

HIGH COURT OF CHHATTISGARH, BILASPUR**M.Cr.C. No. 843 of 2001**

In reference in the matter of –

Girdhari Lal Agrawal, S/o Shri Murlidhar Agrawal, aged about 45 years, R/o Kharsiya, Tahsil Kharsiya, District Raigarh, Chhattisgarh

---- Applicant

versus

The State of Chhattisgarh, through the Station House Officer, Police Station Kharsiya, District Raigarh, Chhattisgarh

---- Respondent

M.Cr.C. No. 757 of 2001

Girdhari Lal Agrawal, S/o Shri Murlidhar Agrawal, aged about 45 years, R/o Kharsiya, Tahsil Kharsiya, District Raigarh, Chhattisgarh

---- Applicant

versus

The State of Chhattisgarh, through the Station House Officer, Police Station Kharsiya, District Raigarh, Chhattisgarh

---- Respondent

For Applicant	:	Shri V.R. Tiwari and Shri B.D. Guru, Advocates
For State/Respondent	:	Shri J.K. Gilda, Advocate General

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Justice Sanjay Agrawal

Order on Board

Per Deepak Gupta, Chief Justice

3.11.2016

1. This reference (M.Cr.C. No.843 of 2001) has been registered on the basis of letter dated 9.12.2000 received from the Special Judge, Raigarh, whereby the Special Judge has virtually questioned the correctness of a judgment delivered by a learned Judge of the Madhya Pradesh High Court. We are of the view that the Special Judge should not have made the reference in question. Judicial discipline requires that a judgment of a Higher Court must be followed by a Judge of a Court lower in hierarchy to the Court which delivered the judgment. Therefore, the Special Judge was bound by the

judgment of the Madhya Pradesh High Court and should not have made reference to this Court.

2. However, since the reference has been registered and referred to a larger Bench, we proceed to deal with the same. Section 10-A of the Essential Commodities Act reads as follows:

“10-A. Offences to be cognizable and bailable.– Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be cognizable.”

3. Prior to 1974, after the word 'cognizable' the words 'and bailable' were there. By amendment with effect from 22.6.1974, the words 'and bailable' were deleted. Thereafter, by Act 18 of 1981, the words 'and non-bailable' were inserted there. This amendment of 1981 was valid only for 15 years and after 1996, again neither the words 'and bailable' nor the words 'and non-bailable' are there. The question referred to us is whether the offences under the Essential Commodities Act are to be treated as bailable offences or non-bailable offences.
4. The answer is very simple. The Cr.P.C. itself has a Schedule, namely, First Schedule, which deals with the different offences under the I.P.C., dealing with the issues, whether the offences are cognizable or non-cognizable, bailable or non-bailable and by which Court triable. Part II of the First Schedule of the Cr.P.C. deals with classification of offences against other laws, i.e., other than the I.P.C. and it reads as follows:

II. CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	Cognizable or Non-cognizable	Bailable or non-bailable	By what Court triable
If punishable with death, imprisonment for life, or imprisonment for more than 7 years.	Cognizable	Non-bailable	Court of Session.

If punishable with imprisonment for 3 years and upwards but not more than 7 years.	Ditto	Ditto	Magistrate of the first class.
If punishable with imprisonment for less than 3 years or with fine only.	Non-cognizable	Bailable	Any Magistrate.

5. The First Schedule of the Cr.P.C. makes it more than amply clear that when there is an offence under any other law and the law is silent on this aspect, that offence is to be treated as bailable or non-bailable as per Part II of the First Schedule.
6. We may add that a Learned Single Judge of this Court has taken the same view in **Amar Nath Sahu v. State of Chhattisgarh, 2007 (2) M.P.H.T. 88 (CG)**. The same view has been taken in **Brajesh Bahadur Singh v. State of Jharkhand, 2005 Cri.L.J. 1558, Emperor v. Ismail Hirji, AIR 1930 Bombay 49 and Qazi Mohomed Hanif v. Smt. Mumtaz Begum, 1990 Cri.L.J. 171**.
7. The instant reference (M.Cr.C. No.843 of 2001) is disposed of accordingly.
8. In view of the above, Miscellaneous Criminal Case No.757 of 2001 is also disposed of as having become infructuous.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay Agrawal)
JUDGE