ANDHRA PRADESH HIGH COURT

The Public Prosecutor

Vs

Legisetty Ramayya

(S Obul, C.J. B. Raju and V Sastry, JJ.)

12.08.1974

JUDGMENT

B. Raju, J.

1. (D/- 18-4-1974). This is an application by the State of Andhra Pradesh for revision of the decision of the Sessions Judge, Kurnool in Cri. A. No. 170 of 1970 acting under the powers conferred upon him under Section 6-C of the Essential Commodities Act 10 of 19-55. In Section 2-A of the Essential Commodities -Act heads of commodities which come within the meaning of "essential commodity" are listed among which are included foodstuffs. For maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, provision is made under Section 3 of the Essential Commodities Act to make orders for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Under this provision several orders were made from time to time either by the Central Government or by the State Governments under delegation of powers. With regard to foodgrains, edible oilseeds and edible oils, provision is made under Section 6-A. of the Essential Commodities Act for confiscation of any essential commodity when., it is seized in pursuance of an order made under Section 3 of the Essential Commodities Act by the Collector of the-District in which the essential commodity is seized. As provided under Section 6-C of the Essential Commodities Act any person aggrieved by an order of confiscations made under Section 6-A may within one month from the date of the communication to him of such order, appeal to any judicial authority appointed by the State-Government concerned. The State of Andhra Pradesh by notification in G.O. Ms, No. 1863 dated 2-11-1967 appointed "District and Sessions Judge of each district" as the Judicial Authority to whom an appeal may be made by any person aggrieved by an order of confiscation made under Section 6-A by the Collector of the district concerned.

2. As provided under Section 3 of the Essential Commodities Act, the State of Andhra Pradesh

passed the Andhra. Pradesh Foodgrains Dealers Licensing: Order, 1964 and the Andhra Pradesh Rice Procurement (Levy) and Restriction on-Sale Order, 1967.

3. The respondents are the owners. of a Rice Mill at Sirvel Village, Alla-gadda Taluk, Kurnool District. They are carrying on the business of milling^. paddy. The Deputy Superintendent of Police, Vigilance Cell (Civil Supplies),. Anantapur, paid a visit to the rice mill and inspected the same. He found a stock of a total quantity of 714 quintals of various kinds of rice in the mill. He verified the accounts of the mill and noticed that the respondents had been carrying on business in paddy and rice from 2-1-1970" to 21-1-1970 without a valid licence as required under the Andhra Pradesh Food-grains Dealers Licensing Order, 1964 and that they failed to supply the levy of rice to the Food Corporation of India as required under the provisions of the Andhra Pradesh Rice Procurement (Levy> and Restriction on Sale Order, 197 and instead disposed of the stock to private dealers. Therefore the Deputy Superintendent of Police seized the above quantity of 714 quintals of rice in the presence of mediators and submitted his report to-the Collector, Kurnool, for further action to be taken under the provisions of the Essential Commodities Act. On the ground that the facts disclosed a prima facie case of contravention of the provisions of the two control orders mentioned above in-respect of the seized stock, the Collector, Kurnool, issued a notice to the respondents as provided under Section 6-B of the Essential Commodities Act to show cause against the confiscation of the seized stock of rice, in pursuance of the notice, the respondents appeared before the Collector by counsel and submitted their written explanation. The Collector after going through the matter and by coming to the conclusion that the respondents have contravened the provisions of the two Control Orders referred to above ordered confiscation to the Government the seized stock of 714 quintals of rice.

4. Aggrieved by the order of the Collector the respondents preferred an appeal as per the provision contained in Section 6-C of the Essential Commodities Act before the Sessions Judge, Kurnool. The learned Sessions Judge by holding that the order of the Collector confiscating the rice is bad in law and therefore cannot be allowed to stand, allowed the appeal and set aside the order of confiscation. Aggrieved by the order of Sessions Judge allowing the appeal, the State of Andhra Pradesh has preferred the above criminal revision case under Sections 435 and 439 of the Code of Criminal Procedure.

5. When the revision case oame up for hearing before a single Judge, Muktadar, J. a preliminary point was raked on behalf of the respondents contending that the revision is not maintainable as provided under Section 435 or 439, Cr, P. C. because the District and Sessions Judge who has been appointed as the appellate authority under Section 6-C of the Essential Commodities Act is not an inferior criminal court as mentioned in Section 435, Cr.P.C. and is only a persona designata and alternatively it was also contended that even if it is held that the District and

Sessions Judge acting under Section 6-C of Essential Commodities Act is an inferior criminal Court, nevertheless the revision is not maintainable as the proceedings in question cannot be said to be those which have been taken under the Criminal Procedure Code. The learned single Judge framed two questions and referred them to a Bench for decision. The two questions referred are the following:

(1) Whether the District and Sessions Judge who is the judicial authority under Section 6-C of the Essential Commodities Act is a persona designata or whether the District and Sessions Judge is an inferior criminal court; and (2) If it is held to be an inferior criminal court, whether a revision is maintainable under Section 435 or 439, Cr. P C. against the order of the appellate authority under Section 6-C of the Essential Commodities Act in spite of the iaet that such proceedings are not held under the Code of Criminal Procedure.

6. Therefore the case came up before a Bench consisting of Sambasiva Rao and Muktadar, JJ. The Bench while dealing with the matter came to consider a Bench decision of this Court in B. Krishna v. D. Chechi Reddy wherein it was held that a Magistrate exercising jurisdiction under Section 87 of the Madras Hindu Religious and Charitable Endowments Act falls within the definition of 'Court' as denned in the Indian Evidence Act and 'Court of Justice' as defined in the Indian Penal Code and therefore a Magistrate performing the functions allotted to him under Section 87 of the said Act should be considered to be acting as a Court .and not as persona designata and thus he is an inferior criminal Court within the ambit of Section 435 of the Code and consequently a revision can be entertained by the High Court under Section 435 or under Section 439, Cr. P. C On the ground that the reasoning adopted by the learned Judges in that case does not appear to be convincing, the Bench came to the conclusion that the two questions framed by the learned single Judge should be referred for consideration of a Full Bench. That is how this revision case has come up before this Full Bench.

7. With regard to the first question we are concerned with the meaning to be given to the expressions 'Judicial Authority' mentioned in Section 6-C of the Essential Commodities Act as the appellate authority to be appointed by the State Government to hear appeals against the orders of confiscation made by the Collector under Section 6-A and "The District and Sessions Judge of each District" appointed by the Government of Andhra Pradesh as the 'Judicial Authority'.

8. The expression "persona designata" is denned by P. G. Osborn in his Law Dictionary as "a person pointed out or described as an individual as opposed to a person ascertained as a member of a class, or as filling a particular character.

9. This definition was accepted as correct by the Supreme Court in *Central Talkies Ltd. v.*

Dwarka Prasad and Ram Chandra v. State of U.P. and also in the decisions of several other High Courts, to mention a few: *Parthasarathi Naidu v. Koteswara Rao*[1] D. P. Singh v. State of U.P. and B. B Manpoli v. Dattatraya .

