

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 197 of 2001

**Hanuman Prosad Jhanwar
Vs.
The State**

For the Appellant : Mr. Biswajit Manna

For the State : Mr. Madhusudan Sur
Mr. Mirza Firoj Ahmed Begg

Heard on : 31.03.2023, 07.08.2023.

Judgment on : 28.11.2023.

Ananya Bandyopadhyay, J.:-

1. The instant criminal appeal is preferred by the appellant being dissatisfied and aggrieved by a judgment and order dated 24.11.1994 passed by Learned Judge, 2nd Special Court of E.C. Act, Calcutta in G.R. Case No. 148 of 1993.
2. The impugned order dated 24.11.1994, inter alia, states that *"After hearing both parties and after going through the case record, reported decisions I am of the opinion that the present case is not at all maintainable. Regarding alamats there is no prayer in the above two petitions and no submission was made from the defence side of this case. Hence, it is*

Ordered

that the petitioner filed on behalf of the accused persons dated 3.3.94 and

16.6.94 be allowed on contest. Accused Kamakshya Narayan Singh, Smt. Sita Debi Maheswari, Hanuman Prosad Jhanwar and the company M/s. Bajrang Oil Co. represented by the accused No.3, Hanuman Proasad Jhanwar be discharged from this case. The alams be confiscated with the State after the period of appeal, as the accused persons are discharged on technical ground.”

3. The Learned Advocate for the appellant submitted though the appellants were discharged by the Learned Trial Court, the goods were ordered to be confiscated by the State after the period of appeal and the same was contrary to the provisions enumerated under Section 6A of the Essential Commodities Act. He further mentioned that the goods were released on bond and separate proceeding under Section 6A of the Essential Commodities Act was pending.
4. It was further submitted that the Learned Trial Judge vide Order No. 40 dated 24.11.1994 discharged the petitioner and other accused persons and the charges, however, without assigning any reason arbitrarily passed an order of confiscation of the seized goods.
5. The Learned Advocate for the State submitted in view discharge of the petitioner and other accused persons, the State did not have the power to confiscate the goods in question and left it to the discretion of the Court.
6. Section 452 of the Code of Criminal Procedure empowers a criminal Court to pass orders for disposal of property on conclusion of enquiry or trial granting discretion to the court to determine the person who is entitled to be in position of the said property.

7. Determining an offence punishable under Section 7(1)(a)(II) of the EC Act, 1955 which is a Special Act, the Learned Trial Court should have considered the provisions stipulated under Section 6A of the aforesaid Act dealing with confiscation of essential commodities which states as follows:

“6A. Confiscation of essential commodity.- (1) *Where any [essential commodity is seized] in pursuance of an order made under section 3 in relation thereto, [a report of such seizure shall, without unreasonable delay, be made to] the Collector of the district or the Presidency town in which such [essential commodity is seized] and whether or not a prosecution is instituted for the contravention of such order, the Collector [may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied] that there has been a contravention of the order [may order confiscation of—*

(a) the essential commodity so seized;

(b) any package, covering or receptacle in which such essential commodity is found; and

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity:]

Provided that without prejudice to any action which may be taken under any other provision of this Act, no food grains or edible oilseeds in pursuance of an order made under section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section:

[Provided further that in the case of any animal, vehicle, vessel or other conveyance used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such animal, vehicle, vessel or other conveyance.]

[(2) Where the Collector, on receiving a report of seizure or on inspection of any essential commodity under sub-section (1), is of the opinion that the

essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may—

(i) order the same to be sold at the controlled price, if any, fixed for such essential commodity under this Act or under any other law for the time being in force; or

(ii) where no such price is fixed, order the same to be sold by public auction:

Provided that in case of foodgrains, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at the price fixed by the Central Government or by the State Government, as the case may be, for the retail sale of such food grains to the public.

(3) where any essential commodity is sold, as aforesaid, the sale proceeds thereof, after deduction of the expenses of any such sale or auction or other incidental expenses relating thereto, shall

(a) where no order or confiscation is ultimately passed by the Collector,

(b) where an order passed on appeal under sub-section (1) of section 6C so requires, or

(c) where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section, the person concerned is acquitted, be paid to the owner thereof or the person from whom it is seized.]”

8. The aforesaid section empowered the Collector of the District to deal with the seized articles under the said Act.

9. The general rule is that when a property is seized from any person and the same is acquitted of the charge the property should be returned to him. However, the rule is subject to several exceptions depending on circumstances of each case and the seized property to be returned to him cannot be claimed by the accused as a matter of right. It has to be judged as

to whether the person acquitted who claims that the property seized should be returned to him is admittedly the owner of the property entitled to the possession of the same.

10. The Trial Court erred in its decision in directing the seized articles to be confiscated to the State. The order impugned is modified to the extent that the seized articles be returned to its actual owner upon identification and confirmation of the same complying the directions enumerated under Section 452 of the Cr.P.C.
11. Under such fact and circumstances of case the instant criminal appeal is allowed.
12. Accordingly, the criminal appeal stands disposed of.
13. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
14. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)