

MYSORE HIGH COURT

State

Vs

Abdul Rasheed

Criminal Revn. Cases Nos. 1 and 2 of 1967, Cri. Revn Petns Nos. 34/7 and 35/7 of 1966

(K. Bhimiah, J.)

02.03.1967

JUDGMENT

K. Bhimiah, J.

1. These two Criminal Revision cases involve common questions of law and fact and therefore, they are disposed of by a common order.
2. The petitioner is the accused in both the cases before the trial court. On 30-10-1966, he was found in possession of 79 bags of rice. The police seized those bags and registered a case in Crime No. 295/1 of 1966 and produced the rice bags before the Court. Again, on 2-11-1966, they searched and found in his possession 135 bags of rice. They registered a case in Crime No. 302/1 of 1966 and produced the rice bags before the Court. In the former case, the offence alleged to have been committed by the accused is under Sections 3 and 7 of the Essential Commodities Act, 1955, to be hereinafter called the 'Act' and in the latter case, the offence said to have been committed by the accused is under sub-rules (2) and (3) of Rule 125 of Defense of India Rules, to be hereinafter referred to as the 'Rules' and Section 3 read with Section 5 of the Act. In the F. I. R. dated 30-10-1966, the Orders contravened, according to the prosecution, are the Mysore Food grains (Retail) Dealers Licensing Order, 1964, and also Mysore Food grains (Wholesale) Dealers Licensing Order, 1964. In the F. I. R. dated 2-11-1966, the contravention relates to the Mysore Food grains (Declaration of Stocks) Order, 1965, made by the State Government in exercise of the powers conferred by sub-rules (2) and (3) of Rule 125 of the Rules.
3. After the rice bags were seized, the accused made applications before the trial court for release of the bags to his possession in both the cases as those bags belonged to him. Before those applications could be disposed of, the Sub-Inspector of Police made another application before the trial court to permit him to produce the attached rice bags in the case before the Collector (Deputy Commissioner, Raichur), for disposal of property and for further action. The learned

Magistrate allowed the application filed by the Sub-Inspector of Police, Raichur, and permitted him to produce the stocks in question before the Collector (the Deputy Commissioner, Raichur). The accused filed Revision Petitions before the Sessions Judge, Raichur. The Sessions Judge was of the opinion that the Magistrate by his order abdicated his judicial powers given to the court under the Criminal Procedure Code and the opinion of the learned Magistrate that the provisions contained in Section 516-A Criminal Procedure Code are not applicable to the case has neither any merit nor supported by any judicial decision or any provision of law. Therefore, he allowed the Revision Petitions and has made the present Reference under Section 438 Criminal Procedure Code to this Court for setting aside the order's under revision.

4. The learned State Prosecutor did not support the reference while Sri Jagannatha Shetty appearing for the petitioner strongly supported the Reference. The contention of the learned State Prosecutor in opposing the Reference and supporting the order passed by the trial court is that amended provisions of Section 6-A of Act which came into force on 3-9-1966 are applicable to this case. He urged that section 6-A of the Act requires that the food grains, edible oil seeds or edible oils seized in pursuance of an order made under Section 3 in relation thereto may be produced without any unreasonable delay before the Collector (Deputy Commissioner) of the District in which those articles were seized for taking action for confiscation of the food grains, edible oil seeds or edible oils, if the Collector is satisfied that there has been contravention of the Order made under Section 3 of the Act. His further contention is that the provisions of Section 6-A of the Act which provide for disposal of the food grains, edible oil seeds or edible oils, prevail over the provisions of S 523 Cr P. C. He urged whether or not the prosecution is instituted for the contravention of any order, the Collector (Deputy Commissioner) gets the power to take action under Section 6A of the Act. He further urged that in the event of the accused concerned being acquitted, in cases where prosecution is instituted for the contravention of the order in respect of which an order of confiscation has been made, such acquitted person shall be paid the price of the food grains edible oilseeds or edible oils as required under amended Section 6C(2) of the Act. On the other hand, Sri Jagannatha Shetty, learned Advocate for the petitioner contended that the provisions of Section 6A of the Act are inapplicable in cases where the police seized food grains, edible oilseeds and edible oils and produced those articles before the jurisdiction Magistrate as required under the Orders. He further contended that the amended Section 6A of the Act does not take away the jurisdiction of the criminal courts in the matter of disposal of food grains, edible oil seeds and edible oils which are seized under the Orders made by the State Government on the delegated authority under Section 5 of the Act. His further contention is that in cases where the contravention is with regard to the orders issued by the Central Government under Section 3 of the Act, it is open to the police or the authority empowered to seize food grains etc. to produce them without unreasonable delay before the Deputy Commissioner for taking action under Section 6A of the Act. If on the other hand he contends, the food grains etc., are produced before the Magistrate having jurisdiction, then the court gets the power to dispose of the said property under Section 523 Criminal Procedure Code

