

**Krantichand Vs. State**

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**Court :** Rajasthan

**Decided On :** Oct-14-1965

**Reported in :** AIR1967Raj100

**Judge :** C.B. Bhargava, J.

**Acts :** [Essential Commodities Act, 1955](#) - Sections 3, 7 and 12A; Essential Commodities (Amendment) Act, 1964; Rajasthan Food Grains Dealers Licensing Order, 1964

**Appeal No. :** Criminal Revn. No. 209 of 1965

**Appellant :** Krantichand

**Respondent :** State

**Advocate for Def. :** B.C. Chaterjee, Adv.

**Advocate for Pet/Ap. :** M.B.L. Bhargava,; R.C. Bhargava and; S.N. Bhargava,

**Disposition :** Revision partly allowed

**Judgement :**

ORDER

**C.B. Bhargava, J.**

1. Petitioner Krantichand holds a whole-sale licence to deal in food grains issued under the Food Grains Licencing Order, 1964 promulgated under Section 3 of the [Essential Commodities Act, 1955](#) (hereinafter called the Act).

2. It is said that he committed an offence under Section 7 of the Act by contravening a condition incorporated in paragraph 9 (3) of the Licence issued to the petitioner on 21st September, 1964. For this contravention the petitioner was challaned in the Court of the Additional District Magistrate. Ajmer on 28th January, 1965.

3. On behalf of the petitioner two preliminary objections were taken before the Additional District Magistrate, Ajmer, viz.,

1. that he could not be tried summarily under Section 12A of the Act as this provision could not apply to any offence alleged to have been committed prior to 5th November, 1964.

2. that the condition of licence contained in paragraph 9 contravention of which was the ground of charge having been deleted by the Amendment Order dated 26th September, 1964, the petitioner could not be tried of the alleged contravention dated 21st September as the contravention had ceased to be an offence, if any on and from 26th September, 1964.

4. The learned Additional District Magistrate rejected both the preliminary objections raised by the petitioner by his order dated 9th March, 1965 and the said order was maintained by the Sessions Judge also on 26th April, 1965. It is against this order that the present revision application has been submitted.

5. On 5th November, 1964 by Ordinance No. 3 of 1964, Section 12A was inserted in the Act. It runs thus:

'12-A, Power to try summarily.---(1) Notwithstanding anything contained in Sub-section (1) of Section 260 of the Code of Criminal Procedure, 1898, any Magistrate of the first class specially empowered in this behalf by the State Government or any Presidency Magistrate shall try in a summary way all offences relating to the contravention of any such order made under Section 3 as the

Central Government may by notified order specify in this behalf, and the provisions of Ch. XXII of the said Code shall, as far as may be, apply to such trial:

Provided that in the case of any conviction under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year. (2) Notwithstanding anything contained in Section 414 of the Code of Criminal Procedure, 1898, there shall be no appeal by a convicted person in any case tried summarily under this section in which the Magistrate passes a sentence of imprisonment not exceeding one month or of fine not exceeding two thousand rupees, or both. Subsequently, the above Ordinance was repealed and Essential Commodities Amendment Act 1964 (Act No, 47 of 1964) was promulgated on 24th December, 1964 and came into force retrospectively from 5th November, 1964. The following new Section 12A was inserted in the Act by this Amendment Act of 1964:

'12-A. Power to try summarily:

(1) If the Central Government is of opinion that a situation has arisen where, in the interests of production, supply or distribution of any essential commodity or trade or commerce therein and other relevant considerations, it is necessary that the contravention of any law made under Section 3 in relation to such essential commodity should be tried summarily, the Central Government may, by notification in the Official Gazette, specify such order to be a special order for purposes of summary trial under this section and every such notification shall be laid, as soon as may be after it is issued before both Houses of Parliament.

(2) Where any notification issued under Sub-section (1) in relation to a special order is in force, then, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), all offences relating to the contravention of such special order shall be tried in a summary way and by a Magistrate of the first class specially empowered in this behalf by a State Government or by a Presidency Magistrate, 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 Magistrate to pass a sentence of imprisonment for a term not exceeding one year. (3) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898 (5 of 1898) there shall be no appeal by a convicted person in any case tried summarily under this section in which the Magistrate passes a sentence of imprisonment not exceeding one month or of fine not exceeding two thousand rupees, or both, whether or not any order of forfeiture of property or an order under Section 517 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence of imprisonment or fine in excess of the aforesaid limit is passed by the Magistrate.

