

HIGH COURT OF CHHATTISGARH, BILASPURCr.M.P.No.275 of 2014

State of Chhattisgarh, the Collector, Food Section, Bilaspur, District
Bilaspur (CG)

---- Petitioner

Versus

1. Smt. Shanti Mandal, Wd/o Late Rajeshwar Mandal, through the Power of Attorney namely Kishore Mandal, R/o Tarbahar, Near F.C.I. Godown, P.S. Tarbahar, Tahsil and District Bilaspur (CG)
2. Santosh Kumar Yadav, S/o Rathram, Driver, R/o Sirgitti, P.S. Sirtitti, Tahsil and District Bilaspur (CG)

---- Respondents

For Petitioner:-	Mr.Chandresh Shrivastava, Advocate
For Respondents:-	Mr.Parag Kotecha and Mr.Shalvik Tiwari, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board02/05/2019

1. The vehicle owned by respondent No.1 herein was found involved with the commission of offence punishable under Section 3(1) of the Kerosene (Upyog Par Nirbandhan Aur Adhikatam Kimat Niyatan) Order, 1993 (hereinafter called as "Order, 1993") and after due process, learned District Magistrate in exercise of powers conferred under the Essential Commodities Act, 1955 (hereinafter called as "the Act of 1955") directed for confiscation of Rs.1,00,000/- out of the total cost of seized vehicle and 10-12 liters kerosene oil under the provisions contained in Section 6A of the Act of 1955, which was challenged by the respondents herein before the Third Additional

Sessions Judge, Bilaspur in Criminal Revision No.101/13. Learned Third Additional Sessions Judge by the impugned order set aside the order of the District Magistrate, against which, this petition under Section 482 of the CrPC has been preferred by the petitioner/State.

2. Mr.Chandresh Shrivastava, learned Deputy Advocate General for the petitioner/State, would submit that against the order of confiscation under Section 6A of the Act of 1955, appeal under Section 6C of the Act of 1955 was maintainable before the concerned judicial authority appointed by the State Government, as such, revision was not maintainable. He would further submit that even otherwise, the impugned order on merits is liable to be set aside.
3. Mr.Parag Kotecha, learned counsel for the respondents, would submit that this Court in Criminal Revision No.604 of 2007 (**Sandeep Singh v. State of Chhattisgarh**), decided on 11.9.2014 has clearly held that the judicial authority under Section 6C of the Act of 1955 would be Sessions Judge. He would further submit that the order of the Third Additional Sessions Judge is strictly in accordance with law.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. In order to judge the correctness of the impugned order, it would be proper to notice Section 6C of the Act of 1955 as well as the legislative change in the aforesaid provision relating to appellate authority.
6. Section 6C(1) of the Act of 1955 originally enacted reads as under:-

“6C. Appeal.-(1) Any person aggrieved by an order of confiscation under section 6A 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.”

7. The Madhya Pradesh State Government in exercise of its power conferred under Section 6C of the Act of 1955, has appointed Sessions Judge as a Judicial Authority for exercising power conferred under Section 6C of the Act of 1955. Thereafter, the Essential Commodities (Special Provisions) Act, 1981, came into force w.e.f. 01.09.1982 inserting certain special provisions by way of amendment in the Act of 1955 in order to expedite process of prosecution under the principal Act. In the principal Act, the following amendment in Section 6C of the Act was made-

“5. Amendment of section 6C.-In section 6C of the principal Act,-

a).in sub-section (1), for the words “any judicial authority appointed by the State Government concerned and the judicial authority”, the words “the State Government concerned and the State Government “ shall be substituted;

b).in sub-section (1), for the words “such judicial authority”, the words “the State Government shall be substituted.”

By above-stated amendment Act, in Section 6C of that Act, in place of judicial authority appointed by the State Government concerned and judicial authority, the word 'the State Government concerned' and State Government was substituted.

8. The Act, 1981 came into force w.e.f. 01.09.1982 by GSR dated 31.08.1982 for a period of five years. The duration of the Act of 1981 was extended for another five years and the word “five years” was

substituted in Section 1(3) of the Act for the “ten years” by Essential Commodities (Special Provision) Continuance Act (25 of 1981) w.e.f. 28.08.1987. Thereafter, By Essential Commodities (Special Provisions) Amendment Act, 1993 (34 of 1993) for ten years in Section 1(3) of the Act, “fifteen years” was substituted w.e.f. 27.08.1992. The Essential Commodities (Special Provisions) Ordinance, 1997 was promulgated on 03.10.1997, published in extraordinary Gazette of India on 03.10.1997. It provides that during the period of operation of ordinance, the original Act, 1955, shall have effect subject to amendment specified in the Sections 3 to 11.

9. The Act of 1981 ceased to operate after the period for which it was enacted. Under this ordinance, the position which existed prior to the enforcement of the Act of 1981, was restored and consequently, after this date, the appellate powers concerned upon the judicial authority under the original Act, 1955, stood revived, which is clear from the ordinance issued which came into force w.e.f. 03.10.1997. The amendments specified in Sections 3 to 11 do not show that any amendment has been made in Section 6AC of the original Act, 1955. Consequently, the appellate authority which stood in the original Act, 1955, is revived. In the original Act, 1955, the appellate powers under Section 6C of the Act of 1955, are conferred upon “any judicial authority appointed by the State Government concerned”, which was taken away by the Act of 1981. Thus, upon the expiry of the Act of 1981, this is the expiry of fifteen years from 01.09.1982 and upon promulgation of ordinance w.e.f. 03.10.1997, the appellate authority

under Section 6C of the Act of 1955 would be judicial authority appointed by the State Government originally enacted and provided as the amended provision ceased to apply on coming into force of ordinance on 03.10.1997.

10. The above-stated view has also been taken by this Court in Sandeep Singh (supra).

11. In view of the aforesaid provisions, it is quite vivid that the appellate authority under Section 6C of the Act of 1955 in the instant case on 23.3.2013 would be the Sessions Judge though the respondents have preferred the revision, but the Sessions Judge was empowered to hear the appeal under Section 6C of the Act of 1955 and merely because they have preferred the revision, it cannot be held that order passed by the Third Additional Sessions Judge is without jurisdiction and without authority of law. The Third Additional Sessions Judge has assigned sufficient reasons that by disbelieving the statement of investigating officer as well as the samples seized were not examined by competent laboratory, as such, I do not find any illegality in the order passed by the revisional Court.

12. Accordingly, the CrMP being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-