10. In the House of Lords case in National Telephone Company Ltd. v. Post Master General (1913) AC 546 Lord Parker said Where by statute matters are referred to the determination of a Court of Record with no further provision, the necessary implication is that the Court will determine the matters as a Court. Its jurisdiction is enlarged and all the incidents of such jurisdiction including the right of appeal from its decision remain the same.

11. This view was approved by the Supreme Court in *National Sewing Thread Co. Ltd. v. James Chadwick and Brothers and Collector, Varanasi v. Gauri Shankar* . In the Supreme Court was dealing with Section 76 of the Trade Marks Act which confers a right of appeal to the High Court. That section while conferring the right of appeal to the High Court says nothing more about it. The Supreme Court said that the High Court as such being seized of the appellate jurisdiction conferred by Section 76, it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single Judge his judgment becomes subject to an appeal under clause 15 of the Letters Patent, there being nothing to the contrary in the *Trade Marks Act. In Hanskumar v. Union of India ,* however, a different note was struck by the Supreme Court, There it was held that the decision of the High Court in appeal under Section 19 (1) (f). Defence of India Act (1939) is not a judgment, decree or order within the meaning of Sections 109 and 1lO of the Civil Procedure Code or clause 29 of the Letters Patent of the Nagpur High Court and therefore the Federal Court could not have granted special leave. The Supreme Court came to this conclusion on the ground that the judgment of the High Court passed in appeal under Section 19 (1) (f) was an award and not a judgment, decree or order within the meaning of Sections 109 and 110 of the Civil Procedure Code as the reference under Section 19 (1) (b) and the appeal under Section 19 (1) (f) are all arbitration proceedings and the decision of the High Court in the appeal was really an award. This view was dissented from by the Supreme Court in the subsequent decision in AIR 1968 SC 384 referred to above wherein it was held that while acting under Section 19 (1) (f) the High Court functions as a 'Court' and not as a designated person and therefore the decision rendered by the High Court under Section 19 (1) (f) is a "determination" and hence it is within the competence of the Supreme Court to grant special leave under Article 136. The Supreme Court said that neither the Act nor the rules framed thereunder prescribe any special procedure for the disposal of appeals under Section 19 (1) (f). Appeals under that provision have to be disposed of just in the same manner as other appeals to the High Court. The rule is well settled that when a statute directs that an appeal shall lie to a court already established then that appeal must be regulated by the practice and procedure of that court. The fact that the arbitrator appointed under

Section 19 (1) (b) is either a designated person or a tribunal does not in any way bear on the question whether the High Court referred to under Section 19 (1) (t) is a court or not. The Supreme Court has further said that our statutes are full of instances where appeals or revisions to courts are provided as against the decisions of designated persons and Tribunals.

12. In coming to this conclusion the Supreme Court followed their earlier decision AIR 1953 SC 357 and the House of Lords case (1913) AC 546.

13. Therefore, if the expression "the District and Sessions Judge of each District" which is a Judicial Authority appointed by the Government of Andhra Pradesh as the 'Judicial Authority1 as provided under Section 6-C of the Essential Commodities Act can be referred to as 'court' there will not be much difficulty because as per the principle just mentioned above, the matter would be determined by the Court as a Court and all the incidents including the incident of being liable to revision under Sections 435 and 439, Cr.P.C. if the District and Sessions Judge acts as a Court of Session would follow. Mention may be made here that in the State of Andhra Pradesh in the Districts, the same Judge presides over both the District Court which deals with civil matters and the Sessions Court which deals with criminal matters. But here the reference in terms is to the presiding Judge of the court, namely "the District and Sessions Judge'1 and not to the court itself.

14. Broadly speaking court is a place where justice is administered. We find the term "court" defined in the, Evidence Act as including all Judges and Magistrates and. all persons, except arbitrators, legally authorised to take evidence. This definition is by no means exhaustive and it is an inclusive definition framed for the purpose of the Evidence Act. It is quite an Ordinary practice in drafting Indian statutes or even otherwise for a reference to be made to the officer presiding over the Court even if it is the Court which is meant. The words "court" and "Judge" are sometimes used as interchangeable terms. See Mangu Venkataiah in Re.[2] *Kiron Chandra Bose v. Kalidas Chatterji*[3] and *Chatur Mohan v. Ram Behari . In the above Full Bench case of the Allahabad Hitfh Court*[4] Desai, Section 4 said that I am not enamoured of the distinction made between "a Munsif" and "a court of Munsif" and of the argument based upon it to the effect that "a Munsif" acts as a persona designata whereas a "a court of Munsif" acts as a Court constituted under the Bengal, Agra and Assam Civil Courts Act or the Oudh Courts Act, When the Legislature speaks of "a Court of Munsif" it certainly means a court and not a persona designata but the converse is not always true.

15. In the United States the prevailing law has been stated in 14 American Jurisprudence, Court, S-4 in the following terms:

While there is a well defined and generally recognised distinction between a judge and a judicial tribunal and while it takes more than a presiding officer to constitute a Court, yet the Judge of a

Court while presiding over it is by common courtesy called "the Court", and the words "court" and 'judge' are frequently used in the statutes of various States as synonymous and convertible terms. Such terms are not, however, strictly synonymous and the Judge alone does not necessarily constitute a court, for while the Judge is an indispensable part, he is only a part of the Court. Whether an act is to be performed by the one or the other is generally to be determined by the character of the Act rather than by such designation. Whenever the power or duty imposed is found from a consideration of the object and purposes of the act to be one which is more properly the function of the court, it will be a construed; and whenever it is manifest that the Legislature meant the Judge and not the court, that meaning will be ap-plied to the words in order to carry out the Legislative intent. "Court" will always be construed to mean "judge", and "judge" to mean "Court" wherever either construction is necessary to carry into fleet the obvious intent of the Legislature.

16. Therefore, when a reference is made to the presiding officer of a Court whether it meant to refer to the Court or to him personally and refer to the fact of his presiding over a court simply to describe or identify him depends upon the intention to be gathered from the nature of the act he has to perform and other surrounding circumstances.

17. Therefore from the mare fact that in the notification of the Goverment ment for the appointment of the appellate authority the expression "the District and Sessions Judge of each District" is used instead of the Court over which such officer presides, it does not necessarily follow that the District and Sessions Judge is mentioned as persona designata and not in his capacity of presiding over the District and Sessions Court.

18. As provided in Section 6-C of the Essential Commodities Act the appellate authority to be appointed by the State Government to hear appeals from the orders of confiscation made by the Collector shall be Judicial Authority. Then the question arises what the Legislature meant by the expression 'Judicial Authority'. In the Law Lexicon by Rama-natha Aiyyar the term "judicial" is defined as belonging to a cause, trial or judgment belonging to or emanating from judge as such; the authority vested in a judge, of or belonging to a court of justice; of or pertaining to a judge; pertaining to the administration of justice, proper to a court of law. The expression "Judicial Authority" is defined in Black's Law Dictionary thus:

the power and authority appertaining to the office of a judge, jurisdiction, the official right to hear and determine questions in controversy.

