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State of Karnataka Vs. L.N. Chakrapani and Etc. Etc.

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Court : Karnataka

Decided On : Jan-31-1992

Reported in : 1993CriLJ1316; ILR1992KAR2725; 1992(4)KarLJ240

Judge : A.B. Murgod and ;P.K. Shyamsundar, JJ.

Appeal No. : Criminal Revn. Petns. No. 51 of 1990 and C/W Cr. R.P. Nos. 319, 92, 494, 499, 324, 528, 560, 575, 63

Appellant : State of Karnataka

Respondent : L.N. Chakrapani and Etc. Etc.

Advocate for Def. : N.P. Kallesh Gowda and ;S.V. Tilgul, Advs.

Advocate for Pet/Ap. : S.R. Bannurmath, Govt. Spl. Public Prosecutor and ;D.R. Rajashekharappa, Govt. Pleader

Judgement :

Shyamsundar, J.

1. The above petitions have been referred for disposal by a Division Bench by our brother R. Ramakrishna, J., under an order of reference made on the 18th March, 1991. The learned Judge after noticing that there was a marked conflict or divergence of views between two decisions of views between two decision of this Court both by two learned single Judges bearing on a point that had also arisen

before him. His Lordship therefore felt the contending views in the two earlier decisions be taken note of by a Division Bench, the differences resolved and a conclusive opinion recorded in the matter. Therefore, acting under S. 8 of the Karnataka High Court Act, 1964 the learned Judge made the reference as aforesaid. That is how these revision petitions came up for consideration and disposed by us.

2. But we notice along side that in a number of other criminal revision-petitions in which the point which we are required to consider in these petitions has also arisen. The Registry of this Court have tagged them on for disposal along with the revision-petitions that are specifically referred for consideration and disposal by us as stated above. We do not find any formal order having been made by any Bench directing the posting been made by any Bench directing the posting of the other cases referred to us. We have however had the advantage of hearing counsel appearing in those cases and as a matter of sponsored a similar revision-petition even in the absence of the same being posted before us.

3. With this prefactory observations, we go on to consider the cases referred for disposal by our brother R. Ramakrishna, J. To put ourselves into the stride, we may with advantage excerpt the brief order of reference itself since that would give an insight to the issues that are controverted and hence arising for our consideration. The order of reference reads thus :-

'The above Criminal Revision Petition requires a common order as the substantive question of law involved in both the revision petition are one and the same. The question is :

'Whether a Special Judge can invoke the provisions of S. 167, sub-clause (5) of the Criminal Procedure Code (shortly called 'the Code') to release an accused who is alleged to have been committed the offence punishable under S. 3 read with S. 7 of the Essential Commodities Act (shortly called 'the Act')

2. In Criminal Revision Petition No. 51/90, the offence alleged against the respondent was, the violation of Clause (3) of the Kerosene (Restriction on Use) Order, 1966. The respondent being a driver of an Autorickshaw bearing Regn. No.

MYA 4027 was found using kerosene mixed with petrol as fuel on using kerosene mixed with petrol as fuel on 21-3-1988 at about 11.55 a.m. in front of Basavangudi Police Station.

3. In Criminal Revision Petition No. 319/90, the offence alleged against the respondents was, the contravention of Clause (15) of the Karnataka Cement Control Order, 1983 punishable under S. 3 read with S. 7 of the Act.

4. In the former case, the respondent filed IA.II to stop further all proceedings in exercise of power under S. 167 of the Code as the charge-sheet has been filed more than 11 months after his arrest. The learned Special Judge relying on the decision of this Court in State v. Abdul Razak Mohamed Saheb, reported in ILR 1988 Kant 3175 and in Iswarappa Magundappa Airbenchi v. State of Karnataka, reported in ILR 1987 Kant 676 decided by Patil, J., allowed the application and stopped further proceedings in the case.

5. In Criminal Revision Petition No. 319/90 the Special Judge, Bijapur, relying on Abdul Razak Mohamed Saheb's case, ILR 1988 Kant 3175 dismissed the case and discharged the accused.

6. The learned Government Pleader has brought to our notice another judgment in Gadag Co-operative Textiles Mills Ltd. v. this decision, Kulkarni, J., on similar circumstances, held that S. 167, Sub-section (5) of the Code cannot be invoked and applied re. an offence punishable under S. 7 of the Act for a breach of the various orders passed by the State Government under S. 3 of the same Act as the said offence was punishable with imprisonment which may extend to 7 years. Therefore, it is held that any offence punishable under S. 7 of the Act for the breach of various orders passed by the State Government under S. 3 of the Act is a warrant case.

7. Since there is conflicting opinions expressed by two single Judges of this Court, it is necessary that these cases require to be referred to a Division Bench for opinion.

Hence I refer these Criminal Revision Petitions for disposal by a Division Bench, under S. 8 of the Karnataka High Court Act.'

4. As we see from the order of reference, because of a conflict of views in the two reported cases of this Court in State v. Abdul Razak Mohammed Saheb, ILR 1988 Kant 3175 and the later decision in the case of Gadag Co-operative Textile Mills Ltd. (ILR 1988 Kant 1489), the learned Special Judges of Gulbarga and Bijapur, from whose dockets the two revision-petitions referred to above arise and have been disposed of by them. The investigation in each of the said cases appear to have gone far beyond the six months period after which as enjoined by S. 167 of the Code of Criminal Procedure. Further proceedings had been stopped.

5. Feeling aggrieved by the aforesaid judgments rendered by the Special Judges of Gulbarga and Bijapur the State has filed the two revision-petitions comprised in this reference.

6. Before the learned single Judge, counsel the State relied on the decision of Mr. Justice Kulkarni, J. (as he then was) in the case of Gadag Co-operative Textile Mills Ltd. v. State of Karnataka, ILR 1988 Kant 1489, wherein it was held that S. 167(5) of the Code cannot be invoked and applied to an indictment leading to an offence under S. 7 of the Essential Commodities Act, and therefore the stoppage of proceedings that had not yet culminated in a charge-sheet filed within six months from the date of commencement of the investigation was clearly unwarranted. This being the stand taken by the State in support of the contrary view propounded on its behalf, Ramakrishna, J., thought it appropriate to refer the case itself for disposal by a Division Bench which of course appears to be the most apposite course to be adopted in the light of the diametrically conflicting views expressed in the two reported decisions rendered by the learned single Judges as mentioned hereinbefore. It would also be apposite to set out the dictum of the Court in the case of Gadag Co-operative Textile Mills Ltd. v. State of Karnataka, ILR 1988 Kant 1489 which reads thus :-

'The Special Judge can exercise the power to stop further proceedings under S. 167(5) of the Code, only if the case is triable as a summons case. If it is not triable as a summons case, then he cannot exercise the powers under S. 167(5) at all.

Merely because the provisions of the Act are made applicable to the cases under the Essential Commodities Act (S. 12AC), it does not mean that the Sessions Judge would have unbridled powers to stop further proceedings as laid down by S. 167(5) irrespective of the fact whether the offence is a summons case or a warrant case. S. 167(5) of the Code is limited only to the summons case.'