5. From the above contentions, the question that arises for decision is whether the criminal court has power to order confiscation under the wider powers conferred by the provisions relating to disposal of property by the Criminal Procedure Code when a statute specifies a particular mode of enforcing a new obligation created by it in respect of disposal of food grains etc., which are seized for the contravention of the provisions of the Act or Orders issued under the provisions of Section 3 or Section 5 of the Act.

6. In order to examine the validity of the rival contentions put forward in the case and to answer the above questions, it is necessary to set out the relevant provisions of the Act, Rule and the Orders. Amended Section 6-A of the Act reads thus:

"Where any food grains, edible oilseeds or edible oils are seized in pursuance of an order made under Section 3 in relation thereto, they may be produced, without any unreasonable delay, before the Collector of the district or the Presidency-town in which such food grains, edible oilseeds or edible oils are 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 food grains, edible oilseeds or edible oils:" (Proviso is not necessary for our present purpose).

7. The next relevant section of the Act is Section 6C(2) which reads as under:

"Where an order under Section 6A is modified or annulled by such judicial authority, or where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under Section 6A, the person concerned is acquitted, and in either case it is not possible for any reason to return the food grains or edible oilseeds or edible oils seized, such person shall be paid the price therefore as if the food grains, edible oilseeds or edible oils as the case may be, had been sold to the Government with reasonable interest calculated from the day of the seizure of articles: and such price shall be determined in accordance with the provisions of sub-section (3B) of S 3".

(For the purpose of this case, there is no necessity to reproduce sub-section (3B) of Section 3). Section 6A of the Act requires the authority which seizes the food grains, edible oilseeds and edible oils to produce them without unreasonable delay before the Collector (Deputy Commissioner) of the District in which such food grains, edible oilseeds and edible oils are seized. Further, it is clear that the Collector (Deputy Commissioner) if satisfied that there has been a contravention of the Order, may order confiscation of the food grains, edible oilseeds and edible oils so seized whether or not a prosecution is instituted for the contravention of such Order. The Collector (Deputy Commissioner) should follow the procedure laid down in Section 6B of the Act by issue of a show cause notice before the confiscation of food grains etc.

8. The learned State Prosecutor argued that the Parliament has passed the Essential Commodities

(Amendment) Act, 1966. with a view to achieve the policy of the law viz., for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices and to provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. He urges that the provisions of Section 6A of the Act prevail over the provisions of Section 523 Cr P. C. On a careful reading of the provisions of Sections 6A and 6C(2) of the Act, it is clear that the Deputy Commissioner gets the power to order confiscation of food-grains etc., seized whether or not prosecution is instituted for the contravention of the Orders and in the event of the accused getting acquitted in the case after enquiry or trial is over in a criminal court, he is entitled according to provisions of Section 6C(2) for the price of the food-grains etc. The Parliament has thought it fit to make these two provisions in the Act in order to achieve the policy of the law stated above. But the contention of Sri Shetty is that the provisions of Section 6A of the Act are inapplicable in cases where the police seize food-grains etc.. and produce them before the jurisdiction Magistrate as required under the Orders and the Magistrate before whom such food-grains etc. are produced is required by law to exercise powers vested in him under Section 523 Cr. P C. He strongly urged that Section 6A of the Act did not take away the general powers of disposal of property vested in the criminal courts under the provisions of the Criminal Procedure Code This argument of Sri Shetty ignores the provisions of Section 5 Criminal Procedure Code which make distinction between the offences under the Penal Code and the offences under any other law which will be dealt with presently Sub-rule (7) of Rule 125 of the Rules reads as under.

