

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE C.T. SELVAM

Crl.R.C.No.42 of 2007

Amicus Curiae : Mr.A.Ramesh, senior counsel

For Referring Officer : Mr.V.Arul
Additional Public Prosecutor

ORDER

This reference has been pending before this Court over 10 long years. In a line, the question raised is regards the procedure to be adopted by a special Court constituted under the Essential Commodities (Special Provisions) Act, 1981, which Act u/s.12-AA(f) made all offences under the same triable in a summary manner, when called upon to try offences under the Act also with offences to which the summary trial procedure would not apply. Section 12-AA (2) of the Act informed that when trying an offence under the Act a Special Court may also try an offence other than an offence under this Act, with which the accused may, under the Code, be charged in the same trial provided that such other offence is, for the time being, in force, triable in a summary way.

2. The reference does not survive consideration.

3. Senior counsel, Mr.A.Ramesh, learned Amicus Curiae, referred us to judgment of the Orissa High Court in *Usha Sinha v. State of Orissa* dated 05.12.2001 [refer legalcystal.com/525674], wherein the following observation has been made:

'4. For consideration of this matter, it is relevant to trace the legislative history concerning constitution of the said Special Courts. Section 12-A (Constitution of Special Courts), Section 12-AA (Offences triable by Special Courts) and other related provisions were inserted in the Principal Act by Essential Commodities (Special Provisions) Act, 1981 (Act No.18 of 1981). The aforesaid Act 12 of 1981 was for a limited period of 5 years from the date of its commencement (01.09.1982). Its life was extended twice which ultimately lapsed on 31.8.1997. Thereafter, two Ordinances, i.e. Essential Commodities (Special Provisions) Ordinances were promulgated on 3.10.1997 and 2.1.1998 containing many of the provisions of the Act 18 of 1981. The special provisions of the Act 18 of 1981 were also continued (vide Essential Commodities (Amendment) Ordinance, 1998 (which was promulgated on 25.4.1998). This Ordinance lapsed on 8.7.1998. Later a Bill called 'the Essential Commodities (Amendment) Bill, 1998 was introduced in the Lok Sabha which was withdrawn. Thereafter the Essential Commodities (Amendment) Bill was introduced on 5.3.1999. This Bill lapsed following the dissolution of the Lok Sabha. Therefore, the special provisions including functioning of Special Courts

contained in the Essential Commodities (Special Provisions) Act, 1981 (Act 18 of 1981) and the subsequent Ordinances are no longer in force after expiry of the Essential Commodities (Amendment) Ordinance, 1998 on 8.7.1998. As a result of expiry of the Essential Commodities (Special Provisions) Act, 1981 and the subsequent Ordinances in this regard, the provisions of the Principal Act in original stand revived and are now in force.'

4. Learned senior counsel submitted and in our view correctly, that Special Court was constituted under Section 12-A of the Essential Commodities (Special Provisions) Act, 1981, with respect to offences triable under Section 12AA of the said Act. The Essential Commodities (Special Provisions) Act, 1981 came into force on 01.09.1982 and was so for a period of 10 years to begin with. By subsequent amendment viz., Central Act 34 of 1993, the life of the Act was extended by five years upto 01.09.1997. As the Essential Commodities (special Revisions) Second Ordinance, 1998 (Ordinance No.1 of 1998) promulgated by the President of India, was allowed to lapse, the provisions of the Essential Commodities Act which was in force as on the date of commencement of the Central Act 18 of 1981 became reapplicable and offences under the Essential Commodities Act or offences punishable under the various control orders issued in exercise of powers conferred under the Essential Commodities Act are to be brought before the Jurisdictional

Magistrate.

5. Section 12-A of the Essential Commodities Act, 1955, reads as follows:

'12-A. Power to try summarily. - (1) *If the Central Government is of opinion that a situation has arisen where, in the interests of production, supply or distribution of any essential commodity not being an essential commodity referred to in clause (a) of sub-section (2) or trade or commerce therein and other relevant considerations, it is necessary that the contravention of any order made under section 3 in relation to such essential commodity should be tried summarily, the Central Government may, by notification in the Official Gazette, specify such order to be a special order for purposes of summary trial under this section, and every such notification shall be laid, as soon as may be after it is issued, before both Houses of Parliament:*

Provided that—

(a) every such notification issued after the commencement of the Essential Commodities (Amendment) Act, 1971, shall, unless sooner rescinded, cease to operate at the expiration of two years after the publication of such notification in the Official Gazette;

(b) every such notification in force immediately before such commencement shall, unless sooner rescinded, cease to operate at the expiration of two years after such commencement:

Provided further that nothing in the foregoing proviso shall affect any case relating to the contravention of a special

order specified in any such notification if proceedings by way of summary trial have commenced before that notification is rescinded or ceases to operate and the provisions of this section shall continue to apply to that case as if that notification had not been rescinded or had not ceased to operate.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all offences relating to—

(a) the contravention of an order made under section 3 with respect to

*[**]*

(ii) foodstuffs, including edible oilseeds and oil; or

(iii) drugs; and

(b) where any notification issued under sub-section (1) in relation to a special order is in force, the contravention of such special order, shall be tried in a summary way by a Judicial Magistrate of the First Class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may

have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in the manner provided by the said Code.