7. Before we proceed to indicate as to which of the two views propounded by our learned brothers on the earlier occasions should commend to us and therefore be treated as correct and apposite, we consider it appropriate to make a brief reference to the facts of the case, although it may amount to reiterating facts that have already been adumbrated in the order of the reference. Suffice it to note the indictment out of which Cr. R.P. No. 51/90 arose was in regard to the alleged violation of Clause (3) of the Kerosene (Restriction on Use) Order, 1966. Whereas the indictment in Cr. R.P. 319/90 arose was in regard to the offence allegedly committed in contravention of Clause (15) of the Karnataka Cement Control Order, 1983 punishable under section 3 r/w. S. 7 of the Act. Both the indictments were in regard to offences punishable under section 7 of the Essential Commodities Act, which is the basic statute (hereinafter referred to as 'the Act'). S. 7 of the Act, prescribes the following penalties viz :-

'(1) If any person contravenes any order made under S. 3, -

(a) he shall be punishable :-

i) in the 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 and shall also be liable to fine, and

ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine :

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months; (b) any property in respect of which the order has been

contravened shall be forfeited to the Government;

(c) any packing, covering or respectable in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the property shall, if the Court so orders, be forfeited to the Government.

(2) If any person to whom a direction is given under Clause (b) of sub-section (4) of S. 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine :

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.

(2A) If any person convicted for an offence under sub-clause (ii) of Clause (a) of sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine :

Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

(2B) For the purposes of sub-secs. (1), (2) and (2A) the fact that an offence under sub-section (ii) of Clause (a) of sub-section (1) or under sub-section (2) has caused no substantial harm to the general public or to any individual shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than three months or six months, as the case may be.

(3) Where a person having been convicted of an offence under sub-section (1) is again convicted of an offence under that sub-section for contravention of an order in respect of an essential commodity, the Court by which such person is convicted shall, in addition to any penalty which may be imposed on him under that sub-section, by order, direct that, that person shall not carry on any business in that

essential commodity for such period not being less than six months, as may be specified by the Court in the order.'

8. As seen from the above section that in relation to a charge under Clause (h) or Clause (i) of sub-section (2) of S. 3 of the Act, the prescribed punishment is imprisonment for a term extending to one year and a fine as well. Whereas in the case of any other offence, the prescribed punishment would be imprisonment for not less than three months which may however stretch up to 7 years plus a fine as well. Therefore, depending on the gravity of the offence, whether it was one covered by Clause (h) or (i) of sub-section (2) of S. 3 of the Act, or it was something else, the scale of punishment would vary within particular limits. In regard to other indictments the consequence will be a prison sentence ranging from three months to a maximum of 7 years plus fine as well. The complaints made herein touching the deviance from the Act, arose prior to the amendment of the Act in the wake of which S. 12-A providing for Constitution of a Special Court with effect from 1-9-82, whereas the forum for enquiry into such complaints prior to the amendments, were the Courts of Magistrates. But after the event of S. 12-A State Government were enjoined to constitute Special Courts for the purpose of providing speedy trial for offences under the Act and inter alia, Clause (2) of S. 12-A of the Act also provided for the appointment of a Special Judge by the High Court upon a request made by the State Government, likewise Clause (3) of S. 12-A of the Act, prescribed the qualification for appointment as a Judge of a Special appointed as a Judge of a High Court or (b) one who had been a Sessions Judge or an Additional Sessions Judge for a period not less than one year. It was only such a person who could be appointed a Judge of the Special Court constituted under S. 12-A of the Act Another radical change which also came in by a further amendment is traceable to S. 12-AA of the Act, and that relates to offences triable by the Special Courts referred to supra. The said amendment was ushered in by Act No. 42/86 and 73/1986 with effect from 9-9-1986 and 1-5-1987 respectively. It is however, desirable to excerpt S. 12-AA of the Act which reads :-

'12-AA. Offences triable by Special Courts.

(1) Notwithstanding anything contained in the Code, -

(a) all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court.

(b) Where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) of sub-section (2-A) of Section 167 of the Code, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate :

Provided that where such Magistrate considers -

(1) When such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him; that the detention of such person is unnecessary, he may, if he is satisfied that the case falls under the proviso to Section 8, order the release of such person on bail and if he is not so satisfied, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court, may, subject to the provisions of clause (d) of this sub-section, exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code in relation to an accused person in such case who has been forwarded to him under that section;

(b) save as aforesaid no person accused of or suspected of the commission of an offence under this Act shall be released on bail by any court other than a Special Court or the High Court :

Provided that a Special Court shall not release any such person on bail -

(i) without giving the prosecution an opportunity to oppose the application for such release unless the Special Court, for reasons to be recorded in writing, is of

opinion that it is not practicable to give such opportunity; and

(ii) Where the prosecution opposes the application, if the Special Court is satisfied that there appear reasonable grounds for believing that he has been guilty of the offence concerned :

Provided further that the Special Court may direct that any such person may be released on bail if he is under the age of sixteen years or is a woman or is a sick or infirm person, or if the Special Court is satisfied that it is just and proper to do for any other special reason to be recorded in writing;

(e) a Special Court may, upon a perusal of police report of the facts constituting an offence under this act or upon a complaint made by an officer of the Central Govt. or a State Government authorised in this behalf by the Government concerned or any person aggrieved or any recognised consumer association take cognizance of that to offence without the accused being committed to it for trial;

(f) all offences under this Act shall be tried in a summary way and the provisions of Sections 262 to 265 both inclusive of the 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 Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(2) When trying an offence under this 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 at the same trial;

Provided that such other offence, is under any law other for the time being in force, triable in a summary way;

Provided further that in the case of any conviction for such other offence in such trial, it shall not be lawful for the Special Court to pass a sentence of imprisonment for a term exceeding the term provided in the conviction in a summary trial under such other law.

(3) A Special Court may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned in, or privy to, an offence under this Act, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence under this Act, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall, for the purposes of S. 308 of the Code, be deemed to have been tendered under S. 307 thereof.

(4) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under S. 439 of the Code and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to 'Magistrate' in that section included also a reference to a 'Special Court' constituted under S. 12-A.'

We must also mention that the said amendments would remain in the statute book for a period of eight years from the date of enactment unless otherwise extended. A plain reading of the foregoing amendments makes it quite clear that shortly stated Jhar Sections 12-A and 12-AA presenting required offences arising under the Act, that were formerly tried by a Magistrate would, following the amendment of the Act, in 1982 be tried by a Special Court comprising of a Sessions Judge with a minimum standing of one year who would try all the offences formerly triable by a Magistrate under the Essential Commodities Act. The other change which the amendment brought in was of prescribing that the trial and disposal of all the cases arising under the Essential Commodities Act, before the Special Court be done in a summary way with the assistance and aid of the provisions of Sections 262 to 265 of the Code of Criminal Procedure insofar as they could possibly apply to offences triable by the Special Court, save however the power available to a Magistrate under S. 167(5) of Cr.P.C. to deal with and pass appropriate orders in a case arising before him with reference to any particular accused. At this juncture it is necessary to refer to S. 167(5) and (6) of Cr.P.C. which read thus :-

'167(5) : If in any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.'

