

Mukesh and Etc. Etc. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-30-1997

Reported in : 1998CriLJ2439

Judge : M.A.A. Khan, J.

Acts : [Essential Commodities Act, 1955](#) - Sections 3, 3(1) 3(2) 3(4), 6A, 7, 7(1), 7(2), 7(2A), 8, 8A, 9, 11, 12A, 12A(1), 12A(2), 12AA, 12AA(1), 12AA (2), 12AC, 16A and 317; Essential Supplies (Temporary Powers) Act, 1946; [Criminal Law Amendment Act, 1932](#); Criminal Law Amendment Act, 1952 - Sections 3A, 6(1) and 8A; Essential Commodities (Amendment) Act, 1964; Essential Commodities (Amendment) Act, 1967; Essential Commodities (Amendment) Act, 1971; Essential Commodities (Amendment) Act, 1974; Essential Commodities (Amendment) Act, 1976; Essential Commodities (Special Provisions) Act, 1981; Essential Commodities (Special Provisions) (Amendment) Act, 1987; Essential Commodities (Amendment) Act, 1986 - Sections 6E; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 170, 173, 206, 206, 206(2)

Appeal No. : Criminal Misc. Petns. Nos. 215 and 422 of 1997

Appellant : Mukesh and Etc. Etc.

Respondent : State of Rajasthan

Advocate for Def. : G.C. Vyas and; S.M. Poddar, Public Prosecutors

Advocate for Pet/Ap. : A.S. Shekhawat and; S.S. Naruka, Advs.

Disposition : Petition allowed

Judgement :

ORDER

M.A.A. Khan, J.

1. As common questions of law of considerable significance are involved in both these petitions under Section 482, Cr.P.C. these are disposed of by this common order.

2. In S.B. Cr. Misc. Petn. No. 215 of 1997 Mukesh petitioner is alleged to have been found on 26-3-1989 keeping in his possession in a godown at 22, Godowns Factory Area, Jaipur 15 drums containing different kinds of petroleum products like mobile oil, greese liquid and black-hard and solid black oil, soap wash etc. with certain instruments and utensils to be used in preparing adulterated petroleum products. He was possessing no license to deal in petroleum products. He was, therefore, accused of having contravened clauses 3 and 4 of Lubricating Oil and Greese Order 1987 punishable under Section 7 of the Essential Commodities Act 1955 (The Act). A police report under Section 170/173, Cr. P.C. was made against him to the Special Judge (Essential Commodities Act) Cases on 1 -3-1993 and on the same day the learned Special Judge took cognizance of the case. Particulars of the offence and substance of accusation were read over and explained to the petitioner on 31-5-1993 but after recording the evidence of one witness the Presiding Officer of the Special Court was transferred. The new Presiding Officer commenced de-novo trial and read over and explained the (sic) sustance of the accusation to the petitioner afresh on (sic) 18-7-1994. However, after recording the statements of seven witnesses, he too was transferred. The succeeding Presiding Officer again commenced de-novo trial on 6-9-1995. Fortunately, he completed the trial, examined the petitioner under Section 313, Cr.P.C. recorded the statement of his witness Nasiruddin and heard the parties finally. However, on examination of the record in order to prepare himself to write the judgment the learned Special Judge came to hold the opinion that the charge framed against the petitioner was required to be amended and suitably modified. He amended the

charge accordingly vide his order dated 13-2-1997. On request of the Assistant Public Prosecutor the learned Judge permitted him to recall such witnesses for examination and cross-examination as he may deem necessary. Even after availing several opportunities no witness has so far been produced before the learned Special Judge and thus for the fourth time a 'Summary trial case' has again reached the stage it was in the year 1989/1993.

3. In S.B. Cr. Misc. Petition No. 422/97 Anil Kumar the factual matrix is no fiver than that noticed in Mukesh's case. In this case the petitioners were found in un authorised possession of 10 cooking gas cylendars and unlawfully transporting them in a jeep on 30-6-1992. They were accused of having contravened clauses 3 and 6 of the Liquified Petroleum Gas (regulation of Supply and Distributor) Order, 1988 (the order) punishable Under Sections 7 of the [Essential Commodities Act, 1955](#). A police report under Section 170/173, Cr.P.C. was submitted in the Court of the Special Judge on 14-6-1993. In the list of witnesses only eight witnesses were cited to be examined at the trial. By 5-5-1994 six witnesses were examined. Rest of the two witnesses were given up and prosecution closed their evidence on 18-5-1994. The case was adjourned for examining the accused under Section 313, Cr.P.C. However, the Presiding Officer was transferred and therefore, the new Special Judge, appointed to that Court, ordered on 11-8-1994 for de-novo trial of the case. Particulars of offences and substance of accusation as had been read over and explained to the accused earlier on 6-8-1993 were again read over and explained. After examining 5 witnesses in the second round the prosecution evidence was closed on 22-3-1996. The accused were examined on 29-3-1996 and after availing opportunity to produce their witnesses in defence they finally informed the Court on 27-4-1996 that they intended to produce no witness in their defence. The case was fixed for final arguments before the case would have been finally heard the Asstt. Public Prosecutor moved an applications under Section 311, Cr.P.C. on 5-6-1996. In that application it was prayed that inadvertently the seized cylenders could not marked exhibits at the trial, therefore, the same as also the witnesses of their seizure be called for. The seized cylenders were called for and after examining two witnesses the A.P.P. closed his evidence on 3-10-1996. The accused were again examined under Section 313, on 16-10-1996. Thereafter, final arguments were heard on 5-11-1996 but when such arguments were being

concluded on 8-11 -1996 the learned Special Judge formed the opinion that the charges framed against the accused were required to be suitably amended and modified. He did accordingly. The A.P.P. examined four witnesses again after amendment of the charge and the case is being adjourned for recording the statement of the remaining prosecution witnesses.

4. That is all there is to the factual aspect of the proceeding in the two cases.

5. Mr. A.S. Shekhawat, the learned counsel for the petitioners, while opening his arguments on 16-7-1997 in the case of Anil Kumar and another petitioners strongly objected against the manner the cases under the Act were being tried in almost all the Courts of Special Judges, appointed under Section 12A(2) all over the State. The learned Counsel submitted that offences under the Act are required to be tried in a summary way with the object that early convictions of the offenders may dissuade them from carrying on their anti-economy and anti-people activities and such convictions may leave their impact on the morals of the people and may keep their faith and confidence intact in the criminal justice delivery system of the country and at the same time merited acquittals may dissuade, away and erring enforcement officers from causing undeserved and unmerited harassment to the trading and business community and may re-affirm the hope and faith of the oppressed accused in the purposeful functioning of the courts. Mr. Shekhawat further submitted that the summary trials of the offences under the Act are facing a situation worse than that the regular trials in various Courts in as much as in a regular trial the accused at least knows that sooner or later a 'day of judgment' would arrive but in a summary trial, as are being held in all the Courts of Special Judges, an accused does not know whether any such day would ever arrive at, as on the charge of the Presiding Officer his successor shall have to commence the trial de-novo. Mr. Shekhawat submitted that the procedure being adopted in the trial of such cases has left every body concerned in a state of high and dry and such a procedure is shockingly and painfully infringing the fundamental right of an accused under Article 21 as a speedy trial has been recognised as a part of the right to life and liberty of the citizen. On being made aware of such a situation with regard to the summary trials or offences under the Act the Registrar, Rajasthan High, Court was required to inform the Court as to

whether there were any orders/instructions issued by the High Court regulating the trials of summary cases and the transfer policy of the Presiding Officers, appointed to hear such cases. The Registrar has furnished some information in that behalf. A general notice was issued to the Bar requesting the learned Members of the Bar to asside the Court with their valuable learning of the subject and knowledge of the legal position, governing the trials of summary cases in this State and other States in the country. The Registry was also directed to submit a list of all such cases as are pending for orders in this Court and also fix them for hearing. Only five or six petitions/ applications were reported pending here. They all were heard as and when those were listed for hearing. I must record my thanks to the learned Members of the Bar here to have taken great pains in making me aware of the factual as well as legal position with regard to the trial of offences under the Act in a summary way in the State,

6. In main it was brought to my notice that in the case of Ram Prasad Sharma & Sons v. State of Rajasthan 1984 WLN 405 : (1985 Cri LJ 442) this Court held that the provisions of Section 12AA are mandatory and have an overriding effect. Then in the case of Ramesh Chand v. State 1986 Cri LR (Raj) 734 this Court took the view that if the trial got vitiated de-novo proceedings shall have to be taken. In the case of B.C. Jain and Sons v. State of Rajasthan 1987 Raj LW 401 though the case of Ram Prasad Sharma (supra) was referred to yet the character of Section 12AA with particular reference to clause (f) of Sub-section (1) was not discussed. Finally, in the case of Prakash Chand v. State of Rajasthan 1991 Cri LJ (Raj) 446 it was held by this Court that proceedings under Section 12AA r/w Section 317 of the Act are summary proceedings of the provisions contained in Section 326, Cr.P.C. are not applicable to such proceedings and, therefore, the successor Special Judge has no authority under the law to proceed with the trial of the case from the stage at which his predecessor in office left the case. A successor Judge shall have to try the case de-novo in a summary way as provided under Section 12AA of the Act. It was submitted that the decision of this Court in the case of Prakash Chand (supra) holds the field and since an offence under Section 7,8 or 9 of the Act cannot be tried in a way other than the summary way as laid down in Sections 260 to 265 of the Cr.P.C, there is no way out for the successor Judge to start de-novo trial of the offences under the Act in a summary way notwithstanding

the fact that the predecessor Judge might have even completed the trial heard the parties finally and reserved his order at judgment but would not pronounce the same on account of his ceasing to be the Presiding Officer of the Special Court due to transfer, retirement or death. It was pointed out that the procedure of a warrant case being inapplicable to the trial of offences under the Act trials of such offences in a summary way being not completed for any of the reasons stated above any case under the Act has hardly seen the 'day of judgment' and due to repeated de-novo trials of such cases the accused therein are being prosecuted for indefinite periods to arrive at an unknown and uncertain destination.