*(3) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), there shall be no appeal by a convicted person in any case tried summarily under this section in which the Magistrate passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order of forfeiture of property or an order under section 452 of the said Code is made in addition to such sentences, but an appeal shall lie where any sentence [***] in excess of the aforesaid limits is passed by the Magistrate.*

(4) All cases relating to the contravention of an order referred to in clause (a) of sub-section (2), not being a special order, and pending before a Magistrate immediately before the commencement of the Essential Commodities (Amendment) Act, 1974, and, where any notification is issued under sub-section (1) in relation to a special order, all cases relating to the contravention of such special order and pending before a Magistrate immediately before the date of the issue of such notification, shall, if no witnesses have been examined before such commencement or the said date, as the case may be, be tried in a summary way under this section, and if any such case is pending before a Magistrate who is not competent to try the

same in a summary way under this section, it shall be forwarded to a Magistrate so competent.

*[***]*

6. For reasons informed supra, Section 12-A(1) of the Essential Commodities Act, 1955, does not arise for consideration. However, Section 12-A(2) of the Act is of interest. The same requires offences covered by Section 12-A(2)(a) of the Act to be tried in a summary way either by a Judicial Magistrate of the First class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate. For purposes of clarity, this Court may state that a Metropolitan Magistrate need not be specially empowered by the State Government to try cases under the Act. However, the Metropolitan Magistrate would have to follow the summary trial procedure in keeping with Sections 262 to 265 of the Code of Criminal Procedure. This Court in decision in Crl.R.C.No.301 of 1998 and Crl.R.P.No.300 of 1998 dated 12.01.1993, was concerned with a case involving offences u/s.7(1)(a)(ii) of the Essential Commodities Act, Sections 177 r/w 109 IPC, 406 and 477-A IPC. This Court directed that the trial Judge split up the case and proceed with the trial only for offences u/s.7(1)(a)(ii) of the Essential Commodities Act and 177 r/w 109 IPC but refer to trial offences u/s.406 and 477-A IPC to the regular Court in keeping with the Code of Criminal Procedure. This Court is in respectful

agreement with the procedure directed in the said decision. This Court may explain that this Court has directed as aforestated since Section 12-A of the Essential Commodities Act, 1955, requires offences thereunder to be tried in a summary manner and offences u/s.177 r/w 109 IPC (offence u/s.177 IPC attracting a maximum punishment of 2 years and Section 260 Cr.P.C. informing applicability of summary procedure where the offences are not punishable with imprisonment for a period exceeding 2 years) were amenable to summary procedure whereas offences u/s.406 and 477-A IPC were not. However, the second proviso to Section 12-A(2) of the Essential Commodities Act, 1955, is not to be lost sight of. The effect of such proviso would be that if at commencement of proceedings, the Magistrate concerned forms the view that the case is not one which should be tried in a summary manner then it would be open to such Magistrate to try in a regular manner the offences under the Essential Commodities Act along with offences under the Indian Penal Code or other enactments. Such procedure would not be open to a Magistrate when the decision to try the case in a regular manner is taken after having entered upon a summary trial.

Reference is answered accordingly.

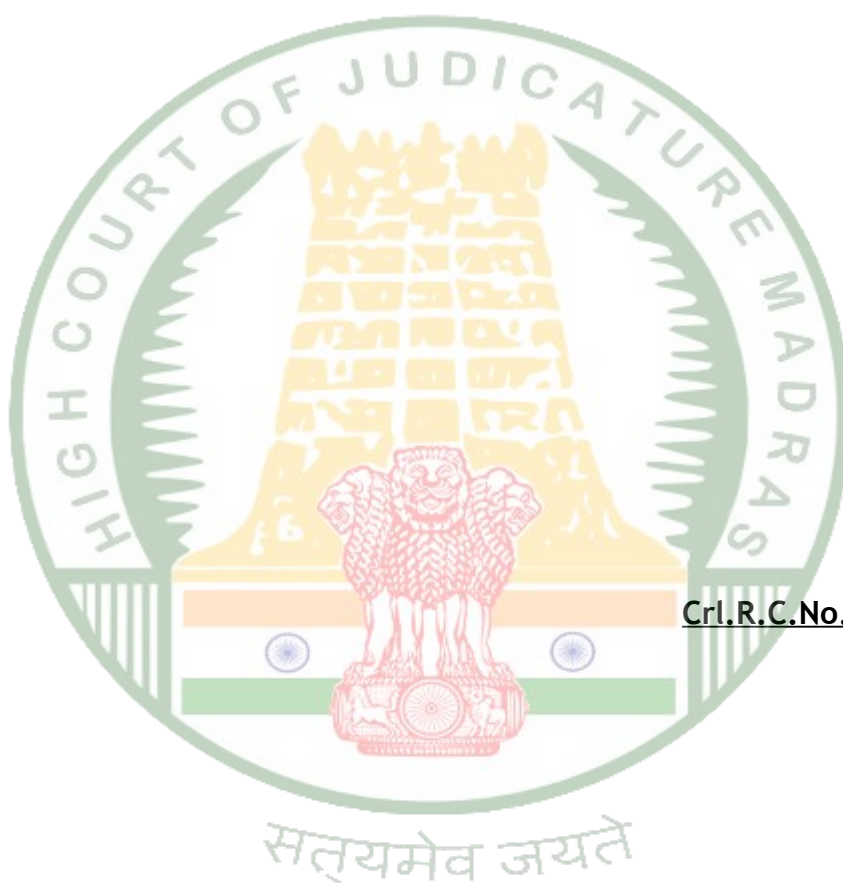
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Index: Yes/No, Internet: Yes

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C.T. SELVAM, J

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