwarded to it under clause (b) same power which a Magistrate having jurisdiction to try a case may exercise u/s. 167 of the code in relation to an accused person in such case who has been forwarded to him under that section. Clause (d) deals with release of the accused on bail. Clause (e) authorises the special court to take cognizance of an offence on perusal of the police report of the facts constituting an offence without the accused being committed to it for trial. Clause (f) has made all offences under the E. C. Act triable in a summary way and has made the provisions of sec. 262 to 265 of the Cr.P.C. applicable as far as may be. Proviso to this clause states that on any conviction in a summary trial under this section, it shall be lawful for the special court to pass a sentence of imprisonment for a term not exceeding two years. Placing their reliance on the provisions stated above both Mr. Sen Gupta and Mr. Roy submitted that it will appear from clause (f) that all offences under this Act have to be tried, in a summary way and sec. 262 to 265 of the Cr. P.C. shall apply as far as may be. Section 262 appears in chapter XXI of the Cr.P.C. under the heading (Summary Trial). Section 262 provides for proceeding for summary trials. Procedures specified in the Cr.P.C. for the trial of summons case shall be followed in a summary trial, it has also provided that no sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under the said chapter. The learned Advocate argued that by virtue of clause (f) of sec. 12AA all offences under the E. C. Act have been rendered to be summons case. They further submitted that clause (f) has determined the maximum term of imprisonment to be not exceeding two years. According to sec. 2(W) of the Cr.P.C. summons case means a case relating to offence not being a warrant case and according to the clause 2(X) warrant case means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. According to them because of this provision referred to above all the cases triable by the special Judge has become a summons case and accordingly section 167 (5) of the Cr.P.C. applies in all force.

2. Mr. Roy also submitted that clause (c) of sec. 12AA(1) has made section 167 of the Cr.P.C. applicable in such case without any reservation. Therefore a special Judge under the Act is bound to apply sec. 167(5) of the Cr.P.C. in appropriate case pending before him. He also submitted that the fact he is a special Judge has no bearing in exercising powers u/s. 167 of the code as he has been specifically vested with such power under clause (c) of sec. 12AA. Learned Advocate has relied on 1981 (2) CHCN 173 Ram Brijesh Jadav v. The State and 81 Cri.L.J. 1288 Ram Kumar Keshori v. State. These two cases were before the coming into operation of the Essential Commodities (special provision) Act, 1981. In the first case it was held that an offence punishable u/s. 7(i)(a)(i) is triable as a summons case and the continuation of investigation beyond the period of 180 days was illegal and the Magistrate was not competent to take cognizance on the challan submitted on completion of investigation beyond the period of six months after the arrest of the accused persons. In the later case the court held that the extension of time u/s. 167 (5) has to

be obtained before the expiry of the period of six months from the date of arrest. This two decisions have little relevance in the facts of this case. Firstly, because in the Rambrikha Jadav case it was held that a case u/s 7(i)(a)(i) of the E.C. Act is summons case. This decision is strictly according to the provision of the Cr.P.C. The maximum punishment under this section is one year. Obviously offence triable u/s. 7(i)(a)(i) is a summons case as defined by the Cr.P.C. I may mention again that decision was arrived at when the special provision Act did not come into force. With regard to Ram Kumar Keshori's case there is no dispute that the period can be extended beyond six months only if a prayer is made before the statutory period of six months has expired. As it appears the contentions raised by the learned Advocate in this case has to be decided on the merits of their submissions.

3. I have no hesitation in my mind to agree with the submission of Mr. Roy that clause (c) of section 12AA(1) has vested the learned Special Judge with all the powers of section 167 of the Cr.P.C. Such power is not in any way restricted by the provision contained in this particular clause or any where in the special provision Act, 1981. Therefore there is no restriction on the special Judge to exercise this power u/s 167 (5) in appropriate cases namely, a summons case. The question is if all the offences triable by the special court under the E.C. Act has been rendered summons case because of the special provision made in section 12AA is the direct question which I am required to deal with. Section 7 of the E.G. Act provides for punishment for contravention of any order made u/s 3 of the said Act. Under clause (a)(i) maximum sentence is one year which can be imposed on contravention of an order made with reference to clause (h) or clause (i) of sub-section 2 of section 3 of the said Act. Clause (h) provides for making an order for collecting any information or statistics for regulation of prohibition of the matter referred to earlier and clause (i) provides for making an order for an incidental or supplementary matters. Contraventions of the rest of the orders u/s 3 is punishable with imprisonment for a term which may extend to 7 years and shall also liable to fine, as it stands offences punishable u/s 7(i)(a)(ii) can not be treated as summons case. The argument that. sec. 262 of the Cr.P.C. having been made applicable to all the cases under the E.C. Act before the special Judge has made case under the E. C. Act a summons case is not tenable Clause(f) of sec. 12AA has made all the offences under the E.C. Act triable in a summary way. In trial of such cases application of sec. 262 has been made for the purpose of determining the procedure to be applied and for no other purpose. Offences triable under the E.G. Act have become triable in a summary way not because of application of sec. 260 Cr. P. C. but because of clause (f) of section 12AA of the special provision Act. Therefore application of section 262 does not make the offences under the E.G. Act a summons case. It only provides that even though such offences may be a summons case even then the procedure specified in the case for the trial of summons cases shall be applicable to them before the special Judges.

