

Usha Sinha Vs. State of Orissa

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Court : Orissa

Decided On : Dec-05-2001

Reported in : 93(2002)CLT278; 2002(I)OLR262

Judge : R.K. Patra, A.C.J. and ;L. Mohapatra, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 7, 8, 9 and 10; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; Essential Commodities (Special Provision) Act, 1981 - Sections 1(3), 12-A and 12-AA; Essential Commodities (Amendment) Ordinance, 1998; [General Clauses Act, 1897](#) - Sections 6; Essential Commodities (Amendment) Act, 1967 - Sections 10A; Essential Commodities (Amendment) Act, 1974; [Code of Criminal Procedure \(CrPC\) , 1898](#)

Appeal No. : Misc. Case No. 2966 of 2001 (Arising out of Crl. Misc. Case No. 3657 of 2001)

Appellant : Usha Sinha

Respondent : State of Orissa

Advocate for Def. : Standing Counsel (Vigilance)

Advocate for Pet/Ap. : D.P. Dhal, ;K. Dash, ;P.K. Routray and ;K. Rath, Advs.

Judgement :

R.K. Patra, A.C.J.

1. The aforesaid application has been filed on behalf of the prosecution (Vigilance Department) seeking clarification of the judgment dated 14.8.2001 rendered by one of us (L. Mohapatra, J.) in Criminal Misc. Case No. 3657 of 2001). While considering the same, it was brought to our notice that a learned Single Judge of this Court in *Sadhu Charan Meher v. State of Orissa*, 2001(21) OCR 353 has held that offences under the [Essential Commodities Act, 1955](#) are bailable. As the aforesaid view was doubted, we have examined the entire matter and would deal with the same hereinafter.

2. A. Clarification of the Judgment dated 14.8.2001 (supra)

Criminal Misc. Case No. 3657 of 2001 was an application made under Section 482, Cr.P.C. by which cognizance taken by the Special Judge, Bolangir under sections 7, 8, 9 and 10 of the [Essential Commodities Act, 1955](#) (hereinafter referred to as the Principal Act) was challenged by the petitioner Usha Sinha on the ground that he (special Judge) had no jurisdiction. After hearing both sides, by judgment dated 14.8.2001 the said application was dismissed. It was held therein that since the Special Court has jurisdiction to try offences in respect of those which were committed under the Principal Act prior to the expiry of the 1998 Ordinance, there was no illegality in taking cognizance. While dismissing the application, it was observed as follows :

'There is no dispute about the fact that amendment brought into by way of Essential Commodities (Special Provision) Act, 1981 remained in force for a period of fifteen years and thereafter the said provisions in the amending Act were continued by way of Ordinance, 1997 and 1998. After expiry of the period under the two Ordinance, there has not been any further amendment or Ordinance providing continuance of Essential Commodities (Special Provision) Act, 1981 any further. Therefore, the absence of the amending Act, 1981, the provisions of the Principal Act stand restored which had been kept under suspension during operation of the amending Act as well as Ordinances and accordingly Special Courts shall have no jurisdiction to take cognizance and cognizance has to be taken only by those empowered under the Principal Act.'

3. The prosecution in the present application has prayed that this Court should direct withdrawal of High Court Notification No. 837 dated 4.8.2000 and to transfer all such cases instituted before the Special Courts for offences committed under the Principal Act after 8.7.1998 to the concerned Magistrates for trial. This application has been made because of doubt expressed regarding legal existence (or non-existence) of the Special Courts constituted for the purpose of trial of offences under the Principal Act.

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

5. Re : Validity of High Court Notification No. 837 dated 4.8.2000.

The aforesaid notification was issued by this Court appointing District Judges/Additional District Judges as mentioned in Col. 2 of the Schedule of the notification to be the Judges of the Special Courts constituted by the Home Department Notification No. 45956 dated 27.7.2000. As indicated above, since 8.7.1998 the special provisions including the functioning of Special Courts contained in the Essential Commodities (Special Provisions) Act, 1981 and the subsequent Ordinances issued in that regard are no longer in force. Therefore, the Home Department Notification No. 45956 dated 27.7.2000 constituting Special Courts and High Court Notification No. 837 dated 4.8.2000 basing on the Home Department Notification (supra) are hereby declared redundant and non-existent.

6: Consequences of abolition of Special Courts with effect from 8.7.1998.

The Special Courts and the related provisions came to be constituted/framed as per Section 12-A, as amended by the Essential Commodities (Special Provisions) Act, 1981 (Act No. 18 of 1981). Sub-section (3) of Section 1 of the Act provided that it shall cease to have effect on expiry of five years (later the period was extended) from the date of commencement of the said Act except as respects things done or omitted to be done before such ceasure of operation of the said Act and section 6 of the [General Clauses Act, 1897](#), shall apply upon such ceasure of operation of the said Act as if it had been repealed by the Central Act. The aforesaid Act No. 18 of 1981 and subsequent Ordinances promulgated in that regard were temporary statutes. It is well settled that a temporary statute is a piece of legislation which expires by efflux of time or on the happening of a contingency without, recourse to fresh legislation. Since, as indicated above, Sub-section (3) of Section 1 of the Act No. 18 of 1981 provided that provisions of section 6 of the [General Clauses Act, 1897](#) shall apply upon ceasure of operation of said Act, we have no doubt to hold that provisions of section 6 of the [General Clauses Act, 1897](#) shall come into play.