Whereas S. 167(5) of Cr.P.C., grants to the Magistrate power to stop further investigation into an offence triable before him as a summons case in the event of the investigation in such a case not being completed within a period of six months from the date on which the accused had been arrested, subject of course to granting a further reprieve to the investigation after on being specifically solicited by making an application for that purpose to the Court, in which event the Magistrate could, for special reasons and in the interest of justice permit the continuation of investigation beyond the period of six months, if that is necessary. But if the Magistrate did not accede to the prayer for extension of time to continue the investigation by the police, the Sessions Judge could however made such an order provided an application was made to him as enjoined in S. 167(6) of the Code of Criminal Procedure. But the question that arises before us is whether a Special Judge acting under section. 12-AA of the Act, can stop a proceeding pending before him if the investigation remains incomplete even after a lapse of six months. To put it more precisely the question would be, does the Special Judge have the power to stop a proceeding that remains incomplete even after six months of investigation without culmination under S. 167(5) of Cr.P.C. while a Magistrate acting in his place can always do. Should such power to stop a slothful and tardy investigation be denied to a Special Judge albeit the same being available to a surrogate authority in the law that denies such power to the higher

Court while readily conceding the same to an inferior Court is the aspect that confronts us at present.

9. While adverting to the conspectus of the legislation with particular reference to the amendment effected to the Essential Commodities Act with the introduction to S. 12AA and the provisions following thereon, we should in this context also refer to S. 12AC of the Essential Commodities Act which reads as follows :

'12C Application of Code to proceedings before a Special Court :- Save as otherwise provided in this Act, the provisions of the Code (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purpose of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting the prosecution before a Special Court, shall be deemed to be a Public Prosecutor.'

From a perusal of the foregoing provisions, it becomes clear that with the ushering in of S. 12AA of the Act ending with S. 12AC referred to supra, what becomes overwhelmingly abundant is that Parliament being of the view that offences arising under the Act warranted a speedy trial and with that laudable object in view, a series of changes were rung in by placing on the status book the provisions of S. 12A to 12AC in the Act. Undoubtedly very marked and significant changes have been effected by the amendments.

10. To start with, it may be noticed that prior to the amendment, the offences arising under the Act were triable by the Court of Magistrates. Following the amendment, they are not tried by specially designated Courts headed by a Session Judge with a minimum standing of one year or by a person who is qualified to be a appointed as Judge of the High Court. The next change, which the amendment brought about is to prescribe that all the offences under the Act would be hereafter triable by adopting the summary procedure and whatever be the nature of the offence with which a person stood charged the sentence to be imposed would never exceed 2 years. The resulting position was that in respect of prosecutions under the Act which ought necessarily be initiated before a Special Court irrespective of the gravity of the offence, all of them were to be tried as summary cases and disposed of as such by imposition in any case where

prosecution ended in a conviction with a punishment which in no circumstances would be more than 2 years although it could be less than 2 years. These changes were introduced to the procedural format of the Special Court by providing for the application of Sections 262 to 265 of the Code alongside sub-clause (f) of S. 12AA.

11. The amending statute made it abundantly clear that hence forward all the cases tried by a Special Court under the Act shall now be done by adopting the procedure enjoined for trial in a summary case.

12. We think the promulgation of a uniform procedure to be adopted at the trial before the Special Court and the evolution of the abolition of the range of punishment, in that there being a conspicuous omission to prescribe a minimum sentence at the bottom with a maximum sentence at the top and by enacting a single slab in regard to the quantum of sentence to be imposed, what the Parliament did was to do away with the distinction that formerly obtained under the Act viz. offences created by S. 3(2)(h) and (i) as contrasted with offences arising pursuant to a contravention of the other provisions such as under S. 3(2) or of any other order prescribed by the Act as adumbrated under S. 7(1)(a) and (1)(2).

13. The provisions that held sway earlier provided a scale for imposition of punishment which in turn depended on the gravity of the offence complained of being one comprised either within clause (h)(i) of sub-sec (2) of S. 3 or under any other order made under S. 3 In regard to the latter the punishment prescribed was a minimum of 3 months raising to a maximum of 7 years along with fine whereas in regard to offences under clause (h)(i) of sub-sec (2) of S. 3 the prescribed punishment was anything extending up to 1 year plus a mandatory sentence of fine.

14. The change brought about by the amendment following the introduction of a new scheme with S. 12A of the Act in particular by the enacting of S. 12AA, it seems to us the significant transformation brought was of prescribing the imposition of a uniform pattern in sentence limiting it to two years only without any minimal quantum whatever be the offence. The fall out from this change sounds itself in the matter of the procedure to be adopted in trying the offences under the

Act resulting in doing away with the need to try some offences in a summary way and some other offences by adopting the warrant procedure because of the higher sentence to be imposed as enjoined by S. 7(1)(a)(2).

15. We think that the change in the scheme brought about by the introduction of S. 12AA enjoining the adoption of only one procedure in the matter of trying any offence arising under the Act, the fact that whatever be the offence, the sentence to be imposed was at all times to be not more than two years although it could be less, results ipso facto in doing away with the categorisation of the offences adumbrated by the penalty clause under S. 7 dividing them into offences that were earlier visited with a lesser penalty vis-a-vis those to be visited with a higher penalty. Therefore, the fact that S. 3 read with S. 7 had given rise to a cleavage in the matter of imposition of the sentence depending on the graveness of the offence in question, the part assigned to the accused really ought not detain us at all and nor should we feel abscessed by such a distinction that obtained hitherto. We think that in view of the amended provisions of S. 12AA of the Act, there is no need to appeal any longer to S. 7 for the purpose of imposing any penalty because it is henceforth provided for by S. 12AA itself.

16. But the question still arises whether S. 7 as it even now stands and the new arrival S. 12AA brought in by the amendment do not clash with each other, when juxtaposed.

17. We think it possible to read S. 7 and 12AA together in such a manner so as to harmonise with each other without seeking any confrontation. There is now an uniform strata so far as the offence created by the Act, in that all offences are triable by adopting a summary procedure and all offences are punishable with a substantive sentences which at no time can go beyond two years. It would thus become clear the Act is now placed on a turnkey basis with the amended provisions now on the statute book and in turn to be treated as having literally displacing S. 7, as long the amending provisions continue to operate with, their life capable of being protracted and their operation continued beyond the period cited by the statute.