19. Therefore when, as provided under Section 6-C of the Essential Commodities Act, the appointment to be made by the State Government to hear appeals from the orders of confiscation is a "Judicial Authority", whoever is appointed the appointment has to be made in his capacity of

"Judicial Authority" and not in the personal capacity of the person manning or presiding over such office. The appointment should be of the office as such exercising judicial power. Therefore in this view of the matter, we do not think the State Government could appoint the presiding officers of courts in their personal capacity to hear appeals from the orders of confiscation made by the Collectors. Thus, when the State Government appointed "the District and Sessions Judge of each district" and he is intended by the Statute to act not otherwise than in a judicial capacity he cannot come within the expression "persona designata" and the appointment must be taken to have meant only the court over which he presides and constitutes and exercises judicial powers. Our learned brother, Chinnappa Reddy, J. in *L. Ramaiah v. State of Andhra Pradesh*[5], was of the same view when he said1 the Legislature's mandate to the Government in Section 6-C of the Essential Commodities Act is that a Judicial Authority and not any other authority should be chosen as the appellate authority. The jurisdiction under Section 6-C is given to the District and Sessions Judge not as mere persona designata but as the judicial authority presiding over a Court. Therefore he functions as a court when he exercises jurisdiction under Section 6-C.

20. Another circumstance which points to the fact that "the District and Sessions Judge of each district" was appointed only as a court and not as a persona designata is that no finality is attached to the orders under Section 6-C. When nothing has been mentioned in Section 6 with regard to the finality of the orders passed thereunder, it shows that the District and Sessions Judge is to act as z Court in which case only it is not necessary to mention whether an order to be made under Section 6-C is to be final or not as all the incidents of exercising jurisdiction as a court including the right of appeal or revision as the case may be Erom its decision would follow. Therefore. the fact that nothing has been mentioned about, the finality or otherwise of the orders passed under Section 6-C also indicates that the Judical Authority to be appointed under Section 6-C as the Appellate Authority to hear appeals is to act as a Court only and not as a persona designata.

21. Now we will consider how the matter was dealt with in various decided cases. In AIR 1924 Mad 561 (FB) the Full Bench of the Madras High Court was dealing with a case which had come up under the Madras Local Boards Act. Under that Act and the Rules framed thereunder it was provided that no election of a member or the President of a. District, Taluk or Union Board shall be called in question except by an election petition presented to the District or Subordinate Judge having jurisdiction. The question arose whether the High Court has power of revision under Section 115. Civil Procedure Code over the decision of the District or Subordinate Judge when acting under that provision. The, Full Bench said that, that depends on whether the Judges therein referred to were acting as Courts or as persona designata, that is to say, persons selected to act in the matter in their private-capacity, not in their capacity as Judges. While recognising the existence of conflict of opinion on the point Schewabe, Section 4 stated thus:The law is definitely

established in (1913) AC 546 wherein it was held 'Where by statute matters are referred to the determination of a court with no further provision, the necessary implication is that the court will determine the matters as a court. Its jurisdiction is enlarged but all the incidents of such jurisdiction including the right of appeal from its de- cision remain the same'. If this matter has been referred to a District Court or Subordinate Judge's court in terms, m question could arise, because following the words of the judgment just quoted the matter would be determined by the Court as a Court, it being given jurisdiction for this particular purpose and all the incidents which include the incident of being liable to revision must follow, although no appeal would lie in this particular case as an appeal has been expressly precluded, for by Section 57 (21 of the Act, and by the rules "this decision is to be final". But as the word "Judge" and not the word "Court" was used one has to look carefully to see whether the word "Judge" was used of him in his capacity as Judge or in his personal capacity and I think great light is thrown upon this by two other Rules. Rule 12 (2) of the Rules for election refers to "an election or other competent Court" and it is quite clear that it is there referring to a Court of a District Judge or Subordinate Judge: and by Rule 4 (3) of the Rules for the conduct of inquiries power is given to the District or Subordinate Judge in certain cases "to direct any court eubordinate to him to hold the inquiry", I find it impossible to hold that reference to a Judge with power to refer to a Court subordinate to him can mean any thing else than reference to a Judge sitting ,as a Judge in the exercise of his ordinary jurisdiction extended for that purpose. For these reasons, in my judgment the power of revision lies.

22. In *Dirji v. Goalin*[6] the question considered by the Full Bench of the Patna High Court was whether the Commissioner appointed under the Workmen's Compensation Act is a Court or only acts as a persona designata. The relevant provision in that Act is The Provincial Government may by notification in the Official Gazette appoint any person to be a Commissioner for such local area as may be specified in the notification.

23. The Full Bench said that the points to be remembered are; (1) that the Act itself does not designate any official to be the Commissioner and (2) that whether the Commissioner is a Court or not depends upon the powers conferred on him by the Act and not on who is the person who happens to be selected for appointment by the Provincial Government. It was held that the Commr. under the Workmen's Compensation Act constitutes an independent tribunal and his function is to judge and decide and not merely to inquire and advice and in judging or deciding the matters before him he has to proceed judicially and not arbitrarily. In short he satisfied all the main tests which one has to apply to determine whether a tribunal is a court or not.

24. In *Works Manager v. Hashmat*[7] the Full Bench of the Lahore High Court said that one of the fundamental tests whether a certain Tribunal is a Court or is not so is whether it exercises

jurisdiction by reason of the sanction of the law or whether jurisdiction is given to it by the voluntary submission of the parties to a dispute. Another important test whether a -certain tribunal is or is not a court is whether it can take cognizance of a his and whether in exercising its functions it proceeds in a judicial manner.

25. In AIR 1969 All 484 (FB) it was held by the Full Bench of the Allahabad High Court that the Chief Justice end the Taxing Judges while deciding a reference under Section 5 of the Court-fees Act are not persona designata. A persona designata is a person selected to act in his private capacity and not in his capacity as a Judge. The definition given to the expression "persona designata" in Osborn's Concise Law Dictionary was accepted as correct by the Full Bench.

26. In the Supreme Court case AIR 1961 SC 606 : (1962) 2 SCJ 41 : (1961) 1 Cri LJ 740, the facts are: As provided under Section 3 of the United Pro-vinces (Temporary) Control of Rent and Eviction Act, 1947, permission of the District Magistrate was required to file in any civil Court a suit for the eviction of a tenant, except on certain grounds which were enumerated therein. One Dwaraka Prasad applied to the District Magistrate for permission for ejectment of a tenant and permission was granted not by the District Magistrate but by the Additional District Magistrate and the suit was filed. The question arose whether the suit was competent because the permission as required by Section 3 has not been obtained. The High Court held that the Additional District Magistrate who granted the permission was empowered by the provision under Section 10 (2) of the Criminal Procedure Code to exercise the powers of a District Magistrate under the Code and all the laws for the time being in force and therefore the requirements of Section 3 were complied with. It was contended before the Supreme Court that the District Magistrate mentioned in Section 3 was persona designata and no Additional District Magistrate was competent to grant the permission. The Supreme Court said that a persona designata is the one as defined in Osborn's Concise Law Dictionary and in the words of Schewabe. Section 4 in' AIR 1924 Mad 561 (FB) it aens "persons collected to act in their private capacity and not in their capacity as Judge". Therefore the Supreme Court by coming to the conclusion that District Magistrate mentioned in Section 3 of the Eviction Act was not to act as persona designata but as District Magistrate and as provided under Section 10 of the Criminal Procedure Code Additional District Magistrates were also emoowered with all the powers of the District Magistrate, the Additional District Magistrates-could act as provided under Section 3 of the Eviction Act.