7. The arguments advanced at Bar before (sic) the raise certain questions of vital and important significance. I, therefore, propose to examine the legal issues raised in the context of the administration of the Act before me somewhat analytically, critically and exhaustively. In main the following two questions arise for serious consideration, viz.

(1) Whether the provisions contained in clause (f) of Section 12AA(1) and Section 12AA(2) admit of the adoption, in no circumstances whatsoever, of a procedure other than the procedure of summary trial for the trial of the offences under the Act with or without offences under other Acts

(2) Whether the evidence recorded by a Special Judge, who is duly appointed as such under Section 12 A(2), cannot be read in evidence by his successor-in-office in a case tried in a summary way or in the way of summons case or a warrant case under Section 12AA of the Act.

8. Before I proceed to search out the answers to the two questions, formulated as above, it would be, I think, useful to briefly refer to the legislative back ground and circumstances under which the provisions contained in Sections 12A and 12AA came to be inserted in the Act. It may be recalled that the Act had replaced the Essential Supplies (Temporary Powers) Act, 1946 which expired on 26-1-1-955. The implementation and administration of the Act, however, attracted widespread public criticism of the manner in which some section of the traders and the middle men were able to get over and render in effective the legal measures which had been devised for the maintenance and equitable distribution and supply of

essential commodities to the consumer community. Though several orders issued by some of the State Govts. Under section 3 of the Act and the [Criminal Law Amendment Act, 1932](#) provided for summary trials for offences covered by such Orders yet it was felt that the improvement over such procedure in order to make the trial of offences under the Act generally quick and effective, be immediately made to ensure proper supply and distribution of essential commodities to the community and to bring the offences against the Act to book as early as possible. Amending Act No. 47 of 1964 was accordingly passed for the purpose. There after, in order to make the provisions of the Act more strict with regard to the confiscation of the essential commodities, against which or in respect of which offence under the Act was committed and forfeiture of the packages, vehicles, animals etc., involve in the contravention of the relevant Order Amending Act No. 23 of 1966 was passed. The Act was further amended by Amending Act No 36 of 1967 which made the offences under the Act cognizable and bailable, raised the maximum punishment to 5 years from three years imprisonment, prescribed impositions of minimum punishment of six months imprisonment to habitual offenders, did away with the requirement of proof of mens rea on the part of the offenders in the commission of offences under the act and extended the life of summary trial* ' 1967 to 31-12-196. Amending Act No.66 of 1971, apart from amending the provision relating. to search and seizures of covering and receptacles, procedure for fixation of prices food grains edible oil seeds or edible oils, delegation of powers to pass Orders Under Section 3 so State Govt. and issuing of notifications by officers and other authorities under such delegated powers, brought about some significant changes in the principal Act. Section 12A, as originally inserted by the Amending Act No. 47 of 1964 empowered the Central Govt. to specify any order made under section 3 of the Act, by issue of a notification, to be a Special order the contravention of which may be tried in a summary way by a Special Judge. The Act of 1964 had inserted a new Section 8 A in the Criminal Law Amendment Act, 1952, empowering the Special Judge, trying an offence, specified Under Section 6(1) of the Criminal Law Amendment Act, 1952, alleged to have been committed by a public servant in relation to the offence, covered by Section 12A, to try such offence in a summary way. The amendments so brought about by the Amending Act of 1964 in the area of trials of

certain offences under the specified special orders were to remain in force for a short period in the beginning but the period of their operation had been extended from time to time by subsequent Amending Acts. By Amending Act of 1971 it was considered desirable to place Section 12 A of the Act and Section 8A of the Criminal Law Amendment Act, 1952 permanently on this statute Book looking to the continued violation and contravention of the Act and the orders made thereunder the offences under the Act were made non-bailable by Amending Act No. 30 of 1974 and by Amending Act No. 32 of 1976 the definition of 'Collector' was widened to give teeth to the drive against hoarders and profiteers (sic). Then there came the Amending Act of 1981 which made certain drastic changes particularly in the matter of prosecutions and penalties. All the offences under the Act were made non-bailable and triable as a summary way by a Special Court only. Provisions for imposition of the minimum mandatory imprisonment for a period of not less than three months for all offences, save those excepted in the Proviso to Section 8 and for enhancement of the term of imprisonment awardable in a summary trial from one year to two years were made. By Act 42 of 1986 Section 6E debarring jurisdiction of the Courts from making orders with regards to possession, delivery, disposal or distribution of any seized essential commodity was inserted. The scope of the Section 12AA, inserted by Amending Act No. 18 of 1981, was widened by empowering the Special Judge to take cognizance of the offences under the Act on complaints filed by authorised officers of the Central and State Govts. By subsequent Amending Act No. 73 of 1986, a right to approach the Special Court was given to aggrieved consumers and recognised consumer associations. This narration of the legislative history of the Act helps us to ascertain the conditions which led to the insertion and there after drastic amendment or modification of Sections 12A and 12AA in the present form and which conditions persuaded the legislators to make the provisions under the Act, relating to bails, search, seizures and confiscations trial of offences and penalties and punishments more and more stringent by repeatedly amending the Principal Act.

9. Here I may observe that the Act is a piece of welfare legislation made to provide, in the interest of general public for the control of the production, supply and distribution of and trade and commerce in certain essential commodities.

Since this piece of legislation seeks to implement and executive socio-economic programme and plan of the State of regulating the production, supply and distribution of certain essential commodities in the interest of the general public a constructive attitude is required to be adopted in interpreting various provisions in the Act. Therefore, effort should be made to harmonise seemingly contradictory and conflicting provisions in the Act in a manner which may ensure coherence and consistency between them and may help promote and advance the object and purpose of the Act and curb and do away with the mischief intended to be redressed by it. It is particularly so when provisions governing the rules of procedure are to be construed. In the construction of such provisions it is well to be remembered that rules of procedure are intended to advance justice and not to defeat it. Therefore, a construction of such provisions, which promotes and advances the remedy should always be preferred to the one which prevents it.

10. In the case of *Chitranjan Dass v. State of West Bengal* AIR 1963 SC 1696: (1963 (2) Cri LJ 534), the particulars regarding date or time relating to the alleged criminal breach of trust or dishonest misappropriation of money were not mentioned in the charge. Gajendragadkar, J. (as the learned Chief Justice of the Supreme Court then was) made the following pertinent observation on the point in that behalf in Para 7 ' of the report

In this connection, it may be relevant to bear in mind that the requirements of procedure are generally intended to subserve the ends of justice and so, undue emphasis on mere technicalities in respect of matters which are not of vital or important significance in a criminal trial, may sometimes frustrate the ends of justice. Where the provisions prescribed by the law of procedure are intended to be mandatory, the Legislature indicates its intention in that behalf clearly and contravention of such mandatory provisions may introduce a serious infirmity in the proceedings themselves; but where the provisions, made by the law of procedure are not of vital importance, but are, nevertheless, intended to be observed, their breach may not necessarily vitiate the trial unless it is shown that the contravention in question has caused prejudice to the accused. This position is made clear by sections 535 and 537, Cr.P.C.

11. The above principle, governing the construction of procedural provisions in a statute, has all along been followed in subsequent decisions. Of late in the case of D.D.A. v. Skipper Construction (1996) 1 SCC 272 : (AIR 1996 SC 715), their Lordships of the Apex Court observed that:

The rules of procedure and for principles of natural justice are not meant to enable the guilty to delay and defeat the just retribution. The wheels of justice may appear to grind slowly but it is the duty of all of us to ensure that they do grind slowly and grind well and timely. The justice system cannot be allowed to become soft and supine and spineless.

(Emphasis supplied)

12. It is in the light of the above principles that the relevant provisions in the Act and in other sister enactments, regarding the subject-matter of the law questions framed to decide the present petitions, are required to be examined and construed.

13. Our search to the answer to question No. 1 must first take as to the relevant provisions in the Act which may be reproduced as under:-

Section 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 that one for such area, by such one of them as may be specified in this behalf by the High Court:

(b) to (e) xx xx xx xx xx xx xx xx

(f) all offences under this Act shall be tries 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 was a sentence of imprisonment for a term

not exceeding two years.(g) when trying an offence under this Act a special Court may also try an offence other than an offence under this Act, which the accused may, under the Code be charged at the same trial:

Provided that such other offence is, under any law 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 for conviction in a summary trial under such other law.Section 7 : Penalties.- (1) If any person contravenes any order made under Section 3.- (a) he shall be punishable.-

(1) 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 :

(2) If any person to whom a direction is given under clause (b) of Sub-section (4) of Section 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.

(2-A) If any person convicted of an offence under sub-clause (ii) of clause (a) of Sub-section (1) or under 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.

14. A close study of Section 12AA(i)(a) shows that all offences are intended to be tried only by a Special Judge. The stress in clause (a) of Sub-section (1) is on the trial of Case by the Special Courts only, which are created Under Section 12A for the purpose. The use of the word 'only' in the language of clause (a) expresses the anxiety of the legislature that the offences under the Act, which in their very nature are offences against the society at large likely to be committed by persons engaged in the business of manufacturing, storing and selling the specified

essential commodities, should be tried by such experienced persons from the legal profession who have acquired the qualification of being appointed to the High Court or have worked for at least one year as Sessions Judges or Additional Sessions Judges. The appointment of such experienced persons to man the posts or office of the Special Courts was in conformity with the scheme underlying the Act. Offences under the Act were intended, from the very beginning of the Act, to be tried speedily. Trial by a summary way is simply one of the recognised mode of speedy trial summary trial is, in general, meant for and adopted for punishable offenders of petty offences contemplated by Section 206, Cr.P.C. But offences under the Act were not, save those contemplated by Section 7(1)(i), petty offences. Besides being anti-people, those were anti-economy of the country also. The trial of such offences speedily was therefore handed over to the experinced Special Judges and they were directed to try such offences in a summary way.

