

SMT. JUSTICE T. RAJANI

CRIMINAL PETITION No.12876 OF 2011

ORDER:

The present Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 is filed by the petitioners - accused Nos. 4 and 5 seeking to quash the proceedings in Calendar Case No.7 of 2002, pending on the file of the Special Judge under E.C. Act - cum - District and Sessions Judge, Visakhapatnam, registered for the offences punishable under Sections 120B, 407, 420, 467, 468, 471, 472 and 474 of the Indian Penal Code, 1860 and Section 7 (i) of the Essential Commodities Act, 1955 read with Sections 26 and 28 of the Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order 1980.

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor appearing for the respondent.

3. The learned counsel for the petitioners submits that the matter is covered by the order, dated 25.09.2018, passed by this Court in CrI.P. No.9294 of 2011, which is as follows:

“3. Learned counsel for the petitioners straight away draws the attention of this Court to the order, dated 15.07.2004, passed by this Court, earlier, in Criminal Petition Nos.2535 of 2002 and batch; wherein it was observed as follows:

“2. The question involved in all these Criminal Petitions is whether the Special Court constituted under the provisions of Section 12-A of Essential Commodities

Act, 1955 can try the cases involving offences under IPC along with the provisions of Essential Commodities Act. This issue is squarely covered by the Division Bench judgment of this Court in Kasarabada Rajeswara Rao v. State of A.P.[2004 (1) ALT (CRL) 443 (DB) (AP)]. It has been held in the cited decision as follows:

“For the reasons given hereinabove, we agree with the view of the Punjab and Haryana High Court and hold that the Special Judge cannot try other offences along with offences under Essential Commodities Act which are not to be tried in a summary way. Since all the offences other than the offences under Essential Commodities Act are not to be tried in a summary way, therefore, the Special Judge has no jurisdiction to take cognizance of the offences mentioned herein. The reference is answered accordingly. We do not think it will serve any purpose if we send the matter back to the learned Single Judge and therefore, we quash the proceedings as far as they relate to offences under Sections 120-B, 407, 411, 420, 467, 468, 471, 472 and 474 of the Indian Penal Code.”

3. In all these cases the offences under IPC are sought to be tried along with Essential Commodities Act under Section 120-B, 407, 411, 420, 467, 468, 471, 472 and 474 of the Indian Penal Code. In view of the proposition of law laid down by the Division Bench of this Court, the petitioners herein cannot be tried for the offences under Sections 120-B, 407, 411, 420, 467, 468, 471, 472 and 474 of the Indian Penal Code by the Special Court constituted under the provisions of Section 12-A of Essential Commodities Act, 1955.” ”

4. This Court also observed in the order, dated 07.09.2007, passed in Crl.P.No.4977 of 2007, which is as under:

“Under Section 7 (1) (a) (i) of the Essential Commodities Act, 1955, if any person contravenes any order made under Section 3, he shall be punishable in case of an order made with reference to Clause (h) or Clause (i) of sub-section (2) of that Section, with imprisonment for a term which may extend to one year. Under Section 468 Cr.P.C., no Court shall take cognizance after one year, if the offence is punishable with imprisonment for a term not exceeding one year. As seen from the charge sheet, admittedly, the offence is alleged to have taken place in the year 1995 whereas the charge sheet was filed and cognizance was taken, in the year, 2002, for the offence under Section 7(i) of the Essential Commodities Act, 1955, and hence, it is barred by limitation. So, continuation of the impugned proceedings against the petitioner is nothing but abuse of process of Court”.

5. In the instant case, as seen from the charge sheet, the offence is alleged to have taken place on 28.02.1997 and a complaint was filed on the said date, whereas the charge sheet was filed on 29.12.2001, and cognizance was taken in the year 2002 for the offence under Section 7 (i) of the Essential Commodities Act, 1955, which is beyond one year from the date of alleged offence, and hence, it is barred by limitation.

6. In the circumstances, following the said judgments and for the reasons mentioned therein, this Criminal Petition is allowed, quashing the proceedings in Calendar Case No.7 of 2002, pending on the file of the Special Judge under E.C. Act - cum - District and Sessions Judge, Visakhapatnam, against the petitioners/Accused Nos.4 and 5.

Consequently, Miscellaneous Petitions, if any, pending in the present Criminal Petition stand closed.

SMT. T. RAJANI, J

November 14, 2018
Mgr