"Any articles or things seized under the authority of any order made under clause (n) of sub-rule (3) shall be conveyed without delay before a Magistrate who may give such directions as to their temporary custody as he thinks fit, so however that where no prosecution is instituted for a contravention of the order in respect of the articles or things seized within a period in his opinion reasonable and no action is taken for adjudging forfeiture of the articles or things under sub-rule (8). the Magistrate shall direct their return to the person from whom they were seized; and subject to the forgoing provisions of this sub-rule, the provisions of the Code of Criminal Procedure 1898, shall, so far as they may be applicable apply to any search or seizure under the authority of any such order as they apply to any search or seizure under Chapter VII of that Code."

9. From the above provisions it is clear that any articles seized under the authority of any Order shall be conveyed without delay before a Magistrate who is empowered to give such directions as to their temporary custody. If no prosecution is instituted within a period which is in his opinion reasonable and if no action is also taken for adjudging forfeiture of the articles, the Magistrate is empowered to return them to the person from whom they were seized. Under sub-rule (7) of Rule 125 of the Rules, the Magistrate's powers are limited. Firstly he has to make arrangement for temporary custody. Secondly, if no prosecution is instituted and if no forfeiture is made, he is empowered to return the property to the person from whom it was seized. This section puts limitation on the powers of the Magistrate and he cannot exercise the powers conferred on him

under the Criminal Procedure Code.

10. The Mysore Food grains (Declaration of Stocks) Order, 1965, has been enacted by the State Government in exercise of the powers conferred by sub-rules (2) and (3) of Rule 125 of the Rules. The alleged contravention comes under clause 3 Power of entry, search and seizure comes under clause 5. Forfeiture of stocks of food grains come under clause 4. Clause 3 reads as under:

"Declaration of stocks of food grains:-

(1) Every stock-holder shall, within two days from the date of commencement of this Order or in the case of a person who becomes a stock-holder on or after the commencement of this Order within two days from the date on which he becomes such stock-holder make a declaration in the form set forth in schedule 1, of the quantity of the food grains in his possession or control to the Tahsildar in charge of the Taluk having jurisdiction over the area.

(2) Every stock-holder shall make a further declaration every month on or before the third day of the month of the quantity of food-grains in his possession or control on the first day of that month in the manner and to the Officer specified in sub-clause (1)

(3) Every declaration under this clause shall be made in duplicate of which one copy shall be authenticated by the Officer to whom it is made and thereafter it shall be returned to the stock-holder who shall retain it as evidence of the declaration made by him
Explanation: A declaration under this clause may be submitted to the Tahsildar by the stockholder by delivery of such declaration in person or by transmission of such declaration by registered post along with necessary postage stamps required for the retransmission of the authenticated copy of the declaration to the stock-holder."

Clause 4 reads as under:

"Forfeiture of stocks of food grains:-If any person contravenes any provision of this Order, then without prejudice to any other punishment to which he may be liable, any court trying such contravention may direct that any stock of food grains together with any packages and coverings thereof, in respect of which the Court is satisfied that the Order has been contravened, shall be forfeited to the State Government."