15. Now on coining to clause (f) of Section 12AA (1) we may note in the language of this clause though it has been mandated that all offences under the Act shall be tried in a summary way and the provisions of Section 262 to 265 (both inclusive) of the Code shall apply to such trial, yet the mandate given in clause (a) by the use of the word 'only' in the context of trial of the offences by the Special Court is missing, though again, in the phraseology of both the provisions contained in clause (a) and clause (f) the auxilliary verb 'shall' has been used. Then, it may further be noted that the rigours of the mandate contained in clause (f) have further been taken away to some extent by the use of the expression 'as per as may be' in the language of clause (f). It must, therefore, logically follow that the mandate, as contained in clause (l) with reference to the trial of offences under the Act in a summary way is not of that degree of compulsion which is there in the mandate contained in clause (a) with reference to the requirement of the trial of the offences under the Act by Special Courts. It follows, therefore, that where as no departure can be made from the mandate in clause (a) that the offences under the Act cannot be tried by a Court other than a Special Court constituted Under Section 12A (1), a departure from the mandate in clause (f) with regard to the trial of the offences in a summary way, may reasonably be made if the facts and circumstances of a given case so warrant and require. Therefore there is a basic difference between the characters of the two provisions viz clause (a) and clause

(f), as being of mandatory nature. Whereas a departure from the mandate contained in clause (a) would hit at the very jurisdiction of the trial Court and a trial of an offence under the Act by a Court other than a Special Court would be without jurisdiction and would stand vitiated, that would not be the position if an offence under the Act is tried in a way other than a summary way. Therefore, in the interpretation of the word 'shall' used in the language of clause (f) of Section 12AA (1) reasonable construction shall have to be made of the expression 'as far as may be' used in the language of that clause. The Act itself does not lay down any rules of procedure to be adopted in the trial of the offences in a summary way. Chapter XXI of the Code of Criminal Procedure 1973, which stands applied to the Act by virtue of Section 12AC speaks of summary trials and Section 262 therein lays down the procedure for summary trials. It provides as under :-

Section 262 Procedure for summary trials (1) In trials under this chapter the procedure specified in this Code for the trial of summons case shall be followed except as herein after mentioned.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter.

(Emphasis supplied)

16. It may be noted that the procedure of trial, mandated to be adopted in the trial of offences under the Act and that too with suitable modification of the sentence clause by insertion of the proviso under clause (f), itself speaks of the adoption of the procedure specified in the Code of Criminal Procedure for the trial of summons case, Chapter XX of the Code contains the procedural provisions applicable to the trials of summons cases. Section 259, which occurs in this Chapter provides as under :-

Section 259 Power of Court to convert summons case into warrant case

When in the course of the trial of a summons case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interest of justice, the offence should be tried in accordance

with the procedure for the trial of warrant cases, such Magistrate may proceed to re-hear the case in the manner provided by this Court for the trial of warrant cases and may re-call any witness who may have been examined.

17. Section 259 is a newly inserted provision in the Code of Criminal Procedure 1973 and is an enabling provision which is intended to remove procedural difficulty in the trial of Criminal case by the Magistrates as per procedure laid down in Chapter XX when it appears to the Magistrate that the trial should be held as in a warrant case as per procedure laid down in Chapter XIX of the Code.

18. Reverting back to the subject on hand we may legitimately conclude that the use of the word 'shall' in the language of clause (f) no doubt casts an obligation on the Special Court to try all offences under the Act in a summary way but that fact alone, particularly, in the context of the discussion made hereinafter, is not determinative of the conclusion that clause (f) is necessarily mandatory in character. In determining the true character of this clause the very purpose of the enactment, as referred to above briefly, cannot be lost sight of. The determinative factor to know whether a particular provision in an enactment is mandatory or directory is that if the object of the enactment is to be defeated by non-compliance of the questioned provision, it has to be regarded as mandatory. But then a provision of law relates to the performance of any public duty, like the one cast on the Special Court to try the offences under the act in a summary way and the invalidation of the act done in disregard or by non-compliance of that provision causes serious prejudice to those for whose benefit the statute was enacted and at the same time they have no control over the performance of the duty the provision should be treated as a directory one. If, however, a provision of law requires that a certain act is to be done in a particular manner by a person for acquisition of a right and at the same time another provision in the statute confers an immunity upon another person if that act is not done in the prescribed manner, the former provision would be a mandatory provision. Ordinarily, therefore, a rule prescribing a procedure is not to be held mandatory if the act done in pursuance of such rule suffers from some defect but such defect or error may be rectified without contravening any other rule of procedure or, even, a rule of natural justice.

19. In the case of *Kehar Singh v. State (Delhi Administration)* AIR 1988 SC 1883:1989 Cri LJ 1) the Apex Court considered a similar question and made the following pertinent exposition of law on the subject (paras 227 and 228) :-In the past, the Judges and lawyers spoke of a golden rule by which statutes were to be interpreted according to grammatical and ordinary sense of the word. They took the grammatical or literal meaning unmindful of the consequences. Even if such a meaning gave rise to unjust result which legislature never intended, the grammatical meaning alone was kept to prevail. They said that it would be for the legislature to amend the Act and not for the Court to intervene by its innovation.

During the last several years, the golden rule has been given a go-by. We now look to the intention of the legislature or the 'purpose' of the statute. First, we examine the words of the statute. If the words are precise and cover the situation in hand, we do not go further. We expound those words in the natural and ordinary sense of the words but, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine the Act as a whole. We examine the necessity which gave rise to the Act. We look at the mischiefs which the legislature intended to redress. We look at the whole situation and not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provision provisions as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe their origin. We will consider the provisions to ensure coherence and consistency within the law as a whole and to avoid undesirable consequences.

20. A similar view had earlier been expressed by the Apex Court in the case of *Presidential Election 1974*, AIR 1974 SC 1682, where it was observed that (para 13):-

In determining the question whether a provision is mandatory or directory, the subject-matter, the relation of that provision to the general object intended to be secured by the Act will decide whether the provision is directory or mandatory. It is the duty of the Courts to get at the real intention of the legislature by carefully

attending to the whole scope of the provision to be construed. 'The key to the opening of every law is the reason and spirit of the law, it is the animus imponentis, the intention of the law maker expressed in the law itself, taken as a whole.

21. In the case of *Govind Lai Chagan Lai Patel v. Agricultural Produce Marketing Committee* (1975) 2 SCC 482 : (1975 Cri LJ 1993), their Lordships of the Supreme Court had observed that (para 13 of Cri LJ):-

Thus the governing factor is the meaning and intent of the Legislature, which should be gathered not merely from the words used by the Legislature but from a variety of other circumstances and considerations. In other words, the use of the word 'shall' or 'may' is not conclusive on the question whether the particular requirement of law is mandatory or directory. But the circumstance that the Legislature has used a language of compulsive force is always of great relevance and in the absence of anything contrary in the context indicating that a permissive interpretation is permissible, the statute ought to be construed as peremptory. One of the fundamental rules of interpretation is that if the words of a statute are themselves precise and unambiguous, no more is necessary than to expound those words in their nature and ordinary sense, the words themselves in such case best declaring the intention of the Legislature.

22. Examined in the light of the principles laid down in the above cases it is noted the clause (f) casts an obligation on the Special Court to try all offences under the Act in a summary way but the compliance of such a rule does neither confer any sort of right either in favour of the prosecution or in favour of the accused nor does the non-compliance there of confer any immunity upon the accused and also (cause) no prejudice to him in his trial clause (f) of Section 12 AA(1) contains a rule of procedure for trial of offences under the Act and the rigours of the obligatory compliance of the rule has not only been taken away by the express provisions in Sections 262 r.w. Section 259, Cr.P.C. as also by the use of the expression 'as far as may be 'in the very language of this clause but also by the sentencing policy expressed in the Proviso to this clause and the proviso to Sub-section (2) of Section 12AA and the quantum of punishment prescribed in Section

7,8 or 9 of the Act goes a long way to suggest that clause (f) does not totally exclude the desirability, may, necessity of adopting other procedures for trial of offences under the Act with or without the offences triable under the Code. In this behalf the provisions contained in Sections 7,8 or 9 and 12AA (2) of the Act may be examined.

23. Clause (a) (i) of Section 7(1) provides for punishment of certain offences, specified therein, upto one year & fine maximum punishment to that extent may be awarded as per Proviso to clause (f) of Section 12AA (1) in a summary trial. There is no problem in the functioning of clause (a) (i) of Section 7(1) and clause (f) with its proviso. Both may co-exist and work smoothly in their respective fields. But clause (a) (ii) of Sections 7(1), 7(2), 7(2A), Section 8 (without proviso) and Section 9 provide for punishment for offenders, specified therein, for seven year & fine and five years with or without fine respectively. The maximum punishment provided by those sections for the offences falling within their notes much exceeds the maximum punishment imposable under the proviso to clause (f) of Section 12AA (1) by holding the trial in a summary way. How are then those provisions to function? How can punishment exceeding the limit prescribed under Proviso to clause (f) be imposed for offences contemplated by Sections 7(1)(a)(ii), 8 and 9 in deserving cases of departure from the general rule of summary trial of all offences under the Act was not contemplated by the Legislature in any circumstances to all, what was the necessity for providing punishments exceeding the permissible limit of two years under Proviso to Section 12AA (1)(f)? The Legislature cannot be attributed the intention of having brought a non-functional irrelevant and non-workable provision on the Statute Book. The temporary life of Section 12AA, does not, I think render those provisions redundant.

24. The questions, posed above, arise also when the construction of the provisions contained in Section 12AA(2) is opened for consideration and discussion. Sub-section (2) of Section 12AA, as reproduced above, lays down that when trying an offence under the Act, the Special Court may also try an offence, other than an offence under the Act, with which the accused may under the Code, be charged at the same trial. First Proviso 0 to Sub-section (2) says that the offence under any other law, spoken of in the main Sub-section, should be triable

in summary way. Second Proviso restricts the power of the Special Court to impose punishment for the offence under the other law upto the term provided for conviction in a summary trial under such other law.