27. In a Bench decision of this Court in (1962) 1 Andh WR 296 Satya-narayana Raju, J. and Kumarayya, J. as they then were, held that the expression 'persona designata' connotes a person appointed by name or other personal description in contradistinction to one whose identity is to be ascertained by the office he holds. Where a person is indicated in the statute not by name but by official designation, the question always arises whether the intention is to single him out as a

persona designata i.e. as an individual the designation being merely his further description. If he be a Judicial Officer and is intended by the Statute to act not otherwise than in a judicial capacity, certainly he cannot come within the expression "persona designata".

28. In a Bench decision of this Court in AIR 1959 Andh Pra 129, which was referred to by the Bench in the order of reference to this Full Bench, their Lordships were dealing with the provision contained in Section 87 of the Madras Hindu Religious and Charitable Endowments Act whereunder if a person has been ap-oointed as a trustee or an Executive Officer of a religious institution and if any such person is resisted in or prevented from obtaining possession of the religious institution, or of the records, accounts and properties thereof, any Magistrate of the First Class in whose jurisdiction such institution or property is situate shall, on application by the person so appointed, direct delivery to the person appointed as aforesaid of the possession of the religious institution, or of the records, accounts and properties thereof as the case may be. The question which had arisen was whether the Magistrate of the first class acts as a persona designata or in his official capacity as a court. It was contended there that if the intention of the Legislature was that the Magistrate should be regarded as a Court, it would, have used the words "court of the Magistrate of first class". The learned Judges came to the conclusion that since functions are assigned to the Magistrates with certain territorial jurisdiction and no individual Magistrate is specified, and the authority is vested in that behalf on all the first class Magistrates in respect of institutions within their jurisdiction the reference is clearly to a first class Magistrate representing the court. The use of the term "Magistrate" instead of "Court" does not by itself imply that he acts as a persona designata and not as a court. We agree with that view.

29. In the Full Bench case AIR 1972 Madh Pra 1 (FB) the Madhya Pradesh High Court was dealing with the provision contained in Section 20 of the Madhya Pradesh Municipalities Act. 1961, whereunder provision is made to question an election by a petition presented to the District Judge where such election is held within the revenue district in which the Court of the District Judge is situate. In an election petition filed before the District Judge, the latter transferred it for disposal to the Additional District Judge. A question arose whether that could be done. It was contended that authority was conferred on the District Judge as a persona designata or as a special,, tribunal and as such the District Judge had no authority to transfer the election petition to the Additional District Judge for disposal and the Additional District Judge acted without jurisdiction in disposing of the same. The Full Bench after discussing the Supreme Court decisions in AIR 1961 SC 606 = {1962) SCJ 41 : ((1961) 1 Cri LJ 740); AIR 1958 SC 947 and AIR 1968 SC 384 said that the combined effect of the three Supreme Court decisions is that when a statute confers authority on a judicial authority one should be slow in saying that the Legislature confers such authority on the said judicial officer as a persona designata. The District Judge is referred to in the section as a 'Judge', that is to say a person holding a judicial office and

the reference cannot be said to be a reference to a persona designata.

30. In Virindra Kumar v. State of Punjab the Supreme Court said that what distinguishes a court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. When a question arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.

31. In Brajanandan Sinha v. Jyoti :Narain it was held by the Supreme Court that in order to constitute a Court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, the power to give a decision or a definitive judgment which has; finality and authoritativeness which are?-the essential tests of a judicial pronouncement. These tests must be applied for determining what is a Court strictly so-called.

32. In Chatur Mohan v. Ram Behari mention about which had already been made above, the Full Bench, of the Allahabad" High Court was considering Section 7-E." of the U.P. (Temporary) Control of Rent and Eviction Act whereunder provision is made that if the landlord neglects to> carry out repairs which he is bound to make "the tenant may apply to the Munsif having jurisdiction for an order to the landlord for carrying out the same." The Full Bench said that the Munsif exercising jurisdiction under Section 7-E of the-Act acts as a Court.

33. Sri E. Ayyapu Reddy, has, how-ever, placed reliance on certain decisions-in support of his contention. In Mt. Mithan v. Municipal Board, Orai a Bench of the Allahabad High Court was considering whether a Magistrate passing are order under Section 247 of the U.P. Municipalities Act acts as a court or in persona designata, wherein it is provide that "when a Magistrate of the First Class receives information" that a house-in the vicinity of a place of worship etc. is used as a brothel or for the purpose of habitual prostitution, he may summon the owner, tenant.... to appear before him either in person or by agent; and if satisfied that the house is used a described above may order such owner, tan-ant etc. to discontinue such use. The court came to the conclusion that the Magistrate acts as a persona designate, because the nature of the functions to be performed by the Magistrate is mote consistent with his acting as an executive authority than with his acting as a Judicial Authority. Therefore, the facts there are different. As a matter of fact this decision was not referred to in either of the two Full Bench decisions of the Allahabad High Court AIR 1964 All 56a (FB) and .

34. Another decision on with reliance was placed by Sri Ayyapu Beddy is a decision of the Supreme Court in Dargha Committee v. State of Rajasthan . There, the Supreme Court was

considering whether a Magistrate acting under Section 234 of the Ajmer Merwara Municipalities Reduction does not act as an inferior criminal court to the High Court within the meaning of Section 439, Cr.P.C. The Supreme-Court held that the Magistrate who entertains an application under Section 234 is not an inferior criminal court on the ground that the nature of the enquiry contemplated by Section 234 is very-limited and it prima facie partakes of a character of a ministerial enquiry rather than a judicial enquiry.

35. Another argument submitted is that the confiscation proceedings before the Collector under Section 6-A of the Act are ministerial in nature and not .judicial in nature and he is a designated person and that is an indication to show-that the District and Sessions Judge appointed as the appellate authority against the decisions of the Collector also acts as a persona designata and not as a Court. As observed by the Supreme Court in AIR 1958 SC 947 mention about which has already been made above, our statutes are full of instances where appeals or revisions to Courts are provided as against the decisions of designated persons and tribunals. Therefore from the fact that the District Collectors acting under Section 6-A of the Act act. as persona designata it does not necessarily follow that the District and Sessions Judges who are given the powers of appeal over the decisions of the Collectors would also act as persona designata.