(4) Where any notification is issued under Sub-section (1) in relation to a special order all cases relating to the contravention of such special order and pending on the date of the issue of such notification shall, if no witnesses have been examined before the said date, be tried in a summary way under this section, and if any such case is pending before a Magistrate who is not competent to try the same in a summary way under this section, it shall be forwarded to a Magistrate so competent.

By insertion of this section power was conferred on the Central Government to notify trial of offences or any order made under Section 3 of the Act to be summary. In pursuance of Section 12A the Central Government issued notification GSR. 1842 published in the Gazette of India dated December 24th, specifying all orders made under Section 3 of the said Act in relation to food stuffs including edible oil seeds and oils to be special orders for purposes of summary trial under the said Section 12A.

6. Contentions of the learned counsel for the petitioner are that:

(a). Section 12A was enacted for a particular situation necessitating summary trial of offences relating to the contravention of orders made under Section 3 and was not intended to apply to offences committed before the said orders were notified to be special orders for purposes of summary trial.

(b) Section 12A is not retrospective in operation beyond 5th November, 1964 and as such the petitioner cannot be tried summarily for an offence alleged to have been committed on 21st September, 1964. He says that Section 12A being a part of penal statute cannot be held to be retrospective. In this connection reliance is placed on the State v. Pyarey Mohan Lal, AIR 1953 All 694 and the State v. Kanhiyalal. AIR 1953 Madh Bha 56.

7. It is to be noted that Section 12A relates to procedural law and no person has a vested right in any course of procedure and alterations in procedure are to be retrospective unless there is good reason against it, as has been observed in Madhya Bharat case cited on behalf of the petitioner. It was also held by the Supreme Court in Anant Gopal Sheorey v. State of Bombay. AIR 1958 SC 915:

'No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode. In other words a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective '

But the objection raised can be answered on the language of the section itself. Before the mode provided in Section 12A could apply to the trial of any offence relating to the contravention of any order made under Section 3 of the Act, it had to be notified as a special order for put poses of summary trial by the Central Government. In other words both under the Ordinance and the Act it is the contravention of a notified or special order which can be tried summarily.

The object of the Legislature in enacting Section 12A was to confer power of summary trial of offences relating to supply and distribution of food stuffs and other essential commodities and enforcement of the prices fixed for these commodities, if the Central Government was of opinion that such a situation had arisen. Further power was conferred upon the Central Government to notify trial of offences for contravention of any order made under Section 3 to be summary. Such orders were to be designated as special orders for purposes of summary trial under Section 12A. It therefore seems that this provision could not have been intended to

ap ply to offences which were committed before Orders under Section 3 of the Act were notified to be special orders for the purposes of summary trial.

The Legislature did not make Section 12A retrospective beyond 6th day of November, 1964, i.e., the day when Ordinance No. 8 of 1964 was promulgated. However, provision has been made under Sub-section (4) for the application of Section 12A to cases pending on the date of the issue of notification if no witnesses have been examined in those cases before the said date. But in my view Sub-section (4) was enacted to apply to such offences which are committed after the coming into force of the Act and before the notification under Section 12A is issued --where it is not done simultaneously. It is to be noted that under Section 12A Central Government is required to notify order or orders made under Section 3 of the Act to be a special order for purposes of summary trial. As already mentioned this notification was issued and orders made under Section 3 were specified to be special order for purposes of summary trial only on 24th December, 1964. But Ordinance No. 3 of 1964 had come into force on 5th November, 1964 and in pursuance of Section 12A as amended by the Ordinance orders made under Section 3 of the Act though they were not specified as special orders were notified for summary trial.

Further, the Amending Act was also made retrospectively applicable from 5th November, 1964 and so cases pending in relation to offences committed after 5th November, 1964 could not be covered strictly by Section 12A as they did not relate to the notified special orders and so Sub-section (4) was enacted to make Section 12A applicable to such cases also. But scope of Sub-section (4) was not to be extended to those offences which were committed before Ordinance No. 3 of 1964 came into force. I am therefore, of the view that Section 12A will not apply to the present case as it relates to an offence which was committed on 21st September, 1964 when no notification specifying the order made under Section 3 of the Act was specified to be special order under Section 12A. This case will have therefore, to be tried according to the provisions laid down in the Code of Criminal Procedure.