25. Sub-section (2) of Section 12AA permits a Special Court, when trying an offence under the Act, to try an offence under any other law also. This is the general principle recognised and laid down in main Sub-section (2). It means that the powers of the Special Judge, which he had as a Sessions Judge/Additional Sessions Judge under the Code of Criminal Procedure 1973 to try the offences under the Indian Penal Code and/or other laws, before his appointment as a Special Judge Under Section 12A(2) of the Act, remained unaffected by such appointment. In fact his experience of at least one year as a Sessions Judge/Additional Sessions Judge made him qualified and eligible for his appointment as a Special Judge Under Section 12 A(2). Now the requirements for the applicability of Sub-section (2) are that the Special Judge must be seized of the trial of an offence under the Act and that the offence under the other Act may be tried along with the offence under the Act. In other words the accused, who is to face trial for the offence under the Act, may be under the provisions of the Cr.P.C. charged with the offence at the same trial. This position necessarily attracts Section 219 to 223, Cr.P.C. which speak of the circumstances under which a person or persons may be charged with one or more offences, under the case or different laws and tried jointly. A combined reading of those provisions of the Code clearly suggests that persons accused of same or different offences or abetment of, or attempt to, commit such offences, committed in the course of same transaction may be charged jointly. Sub-section (2) of Section 219, Cr.P.C. says that offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code 1860 or of any Special or local law. Illustrations below Section 220, Cr P.C. which are explanatory and not exhaustive, enumerate some of the circumstances under which offences more than one may be tried together. Sub-section (1) of Section 220, Cr.P.C. embodies the general principle which says that, if in one series of act which is so connected together as go to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for, every such offence. In the working and application of Sub-section (2)

of Section 12 AA of the Act to the trial of offences under the Act the provisions contained in S Section 219 to 223, Cr.P.C. are applicable not only by virtue of language of Sub-section (2) of Section 12AA but also by Section 12AC of the Act. Once the general principle of trial of an offence, other than an offence under the Act, by the Special Court is rightly understood and appreciated in right perspective there should not be much difficulty in holding that when trying an offence under the Act a Special Court may also try an offence punishable under any other law, provided the offence committed under the Act and that committed under any other law are so connected together as to form the same transaction and the person or persons accused of committing such offences in that manner may be charged at the same trial. It must then logically follow that if the facts and circumstances and the gravity of the offence in a given case, whether under the Act or any other law, require and demand imposition of sentence, permitted by Sections 7(1)(ii), 8 and 9 of the Act and the relevant provisions in the other law and such a case is triable by a Special Judge as per provisions of Sub-section (2) of Section 12AA a procedure empowering the Special Judge to impose a sentence which is though permitted by the relevant provisions under the Act and under the other laws but contracted by another provision in the Act, must be available to him to impose appropriate sentence, proportionate to the gravity of the offence or offences committed by the accused. To illustrate the point in the proposition thrown, if in committing or in the course of committing an offence punishable Under Section 7(1)(a)(ii) or Section 9 of the Act the accused commits also an offence or offences punishable with, say, ten or more years, under the other law in the same series of transaction, both kinds of offences are triable by the Special Judge as per principle contained in Sub-section (2) of Section 12AA. Now suppose for a while that in the course of seizure of an essential commodity, carried out in pursuance of an Order made Under Section 3(2) (a) to (g), excepting clauses (h) or (i), for regulating by licenses, permits or otherwise, the production or manufacture, storage, transport, distribution, disposal, acquisition, use or consumption or control of price, of an essential commodity, in respect of which an offence punishable Under Section 7(1)((a)(ii) is committed, the accused further commits the offence of voluntarily causing grievous hurt to the public servants in the course of the discharge of their duties as such public servants in order to deter them from discharging their official

duties of seizing the essential commodity, offence punishable Under Section 333, IPC with ten years imprisonment and fine is committed. The commission of such an offence in the same transaction may further be aggravated if the accused intentionally or knowingly causes the death of the public servant. There may be yet another case wherein the accused while transporting an essential commodity, in respect of which an order prohibiting the transportation thereof is made Under Section 3 of the Act, contravenes the relevant order and in the course of committing the contravention of the relevant Order by illegally or unauthorisedly transporting the essential commodity kidnaps or abducts the public servant, with the intention of causing his death or keeping him in wrongful restraint or confinement. Since such offences under the I.P.C. were committed in the course of same transaction, those are triable along with the trial of offences under the Act, by the Special Judge as per principle contained in Sub-section (2) of Section 12AA. That is not only proper but also necessary for the proper administration of the Act and for safeguarding the interest of both the parties - the prosecutor and the accused. In the scheme of the Act no Court other than a Special Court constituted Under Section. 12A(1) and no judge other than the Special Judge appointed Under Section. 12A(2) can try an offence under the Act as mandated in Section 12AA(1). By virtue of Section 12AA(2) a Special Judge is competent and has jurisdiction to try an offence other than an offence under the Act. The official Judge being also a Sessions Judge or an Additional Session Judge with at least one (years) experince of having worked as such judge, can try an offence punishable under other law with imprisonment, with or without fine, exceeding a term of two or more years including life or death sentence. If the trial of the offence under the Act and that under the other law, which offence was also committed in the course of same transaction by the same person or persons is not visualised in the language of Sub-section (2) of Section 12AA, it would necessitate two seperate trials of the same person or persons for offences which were committed in the same transaction and which offences & which persons may be jointly tried at one and the same trial by a Court competent to try both the offences. Besides requiring the accused person or persons to face trial before two seperate Courts at the same or different times, such a procedure would necessitate the prosecution also to produce and examine the same evidence and witnesses at two seperate

trials for such offences, which could have, as per provisions of Sub-section 220 & 223, Cr.P.C. been tried at one and the same trial without any prejudice to be caused to either of the parties. That would not only subject the accused to two separate though avoidable trials but would also be consuming the valuable time of two courts, instead of one and public money in incurring avoidable expenditure on summoning or producing the same witnesses before two forums at different times, involving uncalled for and avoidable harassment to the witnesses and, at the same time, running the risk of losing their evidence due to death, non-availability or lapse of memory. Chances of difference in opinions on the worth & value of the testimonies of the same witnesses on the same facts-in-issue leading to contradictory decisions by two separate Courts in the case of some person or persons over the offences, though different but committed in the same transaction, can also be not ruled out. Besides, subjecting the parties concerned in avoidable duality or plurality of criminal proceedings, such a procedure is likely to promote abuse of the process of law rather than to prevent it. Such a procedure may create an unintended and unhappy situation bringing about a confused and faith-shaking system of delivery of criminal justice. Above all, in following such a dual or plural and parallel procedure the services of an experienced Sessions Judge/Additional Sessions Judge having the basic qualification of appointment as a High Court Judge or having the experience of at least one year as a Sessions Judge/Additional Sessions Judge would not be properly utilised. If all offences under the Act and certain minor offences only under other laws were intended to be tried only in a summary way and in no other way by such a qualified and experienced judicial officer the Legislature must have, perhaps, thought twice before setting apart the services of such an officer for a work which could have legally been done by less qualified judicial officer with same efficiency, competence & ability. Therefore, the use of the expression 'as far as may be' in the language of clause (f) in the context of the word 'shall' occurring earlier in that clause and the principle contained in the main Sub-section (2) of Section 12AA shall have to be construed and understood in wider perspective. In the construction of socio-economic legislations, like the present Act, the doctrine of constructive intention of interpreting the provisions of such enactments shall have to be applied in the search for the spirit of the Act in order to curb the mischief

aimed at to be curbed & done away with by such legislations. This takes me to consider the scope, purposes and operational extents of the provisos to clause (f) of Section 12AA(1) and under sub-clause (2) hereof.

26. Provison to clause (f) of Section 12AA (1) says that in the case of any conviction in a summary trial it shall be lawful for the Special Court to pass a sentence of imprisonment for a term not exceeding two years. It may be kept in mind that as per Sub-section (2) of Section 262, Cr.P.C, made applicable to the trial of offences under the Act by the mandate contained in clause (f), a sentence of imprisonment exceeding three months cannot be passed. The proviso removes that restriction and extends the power of the Special Judge to impose a sentence of imprisonment not exceeding two years in a case tried in a summary way. At the same time this proviso brings offences punishable Under Section. 7(1)(a)(ii), 7(2), 7(2A), 8 and 9 of the Act within its net. But the offences under the above-mentioned provisions are punishable with sentence of imprisonment exceeding two years i.e. in excess of the limit prescribed by the proviso. Does it then mean that since a sentence of imprisonment exceeding two years cannot be imposed for such offences even, as attract those provisions and require imposition of sentence of imprisonment exceeding two years, the prescription for punishing the offences under those provisions for a term of imprisonment exceeding two years was meaningless having been un-intentionally made by the Legislature? I am afraid, the Legislature cannot be attributed such an intention. A word, a phrase, a clause or a sentence in a provision in a statute is not used by the Legislature un-intentionally or without any object or purpose.

27. The word 'shall' used in the language of clause (f), though seems to confer mandatory character upon that provision yet, to my mind, it does not, in the situations and eventualities pointed out above, exclude the adoption of a procedure other than the procedure of trying the offences under the Act in a summary way. The reference to Section 262 to 265, Cr.P.C. in clause (7) has simply been made to tell about the procedure of the proceedings required to be adopted. Then the rigours of the procedure prescribed by Section 262, to 265, Cr.P.C. is taken away of the use of the expression 'as far as may be in the main body of the clause and by adding the proviso thereunder.

28. Now coming to the provisos under Sub-section (2) of Section 12AA it may be observed that the First Proviso carves out an exception to the general rule of trying offences under other laws along with the offences under the Act by the Special Court. It says that the offences under the other law and which offences are proposed to be tried by the Special Court along with the trial of offences under the Act, should be triable summarily. In the construction and application of the First Proviso it is required to be kept in mind that in the main Sub-section (2) by the use of the word 'may' the Legislature has given a discretion to the Special Judge whether to try or not to try an offence under other law along with the offence under the Act. In the interpretation of Sub-section (2) it has been pointed out that if in the course of same transaction offences punishable under other law with sentences of imprisonment such exceeding the prescribed limit of, two years' and necessitating imposition of sentence of imprisonment for, say, ten or more years are committed along with the offences under the Act and the accused-may be charged with both kinds of offences at the same trial and such cases of composit offences are intended to be tried by the Special Court then the operational functioning of the Sub-section cannot be restricted to the trial of cases involving offences punishable with two years imprisonment only. Sub-section (2) makes a substantive provision and the First Proviso thereunder excepts the trial of offences under other laws not triable in a summary way.