36. From what was discussed above the following conclusions would follow:

(1) Where, by statute, matters are referred to the determination of a Court with no further provision, the necessary implication is that the Court will determine the matters as a court. Its jurisdiction is enlarged with all the incidents of such jurisdiction.

(2) Where a person is indicated not by name but by official designation the> question always arises whether the intention was to single him out as a persona designata, i.e. as an individual, the designation being merely his further description. The question whether such a person in a persona designate or not depends upon the intention to be gathered from the words used, nature of the functions to be performed and object and purpose to be achieved.

(3) When a reference is made to an officer presiding over a Court and not the Court itself it does not necessarily follow that such a person is intended to act as a "persona designata" and not as a Court because it is quite an ordinary practice for a reference to be made to the officer presiding over the Court even when the intention is to refer to the Court. The mention of the officer presiding over the court instead of the Court does not by itself imply that he is intended to act as a persona designata end not as a Court.

(4) When a statute confers authority a judicial officer one should be slow in saying that the Legislature confers such authority on the said officer as a persona designata.

(5) Where a judicial officer who presides over a Court is appointed to perform a function under any statute and he is intended by the statute to act not otherwise than in a judicial capacity, in the absence of any other indication to the contrary he cannot come within the expression "persona designata" and he acts as a Court only.

(6) When a Judicial Authority, like an officer who presides over a Court, iH appointed to perform a function, that is to judge and decide in accordance with law and nothing has been mentioned about the finality or otherwise of the decisions made by that authority, it is an indication that the authority is to act as a Court in which case only it is not necessary to mention whether they are final or not as all the incidents of exercising jurisdiction as a Court would ne-cessariiy follow.

(7) Whether the authority functions as a persona designata or as a Court does not necessarily depend on the question whether it is acting against the decisions of designated persons or Tribunals or not. Statutes are full of instances where appeals or revisions to courts are provided even as against the decisions of designet-1 ed persons and Tribunals.

37. It was however argued that the District and Sessions Judge presides over and constitute both the District Court and the Sessions Court and the appointment cannot be of both the Courts and therefore when the appointment was made of the "District and Sessions Judge" the appointment has necessarily to b taken as a persona designata. As already mentioned above, it is true that the same Judge presides over both the Court While presiding over the District Court he disposes of civil matters and when he-presides over the Sessions Court he disposes of criminal matters. The confiscation proceedings under the Essential Commodities Act are essentially quasi criminal in nature. The confiscation provided is by way of penalty and punishment. As Justice Chinnappa Reddy puts it in the decision 1972 Mad LJ '(Cri.) 133: 1972 Cri LJ 1071 (Andh. Pra.) the threat of confiscation by itself like the-threat of prosecution is intended to serf as an effective deterrent. Under Section 28 (1) (c) of the Income-tax Act provision is made for imposition of penalty if ^he-Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal in the course of any proceedings; under the Income-tax Act is satisfied that any person has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income. In Commr. of Income-tax v. Anwar Ali the Supreme Court held that one of the principal objects in enacting Section 28 is to provide a deterrent against the recurrence of default on the part of the assessee. The section is penal in the sense that its consequences are intended to be an effective deterrent which would put a stop to the practices which the Legislature considers to be against the public interest. Therefore, the proceedings under Section 28 are penal in nature. 'Similarly the Supreme Court held in *Hindustan Steel Ltd. v. State of Orissa,* . that the orders imposing penalty in sales tax matters are quasi-criminal in nature. Therefore, when the appellate authority is mentioned as the District and Sessions Judge, because the -proceedings are criminal in nature, he

has to deal with the appeals as criminal appeals as a Sessions Court. Therefore, when the District and Sessions Judge was appointed as the appellate authority, having regard to the nature of the proceedings, it must be taken that the appointment is of the Sessions Court. There is no -difficulty about it. As a matter of fact, that is how appeals against the orders of confiscation are filed in the Sessions Court and the appeals are treated as criminal appeals.

38. The proceedings to be taken by the Collector for confiscation under Section 6-A of the Essential Commodities Act are in addition to or apart from the liability to prosecution as provided under Section 7 of the Essential Commodities Act. It is provided thereunder that whether or not prosecution is instituted for the contravention of the order, the Collector if satisfied that there has been a contravention of the Order, may order -confiscation of the essential commodity seized. It is also provided under Section 6-C (2) that where in a prosecution instituted for the contravention of the Order in respect of which an order of confiscation has been made under Section 6-A, the person concerned is acquitted, the essential commodity seized shall either be returned to the person concerned or in case it is not possible for any reason to return the essential commodity seized he shall be paid the price therefor. Thus, "the confiscation is made subject to the result of any criminal prosecution that may be taken or has been taken with regard to the same act of contravention as provided under Section 7. Having regard to the liability to the two actions, mentioned above, provided under the Essential 'Commodities Act for the same act of contravention, Sri Ayyapu Reddy has argued that if the District and Sessions Judge is to act as a Court under Section 6-C there is likely to be conflicting decisions of the same Court in the confiscation proceedings and the proceedings taken for criminal prosecution. Similarly Sri1 Ayyapu Reddy has argued that as provided under Section 517, Criminal Procedure Code there is also a provision for passing orders of confiscation by a criminal court with regard to case property in an enquiry or trial and as provided under Section 520, Criminal Procedure Code any . Court of appeal or revision can modify, alter or annul such order and therefore if the same function is to be performed by the Sessions Judge as provided under Section 6-C of the Essential Commodities Act the Legislature would not have intended to perform it as a Court again and the intention of the Legislature must have been for him to act as a persona de-signata. We are not very much impressed with either of these two arguments of the learned counsel. The two proceedings provided under Section 6-A and Section 7 of the Essential Commodities Act are different in nature and purpose. The confiscation proceedings are intended to be summary in nature, no elaborate procedure like in the case of regular trials or enquiries having been provided. When a seized essential commodity in pursuance of an Order made under Section 3 of the Act is produced before him, the Collector, if satisfied that there has been a contravention of the Order, may order confiscation of the essential commodity after giving notice in writing informing the owner of the grounds on which it is proposed to confiscate the essential commodity and is given a reasonable opportunity of making a representation in writing and being heard in the matter as

provided under Section C-B. The provision made under Section C-C is that any person aggrieved by the order of confiscation under Section 6-A may, within one month from the date of the communication to him of such order, appeal 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. Whereas with regard to criminal prosecution, there will be an elaborate procedure like taking evidence etc. Because the confiscation proceedings are made summary, they are made subject to the result of any prosecution that may have been instituted for the contravention of the Order. When the nature and purpose of the functions in the two proceedings are different there is nothing wrong if ultimately any decision given under Section 6-C by the District and Sessions Judge may become different with the one given in the proceedings taken for prosecution.