8. The second contention of the learned counsel for the petitioner is that no criminal proceedings can be taken against the petitioner for the contravention of Para No. 9 of the Licence because it was deleted on 26th September, 1964 and since then alleged act of the petitioner ceased to be an offence. Reliance is placed on the following quotation from Craies on Statute Law, Sixth Edition, at page 408,

'As a general rule, and unless it contains some special provision to the contrary, after a temporary Act has expired, no proceedings can be taken upon it, and it ceases to have any further effect. Therefore, offences committed against temporary Acts must be prosecuted and punished before the Act expires, and as soon as the Act expires any proceedings which are being taken against a person will ipso facto terminate.'

and the following decisions:

S. Krishnan v. State of Madras, AIR 1951 SC 301; State of Uttar Pradesh v. Seth Jagminder Das, AIR 1954 SC 683; Gopichand v. Delhi Administration, AIR 1959 SC 609, Rakashya Singh v. State of Bihar, AIR 1957 Pat 66; Hiralal Kezriwal v. State, AIR 1958 Pat 247; In re, Messrs E. T. Palaniappa Chettiar and Co., AIR 1957 Mad 660; Kuruvilla Cheri yan v. Kuruvilla Chandy, AIR 1958 Ker 229 and State of Kerala v. Raman Nair, AIR 1962 Ker 78.

9. These cases lay down the principle that when a statute is repealed or comes to an automatic end by efflux of time, no prosecution for acts done during the continuance of the repealed or expired Act can be commenced after the date of its repeal or expiry because that would amount to the enforcement of a repealed or a dead Act. In cases of repeal of statutes this rule stands modified by Section 6 of the General Clauses Act. An expiring Act however is not governed by the rule enunciated in that section. In regard to temporary statute the general rule is that in the absence of special provision to the contrary, proceedings which are being taken against a person under it will ipso facto terminate as soon as the statute expires. The Legislature can and often enough does avoid such an anomalous consequence by enacting in the temporary statute a saving provision, and the effect of such a saving provision is in some respects similar to the effect of the provisions of Section 6 of the General Clauses Act.

10. How far the above principle enunciated in the above cases can be applied in the present case is the question. The Rajasthan Food Grains Dealers Licencing Order, 1964 was made by the Government of Rajasthan with prior concurrence of the Central Government in exercise of the powers conferred by Section 1 of the Act read with the Notification of the Government of India in the Ministry of Food and Agriculture (Department of Food), published under G. S. R. 888 dated the 28th June, 1961 The licence issued to the petitioner under the said Licencing Order contained the following condition:

'9. The Licensee, if he is a wholesaler, shall sell food-grains only to retailers of certain specified areas which are registered with him and in accordance with such directions as the licensing authority or any officer authorised by that authority in this behalf, may give from time to time. The register of areas registered with him shall be in Form 'D'.'

By Notification No. F.1 (3) Food/Supp/63 dated 26th September, 1964, para 9 was omitted from the licence. There is in my view, an essential difference between a temporary Act which expires after a certain date specified therein and the deletion of a paragraph from the licence issued to the petitioner. The licence was issued to the petitioner under the Rajasthan Food Grains Dealers Licencing Order which itself was made in exercise of the powers conferred by Section 3 of the [Essential Commodities Act, 1955](#). Contravention of conditions of licence are punishable under Section 7 of the Act. The Rajasthan Food Grains Dealers Licencing Order as well as the provisions of the parent Act are still in force and therefore, the principle laid down in cases relied upon by the learned counsel for the petitioner cannot be made applicable here. As observed by Falshaw, J. as he then was in the State v. Onkar Singh Makhan Singh. AIR 1954 Puni 285:

'There is obviously a big difference between a self-contained Act which provides for its own expiry on a certain date, and a temporary Order of no fixed duration promulgated under a parent Act providing for the punishment of contravention of Orders promulgated under its provisions.'

It was further held in the abovenoled case that:

'A Court has power to punish an offence under the provisions of Section 7 of the Act as long as the offence was committed while the Order was in force in spite of the fact that the Order has been cancelled before the case was brought to trial.'

Similar view was taken by the Nagpur High Court in *Provincial Government, C. P. and Berar v. Sayad Ali Sayad Munir*. AIR 1946 Nag 106 where it was held that

'The prosecution of a person is maintainable in respect of a breach of an order which has been subsequently cancelled and was not in force on the date on which the challan was filed against him since the effect of the breach is complete when the act has been done,'

The present case in my view, is distinguishable from those cases which have been relied upon by the learned counsel for the petitioner 1 am, therefore, of the view that the petitioner can still be tried for the offence alleged to have been committed by him on 21st September, 1964 and the view taken by the courts below in this respect is correct.

11. The revision is, therefore, partly accepted and the case is sent back to the trial Magistrate for proceeding with the trial against the accused in accordance with the provisions of the Code of Criminal Procedure.

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