Clause 5 reads as under:

"Powers of entry, search, seizure, etc., :- Any Officer specified in the Schedule II who is authorized by the State Government in this behalf, may, within the limits of his jurisdiction, with a view to securing compliance with provisions of this Order, or to satisfy himself that the provisions of this Order have been complied with-

(a) enter, inspect or search any premises, place, vehicle, or vessel in which he has reason to believe that a contravention of this order has been, is being, or is about or likely to be

committed:

(b) enter into, search or inspect any vehicle or vessel or other conveyance used or intended to be used for the movement of food grains;

(c) seize the stock of food grains in respect of which the Officer has reason to believe that a contravention of this Order has been, or is being or is about or likely, to be committed along with the packages, coverings, or receptacles in which such food grains are found, or vehicles, vessels or other conveyances used in carrying such food grains and thereafter take action in accordance with sub-rule (7) of Rule 125 of the Defence of India Rules 1962 ."

11. The accused in the instant case is alleged to have contravened clause 4 of the Declaration of Stocks Order, 1965. The food-grains etc.. seized for the contravention of the said order are to be dealt with in accordance with sub rule (7) of Rule 125 of the Rules, under which, as already stated above, the Magistrate is empowered to give such directions as are necessary for their temporary custody and if no forfeiture is ordered, he has to return them to the person from whom they were seized. Clause 4 of the Order provides for forfeiture of stocks of food grains. It provides that if any person contravenes any provisions of this order, then, without prejudice to any other punishment to which he may be liable, any court trying such contravention may direct that any stock of food grains together with any packages and coverings thereof, in respect of which the court is satisfied that the Order has been contravened, shall be forfeited to the State Government. By a reading of this clause, it is clear that the court trying a person for the contravention of the provisions of the Order is to be satisfied that the Order has been contravened before passing an Order for forfeiture, which means, that the Magistrate can order forfeiture only after the trial of the person who contravenes the provisions of the Order is over. The relevant provisions of the Wholesale and Retail Dealers Licensing Orders require consideration. Clause 3 in both the Orders is identical in terms except the words 'wholesale dealer' in the former order and 'retail dealer' in the latter order. The said clause 3 reads as under:

"No person shall carry on business as a wholesale dealer or as a retail dealer except under and in accordance with the terms and conditions of a license issued in this behalf by the licensing authority. "

Rule 11 of the said Orders is also identical in terms. It relates to the power of entry, search, seizure etc. Rule 11(1)(d) lays down as follows:

"The licensing authority or any other officer authorized by the State Government in this behalf may with such assistance, if any as he thinks fit.-

search, seize and remove stocks of food grains and the animals, vehicles, vessels or other conveyances used in carrying the said food grains in contravention of the provisions of this Order, or of the conditions of the licenses issued there under and thereafter take or authorize the taking of all measures necessary for securing the production of stocks of food grains and the

animals, vehicles, vessels or other conveyances so seized in a court and for their safe custody pending such production." These two Orders are made by the State Government in exercise of the powers conferred by section 3 of the Act and with prior concurrence of the Central Government. It is significant to note that these two Orders do not provide for forfeiture of the food grains.

12. Chapter XLIII of the Criminal Procedure Code deals with the provisions relating to disposal of property Sections 517 and 523 appear in the said chapter. It is a procedural one and merely enumerates the order of disposal of property which the court can pass if it is otherwise competent. Before the Amendment Act 18 of 1923, Section 517 Criminal Procedure Code originally conferred on the court the power to pass an order for disposal of the property simpliciter. But, after the said amendment, it enabled the court to make an order for the disposal of any property produced before it and the manner in which such disposal can be made such as "by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof". The provisions of Criminal Procedure Code, inclusive of Section 517 apply to offences under the Indian Penal Code as provided under Section 5(1) Criminal Procedure Code In the case of other offences, Section 5(2) Criminal Procedure Code provides that all offences under any other law shall be dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences Thus. Section 5 Cr. P. C however makes a distinction between the offences under the Indian Penal Code and offences under any other law. In the case of latter offences, the procedure to be followed is one provided by the Criminal Procedure Code subject to the provisions of any other law. This is clear from the expression "otherwise dealing with such offences" in Section 5(2) Criminal Procedure Code which bring into action the machinery under the Code subject to the provisions of any other law. Section 517, therefore, merely enumerates various powers which may be exercised by the court. If the Legislature intended that any other authority may exercise the power of forfeiture and provided for it in the statute, the power of forfeiture shall be exercised by that authority. Thus, the power of forfeiture or confiscation is derived by the courts or any other authority from the various statutes creating the offences.