29. The second proviso to Sub-section (2) of Section 12AA, like the proviso under clause (f) of Section 12AA(1), places an embargo on the power of the Special Court to pass a sentence of imprisonment, in the case of conviction of the accused for an offence under any other law, for a term not exceeding the term provided for conviction in a summary trial under such other law. The distinction between the two provisos, namely, proviso under clause (f) and the second proviso to Section 12AA(2) is that whereas the former is an enabling provision, the later is a disabling one. Further, whereas the proviso under clause (f) relaxes the provisions of Sub-section (2) of Section 262, Cr.P.C. in the matter of award of sentence of imprisonment by the Special Court for an offence under the Act tried summarily, the second proviso to Section 12AA(2) disarms the Special Court to pass a sentence of imprisonment for a term exceeding the term provided for conviction in a summary trial under the other law. Here it may be noted that in the matter of

award of sentence of imprisonment the second proviso to Section 12AA(2) is not in line with the mandate contained in the proviso to Section 12AA(1)(f). Under the second proviso to Section 12AA(2) a Special Court may pass a sentence of imprisonment for a term exceeding two years, if the offence under the other law and which is triable in a summary way under such other law, provides for passing a sentence of imprisonment for a term exceeding two years. It would thus appear that the mandate contained in the First Proviso that such offences under the other law, as are triable summarily in the other law, may be tried jointly with the offences under the Act and the prescription of sentence of imprisonment for a term which may conceivably exceed the limit of two years in exceptional cases in view of the language of the second proviso do not adversely affect the general principle laid down in the main Sub-section (2) of Section 12AA. A proper and effective functioning of Sub-section (2), in the situations visualised and pointed out above and in view of the declaration in the preamble to the Act being in interest of general public and the object of speedy trial of the offences under the Act, with or without the joint trial of offences under other laws in order to avoid duplicity or plurality of proceedings which may conceivably create unintended confusing or even conflicting situations by appreciation of same sets of facts coming into existence in the course of same transaction or same series of transactions by two separate adjudicating forums with different approach and in different manner, require that the provisos should be read down. In order to further and promote the object of the Act and to curb the mischief it intends to redress the reading down of the proviso is, I think, permissible in law and on facts of a given case for effective administration of the Act in the larger interest of the general public. In the interpretation of statutes, where the situation and context so warrant, the word 'shall' used in a section or rule of a statute, may be confined as 'may' in order to achieve the object of the statute.

30. In the case of *Ram Narain Sons Limited v. Asstt. C.S.T.* AIR 1955 SC 765, their Lordships observed that 'it is a cardinal rule of interpretation that a proviso to a particular provision of statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other.' The same principle was reiterated in a subsequent decision in the case of *Abdul Jabbar Butt v. State of Jammu &*

Kashmir AIR 1957 SC 281:(1957 Cri LJ 404), wherein it was held that a proviso must be considered with relation to the principal matter to which it stands as a proviso.

31. In the case of State of Punjab v. Kailash Nath(1989) 1 SCC 321 : (1989 Cri LJ 813), their Lordships of the Apex Court had an occasion to consider the necessity of reading down a provision in the context of Punjab Service Rules vis-a-vis the provisions of the Prevention of Corruption Act 1947. In that case Kailash Nath respondent,' a respondent in one of the appeals before the Apex Court, was working as an Executive Engineer in the Public Works Department in the State of Punjab in the year 1979. A complaint regarding the irregularities committed by Kailash Nath respondent in the purchase of certain numbers of sign boards to be placed on roads to avoid accidents and for traffic safety was filed against the respondent and such complaint resulted in lodging a First Information Report against him Under Section. 5(1)(2) of Prevention of Corruption Act 1947 on August 27,1985. During the meanwhile the respondent Kailash Nath stood retired w.e.f. 31-10-1982. Kailash Nath respondent, relying upon Rule 2-2. of the Punjab Civil Service Rules Vol. II and a decision of the Punjab and Haryana High Court in the case of Des Raj Singhal v. State of Punjab (1986) 89 (1) Punj LR 82, as mentioned in the referred case) challenged the F.I.R. on the ground that the same had been lodged about three years after his retirement and about six years of the commission of the alleged offence. The Punjab and Haryana High Court quashed the F.I.R. and the State of Punjab approached the Apex Court in appeal. The order of the Punjab & Haryana High Court was supported by the respondent relying upon R. 2-2 which read as follows :-

(b) The Govt. further reserves to themselves the right of withholding or withdrawing apensionor any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon or re-employment after retirement.

Provided that:

(1) and (2) xx xx xx xx xx xx

(3) No such judicial proceedings, if not instituted while the officer was in service shall be instituted for a cause of action which arose on event which took place more than four years before such institution :

Explanation - xxx

(a) and (b) xx xx xx xx xx xx

(i) xx xx xx x-x xx xx xx

(Emphasis supplied)

32. Relying upon a decision of the Supreme Court in *Ishver Lal Thakore Lal Almanla v. Motibhar Holibhai Nagjibhai* AIR 1966 SC 459, It was urged on behalf of the respondents that even though a proper function of a proviso is to except or qualify something enacted in the substantive clause which but for the proviso would be within that clause there is no rule that the proviso must always be restricted to the ambit of the main enactment as that may at times amount to a substantive provision. Rejecting such an argument their Lordships observed in para 11 of the report as under :-

This submission too does not advance the case of the respondent in as much as even if in a given case a proviso may amount to a substantive provisions, making of such a substantive provision will have to be within the frame-work of Article 309 of a rule containing an absolute or general embargo on prosecution of Government servant after his retirement for grave misconduct or negligence during the course of the service does not fall within the purview of laying down condition of service under Article 309, such a provision cannot in the purported exercise of power under Article 309 be made either by incorporating it in the substantive clause of a rule or in a proviso thereto. In view of what has been said above and keeping in mind the scope of rule-making power under Article 309 of the Constitution the third proviso to 'Rule 2-2 cannot be interpreted as laying down an

absolute or general embargo on prosecution of a govt. servant if the conditions specified therein are satisfied. Even if on first impression the said rule may appear to be placing such an embargo, it has to be interpreted by taking recourse to the well settled rule of reading down a provision so as to bring it within the frame work of its source of power without, of course, frustrating the purpose for which such provision was made. Clause (b) of Rule 2-2 which can be called the substantive clause reserves to the government the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Govt., if in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement.

Their Lordships further observed in Para 12 that:-

The purpose of the third proviso thereto is, as is the scope of the proviso, to carve out an exception to the right conferred on the Govt. by the substantive clause if the conditions contemplated by the proviso are fulfilled. This purpose can be achieved if the said proviso by adopting the rule of reading down is interpreted to mean that even if a govt. servant is prosecuted and punished in judicial proceeding instituted in respect of cause of action which arose or an event which took place more than four years before such institution the government will not be entitled to exercise the right conferred on it by the substantive provision contained in clause (b) with regard to pension of such a govt. servant. The word 'such' in the beginning of the third proviso also supports this interpretation.

33. It is altogether a different matter that the State appeal against Kailash Chand Resp. only was dismissed by their Lordships on the ground of delayed prosecution. But in so far as the ratio decided of this decision is concerned it remains the same that a proviso to a particular proviso in fact carves out an exception to the general principle contained in the main provision to which it has been a proviso and it must be considered with relation to the principal matter to which it stands as a proviso and when the facts of a case and the situations and the context so warrant the mandate contained in a proviso may be got over by

reading it down for proper, realistic and practical operational function of the main substantive provision. Therefore, further the principle laid down in Sub-section (2) of Section 12AA for joint trial of an accused who had committed offences under the Act and also the offences under other laws in the same transaction is not defeated by the mandates contained in the two provisos thereunder. If the conditions for the applicability of those provisos exist in a given case, then only those provisos would come into play. On principles of interpretation and application of the doctrine of reading down a provision under certain circumstances those provisions shall not control the functioning of the main Sub-section (2) in the field which falls within the area of operation thereof.

34. The discussion made so far may now be summed up by stating that 'for the purposes of speedy trial of offences under the Act' the Special Courts have been constituted Under Section. 12A (1) and 'all offences under the Act are contemplated to be tried by Special Courts only (S. 12AA(1)) in a summary way' as mandated in clause (f). The term 'summary', when used in connection with legal proceedings, means a short, concise and immediate proceeding without observance of the formalities of a full proceeding. Summary trial is one of the well-known and generally adopted procedure to achieve the objective and purpose of 'speedy trial' . The Act, as amended and modified by the Essential Commodities (Special Provisions) Act, 1981, which Amendment Act was further amended by the Essential Commodities (Special Provisions) continuance Act 1987 and also by recent decision of the parliament, lays down no special provisions regulating the procedure of summary trial spoken of in clause (f) of Section 12AA (1) and Sub-section (2) thereof and makes the provisions contained in Sub-section 262 to 265, Cr.P.C. as far as may be applicable thereto Section 262, Cr.P.C. talks of the adoption of the procedure, specified for the trial of summons cases, to the trial of summary cases. Section 259, Cr.P.C. which falls within the procedure so specified for trial of summons cases, empowers a Court to convert a summons case into a warrant case, depending upon the peculiar facts and circumstances of a given case, by following the procedure laid down therein. It is thus clear that embedded in the concept of a summary trial are the procedures for the trial of summons cases (Section 262) and even that of the warrant cases (Section 259, Cr.P.C). It therefore, follows that if the main objective of 'speedy trial' spoken of a Section

12A, is achieved by advertantly or inadvertantly, following a procedure other than the procedure of a summary trial and the adoption of such a procedure has not occasioned in failure of justice and caused no prejudice to the accused, it would be a case of curable irregularity only Under Sections 460, 464 & 465, Cr.P.C. and the trial would not get vitiated, in that sense of the matter. I answer question No. 1 in the affirmative. Apart from the exposition of law on the subject, as made in the cases of Chitranjan Dass (1963 (2) Cri LJ 534), D.D.A. v. Skippers Constructions (AIR 1996 SC 715), Kehar Singh (1989 Cri LJ 1). In Re-Presidential Election 1974 (AIR 1974 SC 1682) Kailash Nath (1989 Cri LJ 813) and Govind Lai Chagan Lal Patel (1975 Cri LJ 1993), discussed above, my approach in the construction of the provisions contained in Sections 12A, 12AA(l)(f) and 12AA(2), gets support, I think, from several other decisions also.