18. But it may not be necessary even to go to that length for what is up for consideration now is whether the Special Courts can stop or have the power to stop an investigation not completed within 6 months by invoking S. 167(5) Cr.P.C. We think that there should be little difficulty in invoking that provision by the Special Judge. We have earlier pointed out the need for the amendment and indicated that the Parliament having felt it not merely desirable but expedient to ensure a speedy trial of the offences arising under the Act had specially structured a scheme under which the trial and disposal of all offences or deviations of the Act was entrusted to a specially designated court manned by a specially appointed person who was either qualified to be appointed as a Judge of the High Court or one who was a serving Sessions Judge with atleast one year's experience. We have also indicated the change brought about in the technique and modality to be adopted in the procedure to be followed by the Judge trying these offences, in that he was enjoined to try all offences in a summary way and was empowered to impose a uniform sentence which could never exceed a 2 year prison sentence. The purpose is obvious, and that was to push through a common pattern under the Act having found that what went before had become too languorous and almost marathon like, in the hands of the Magistrate who had to take care of these matters alongside the other work of the Court as well. But a speedy trial does not mean or imply the mere shepherding of a case towards a conclusion post haste. Once it is put on the anvil of the Court, it must necessarily hark back to the investigation of the case starting with the person suspected of the commission of an offence being arrested and may be kept in detention for long periods without the investigation making any headway. Instances are also not lacking where for failure to complete the investigation quickly, credible evidence available at the start of the investigation having disappeared or perished during the interregnum was also a reason that probably motivated a scheme for quick disposal of the cases under the Act and that infact is the grounds well change brought about by the amendment.

19. If therefore, the Special Court and the Special Judge is required to hold a speedy trial in these matters arising under the Act but is not able to do so because the investigation is not completed within a reasonable time following its initiation, a question may well be asked, why can't the Court of the Special Judge, admittedly

a superior Court do what a Magistrate could do in stopping a proceeding taking recourse to the clause (5) of S. 167 of the Code of Criminal Procedure when ever the Magistrate found that the investigation has been needlessly dragging its feet.

20. We see from Clause (c) of S. 12AA, that the Special Court can exercise power available under S. 167 of the Code in relation to an accused person who is forwarded by the Magistrate to the Special Court for being dealt with appropriately in a case where an accused person suspected of having committed an offence under the Act is produced before a Magistrate instead of a Special Court in which event the accused on being forwarded to the Special Court can be dealt with under S. 167 of the Cr.P.C. From this level, we now go to a slightly higher rung and pose for ourselves a crucial question as under.

21. The question is if the Special Court can exercise power vested in S. 167 of Cr.P.C. in the case of a person forwarded to it by a Magistrate before whom he has been produced earlier, can it be then said that the Special Court does not have the right to exercise the same or similar power in a case where the accused is directly produced before it and the Court itself takes cognizance of the offence.

22. We may also note that there would be very few instances of persons being sent to the Special Court by a Magistrate or produced before the Magistrate in the post amendment period as after the amendment, all offences under the Act are to be taken cognizance of by a Special Court and not by any Magistrate. Therefore, instances of production of the accused before a Magistrate suspected of having committed some offence under the Act should be very space and may arise only in such cases where production of the accused before the Special Court not being possible for some reason and immediately he had therefore to be taken to the nearest Magistrate to obtain a remind before being finally produced before the Special Court. If in circumstances referred to above, the Special Court can exercise power under S. 167, Cr.P.C. including the power to stop up further investigation under S. 167, Cr.P.C. it would be paradoxical to deny such power to the Special Judge in a case that originates before him and he is therefore the Court of the first instance. We think any inference suggesting the non-according of power to a Special Judge for resorting to S. 167 in the case of an original

indictment before him would be to make a mockery of the law and no Court can invite such a conclusion. Therefore, we think such a power in the Special Court has got to be readily inferred. We notice an commission in that behalf to specifically include the power under S. 167(5) enabling the Special Court to stop an investigation in a case which originates directly before it. We think this is a case where we have got to readily infer and read in the power enabling the Special Court to stop an investigation acting under S. 167 of the Act. Therefore, we think the Court will have to supply the omission as otherwise and as pointed out earlier, it would not only be making mockery of the law, but will also result in the amending provisions being reduced to shambles, although the amendment itself was ushered in with the laudable object of expediting the disposal of cases arising under the Act.

23. We are in this connection tempted to cite and rely on the celebrated decision of the Court of Appeal in Seaford Court Estates Ltd. v. Asher (1949) 2 All ELR 155 wherein Denning LJ observed as follows :-

'Whenever a statute comes up for consideration it must be remembered that it is not within the human powers to foresee the manifold sets of facts which may arise, and, even if were it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that or have been guilty or some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his to hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. That was clearly laid down (3 Co. Rep. 7b) by the resolution of the judges (Sir Roger

Manwood, C.B. and the other barons of the Exchequer) in Heydon's case ((1584) 3 Co Rep 79), and it is the safest guide today. Good practical advice on the subject was given about the same thing by Plowden in his note (2 Plowd, 465) to Eyston v. Studd ((1574) 2 Plowd 463). Put into homely metaphor it is this : A judge should ask himself the question, how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out He must then do so as they would have done. A judge must not alter the material of which the Act is woven but he can and should iron out the creases.'

24. In Upperi Rudrappa v. State of Karnataka (1981) Kant LJ 79, Puttaswamy J. followed the aforesaid decision of Denning LJ and held :

'In my view it is proper to apply the above rule of construction and effort made to carry out the object and purposes of the amendment ignoring the unintentional omission as it often happens in cases of hasty legislation.'

However, when the dicta of Denning LJ in Seaford's case (1949 (2) All ER 155) was cited before a full Bench of this Court in M/s. Steel Authority of India Ltd. v. Contract Worker's Union, Steel Authority of India Ltd., (1992) 1 Kant LJ 477, Shivashankar Bhat J, speaking for the court made the following observations that makes very interesting reading :

'The job of the ironing out the creases is quite different and distinct from the tailoring work. The Court can not add the material not used by the legislature while conveying its intention in enacting a particular provision. Interpretative skill has to be applied when there is a genuine ambiguity in the statute in question. The court can can not assume that a particular intention was sought to be effectuated by the legislature while enacting the law even though the words needed to effectuate that intention were not used in fact.'

As pointed out by our brother Shivashankar Bhat J. a Court of course should not craft legislation with thimble and scissors but can certainly launder legislation by straightening wrinkled creases and folds. Herein we have done only that and nothing more. If even this endeavour by us catches the eye of our brother Bhat J. we are sure, he will have no occasion to lament.

25. Court on occasion will have to supply the omissions and that is done in this case by reading into clause (c), the power to stop a tardy investigation as enjoined by S. 167 by the Special Judge in a case directly initiated before him and not limiting it to the case where an accused is referred to the Special Court by a Magistrate as adumbrated in clause (c) of S. 12AA. In otherwords, the Court must readily have power to stop an investigation under S. 167, Cr.P.C. where it finds that it remains unconcluded even after the expiry of 6 months and it does not permit the continuance further. One more reason to infer the above power in the Special Judge is what is provided by clause (6) of S. 167, Cr.P.C. that permits a Session Judge to stop the investigation and extend time for further investigation in a case where the Magistrate has stopped the proceeding after the expiry of 6 months from the date of arresting the accused under the sub-section (6), it is the very Session Judge who is Special Judge acting in a dual capacity has power to take remedial action to correct a Magistrate's action by exercising power under S. 167(6) Cr.P.C.