39. Another contention raised is that even if the District and Sessions Judge exercises the powers under Section 6-C of the Essential Commodities Act as a Court it cannot be said to be an inferior Criminal Court within the meaning of Section 435, Criminal Procedure Code. We do not think this question can detain us for long. As already discussed above, if the District and Sessions Judge acts as a Court to hear appeals under Section 6-C it has necessarily to be as a Sessions Court as the confiscation proceedings are criminal in nature. If he acts as a Sessions Court certainly it would become an inferior criminal court with regard to the High Court within the meaning of Section 435, Criminal Procedure Code. Since it is not provided in the Act as to what would become of the orders passed in the appeals under Section 6-C the ordinary incidents of the procedure of the Sessions Court would attach to those orders. If that is the rule, there is 410 difficulty in holding that the order passed in appeal under Section 6-C of the Act by the Sessions Court would be liable to revision as provided under Section 435 and Section 439, Criminal Procedure Code. In (1913) AC 546, reference about which had already been made above, the rule was very succinctly stated in these terms:

When a question is stated to be referred to an established Court without more, it imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decision likewise attaches.

40. The same view was expressed "by their Lordships of the Privy Council in *Adaikappa Chettiar v. Chandrasekhara Thevar*[8] wherein it was Where a legal right is in dispute and the ordinary courts of the country are -seized of such dispute the courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not, in terms, confer a right of appeal.There the Privy Council was considering the provision made

under Section 76 of the Trade Marks Act which confers a right of appeal to the High Court and .says nothing more about it. The Privy Council held that the High Court being seized of the appellate jurisdiction conferred by Section 76, it has to exercise that jurisdiction in the same manner as it exercises its other appellate jurisdiction and when such jurisdiction is exercised by a single Judge, his judgment becomes .subject to appeal under clause 15 of the Letters Patent, there being nothing to the contrary in the Trade Marks Act.

41. In the case before us similarly there being nothing to the contrary in the Essential Commodities Act, the order passed by a Sessions Judge as a Court in an appeal under Section 6-C of the Act would be liable to revision by the High Court as provided under Sections 435 and 439, Criminal Procedure 'Code.

42. Another argument submitted was that the term "proceeding'1 mentioned in Section 435, Criminal Procedure Code has to be a criminal proceeding, that too the one taken under the Code of Criminal Procedure and unless these tests are satisfied iSection 435, Criminal Procedure Code cannot have any application. As already discussed above, the confiscation proceedings as provided under the Essential Commodities Act are criminal in nature. Under Section 5 of the Code of Criminal Procedure, procedure is prescribed though it is mentioned therein for trial of offences only arising both under the Indian Penal Code and against other laws. The term 'proceeding' as mentioned in Section 435, Criminal Procedure Code cannot necessarily be said to have any reference by itself to the commission or trial of an offence. There are several provisions in the Code of Criminal Procedure itself which are not concerned or not necessarily concerned with the commission or prevention of an offence, for instance Sections 48, 144 and 133. In the decision Ujamshi Govindji Sanghadia v. Emperor AIR 1946 Bom 533 : (48 Cri LJ 152) (FB) it was held by the Full Bench of the Bombay High Court that the word "proceeding" cannot be Riven such a restricted significance. It is enough if it is made by an inferior criminal court and the order is a judicial order. In several decided cases it was held that the test was not the nature of the proceeding but the nature of the court in which that proceeding was held. See *Emperor v. Devappa Ramappa*[9] *Ram Gopal Goenka v. Corpn. of Calcutta*[10] *Kumaravel Nadar v. Shanmuga Nadar*[11] *Emperor v. Har Prasad Das*[12] *In the Matter of the Petition of Bhup Kunwar*[13] *and In Re B. G Horniman* [14]With great respect we entirely agree with the view mentioned in those cases that the nature of the court rather than the nature of the proceedings that would determine the issue. Therefore for attracting Sections 435 and 439, Criminal Procedure Code what is important is whether the proceeding was held in an inferior criminal court. It does not matter even if the proceeding cannot be said to have been held' under the Code of Criminal Procedure.

43. Accordingly we answer the two questions referred to us as follows The District and Sessions Judge acting under Section 6-C of the Essential Commodities Act as the Judicial Authority acts

as a Court and not as persona desig-nata. The confiscation proceedings being in the nature of criminal proceedings the District and Sessions Judge acts as an inferior criminal court in relation to the High Court within the meaning of Section 435, Criminal Procedure Code. A revision is maintainable under Section 435 or Section 439, Criminal Procedure Code against the order of the appellate authority under Section 6-C of the Essential Commodities Act even though the confiscation proceedings cannot be said to be those that are held under the Criminal Procedure Code.

{After the answers given by the Full 1 Bench were received the case again came before the Division Bench who by its order dated 14-6-1974 referred it to the original Single Judge who by his order :dated 19-6-1974 posted it for hearing before a regular court hearing Criminal Revision Case.] Chennakeshav Reddy, J.

44. This is a revision petition filed by the State seeking to revise the judgment of the learned Sessions Judge, Kurnool in Criminal Appeal No. 170 of 1970 on his file by which the order of confiscation Tossed by the Collector, Kurnool under Section 6-A of the Essential Commodities Act, 1955, (hereinafter referred to as 'the Act') was set aside.

45. The material facts may be focrtly stated:The respondents herein are the proprietors of Venkateswara Rice Mill, situated at Sirvel in AUagadda Taluk. On 27th June, 1970 the Deputy Superintendent of Police, Vigilance Cell, Anantapur inspected the mill, verified the stocks and fcrtind a total quantity of 714 quintals of rice comprising of various varieties. On 27-12-1969 the respondents had obtained a licence under the Rice Milling Industry (Regulation) Act, 1958. On 22-1-1970 a Heence under the Foodgrains Dealers' Licensing Order, 1964, was granted -to them. On verification of the accounts of the mill, it was noticed that the respondents had been carrying on business in paddy and rice from 2-1-1970 to 22-1-1970 without a valid licence under the Andhra Pradesh Food Grains Dealers' Licensing order, 1964. It was further noticed that even after 22-1-1970 the miller failed to deliver the mill levy to the Food Corporation of India, Kurnool, and disposed of rice to the private dealers both in and. outside Kurnool District. Therefore, the-Deputy Superintendent of Police seize 714 quintals of rice under a panchanama and submitted his report with the record of enquiry to the Collector, Kurnool, for further action under the Act. As the facts-disclosed prima facie case of contravention of the Andhra Pradesh Foodgrains Dealers (Licensing Order, 1964) and the Rice Procurement (Levy) and Restriction^ on Sale Order, 1967, the Collector issued a notice to the respondents under Section. 6-B of the Act to show cause why the-seized stocks should not be confiscated. On 20-11-1970 a written explanation was-submitted on behalf of the respondents. In the written explanation the main place of the respondents was that the contravention of the Andhra Pradesh Food-grains Dealers' Licensing Order, 194 was due to their inexperience in business. They also submitted that the

violation, were technical in nature and that there was no mala fide intention on their par to deserve any deterrent action of confiscation of the stocks seized. As regards the contravention of the Rice Procurement (Levy) and Restriction on Shale Order, 1967, it was stated in the explanation that the firm was always ready to deliver the necessary levy under the Levy Order but the Food Corporation of India and the-Government were not taking the levy as Andhra rice was rejected by the Kerala Government as of sub-standard. It was further stated that in fact they had asked for the allotment of wagons in the month of March and the same was cancelled a the Government permitted the millers in the area to sell the stocks privately.