35. In the case of Gopal Dass Sindhi v. State of Assam AIR 1961 SC 986 : (1961 (2) Cri LJ 39) on submission of a charge-sheet for offence Under Section 338, I.P.C. which offence after amendment of the Code of Criminal Procedure 1956 became triable as summons case, the Additional Distt. Magistrate transferred/forwarded the same to a subordinate Magistrate, Sri R. Goswami, for disposal according to law. Sri Goswami, purporting to act Under Section 251, Cr.P.C. framed a charge in that case. One of the contentions raised in the appeal by special leave before their Lordships of the Apex Court was that Mr. Goswami acted illegally in framing a charge Under Section 251, Cr.P.C., which was applicable to the trial of warrant cases, for an offence which was triable as a summons case. Rejecting the contention their Lordships observed in para 8 of the report as under :-

Regarding the second contention it is true that after the amendment of the Criminal Procedure Code an offence Under Section 448, I.P.C. is triable as a summons case and Mr. Goswami adopted the procedure prescribed for a case triable as a warrant case. We are, however, of the opinion, that this irregularity does not vitiate the proceedings and is curable by the provisions of Section 537, as no prejudice has been established in the case.

36. In the case of Prem Sahu v. State of M. P. 1977 Cri LJ (NOC) 129 (MP) C. P. Sen, J. of Madhya Pradesh High Court, dealing with a case under the Act in the context of M. P. Wheat (Registration on Wholesale Trading and Registration of Retailers) Order, 1973 held that where an offence under the Act is to be tried summarily but is tried as a warrant case in a regular manner and no prejudice is caused to the accused, the defect, if any, was curable Under Section. 537, Cr. P. C. The view so expressed by Sen, J. was in conflict with the view expressed by another learned single Judge of that High Court in Sona Lal v. State (1972 MPLJ 763) wherein it was held that trial of offences under the Act in a summary way was mandatory and not directory requirement of law. Thereafter, I. P. Rao, J. and N. P. Singh, J. of that High Court, dealing with separate cases under the Prevention of Food Adulteration Act, 1954, took conflicting views over the consequences ensuing from the trials of offences under that Act according to warrant case procedure and put in a summary way as was required by Section 16A, of that Act I. P. Rao, J. referred the issue to a larger Bench in Jagdish Prasad v. State of M. P. 1997 Cri LJ 27. After having examined several decisions of different High Courts and following the Supreme Courts decisions in Gopal Dass's case (1961 (2) Cri LJ 39) (supra) and Gurmukh Singh's case, AIR 1972 SC 824 : (1972 Cri LJ 654) the learned Chief Justice held that the procedure for summary trial is exactly the same as the procedure for trials of summons cases. Warrant case procedure being more elaborate provides better opportunity to the accused to defend himself. The summons or summary procedure is prescribed only for trial of comparatively minor offences involving comparatively lesser sentences. In serious cases, it is open to the Magistrate to convert summons case into a warrant case, as seen in Section 259 of the Code. The purpose of providing summons or summary procedure is to shorten the record and the work of the Magistrate and save his time...Undoubtedly when the Legislature directed that 'these cases shall be tried in a summary way' by empowering Magistrate the direction is meant to be followed in letter and spirit by the Magistrate. Summary trial did not give better protection to the accused, it is warrant procedure which ensures more elaborate trial. Hence the provision cannot be regarded as mandatory in the sense that any departure from the mandate shall vitiate the trial. Considering the Legislative purpose underlying the provision, it is not possible to hold that where the empowered Magistrate tries

a case Under Section 16A of the Act not in a summary way but by adopting the procedure of a warrant case, the trial is vitiated and the conviction has to be revised without anything more. If as a matter of fact, in any given case, violation of Section 16A of the Act has caused prejudice to the accused, then undoubtedly the Superior Court can step in and quash the conviction and either acquit the accused or in appropriate cases, direct retrial. I respectfully subscribe to the views expressed by the learned Chief Justice.

37. Under almost similar facts and circumstances a similar conflict of opinions was taken note of by this Court in the case of *Shyam Sunder v. State of Rajasthan* 1996 (3) WLC 722 (Raj) and the same issue was referred to a larger Bench for opinion. The larger Bench opined that a trial conducted in violation of Section 16A of the Act cannot be held vitiated without first finding out the prejudice, if any caused to the accused. Such opinion of the larger Bench was followed by this Court in the case of *Harji Nath v. State of Rajasthan* 1997 RCC June-July 330.

38. In the case of *Gurappa Hanamantappa Bijupur v. State* 1992 Cri LJ 1653 a learned single Judge of the Karnataka examined the force of the mandate contained in Section 12AA(l)(f) of the Act at length and following the principles laid down by the Apex Court in the case of *Chitranjan Dass* (1963 (2) Cri LJ 534) (supra) held in para 44 of the report that 'if these principles are applied to the question raised it would be clear that the provisions contained in clause (f) of Sub-section (1) of Section 12AA of Act of 1981 are not mandatory. If they were to be so. the legislature would have indicated its intention in that behalf by clearly saying that the proceedings held in violation of or in disobedience to the provisions of clause (f) of Sub-Section (1) of Section 12AA are intended to be observed. But their breach in my considered view, does not necessarily vitiate the trial.

39. In the case of *Ram Prasad Sharma & Sons v. State of Rajasthan* (1985 Cri LJ 442) (supra) D. L. Mehta J. of this Court undoubtedly held that the provisions of Section 12AA(1) are mandatory in nature and are having overriding effect. I am in respectful agreement with his Lordship over the construction of the provisions contained in clause (e) of Section 12AA(1) vis-a-vis Section 11 of the Act which dealt with the mode, manner competency of a Court to take cognizance of offence

under the Act. In that case his Lordship had no occasion to consider the character of clause (f) of Section 12AA(1) as being mandatory or directory.

40. In *B. C. Jain and Sons v. State of Rajasthan* 1987 Raj LW401, M. B. Sharma J. of this Court held that for offences under the Act committed before commencement of the Special Provisions Act, the provisions of the Act will be applied. That is not the issue before me in these petitions and therefore this case is not helpful to hold that in no circumstance a departure from the principle contained in clause (f) of Section 12AA(1) can be recorded.

41. In (1986 Cri LR (Raj) 734) (supra), Y. S. Dave J. of this Court held that jurisdiction to try offences under the Act vests in Sessions Judge acting as Special Judge, appointed under Section 12A and trial held by an Additional Sessions Judge who had not been appointed as a Special Judge Under Section. 12A, was without jurisdiction. I respectfully agree with his Lordship over the position of law declared in that case, but as is clear, no such question is involved in the present petitions. In the petition's before me it is not disputed that each and every Sessions Judge or Addl. Sessions Judge who happened to try the offence in the cases involved, at one point of time or the other, had duly been appointed as Special Judge or Judges Under Section. 12A(2) and thus had all the jurisdiction to try these cases.

42. No other authority supporting the view that in no circumstances and in no case offences under the Act can be tried otherwise than in a summary way and if at all tried as per procedure for a summons case or even a warrant case the trial held, without proof of prejudice to the accused and failure of justice, would be illegal and invalid in law was brought to my notice. My answer to question No. 1, as formulated above stands duly supported, I think, from the principles of law laid down in *Gopal Dass* (1961 (2) Cri LJ 39) and *Chitranjan Dass* (1963 (2) Cri LJ 534) cases (supra) and also from the latest trend being adopted by the Apex Court with regard to the effect of non-compliance even of mandatory provisions of a statute. See *State of Punjab v. Jasbir Singh* (1996) 1 SCC 288, *State of Punjab v. Balbir Singh* (1994) 3 SCC 299 : (1994 Cri LJ 3702) *State of H. P. v. Prithi Chand* (1996) 2 SCC 37 : (1996 Cri LJ 1354) and *Saiyyed Mohd. Sayyed Umar Sayyed v.*

State of Gujarat (1995) 3 SCC 610: (1995 Cri LJ 2662).

43. Now coming to the second question it may be noted that the term 'evidence' as defined in Section 3 of the Indian Evidence Act 1872 means and includes (i) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry and (ii) all documents produced for the inspection of the Court. The former is called 'oral evidence' and the latter 'documentary evidence'. The essential characteristics of a statement of a person to be considered evidence 'as per the definition of the term is that (i) it must have been permitted or required to be made before it by a Court legally competent to so permit or require it to be made before it and (ii) such statement must have been made in relation to matters of fact under enquiry i.e., in other words, in the course of judicial proceedings. It therefore, necessarily follows that once the statement of a witness has been permitted or required to be made before it by a Court having jurisdiction to so permit or require the statement to be made in the course of a judicial proceeding pending before it, the statement made shall not lose its character of being 'evidence' in such judicial proceedings and may be used for the adjudication of the rights and liabilities of the parties to and determination of the dispute in such judicial proceedings, unless mandated otherwise by the order of the Court or by the words of the statute. That being the intrinsic value of the evidence recorded by a Court of competent jurisdiction in the course of judicial proceedings and in any criminal case the trial being continuation of the earlier trial there should arise no question of a fresh or *denovo* trial. The Judge or the Magistrate may legally proceed in the case from the stage where it was left off by his predecessor in office, though he may always resubmit such witnesses as he thinks necessary, but no party has any right to claim resubmitting of a witness already examined and which party has had an opportunity to cross-examine such witness. The succeeding Judge or Magistrate is simply to decide whether he will act on the evidence already recorded as supplemented by further evidence if any, whether for a proper decision it is necessary to resubmit a witness already examined. The discretion to so decide in a given case is a judicial discretion and has to be exercised in a judicial manner and not in an arbitrary manner. This general principle governing the trial of criminal cases by the Magistrates was embodied in Section 350 of the Old Code of Criminal Procedure dealing with 'part