It may be noted that Act 18 of 1981 has merely created the for a of trial of offences committed under the Principal Act. Therefore, any order taking cognizance by a Special Court after 8.7.1998 and the subsequent proceedings before it would be without jurisdiction. This does not mean that the offences committed under the

Principal Act stand obliterated or erased. All such offences are liable to be tried by the courts under the Principal Act. But the cases in which cognizance had been taken by the Special Courts prior to 8.7.1998 are not affected in any way, but the relevant records have to be transferred to such courts which are competent to try offences under the Principal Act.

7. For the reasons aforesaid, we accept the submission made on behalf of the prosecution and direct transfer of all such cases pending before the Special courts to such Courts having jurisdiction to try offences under the Principal Act to deal with them according to law.

B. Whether offences under the Essential Commodities Act, 1955 are bailable.

8. As stated in the introductory part of this order, in *Sadhu Charan Meher (supra)* a learned Single Judge of this Court has held that the offences under the aforesaid Act are bailable basing on a decision of the Madhya Pradesh High Court in *Dinesh Kumar Dubey v. State of Madhya Pradesh*, 2001 Cr.L.J. 1307.

As indicated above, we have already held that special provisions including functioning of Special Courts contained in the Essential Commodities (Special Provision) Act, 1981 and the subsequent Ordinances promulgated in that regard are no longer in force since 8.7.1998. As a consequence of this, the provisions of the Principal Act in original stand revived.

9. In order to get at the hand of the issue, it is necessary to refer to some of the provisions contained in the Principal Act as well as different amendments made thereto. In the Principal Act, initially there was no mention as to whether the offences thereunder were cognizable or bailable. Because it was felt that the offences should be made cognizable and bailable, Section 10-A was first inserted to the Principal Act by Essential Commodities (Second Amendment) Act, 1967 (Act No. 36 of 1967). It was as follows :

'10-A. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, every offence punishable under this Act shall be cognizable and bailable.'

The aforesaid Section 10-A was further amended by the Essential Commodities (Amendment) Act, 1974 (Act 30 of 1974) with effect from 29.8.1974. By this amendment, the words and figures 'Code of Criminal Procedure, 1898' were substituted by the words and figures 'Code of Criminal Procedure, 1973' and the words 'and bailable' were omitted subsequently by the Essential Commodities (Special Provisions) Act, 1981 (Act No. 18 of 1981) with effect from 2.9.1981 and after the words 'cognizable', the words 'and non-bailable' were inserted. It is thus clear that by virtue of the aforesaid Act 18 of 1981, the offences were made non-bailable. Act 18 of 1981 along with the Ordinances promulgated in that regard continued to remain in force till they automatically lapsed on 8.7.1998. As a consequence, necessary amendments made thereunder stand deleted and Section 10-A now stands as follows :

'Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under this Act shall be cognizable.'

From this, it does not as a necessary corollary follow that merely because the words 'and non-bailable' stand omitted, all the offences under the Principal Act would be bailable. In the absence of any provision in the special statute as to whether the offences thereunder would be bailable or not, one has naturally to look at the Second Schedule of the Code of Criminal Procedure, 1973 which deals with 'Classification of offences against other laws'. The said Schedule contains three paragraphs. The first paragraph states that if the offence is punishable with death, imprisonment for life or imprisonment for more than 7 years, it would be non-bailable. There seems to be no penal provision in the Principal Act providing for the above sentences. The second and the third paragraphs of the said Schedule provide that if the offence is punishable with imprisonment for 3 years and upwards but not more than 7 years and if the offence is punishable with imprisonment for less than 3 years or with fine only, it would be non-bailable and bailable respectively. Sections 7, 8, 9 and 10 of the Principal Act deal with imposition of different punishments for offences committed thereunder. Thus the legal position that emerges is that if any offence committed under the Principal Act is punishable with imprisonment for three years and upwards but not more than 7 years, it would be non-bailable and any offence committed which is punishable

with imprisonment for less than three years or with fine only, it would be a bailable one.

10. For the reasons aforesaid, the broad proposition laid down by this Court in *Sadhu Charan Meher (supra)* that offences under the Principal Act are bailable is not correct. We accordingly answer the issue as follows :

Whether the offence under the Principal Act is bailable or non-bailable has to be judged keeping in view the quantum of punishment provided under the Act in respect of the offence alleged.

Before parting with this Case, we may state that the Division Bench of the Bombay High Court in *Purthviraj Chandrakant Shinde v. State of Maharashtra*, III (2000) CCR 68 and the learned Single Judge of the Punjab and Haryana High Court in *Som Nath v. State of Haryana*, 2001 CrL.J. 2723 have taken the same view as above with which we respectfully agree.

11. Misc. Case is disposed of.

L. Mohapatra, J.

12. I agree.

13. Misc. Case disposed of.

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