46. The Collector, on a consideration of the Explanation offered by the respondents and after hearing the learned counsel for the respondents, ordered confiscation of the seized stocks. The respondents preferred an appeal against the aaid1 order of confiscation to the Sessions Judge, Kurnool. The appeal was heard by the Additional Sessions Judge, to whom it was made over and the order of confiscation was confirmed. On a revision to the High Court. Chinnappa Reddy, J. ruled that under Section 6-C of the Act it was only the Sessions Judge that was competent to hear the appeal and that the Additional Sessions Judge had no jurisdiction to hear and dispose of the appeal. Therefore, the order of the Additional Sessions Judge was set aside and the Sessions Judge was directed to re-entertain the appeal and dispose of the-case according to law. The Sessions Judge accordingly reheard the appeal and reversed the order of confiscation passed by the Collector, He held that the respondents were under the bona fide belief that they could carry on the business in foodgrains because they had applied for a licence even in August, 1969 and a licence was actually, granted on 22-1-1970. As regards the contravention of the Andhra Pradesh Rice Procurement (Levy) and Restriction on Sale Order, 1967, by selling rice from 23-1-1970 to 27-6-1970 without delivering any levy, the learned Sessions Judge held that unless a demand is made for the payment of the levy, no question of delivery of levy arises and since there was no such demand in this -case, there was no violation of the said order, He consequently set aside the order of confiscation. Hence this revision petition by the State.

47. The principal point presented and persuasively argued by the learned Additional Public Prosecutor, Sri Ramaswamy is that the question of good faith or absence of mens rea is wholly irrelevant in a case of absolute prohibition. He submits clause 3 of the Andhra Pradesh Foodgrains Dealers' Licensing Order, 1&64, contained absolute prohibition that no person shall carry on business as a dealer except under and in accordance with the terms and conditions of licence issued in that behalf of the licensing authority. The respondents, he maintains, having carried on business as a 'dealer' in foodgrains without a valid licence from J2-1-1970 to 21-1-1970, had contravened the provisions of Andhra Pradesh Food-drains Dealers' Licensing Order, an order made under Section 3 of the Essential Commodities Act and the essential commodity seized was therefore liable for confiscation.

48. On the other hand, the learned 'counsel for the respondents, Sri Ayyapu Reddy, submits that the absence of mens rea is as much a valid defence in a proceeding under Section 6-A of the Act as it is in a prosecution under Section 7 of the Act on a charge of violation of any order made under Section 3 of the Act.

49. The primary question that is at once posed or provoked is whether the proceeding under Section 6-A of the Act is a Criminal Prosecution attracting the general presumption that mens rea is required in every criminal offence created by a statute unless the contrary is clearly expressed or implied. The solution should be found primarily from the words of the section and the previous legislation. Section 6-A reads:

6-A Confiscation of Essential Commodities : Where any essential commodity is seized in pursuance of an order made tinder Section 3 in relation thereto, it may be produced without any unreason- able delay, before the Collector of the district or the presidency town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector, if satisfied that there has been a contravention of the order, may order confiscation of the essential commodity so seized:Provided that without prejudice to any action which may be taken under any-other provisions of this Act, no foodgrains or edible oilseeds seized in pursuance of an order made under Section 3 in relation thereto from a producer shall, if the seized foodgrains- or edible oilseeds have been produced by him. be confiscated under this section.

50. The words in the section "whether or not a prosecution is instituted for contravention of such order, the Collector if satisfied that there has been a contravention of the order, may order confiscation of the essential commodity so seized," are very highly significant. They are not cloudy and dark words and clearly indicate that the proceeding is not a prosecution for a criminal offence and the confiscation of the essential commodity seized may be ordered if the Collector is satisfied that there has been a contravention of the order. But then, what is the nature of the proceeding? It is a departmental proceeding. It is only quasi-criminal in character since it may end in a penalty. This proceeding is no bar to a separate criminal prosecution under Section 7 of the Act. The burden of proving by the prosecution as in a criminal trial, everything essential to establish a charge does not arise in a proceeding under Section 6-A of the Act. Therefore the general principles of criminal law that mens rea is an essential ingredient to be established in a criminal offence, cannot be invoked in a departmental proceeding under Section 6-A. The statutory satisfaction is decisive of the act of contravention. It is however, open to the person charged with the contravention of an order to plead and establish the absence of mens rea which if so found would be a mitigating factor to be taken into consideration in the determination of imposition and quantum of the penalty.

51. Now about the previous legislation. The Essential Commodities Act was enacted in 1955 with the dominant object and intendment of ensuring equitable distribution and adequate availability at fair prices of essential commodities defined or notified under the Act. But the penal provisions found in Section 7 of the Act for prosecution under the Act, of defaulting persons, was rendered ineffective by getting round the sections of the Ac by some sections of the trade and middle men. In order to make the administration of the Act more effective, Sections 6-A to 6-D were inserted by Section 3 of the Essential Commodities Amending Act (Act 25 of 1966). The very purpose and object of the amendment to take swift and effective action will be defeated if either the procedure applicable or "the degree of prof required in a criminal trial are again to be insisted in an enquiry under Section 6-A of the Act.

52. It may be apposite now to refer to some of the relevant authorities n the question: Channell, J. in Pearks, Gunsten & Tee Limited, V, Ward. *Hennen v. Southern Counties Dairies Company Limited* [15]at p. 11 observed:By the general principles of the criminal law, if ,a matter is made a criminal offence it is essential that there should be something in the nature of mens rea, and therefore, in ordinary cases a corporation cannot be guilty of a criminal offence, nor can a master be liable criminally for an offence committed by his servant. But there are exceptions to this rule in the case of quasi-criminal offences, as they may be termed, that is to say, where certain acts are forbidden by law under a penalty, possibly even under a personal penalty such as imprisonment, at any rate in default of payment of a fine; and the reason for this is, that the Legislature has thought it so important to prevent the particular act from being committed that it absolutely forbids it to be done; and if it is done the offender is liable to a penalty whether he had any mens rea or not, and whether or not he intended to commit a breach of the law.