heard cases.' This was a principle of procedural convenience without affecting either the worth and value and admissibility of the evidence or the rights of the parties concerned. There was, however, another principle of criminal law that the person who hears the entire evidence must give judgment. Departure from this principle was not permitted in the trials of cases by the Sessions Judges who usually try more serious offences. Though in its 41st report the Law Commission recommended that 'some times Sessions Judges are transferred leaving behind part-heard cases which have to be heard all over again. It would be an ideal position if such transfers did not take place, as Sessions cases are to be heard from day to day and to be decided within a few days. It is obviously desirable that in serious cases the whole evidence should be heard by the Judge who finally decides the case. However, having regard to the realities of the situation, it is necessary to make some provision for cases where such transfers do take place, because a mandatory provision for a de-novo trial may often cause considerable inconvenience and hardship. We, therefore, propose to extend the section to Judges of Sessions Courts by referring to 'Judges or Magistrate' instead of 'Magistrate' only. The Judicial Committee, however, did not approve of the above recommendation of the Law Commission to be incorporated in the originally drafted Section 326 of the New Code of 1976. But by Section 3 of the Rajasthan Act No. 10 of 1977, effective from 3-3-1977, Section 326 was suitably amended and in Sub-Section (1) for the words 'Magistrate', wherever occurring, the words 'Judge or Magistrate' and in Sub-Section (2) before the words 'from one Magistrate to another Magistrate' the words 'from one Judge or another Judge' were substituted and or inserted. The same amendment was later on made w.e.f. 18-12-78 in the main provisions of Section 326 by Act 45 of 1978 passed by the Parliament. By virtue of Section 3A of the Criminal Law Amendment Act 1952 Section 350 of the Old Code (Section 326 of the New Code) applies to Special Judges. But despite such amendment made in Section 326 in the year 1978 an exception, as already stood carved out, continued to have force in respect to summary trials. Question arises as up to what extent and under what circumstance the exception so carried out in Section 326, Cr. P. C. in favour of summary trials applies and works, without affecting the cardinal principle of the criminal law being 'speedy trial', which principle makes the very back-bone of any effective system of delivery of criminal

justice in any civilised society and which principle, fortunately, runs through the entire web of our criminal jurisprudence.

Section 326, Cr. P. C. reads as under :-

Section 326 : Conviction or commitment on evidence partly recorded by one Magistrate and partly by another -- (1) Whenever any Judge or Magistrate, after having heard and recorded whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself:

Provided that if the succeeding Judge or Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged. (2) When a case is transferred under the provisions of this Code from one Judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein and to be succeeded by the later, within the meaning of Sub-section (1).

(3) Nothing in this section applies to summary trials or to cases in which proceedings have been stayed under Section 322 or in which proceedings have been submitted to a superior Magistrate under Section 325.

44. Section 326, it may be noted, is an enabling and not disabling provision. It enables a succeeding Judge or Magistrate to read in evidence the evidence recorded in an inquiry or trial of a case by his predecessor-in-office in that case. This principle, embodies in Sub-Section (1) of Section 326, Cr. P. C, is in tune with the very spirit of a speedy trial of criminal cases. The proviso under Sub-Section (1) further enables a Judge or Magistrate to resummon and re-examine a witness, already examined by his predecessor-in-office, if he considers it necessary so to do in the interest of justice. The proviso thus does not carve out an exception to

the general principle contained in Sub-Section (1), instead it enables the Judge or Magistrate to resummon and re-examine an already examined witness with a view to decide the case justly. Sub-Section (2) speaks of cessation of the jurisdiction of the out going Judge or Magistrate and conferment of jurisdiction upon the incumbent of the office over a transferred case.

45. Sub-Section (3) of Section 326, Cr. P. C. starts with a non-obstante clause and excepts summary trials and cases falling within the purview of Sub-section 322 and 325, Cr. P. C. from the field of operation of the general principle laid down in Sub-Section (1)., The principle applied to the construction of a non-obstante clause is that the enacting part of the statute, where it is clear, must be considered as controlling the non-obstante clause, in case both cannot be read harmoniously. I find no occasion to apply this principle of construction of the non-obstante clause contained in Sub-Section (3) as in my opinion there is no disharmony between the enacting provision of Sub-Section (1) and the non-obstante clause in Sub-Section (3). In so far as non-application of the principle contained in Sub-Section (1) to summary trials is concerned and which is the question we are concerned with for disposal of these petitions, it needs to be appreciated that under the scheme of the Code in general and that underlying Chapter XXI of the Code in particular, trial of petty offences, as defined in Section 206(2), Cr. P. C, in a summary way was intended. It may be recalled with reference to objects and reasons behind Sub-section 260 to 265 of the New Code that in a summary trial under the provisions of the Old Code, the summons procedure used to be followed in summons cases and the warrant procedure in warrant cases as the list of offences given in Section 260 included both types of offences. That distinction, practically, used to serve no useful purpose. In the New Code the procedure for trial of both kinds of offences was simplified by providing in Section 262(1) that in summary trials all cases, whether triable as a summons case or as a warrant case, shall be tried by summary procedure. Summary trial, being essentially a speedy trial dispensing with unnecessary formalities or delays and giving discretion to the Magistrate to try or not to try an offence, triable summarily in a summary manner, increased his responsibility in that he was required to take care and see that the procedure is not made more summary than is laid down in the statute. Since in the trials of offences, triable as warrant case even, in a summary way, the trial is to be

shortened or simplified by having recourse to Sees. 263 to 265, there arises every necessity of maintaining the required record. For, it is to be appreciated, that so little is recorded in summary trials and so little is the protection against the risk, error or haste that it becomes necessary in such trials that the scanty provisions of Section 263 are fully and strictly complied with. This essential requirement gets increased when it is kept in mind that provisions like Section 281 regarding examination of accused, Section 274 regarding making memorandum of the substance of the evidence only and Section 353 or Section 264 regarding writing judgments curtail the procedure of a regular trial to a considerable length. Therefore, the maintenance of record Under Sections 263, 264, Cr. P. C. can give an indication whether a case has been tried summarily in strict sense of the term. If the proceedings taken in the trial of an offence, which is triable summarily, indicate that it was not tried in a summary way though it was titled as a summary case and was in fact tried as a regular summons case it would not fall within the exclusion clause of Sub-Section (3) of Section 326, Cr. P. C. Therefore, in applying the excepting clause in Sub-Section (3) with regard to summary trials to the general principle embodied in Section 326(1) it shall have to be ascertained from the proceeding taken in the trial of a given case and the record maintained therein and thereof as to whether the procedure actually adopted is summary or ordinary. If it is seen that the evidence of the witnesses has been recorded in full together with their cross-examinations and for the formalities which are generally attributes of an ordinary trial have to been observed, technical objections were raised and decided before or during the course of preparation of the requisite record, the procedure adopted cannot be said to be that of a summary trial to which expression the notwithstanding clause in Sub-Section (3) of Section 326, Cr. P. C. were intended to be applied. It now takes me to consider the ratio decidendi in the two decisions of this Court wherein a conflicting opinion is alleged to have been expressed.

46. In the case of Ramesh Chand (1986 Cri LR (Raj) 734) (supra), as pointed out above, the offence under the Act was being tried by an Additional Sessions Judge at Dholpur and the powers of Additional Judge Dholpur had come to an end w.e.f. 7-4-1983 vide notification published in Raj. Gazette Part IV (Ga) I dated 1-6-84 on appointment of a Special Judge Under Section. 12A for that area and the case was transferred to the Special Judge/Sessions Judge having jurisdiction to try

offences under the Act. It was on such facts that Dave J. of this Court held that:-

It may be made clear (that) when the matter of jurisdiction arises the entire proceedings before the Court having no jurisdiction have to be quashed for want of jurisdiction and when the case goes to the competent Court denovo proceedings have to be taken. As such the order of the Additional Sessions Judge dated 22-5-1986 and the consequent record of plea has to be quashed.

47. With all respects to his Lordship I fully agree with the principle of law laid down by him. It is the conferment of jurisdiction upon an authority to do a particular act or pass a legal order enforceable at law which empowers such authority to do that particular act or to pass a legal order. An act done or order passed in absence of the jurisdiction to do that act or to pass that order would be a nullity having no existence in law. But this principle does not apply to the facts in the present case. Herein the Special Judges who heard the cases under consideration from time to time and passed appropriate orders in the course of preparing the record of the proceedings including the evidence recorded or taken by them were having jurisdiction to do all such acts by virtue of their appointments as Special Judges Under Section 12A. The ratio decidendi of this case, therefore, does not support the view that whenever there was change in the Special Judge, manning the Special Court (E.C. Act) cases, Jaipur due to transfer, removal, retirement, death etc. the evidence recorded by him in the cases got suffered from the vire of lack of jurisdiction necessitating denovo trials by the succeeding Special Judge of that Special Court.

48. In the case of Prakash Chand (1991 Cri LR (Raj) 446) (supra) the accused were being tried in a summary manner for contravening the terms and conditions of the license issued to them under the provisions of the Raj. Sugar Control Order. During the course of the trial of the case three Presiding Officers were changed. When the fourth Presiding Officer took cognizance of the case he noticed that only three witnesses namely, Bihari Lal, Om Prakash and Revindra Kumar, had been examined by then. He was of the opinion that the trial of the case in a summary manner was not appropriate. He, therefore, ordered that the evidence of the already examined three witnesses be treated as having been recorded at pre-

charge stage and the case be proceeded further. The order so passed by the learned Chief Judicial Magistrate, Sri Ganganagar in that case on 7-12-1990 was challenged before this Court Under Section 482, Cr. P. C. Setting aside the order of the learned Magistrate Arora, J. held as under :-

The offence, as per the provisions of Section 12-AA(1)(f) of the Act is to be tried in a summary way. As the trial of cases under the Act has to be made in a summary manner, therefore, the statement of the witnesses recorded earlier by a Presiding Judge cannot be read into evidence. The general principle of law is that a Judge or Magistrate can decide a case only on the evidence taken by him, but Section 326, Cr. P. C. is a statutory departure from this principle. If the provisions of Section 326, Cr. P. C. are available to the petitioners, then the trial can proceed onwards by the Successor Judge from the stage left by his predecessor. The successor Judge has no authority under the law to proceed with trial of the case from the stage at which its Predecessor left it, unless the provisions of Section 326, Cr. P. C. are applicable to the case which carves-out an exception to the general rule. Apart from Section 326, Cr. P. C, which is not applicable to the present case, the Code of Criminal Procedure does not conceive of such a trial. It is only those cases which fall within the ambit of Section 326, Cr. P. C. that a Succeeding Judge can proceed with the trial, placing reliance on the evidence recorded by his Predecessor, but if the case does not fall within the ambit of Section 326, Cr. P. C, then the learned Magistrate has to try the case de-novo. Section 326(3), Cr. P. C. specifically provides that nothing in Section 326, Cr. P. C. will apply to a summary trial or the cases in which proceedings have been stayed under Section 322, Cr. P. C, or in which the proceedings have been submitted to its previous Magistrate under Section 326, Cr. P. C. As the trial of the offences under' the Essential Commodities Act is to be made in a summary way, therefore, the provisions of Section 326, Cr. P. C. are not applicable to the present case and the learned Chief Judicial Magistrate, Sri Ganganagar, has to try the case de-novo.