4. Proviso to clause (f) of this sub sec. has limited the maximum sentence that can be awarded to two years. According to learned Advocates that in effect maximum

sentence that can be awarded to two years. According to learned Advocate that in effect maximum sentence for offence u/s. 7(1)(a)(ii) of the Essential Commodities Act is two years and accordingly these cases are summons case as defined by the Code. If I am to accept the submission I am also required to accept that this particular proviso has in fact amended sec. 7 of the E. C. Act. From the scheme of summary trial in chapter XXI of the Cr.P.C. it is clear that warrant cases can also be tried in a summary way and maximum sentence that can be awarded is 3 months. These provisions certainly have not rendered warrant cases to a summons case. Classification of cases into warrant cases remained unaffected. In spite of provision of chapter XXI of the Cr.P.C. effect of clause (f) of section 12AA of the Special Provision Act cannot go any further. These are only special procedure laid down with certain object in view and does not effect any provision of the Essential Commodities Act unless specifically amended by this special provision Act. I accordingly conclude that alienable punishable u/s 7(i)(ii) are not summons cases.

5. I also intend to consider sub section 5 and 6 of section 167 Cr.P.C. in this context. Sub sec. 6 of this section provides that where an order has been made under sec. 167(5) the Sessions Judge may if he is satisfied on an applications made to him or otherwise that further investigation into the offence sought to be made vacate the order made under sub section 5 and direct further investigation to be made into the offence subject to such direction with regard to bail and other matters, as he may be satisfied. According to the provision of the special provision Act sec. 12AC Special Judges are also Sessions Judge. It has been held that the Special Judges has the powers of granting as anticipatory bail u/s. 438 of the Cr.P.C. as they are Sessions Judges. How this position can be reconciled if it is found that sec. 167(5) Cr.P.C. applies with the provisions of sec. 167(5) and (6) an order passed under these two sub section will be difficult, to reconcile. Sub sec. 5 imposes an obligation on the court to stop investigation if it cannot be concluded within a period of six months from the date on which the accused was arrested. Whereas sub sec. 6 provides vacating of order passed under sub sec. 5. It cannot be conceived that legislature intended to make a provision which will make any provision nugatory.

6. Mr. Sen Gupta has argued that section 8 of the Criminal law amendment Act, 1952 is substantially the same as the procedure laid down in section 12AA. He has particularly stressed that special Judge contemplated under the said Act has been given power to make cognizance of offence without the accused being committed to him. He has also been vested with powers u/s 339 and 339A of the Cr.P.C. In sub section 3 of the said section it has been provided that save as provided in sub sec. 1 and sub sec. 2 provision of code of Criminal procedure, 1898 shall so far as they are not inconsistent with this Act apply to the proceedings before a special Judge and for the purpose of the said provisions a court of the special Judge shall be deemed to be a court of Sessions trying cases without the jury or without the aid of the assessor and the person conducting a prosecution before a Special Judge shall be deemed to be a public prosecutor. Thereafter Mr. Sen Gupta laid stress on a