26. The question then would be should the Special Judge in a case initiated before him be treated as not empowered to stop an investigation which had turned out to be purely wasteful and purposeless. In contrast, it may be noted such a power is readily available to a Subordinate Court and is also available to the Special Court and the Special Judge in a case where upon a person is sent up to him under S. 12AA by a Magistrate and where upon functioning as a Session Judge he can exercise such a power under clause (6) of S. 167 to revive an investigation stopped by a Magistrate acting under clause (5) thereof provided such revival is justified.

27. It therefore seems to us regard being had to the scheme of the legislation, its aim and object, the changes wrought into the texture of the Essential Commodities Act, the circumstances that followed the amendment, with all cases arising under the Act being amenable to a single procedure to be followed in the trial of any case with the duty to impose a sentence extended to 2 years only. We think there is absolutely no reason to justify denial of power to the Special Judge to stop an investigation not completed within 6 months from the date of arresting of a person accused of having committed an offence under the Act. The power to extend for

valid reasons the time for completing the investigation subject of course to the Course to the Court being solicited by the Investigation authority for extension of time being very much there inclines us to hold the power of the Court to stop an investigation acting under section 7(5) remains uninhibited and is not confined to only cases referred to in Clause (c) of S. 12AA. So on a bare consideration of the fact situation with reference to the provisions of the act and their interpretation on an apriority basis, we arrive at the foregoing conclusion. But we have also the back up of judgments in this Court to consider but regrettable they are slightly inconsistent. We find that it is not only in this Court that the question debated before us has been dealt with in a variety of modes giving rise to divergent views opposed to one another. To start with, in this Court the first of the cases to take the view that has just now commended to us is the decision in Ishwarappa Mugundappa Aribenchi v. State of Karnataka, ILR 1987 Kant 676. Therein Mr. Justice Patil as he then was held that in a case arising before the Special Court where investigation had not concluded within six months of arrest of the accused and further investigation could be stopped unless of course, the Special Judge being satisfied regarding the need to continue the investigation permit such continuance in the interest of justice. His Lordship holds that in the absence of reasons to continue the investigation, the Special Judge ought to stop all further investigation as is obligatory on the part of a Magistrate to do so in compliance with S. 167(5), Cr.P.C. In that context his Lordship also held that cases under the Essential Commodities Act had to be initiated only before the Special Court the Special Judge was the repository of all powers in the matter of entertainment, trial and disposal of such cases. His Lordships view as aforesaid excerpted in the head-note as follows :-

'(i) The provisions of the Code of Criminal Procedure have been made applicable to cases tried by the Special Judge. The application of the provisions of S. 167 has not been excluded. Although Sessions Judge is conferred with the Special jurisdiction of trying such cases, nevertheless, the Special Judge is a Court of original criminal jurisdiction. Whatever may be the description, the Special Judge enjoys all the powers which a Court of original criminal Jurisdiction enjoys unless specifically excluded.

(ii) Although the offences committed under the Essential Commodities Act are excluded from the bar of the Magistrate and the Court taking cognizance after the expiry of the particular period by virtue of the Economic Offences (Inapplicability of Limitation) Act, 1974, nevertheless, the principle is that delays have to be avoided both at the stage of investigation as also at the trial. It is with this object, the provisions have been made in sub Section (5) of S. 167 Cr.P.C. empowering the Magistrate (or the Special Judge) to stop further investigation in such cases triable as the summons case; it is the part of the obligatory duty of the Magistrate to see that these provisions are complied with. Where the investigation is not concluded within six months from the date of the arrest of the accused, he must not only stop the further investigation, but also satisfy that there are any special reasons for continuation of the investigation beyond the period of six months and it is necessary to do so in the interest of justice.'

But sometime later, another learned single Judge of this Court Kulkarni J. as his Lordship then was took a different view in Gadag Co-operative Textile Mills Ltd. v. State of Karnataka ILR 1988 Kant 1489. His Lordship appears to have treated the matter as res integra. In that case, his Lordship came to the conclusion that the power under S. 167(5) to stop further investigation was not available to a Special Judge while dealing with a case arising under the Essential Commodities Act. When the decision of Patil J. in Aribenchi's case (ILR 1987 Kant 676) referred to supra was brought to his notice, his Lordship observed : (Para 18 of the judgment)

'18. Learned Government Advocate Kuranga referred me to Ishwarappa Mugundappa Aribenchi v. State. What has been laid down in the said case is that the Code of Criminal Procedure is made applicable to cases tried by the Special Judge and that the provisions of S. 167 had not been excluded in the said Ishwarappa's case. The effect of a case being a summons case or warrant case and the effect of Sections 12A, 12AA and 12AA(f) of the Act have not been considered at all. The principle laid down by D. Kumar v. State of Karnataka (1985 Cri LJ 1247) (Kant) (ii) Satya N. Dev v. State (1987 (2) Crimes 129) (Cal) (iii) Bhaskaran Nair v. State of Kerala (1987 Cri LJ 170) (Kerala) (iv) Jagannathan v. State (1983 Cri LJ 1748) (Madras) (v) State of Maharashtra v. P. C. Tatyaji (1986 Cri LJ 332) (Bombay) does not appear to have been brought to the notice of the

Court that decided the said Ishwarappa's case. Therefore, the decision in the said Ishwarappa's case must be limited only to the peculiar facts available in the said case.'

This controversy did not stop with the foregoing observation made by Kulkarni J. while not following the decision of Patil J. in the case before him.

28. Much later, yet another occasion appears to have arisen for considering this very question by Patil J. in State v. Abdul Razak Mohammed Saheb ILR 1988 Kant 3175. In that case, his Lordship once again reiterated his view in Aribenchi's case ILR 1987 Kant 676 and when his attention was drawn to the contrary view of Kulkarni J. in Gadag Co-operative Textile Mills Ltd. v. State of Karnataka ILR 1988 Kant 1489, his Lordship observed that 'it appears to me that the decision in Gadag Co-operative Textile Mills Ltd. v. State of Karnataka ILR 1988 Kant 1489 does not lay the correct law'.

29. Our brother Navadgi J. had also occasion to deal with the question of availability of power under section 167 Cr.P.C. to stop an ongoing investigation in Gurappa Hanamantappa Bijapur v. State ILR 1990 Kant 1014. But the precise question considered by Navadgi J. was only about the power of the Special Court to try an offence arising under the case as a summons case. This question having been debated, his Lordship held that :

'Notwithstanding the amendment to the Act by S. 12AA, it was still open to the Special Judge to try some of the cases arising before him by adopting a warrant procedure and that S. 12AA was not mandatory.'