53. In a more recent decision, Hegde, J. speaking for the Supreme Court in the *State of Gujarat v. Acharya Shri Devendraprasad Pande* observed :The mens rea means some blameworthy mental condition whether constituted by knowledge or Intention or otherwise. But this rule lias several exceptions, as observed by Lord Evershed in *Lim Chin Aik v. The Queen* [16]Where the subject-matter of the statute is the regulation for the public . welfare of a particular activitystatutes regulating the sale of food and drink are to be found among the earliest examples It can be and frequently has been inferred that the legislature intended that such activities should be carried out under conditions of strict liability. The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with. When such a presumption is to be inferred, it dis- places the ordinary presumption of mens rea.54. The learned Judge quoted with approval the observations of Wright, J. in. Sherras v. De Rutzen (1896) 1 QB 918 that the principal classes of exception, that mens rea is an essential ingredient in every offence may perhaps be reduced to three: One is a class of acts which are-not criminal in any real sense, but are acts which in the public interest

are prohibited under a penalty. Another class-comprehends some, and perhaps all, public nuisance. Lastly, there may be cases in which although the proceeding in criminal in form, it is really only a summary mode of enforcing a civil right. But except in such cases as these, there must in general be guilty knowledge on the part of the defendant, or of some one whom he has put in his place to act for him, generally, or in the particular matter, in order to constitute an offence. The present case in my opinion, undoubtedly, falls under the first class. Only the act of contravention is prohibited in the public interest under a penalty. Otherwise the very object and purpose of an order made under Section 3 of the Act, namely, to maintain equitable distribution and supply of essential commodities at fair prices, will be frustrated if it were to be held that mens rea is an essential requisite for holding a person guilty of any contravention before he oould be held to have contravened the provision. Therefore, the learned Sessions Judge was in error in holding that mes rea is an essential ingredient to be proved in a proceeding under Section 6-A of the Act. As already observed, if the laerson charged with committing the contravention establishes absence of mens rea, it will be a mitigating factor while determining the penalty to be meted out for the contravention.

55. The learned counsel for the respondents, Sri Ayyapu Reddy, relying upon the decisions in (a) Nathulal v State of Madhya Pradesh ; (b) *Laxmi Narain v. State,*[17] and (c) State of *Himachal Pradesh v. Shri Ram Mai*[18]*,* contended that mens rea is an essential ingredient in an action under Section 6-A of the Act. In the-latter two cases, the learned Judges onlv followed the decision of the Supreme Court in (supra). In that case, the Supreme-Court was dealing with a sriminal prosecution under Section 7 of the Essential Commodities Act for breach of Section 3: of the Madhya Pradesh Foodgrains Dealers' Licensing Order, 1958. The Supreme Court ruled that mens rea is a necessary ingredient of an offence under Section T of the Act, In this case ther is no crimi- nal prosceution. The action against the respondents is only taken under Section 6-A of the Act, Therefore, these decisions are inapplicable to the facts of this case.

56. One other decision that needs to be referred to is the decision on Kishori Lai Bihari v. The Additional Collector and District Magistrate, Kanpur . In that case, the learned Judge observed that the contravention attracting the provisions of Section 6-A of the Act has the same legal incidence and consequences and has the same nature and character as the contravention made punishable by Section 7 of the Act and the two provisions i.e. Section 6 and Section 7 are in pari materia. With grot respect t" the learned Judge I regret my inability to record my accord for the reasons already given above.

57. There still remains to be considered the question whether the respondents committed contravention of the Andhra Pradesh Rice Procurement (Levy) and Restriction on Sale Order, 1967. The learned Judge held that there was no violation of clause 3 of the order because there

was no demand for the payment of levy. But that was not the case of the respondents in the written explanation filed before the Collector. They stated in their explanation as follows:As for the charge under the levy order is concerned, it is submitted that the firm was always ready to deliver the necessary quantum of rice. But the F.C.I, and the Government were not ready to take delivery as the Andhra rice was rejected by the Kerala State as of substandard. The firm had asked for allotment of wagons in the month of March. The same was cancelled as the Government permitted the millers in this area to sell their stocks privately. Under the circumstances the firm requests the Hon'ble District Collector to drop the proceedings against them.

58. It is clear from the explanation that the plea of the respondents was that they had offered to deliver levy, but the Government was not reedy to take delivery as the rice was sub-standard rice and that they were permitted by the Government to sell the stocks privately. He does not appear to have considered the credibility of this explanation. Moreover, the question whether there should be a demand for the payment of the levy does not really arise in this case as there was such a demand made by the Deputy Tahsildar on 21-3-1970. The respondents being conscious of the demand never pleaded the absence of a demand for levy in their explanation. The learned Sessions Judge also appears to have been under the mistaken impression that the charge Against the respondents was that they dis posed of only 120 quintals of rice without payment of levy from 23-1-1970 to 25-1-1970; whereas it was alleged that the respondents did not deliver any levy for the entire period between 22-1-1970 to-the date of inspection viz. 27-6-1970 and: disposed of rice to several private dealers in and outside the district. He found in parapraph 10 of the judgment as follows:In this case it is said that the Deputy Tahsildar issued some directions on 21-3-1970 to all the Mill Owners to pay the levy, but they carry no significant value so far this charge is concerned, because, the charge is that without payment of levy, the appellant disposed of rice between 23-1-1970 and 25-1-1970. The directions of the Deputy Tahsildar issued after about two months therefore-cannot be treated as a proper demand for the payment of levy. Furthermore the recitals of the show cause notice show that on 20-1-1970 there was stock of 4695 bags of rice in appellants' mills, out of which between 23-1-1970 and 25-1-1970 they are alleged to have sold only 120 quintals of rice. This shows that more than sufficient stocks were available with the appellants for payment of levy. The explanation given by the appellants that they acted in good faith by selling some-quantity of rice because there was danger of their becoming rotten is therefore fit to be accepted.

59. Thus the learned Sessions Judge has totally misled himself as to the actual allegation against the respondents and also the material on record. Therefore, the findings of the learned Sessions Judge cannot be sustained. The learned counsel, however, tried tosustain the order of the learned Sessions Judge on some other grounds which were neither raised nor argued before the learned

Sessions Judge. I do not consider it necessary to go into any of them as I have come to the conclusion that the matter should be-sent back to the learned Sessions Judge and it would be open to the learned counsel to raise all those grounds before the learned Sessions Judge in the appeal.

60. In the result, the judgment of the learned Sessions Judge is set aside and the matter is remitted to the learned Sessions Judge, Karnool. The learned Sessions Judge will re-hear the appeal ire the light of the observations made above and dispose it of according to law

Cases Referred.

1AIR 1924 Mad 561 (FB)
2(1962) 1 Andh WR 29
3AIR 1043 Cal 247
4AIR 1%4 All 562 (FB)
51972 Mad LJ (Cri.) 133 : (1972 Cri LJ 1071) (Andh. Pra.)
6AIR 1941 Pat 65 (FB)
7AIR 1946 Lah 316 (FB)
8AIR 1948 PC 12
9(1919) ILR 43 Bom 607 : (1919) 20 Cri LJ 316
10AIR 1925 Cal 1251 : (1925) 26 Cri LJ 1533)
11AIR 1940 Mad 465 : ((1940) 41 Cri LJ 769) (FB)
12(1913) ILR 40 Cal 477 (FB)
13(1904) ILR 26 All 249 (FB); Karri Adi Reddy, 1972 Mad Lj (Cri.) 512 (Andh. Pra.)
14AIR 1933 Bom 59 : ((1933) 34 Cri LJ 239)
15(1902) 2 KB 1
161963 AC 160)
171970 Cri LJ 615 (All)
181970 Cri LJ 1393 (Delhi)