13. As already seen above, the power to order confiscation in respect of food grains, edible oil seeds and edible oils for contravention of the Orders made under the Act is given to the Collector or the Deputy Commissioner of the District under the amended Section 6A of the Act. He is empowered to exercise the said power whether or not the prosecution is instituted against the accused for contravention of the Orders. Thus, the Legislature intended to give the power of forfeiture by an express provision in the statute to the Collector whether or not prosecution is instituted. Therefore, the general provisions relating to the disposal of property under the Criminal Procedure Code cannot be exercised by the criminal courts in the matter of confiscation of food-grains etc., in view of the special provision for confiscation provided in Section 6A of the Act. But the contention of Sri Shetty is that under the relevant Orders if any person

contravenes any provisions of the Orders, then, without prejudice to any other punishment to which he is liable, any court trying such contravention may direct that any stock of food grains together with any package and coverings thereof in respect of which the court is satisfied that the Order has been contravened shall be forfeited to the State Government - see clause 4 of Declaration of Stocks Order. This provision no doubt empowers the court to forfeit the food grains etc.. but this could be done only if the Magistrate is satisfied that the Order has been contravened. This means that the court should be satisfied that an Order has been contravened only after the enquiry or trial of the case against the accused is over. This power cannot be exercised before the institution of the prosecution against the accused. The only provision made by the Legislature in the Act is the provision relating to the amended Section 6A which empowers the Collector or the Deputy Commissioner to confiscate the food-grains etc.. if he is satisfied after an enquiry that any provisions of the Act or the Orders are contravened by the accused Where a Statute specifies a particular mode of enforcing a new obligation created by it, such obligation can as a general rule be enforced in no other manner than that provided by the statute. The wider Dower of confiscation conferred by Section 517 Cr. P C. must be regarded as impliedly limited by the specific provision in the statute, see the decision in *Emperor v. Purshottam Devji Patel*¹, Therefore, the contention of Sri Shetty that once the food grains etc.. are produced before the Magistrate having jurisdiction, the power of disposal of the property is vested in the court under Section 523 Criminal Procedure Code has no merit in it. In my opinion, the amended provisions of Section 6A of the Act impliedly limit the powers of the Criminal Court in the matter of disposal of food grains etc. which are seized in contravention of the Act and Orders whether or not prosecution is instituted against the accused. Even after the prosecution is instituted, the criminal courts get power of disposal of food grains only after the enquiry or trial is over as provided under various clauses of the Orders made under Section 3 or 5 of the Act.

14. In the instant case, the Magistrate has passed an order before the prosecution was instituted. His opinion that Section 523 Criminal Procedure Code will not apply to the present case is therefore correct. The order passed by him permitting the Sub-Inspector of Police (Sardarbazar), Raichur, to produce the stocks before the Collector of the District is consistent with the provisions of Section 6A of the Act. The learned Sessions Judge is wholly wrong in his opinion that the provisions of Section 516A Criminal Procedure Code are applicable to this case. Further, his observation that the Magistrate has, by his order, abdicated his judicial powers is one made without any basis. Therefore, the two References made by the learned Sessions Judge cannot be accepted and are hereby rejected.

15. For the reasons stated above, the Orders passed by the First Class Magistrate, Raichur, in Case Nos. 295/1 and 302/1 of 1966 are hereby confirmed.

Order accordingly.

¹46 Bom LR 449 : AIR 1944 Bom 247