His Lordship in holding as aforesaid appears to have followed the decision of Kulkarni J. in Gadag Co-operative Textile Mills Ltd. v. State ILR 1988 Kant 1489 as can be seen from the discussion at pages 1031 and 1032. Suffice it to note that the question referred to for our consideration regarding the ambit and power of the Special Judge to stop a proceeding under. S. 167 did not arise in Gurappa's case supra, but even so we think that Navadgi J's view that S. 12AA was not mandatory to be not correct. Here we must remember the procedure to be adopted by the Special Judge under S. 12AA to be and can be only the summary procedure. But if

the Special Judge did adopt the warrant procedure in some cases, it would not of course vitiate the trial appears to be the view of Navadgi J. in Gurappa's case referred to above. But then as indicated hereinbefore, we cannot subscribe to the views of Navadgi J. holding S. 12AA to be not mandatory, a view we consider it to be erroneous.

30. Proceeding further, we are to point out that the Special Judge has no option except to follow the summons procedure in all cases arising before him. It is not necessary to say being without any leg room at all he cannot wiggle even his toes regards choice of procedure. The question of S. 12AA being mandatory or directory is really a non-issue since the consequence of adopting warrant procedure will not vitiate the trial as stated earlier because no one and much less the accused is likely to complain of any invidious treatment and nor could he rue the consequence for it is an axiomatic principle of established lineage that adoption of the elaborate warrant procedure in lieu of the shorter summary procedure is but a curable irregularity and in the long run a clear boon to the accused.

31. We must however conclude the reference to the decision of Navadgi J. in Gurappa's case (ILR 1990 Kant 1014) supra taking the view that S. 12A was not mandatory an aspect which does not commend to us as we find the aforesaid view resting on the view of Kulkarni J. in Gadag Co-operative Societies' case (ILR 1988 Kant 1489) we have now held to have not laid down the law correctly. But in fairness to Navadgi J. we must mention that a single Judge of the Kerala High Court has taken a view which is akin to what his Lordship has taken in Gurappa's case. But, in that case the question was of the right of a Special Court to take cognizance under S. 11 of the Act later amended bringing about certain changes in S. 12(a)(1)(e) under which the Court was obliged to take cognizance on the basis of a police report. Adverting to the content of S. 12(1)(a)(e), S. Padmanabhan J. in T.V. Abdul Nazar v. P. K. Mohammed Kutty 1986 Cri LJ 1534 (Kerala) held (paras 8 and 10) :

'The report under S. 11 could include a police report also. Under S. 12AA(1)(e) there is no prohibition in taking cognizance by any method other than a police

report. What the section says is only 'may' take cognizance. The words 'without the accused being committed to it for trial' obviate the possibility of any doubt. Probably, the legislature might have thought it necessary to have specific mention of a police report, by way of clarification to the provisions of S. 11 which is likely to be interpreted as excluding a police report. In S. 11 there is no specific mention of a police report. By the amendment, jurisdiction has been exclusively given to the Special Court which has to be manned by a person who is qualified for appointment as a Judge of the High Court or who had been a Sessions Judge or Additional Sessions Judge for not less than one year. Probably, the legislature might have thought that in the absence of a specific provision like the one incorporated in S. 12AA(1)(e), there is the possibility of a doubt that the Special Courts could take cognizance only on committal by a Magistrate. Probably by the amendment, the legislature wanted to remove such a possible doubt. No other object or purpose could be read into S. 12AA(1)(e). Therefore, it will not be proper for the Courts to import the doctrine of implied repeal of S. 11 when the legislature has consciously chosen to leave S. 11 of the Principle Act untouched.

Even if it is construed that there is any conflict between Sections 11 and 12AA(1)(e) the maximum that could be said is that S. 11 will have operation only subject to the provisions of S. 12AA(1)(e). That only means that the rigor of the prohibition in S. 11 must be deemed to have been relaxed even if S. 11 is taken as excluding a police report. Even if there is conflict between the provisions the object and purpose of interpretation should be to give effect to both the provisions to the extent possible.'

On this very point, the Calcutta High Court in 1984 Cri LJ 1532 in Re : Satish Chandra De took the opposite view and held that during the currency of the amended provisions viz., 12(b) and 12(e)(a), the procedure indicated in S. 11 cannot be taken into consideration and therefore, all indictments before a Special Court must emanate only on the basis of a police report and not otherwise. The dictum of M. K. Mukherjee J. is clearly indicated in the headnote to the decision which reads :

'So long as the amending Act, which is a temporary one, operates in the field S. 11 cannot be taken recourse to prosecute a person accused of an offence under the Act. That is to say, during the subsistence of the Amending Act cognizance can be taken only on police report under S. 12AA(1)(e) and not otherwise. Consequently, where a complaint was filed by Sub-Divisional Controller, Food and Supplies for violation of W. B. Kerosene Control Order, 1968 before the Special Judge, the Special Judge was not competent to take cognizance of the offence.

Read in the context of the objects and reasons behind the enactment of the Amending Act and the stringent provisions enacted pursuant thereto, it appears that recourse to S. 11 of the Act, which provides that no Court shall take cognizance of any offence punishable under that Act except on a report in writing of the facts constituting such offences made by a person who is a public servant as defined in S. 21 of the Penal Code, would frustrate the entire scheme of the Amending Act. If cognizance is taken on complaint the mode of trial would be different from the one where cognizance is taken on police report. Thus for the self same offence there would be two different modes of trial without any rational basis for the same.'

The attention of Padmanabhan J. of the Kerala High Court was invited to the foregoing decision of Calcutta High Court and other decision in which a similar view touching the mandatory nature of S. 12(1)(a)(e) was taken but the same did not however commend taken but the same did not however commend itself to Padmanabhan J. before whom we notice the decision of Supreme Court in Antulay v. Ramdas Srinivas Nayak, : 1984 CriLJ647 was cited. At para 11 his Lordship referred to portions of the decision in Antulay's case and appears to think that the decision in Antulay's case supported the view that S. 12(1)(a)(i)(e) was not mandatory and could be given a go-by and that recourse can still be had to S. 11 of the Essential Commodities Act. In para 12 of the decision, reference is made to the decisions, in Re : Satish Chandra De 1984 Cri LJ 1532 (Cal) and Ram Prasad Sharma & Sons v. State of Rajasthan 1985 Cri LJ 442 (Raj) (Single Bench decisions). His Lordship then proceeded to refer to a Division Bench of Patna High Court in Nawal Kishore v. State of Bihar 1985 Cri LJ 254 and Manu Lal Sah v. State of Bihar 1985 Cri LJ 260 wherein the Patna High Court appears to have

taken the view that power of the Special Court to take cognizance of an offence under Essential Commodities Act could be traced to dual sources, one under S. 11 of the Act and another under S. 12AA(1)(e). Finally his Lordship concluded in para 14 that there is no possibility of any conflict between the two provisions, although they are not mutually exclusive also. In that view of the matter, he went on to hold that the complaint against a Public Servant is competent and such a complaint could be entertained under S. 11 notwithstanding the preclusion under S. 12(a)(i)(e) limiting acceptance of a complaint by a Special Judge that emanated only on a police report. We think the view of Padmanabhan J. as aforesaid appears to be not quite correct. The question in Antulay's case (1984 Cri LJ 647) (SC) was whether on the basis of a private complaint action could have been initiated against a public servant under the provisions of Prevention of Corruption Act. The Court no doubt said the strict rule of locus standi had no relevance to institution of a prosecution against an offender under the Criminal law but then, their Lordships also said that in all cases where the special law barred any particular procedure or any particular step being taken although such a step may be open under the general principles of Criminal Law, only in such cases, the Court of the Special Judge acting under the Prevention of Corruption Act would find itself fettered but not otherwise. Their Lordships made this provision clear in paras 27 and 28 wherein they reviewed the antecedent situation that had led to the enactment of Prevention of Corruption Act, 1947. It is not necessary to repeat whatever their Lordships stated therein but in would be sufficient to invite attention to the following passage appearing in para 27.