decision reported in AIR 1979 SC 1555 where a provision of the Criminal Law Amendment Act has been considered. It was held on analysis of section 8 that the special Judge in the Criminal law amendment act is for some purposes deemed to be a Sessions Judge and for some other purposes deemed to be a Magistrate and some powers exercisable by the Magistrate has been conferred on him. It also held that if the context otherwise requires the word Magistrate may include Magistrate who are not specified in sec. 3 Cr.P.C. On the provision of the said Act it was held that the special Judge in the Criminal Law amendment is thus for some purpose deemed to be a Sessions Judge and for some other purpose deemed to be a Magistrate and some powers exercised by a Magistrate are conferred on him. Mr. Sen Gupta relying on this decision submits that there is no conflict between sub sec. 5 and sub sec. 6 when a special Judge under the special provisions Act exercise power under sub sec. 5 he exercised a power vested in a Magistrate. Therefore sub sec. 6 will not be nugatory. Elaborating on this Mr. Sen Gupta submitted that u/s. 9 of the Cr.P.C. there shall be a court of Sessions for every sessions Division which is to be prescribed over by a Judge to be appointed by the High Court. Sub sec. 3 of the said sec. provided that the High Court may also appoint Addl. District Judge and assistant Sessions Judge to exercise jurisdiction in a court of Sessions. According to Mr. Sen Gupta office of a Judge presiding over in the Sessions Court is a distinct office. Original jurisdiction conferred on the Sessions Judge rest with him. Therefore in matters which are original in nature can be tackled by him in accordance with law. If such matter arises out of an order passed by any Additional Sessions Judge or Assistant Sessions Judge or other Sessions Judge not presiding over the Sessions court of a Sessions Division can easily entertained by him. Reading sec. 167(6) the jurisdiction for allowing further investigation after it has been stopped by a Magistrate an original jurisdiction vested in the Sessions Judge presiding over the Sessions Division. He can therefore exercise such power even if the order is passed by the learned Special Judge who is deemed to be a Sessions Judge. On this point Mr. Sen Gupta relied on a decision reported in 1978 C.H.N. 841 amending section 3A to Sec. 8 of the Criminal Law Amendment Act 1952 which provides that in particular and without prejudice the generality of the provision contained in sub sec. 3 the provision of sec. 350, 549, of the Cr.P.C. 1898 shall so far as may be applied to the proceeding before a Special Judge and for the purpose of the said provision of special Judge shall be deemed to be a Magistrate, On reading of this sec. it appears that there are indications in sec. 8 itself that a Special Judge under a Criminal Law Amendment Act is a Magistrate when he acts under certain sections of the Cr.P.C. and is a Sessions Judge in respect of other provisions of the Cr.P.C. Therefore his status is different from that of special Judge under special provision Act. Sec. 12 AC of the Special Provision Act has provided that "Save as otherwise provided in this Act, the provision of the code (including provisions as to bail and bond) shall apply to the proceeding before a special court and for the purpose of the said provision, the special Judge shall be deemed to be a court of Sessions and the person conducting a prosecution before a special court shall be deemed to be a public

prosecutor. This provision clearly indicates that inspite of exercise of power u/s 167 the special Judge is a court of Sessions and therefore not a Magistrate. Even if the submission of Mr. Sen Gupta that provision of sec. 167(6) the Sessions Judge means a Sessions Judge presiding over the Sessions Division it will not be possible for such a Sessions Judge to entertain any application which arises an order passed under sub section 5 of the said section. The Sessions Judge is competent to deal with an application in respect of a matter in which the powers under sub section 5 has, been exercised by a Magistrate. There c precisely the terms of sub sec. 5 and sub sec. 6. Mr. Dilip Kumar Dutta Senior Advocate who appeared amicus curiae in this case supported the contention made by Mr. Sen Gupta. I appreciate the ingenuity of Mr. Sen Gupta in advancing the argument with force but I am unable to accept his contentions in view of specific provision of the special provision Act and Criminal law amendment Act. In this connection I express my sincere appreciation of the valuable service rendered by Mr. Dutta. Mr. Roy, on the other hand, argued that any order passed under sub sec. 5 by the special can be altered directing further investigation by the High Court as the Sessions Judge of the Sessions Division cannot pass an order which in effect set aside an order passed by another Sessions Judge. If this contention is accepted we shall have to read the High Court in sub sec. 6 instead of Sessions Judge. This is not permissible by any rule of interpretation. Considering what has already been stated above I conclude that provision of section 167(5) does not apply to cases which are initiated for an offence punishable u/s. 7(i)(a)(ii) of the Essential Commodities Act. In respect of offence u/s. 7(1)(a)(i) the Special Judge is competent to pass an order under sub sect ion 5 of Section 167 Cr.P.C In such case sec. 482 Cr.P.C. will take care of sub sec. 6 of sec. 167 Cr.P.C. These applications are accordingly disposed of as under:
Criminal Revision No. 1207 of 1983.....Rule discharged.

The rest 4 Criminal Revisions.... Application rejected.