'If a Special Judge is enjoined with a duty to try cases according to the procedure prescribed in foregoing provisions he will have to first decide whether the case was instituted upon a police report or otherwise than on police report and follow the procedure in the relevant group of sections. Each of the Sections 251A to 257 of 1898 Code which are in pari material with Sections 238 to 250 of 1973 Code refers to what the Magistrate should do. Does the Special Judge, therefore, become a Magistrate This is the fallacy of the whole approach. In fact, in order to give full effect to S. 8(1), the only thing to do is to read Special Judge in Sections 238 to 250 wherever the expression 'Magistrate' occurs. This is what is called legislation by incorporation.'

We think the above observation of the Supreme Court applies afortiori to a consideration of the status and position of a special Judge under the Essential Commodities Act and amended by the Amending Act. The Court of the Special Judge is as observed by the Supreme Court :

'Shorn of all embellishment the Court of a Special Judge is a Court of original criminal jurisdiction. As a Court of original criminal jurisdiction in order to make it functionally oriented some powers were conferred were conferred by the statute setting up the Court. Except those specifically conferred and specifically denied, it has to function as a Court of original criminal jurisdiction not being hide bound by the terminological status description of Magistrate or a Court of Session. Under the Code it will enjoy all powers which a Court of original criminal jurisdiction enjoys save and except the ones specifically denied.

It is the foregoing aspect which missed the attention of Padmanabhan J. although his Lordship did advert in extenso to the decision of Supreme Court in Antulay's case (1984 Cri LJ 647). Mainly in this view of the matter, we dissent from the decision of Padmanabhan J. and the two decisions of Patna High Court referred to supra. For the very same reason, we think the decision of Navadgi J. following the decision of Kulkarni J. has to be held to be not laying down the correct law treating the same to be per incuriam. The amendment to S. 12 bringing in its wake Sections 12(1)(a) and 12(1)(a)(e) in the Statute Book is a case of incorporation by legislation as pointed out by Supreme Court in Antulay's Case and, therefore, neither S. 12A or 12(a)(1)(e) could be ignored by the Courts. The decisions taking the view that amendments notwithstanding the position that obtained prior to the amendment was still vibrant and could be resurrected for any purpose clearly militate against the decision of Supreme Court in Antulay's case, is in fact one reason why they do not commend themselves for our consideration.

32. It is a matter of regret that when Kulkarni J. thought it fit not to follow the decision of Patil J. in Aribenchi's case (ILR 1987 Kant 676) while disposing of Gadag Co-Operative Textile Mill's case (ILR 1988 Kant 1489), his Lordship did not refer the matter to a Bench. His Lordship appears to think that the dicta in Aribenchi's case must be limited to that case alone but we do not think that it was

the appropriate view to take, because the facts in Aribenchi's case and Gadag Co-operative Textile Mill's Case are one and the same and was all about the competence of a Special Judge to try a case under S. 167 of the Cr.P.C. Apart from expressing our inability to agree with Kulkarni J. as to the ambit of the decision in Aribenchi's case, we must also express our mild anguish at such a view being taken at all. But what happened thereafter is even more baffling because in the much later judgment of Abdul Razak's case ILR 1988 kant 3175, Patil J. again reiterated his earlier view in Aribenchi's case and on this occasion declared the decision of Kulkarni J. as not laying down the correct law. This step, we must respectfully say was not open to a single Judge.

33. Counsel have invited our attention to 3 decisions of the Calcutta High Court. The first one is in 1987 Cri LJ 104 (Lakshmi Kanta Dev v. State of West Bengal) Therein learned single Judge Justice Shamshuddin took the view that S. 167(5), Cr.P.C. did not apply to cases initiated under S. 7(1)(a)(ii) of Essential Commodities Act. Thereafter in the year 1990, another learned single Judge of the Calcutta High Court in Phalguni Datta v. State of West Bengal 1991 Cri LJ 565 followed the decision of a Division Bench of Andhra Pradesh High Court in Public Prosecutor, A.P. High Court v. B. Anjaneyulu 1986 Cri LJ 1456 where a Bench of the Andhra Pradesh High Court had taken the view that power under S. 167(5) Cr.P.C. to stop an ongoing investigation was available to the Special Judge under the Act. The view taken in Phalguni Datta's case by the Calcutta High Court was contrary to the decision of Lakshmi Kanta Dev's case. But in Phalguni Datt's case, the learned single Judge merely referred to the decision of Shamshuddin J. in Lakshmi Kanta Dev's case. The learned Judge also omitted to refer to the decision of Manoranjan Mullick J. of the same High Court in Satya N. Dey v. State (1987) 2 Crimes 129 in which the dictum of Shamshuddin J. in Lakshmi Kanta Dev's case was reiterated and followed. We find from the said judgment that the learned Judge had without expressing any view touching the decision rendered by Shamshuddin J. and Mullick J. referred to supra had however gone on to follow a Division Bench decision of the Andhra Pradesh High Court in Anjaneyulu's case although the said case had only of persuasive value whereas the judgments of the two learned single Judges of the Calcutta High Court in Lakshmi Kanta Dev and Satya N. Dey's case was clearly binding on him.

Our attention was then invited to yet another decision of the Andhra Pradesh High Court in Sri. Balaji Traders v. The State 1990 Cri LJ 332 rendered by a single Judge. His Lordship appears to have taken the view that S. 167(5) Cr.P.C. has nothing to do with the limitation on the powers of the Special Judge.

The Division Bench of the Andhra Pradesh High Court in Public Prosecutor v. B. Anjaneyulu 1986 Cri LJ 1456 went elaborately into the aftermath of the amendment of the Essential Commodities Act following the introduction to Sections 12A and 12AA and other provisions. Their Lordships held as follows :

'Essential Commodities Act (10 of 1955) : Sections 7 and 12AA (as amended in 1981) Criminal - P.C. (2 of 1974) Sections 167(5) and 262 - offence under Act - Cognizance by Special Judge constituted under Act - Investigation not completed within 6 months - Order for stoppage of investigation is valid - However Court cannot prohibit filing of Chargesheet after 6 months.'

34. Again elaborating the matter further, the Bench in para 9 of the judgment at page 1461 while dwelling on the scope of the amendment observed :

'The Essential Commodities Act (Act X of 1955) was passed by the Parliament to regulate and control supply of the Essential Commodities and was similar to the earlier pre-Constitution law viz. the Essential Supplies (Temporary Powers) Act 1946. The Amending Act 47 of 1964 enabled the summary trial of offences under the Act. Later, by several amending Acts provisions for confiscation of the seized goods by the Executive authorities i.e., other than the Courts were made viz., S. 6A. This power of confiscation could be exercised irrespective of the fact whether a prosecution is launched or not viz., S. 6D. However, by S. 6-C(2) when prosecution is launched and it ends in an acquittal the person concerned is entitled to the return of the goods confiscated under S. 6A or their value. The Amending Act 18 of 1981 has made certain amendments for a temporary period of five years to expedite disposal of cases. The Special Courts which may be constituted under S. 12A of the Act are given exclusive jurisdiction to try the cases for offences under S. 12-A of the Act are given exclusive jurisdiction to try the cases for offences under the Act. At the same time, S. 12-AA(1)(f) extracted above directs that all offences shall be tried in a summary way and the provisions of Sections

262 to 265 of the Code shall, as far as may be apply to such trial. By the proviso sentence up to 2 years may be imposed in a summary trial by the Special Court for the offence under the Act. While under S. 262 of the Code, a sentence up to a period of 3 months only may be imposed in a summary trial of the offences by the Magistrates. In view of sub-section (1)(f) of S. 12-AA the cases shall be tried by the summary procedure and there is no option to apply any other procedure. To this extent, the discretion given under S. 260(2) of the Code to revert back to a warrant procedure is superseded. In view of the Scheme of the Amending Act, the imposing of sentence of over 2 years under S. 7 is not permissible where Special Courts are established, as they have to follow summary procedure for the period of the Temporary Amendment. For both reasons, viz, because under S. 262 of the Code, a summary trial is to be by a summons case procedure and also because the Temporary Act provides for a maximum period of 2 years sentence only where cases are tried by the Special Courts, the procedure for warrant cases will not apply.'

The above decision, we notice clearly supports the view we have just now taken regards the power of the Special Judge to act and stop a proceeding under S. 167(5) and that hence forward all trials held by a Special Court to follow the summary procedure because the need to adopt a different procedure that had been made obligatory earlier by the categorisation its significance following the charges made in the format of the law. This in fact is one aspect that commended itself to the Division Bench of the Andhra Pradesh High Court in Anjaneyulu's case (1986 Cri LJ 1456) referred to supra.

We notice in the much later decision of the Andhra Pradesh High Court in Balaji Traders v. State 1990 Cri LJ 332 touching a particular facet of the case viz. the need to adopt an uniform procedure in regard to trial of cases before the Special Court as adumbrated in Anjaneyulu's case appears to have been lost sight of because the decision in Anjaneyulu's case, we find had not been brought to the notice of the learned single Judge in Balaji Trader's case. These are incongruous matters for our sister Courts to worry.

35. In Sundarjas Kanyalal Bhathija v. Collector, Thane , his Lordship Mr. Justice Jagannatha Shetty as his Lordship then was made the following observations (at pp. 1899 and 1900 of AIR) :

'Pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-judge Court, the judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand that where single judge or a Division Bench does not agree with the decision of a Bench of co-ordinate jurisdiction, the matter must be referred to a larger Bench. It is a subversion of judicial process not to follow this procedure. The question of law directly arising in the case should not be dealt with apologetic approaches. This law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the Courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Subordinate Courts would find themselves in an embarrassing position to choose between the conflicting opinion. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute.'

We think the above pronouncement by the apex Court had not come a day too soon. Quite often, we notice decisions rendered without reference to earlier pronouncement by the Very Court and when attention is invited to an earlier decision, they are either brushed aside or side tracked leading to unsavoury predicaments. If to such straits of uncertainty, the Court is driven, the fall out would not merely be just chaotic but totally anarchial. If precedential protocol enjoined by established jurisprudence is not strictly adhered to, then the Court would be no better than a tower of Babble. If an august authority like the High Court being the pinnacle of the seat of justice in the State is not to be the last port for availability of settled views on all controversial matters, then the lot of the laymen as also of learned counsel in the matter of understanding and appreciating the command of the law as interpreted by the Courts would become extremely difficult and unpredictable. If we have made the above observations, we have done so certainly with considerable hesitancy, because of a compelling need to highlight the necessity of making available to the laity, lawyers and more importantly to the

subordinate judiciary the authoritarian views of this Court marked with certitude and precision which alone will avert the prevalence of the overhanging pall of confusion created by the surfeit of conflicting opinions in a multi-tiered Court.

36. Now reverting back to the case on hand, in the light of our views set out herein, the two revision petitions have to fail as in both the cases, the Special Judge has acted under S. 167(5) to stop the proceedings and has chosen not to continue the same.

37. We have also before us one more set of revision petitions. All of them having arisen in similar circumstances, by an oral order the office having been directed to post them for hearing, they are also posted before us for disposal along with these revision petitions.

38. Although they do not come before us on a specific reference, we find that we still have power to dispose them of also as held by a Bench of this Court in Dr. G. M. Mascarenhas v. R. Venkatachalam reported in ILR 1990 Kant 1396. Therein K. A. Swami and N. Y. Hanumanthappa JJ. have held that in order to avoid conflict, to prevent miscarriage of justice and in order to ensure speedy disposal of cases, if it becomes necessary to hear the cases pending before a single judge along with matters placed before a Division Bench. It will thus be open to the Bench to call for and decide even such cases without any order of reference by exercising the Court's inherent jurisdiction. Following that decision with respect, we dispose of all the cases now before us following our decision in Cr. R.P. No. 51/1990 and Cr. R.P. No. 319/1990.

39. In the light of our order therein, all these Revision Petitions are also ordered to be dismissed.

40. We think that all this discussion would not have been necessary if an appropriate amendment had been made to S. 7(3) of the Essential Commodities Act, making it clear by stating that the Special Judge also had the power under S. 167(5) of Cr.P.C. to be exercised alongside clause (c) of S. 12AA in which event all this exercise of tying up of loose ends would have been unnecessary.

41. We are in this context tempted to quote a little limerick in English which reads :-

'I am the Parliamentary draftsmen, I compose the Country's Laws, and for half the litigation, I am undoubtedly the cause.'

But then our Parliamentary draftsman may probably have a case of his own to plead but we however think it better to put a stitch in time so that none could be saved later.

On the view, we have taken of the powers of the Special Judge vis-a-vis S. 167(5) of Cr.P.C., we overrule the decision of Kulkarni, J. in Gadag Co-operative Textile Mills' case, ILR 1988 Kant 1489. The decision of Navadgi J. in Gurappa Hanumanthappa Bijapur's case ILR 1990 Kant 1014. We also express our dissent with the decisions of the Calcutta, Patna and Andhra Pradesh High Courts referred to herein before as being contrary to our view as expressed hereinbefore.

42. Order accordingly.

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