Since after the above pronouncement regarding trials of cases under the Act under other laws relating to socio-economic offences, hardly any case under such Act or laws has been/is being decided by any Special Court throughout the state

due to frequent changes of the Presiding Officers of such Courts.

49. In view of the detailed discussion the the construction of various provisions in the Act and relevant provisions in the Code of Criminal Procedure, Old and New, as made by me so far, it seems to me that the ratio decidendi of the decision of this Court in the case of Prakash Chand (1991 Cri LR (Raj) 446) (supra) has been misunderstood by the Presiding Officers of the Special Courts and the litigants and their lawyers. It is therefore, necessary to explain the purport and field of operation of that decision for proper and speedy trials of the offences under the Act as also under other similar laws dealing with and regulating the trials of socio-economic offences.

50. With utmost respect to Arora J., I fully subscribe to the view expressed by him in Prakash Chand's case (1991 Cri LR (Raj) 446) with regard to the general principle governing the trials of criminal cases and the applicability of the enabling provisions of Section 326, Cr. P. C. to such trials. I also agree that but for the applicability of the provisions contained in Section 326(1) and (2) it was not possible for a succeeding presiding officer to read in evidence the statements of the witnesses recorded by his predecessor in office in the trial of a criminal case. There can also be no dispute that Sub-Section (3) of Section 326, Cr. P. C. carves out an exception to the general principles contained in Sub-Section (1) and, therefore, if a claim is triable summarily or falls within the purview of Section 322 or 325, Cr. P. C. a de-novo trial shall have to be commenced. While making the observation to the effect that 'as the trial of the offences under the Essential Commodities Act is to be made in a summary way, therefore, the provisions of Section 326, Cr. P. C. are not applicable to the present case and the learned Chief Judicial Magistrate, Sri Ganganagar, has to try the case de-novo 'Justice Arora, to my mind, never intended to throw a proposition that whether or not record in a summary trial has been maintained as per provisions in Section 263 and howsoever, lengthy, protracted and avoidingly repetitive a procedure, pitted against reasonably quick and speedy trial, has been adopted in a case, which is to be called a summarily triable case, the trial shall have to be continued for indefinite length of period. While making the above observations this Court must be presumed to be aware of the law of the land, as declared by the Apex Court in

Hussainara Khatoon's case, AIR 11979 SC 1360 (1979 Cri LJ 1036) and which is to the effect that no procedure which did not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21' Nor should this Court be deemed to have ignored the legal position that in all summary trials, be it for the offence triable as a summons case or a warrant case, the procedure of a summons case is required to be adopted as mandated in Section 262 itself and even then the trial of a summons-case-offence or a warrant-case-offence shall be called by the technical name of 'summary trial' for the purposes of Section 12AA of the Act. Therefore, what this Court intended to convey the message by making the above observations was that if a trial has been or is being held as per procedure laid down in Secs. 262 to 265 and the record of such trial has been or is being prepared and maintained as per requirement of Secs. 262 and 264, Cr. F. C. the excepting expression of 'summary trial' used in the language of Sub-Section (3) of Section 326, Cr. P. C. would stand attracted. This Court, by making the above observations, never intended to propound and lay down such an unending procedure for the trial of offences under the Act as did not ensure a reasonably quick and speedy trial and as is being generally adopted by the Special Judge/Special Magistrates in the trials of offences under the Act and/or under the provisions of other enactments in a summary way. The ratio decidendi in the decision of Prakash Chand's case (1991 Cri LR (Raj) 446) (supra) or similar other case expressing the same or similar view should be considered and shall be considered to apply to such cases only as are tried or being tried in a summary way and in which the record of such trials has been and/or is being maintained as per provisions of Section 263 or to which provisions of Section 206, Cr. P. C. apply. This procedure of the trial of offences in a summary way by maintaining the record prescribed Under Section. 263 would itself be so quick, speedy and shortened that hardly there would arise the necessity of commencing the trial by one Special Judge or Special Magistrate and completing the same by the other. If, however, in a given case the trial is not completed by a Special Judge or Special Magistrate then of course it shall have to be redone by the successor Judge or Magistrate *denovo*. It was for such cases only that in Prakash Chand's case (supra) this Court had laid down the above proposition. As stated above, this Court never intended to bring the trial of offences under the Act or under other sister

legislations, triable summarily, to such a situation that not only the very functioning of the socio-welfare legislations of a democratic policy be jeopardised but also make the parties to the trials under such enactments the prey and victim of an unending circles of trials and trials. Such an interpretation of the decision of this Court in Prakash Chand's case would not only run counter to the decision of the Apex Court in Hussainara Khatoon's case (supra) and would be violative of Articles 14 and 21 of the Constitution but would also make mockery of the very system of administration of criminal justice which we profess to govern ourselves by.

51. In so far as the question of adoption of the transfer policy bringing in frequent changes in the Presiding Officers manning the Special Courts constituted for trying, particularly, offences under the Act or for that matter any other socio-economic legislation is concerned, there is no date before me to hold that the High Court ever adopted such a transfer policy with regard to the Presiding Officers of the Special Courts in the State as brought about frequent changes in the Presiding Officers of such Courts. Even if it be assumed, though there is no valid basis for such assumption, that transfers made by the high Court brought in frequent changes in the Presiding Officers of such Courts, such changes could have hardly had any material impact on the disposal of the cases under the Act in a summary way, as explained above. By its very nature the procedure, contemplated in Sub-section 262 to 265 of the Cr. P.C. and required to be adopted in the trial of offences under the Act, would not leave the trials in majority of the cases incomplete or the cases undecided unless some extraordinary and exceptional happening brings in an abrupt or sudden change in the Presiding Officer of a Special Court. The existence of certain foundational facts, consisting mostly of documentary evidence, prepared mainly by an accused, his agent, employees or men or at his instance or under his instruction and regularly maintained in due course of his business coupled with certain public documents or certified copies thereof, is to decide the guilt or innocence of the accused under the Act. If the provisions relating to presumptions, mens rea etc. contained in the relevant Special Acts, read with the provisions relating to the mode and manner of proof of such foundational facts, in other related laws, applicable to the trial of offences under the Special law, are applied in letter & spirit to the trial of offences under the

Act and under other similar laws, trial of a case in a summary way, in the sense indicated above, would hardly necessitate the adjournment of the hearing of such cases by the Presiding Officer for not more than two or three occasions. In the trial of offences under the Act it shall always have to be remembered by the Presiding Officer that it is a social welfare legislation made in the interest of the general public, to control and regulate the production, manufacture and distribution of the essential commodities & prices & availability thereof, for the benefit of the consumer public in general and of the poor, weaker & deprived section of the society in particular. Once the High Court has reposed its trust and confidence in a Magistrate or a Judge by appointing him the Presiding Officer of a Special Court constituted to try socio-economic offences, such Presiding Officer is duty bound to see that the relevant social-welfare legislation is administered in such effective & expeditious manner as responds, to the society's cry for justice against the guilty and relieves the innocent of the ordeal of a delayed and harassing trial. The Presiding Officer cannot afford to see the trials of such offences in a summary way being delayed by adoption of delaying tactics either by the accused or by the prosecutor. He is the protector of the procedure established by law. He is not to play to the tune of the prosecutor or the accused. He is not a mute spectator to the proceedings of the case. He has to play his role as an arbiter. He has to discharge the trust reposed in him by the people in general and by the High Court in particular. The Presiding Officers of all Courts in general and of the Special Courts in particular would do well to remember the presidential words spoken by Dr. Justice A.S. Anand of the Supreme Court in his address on Human Rights Day on 10-12-1996 that 'the Courts have to respond to the challenges to maintain the abiding faith of the society which it has reposed in them as the Courts, essentially, exist for the society.' They may recall to themselves the famous words with modification of the great American President, Abraham Lincoln, that 'if we once forfeit the confidence of our fellow citizens, we can never regain their respect and esteem. It is true that we can fool all the people some of the time and some of the people all the time, but we cannot fool all the people all the time'. Therefore, there is no occasion and no merit in arguing that the transfer policy adopted by the High Court in the matter of manning the Special Courts from time to time did adversely affect the disposal of the cases under the Act. Instead, the Presiding Officers of

such Courts appear to be honestly labouring under the bonafide mistaken belief that in view of the decisions of this Court in Prakash Chand's and other like cases they were required to commence denovo trial, whenever there was a change in the Presiding Officers of the Special Courts. That is why hardly any case under the Act appears to have been decided by such Courts, save a few cases decided by the Special Court at Jaipur as have come to the notice of this Court. Looking to the state of the trials of cases under the Act and also under similar legislations, in a summary way and with a view to remove the stalemate created by the wrong interpretation of the decision of this Court in the case of Prakash Chand I had to make the detailed and critical exercise to stress upon the true purport of that decision in the context of the object and purpose of the Act and the necessity and requirement for delivery of speedy and quick justice in such cases. These considerations prompt me to lay down a scheme for expeditious disposal of the cases under the Act and under other like legislations in a 'summary way' by the Presiding Officers of the Special Courts constituted under the relevant Special Acts including the Act under consideration, trying socio-economic offences. However, before I do that I would like to make some comments on the merits of the impugned orders made in these two petitions.

52. In Mukesh's case (S. B. Cri. Misc. Petn. No. 215 of 1997) the First Presiding Officer recorded the statement of one witness, the second of seven witnesses in the denovo trial and the third succeeding Presiding Officer had completed the denovo trial for the second time. The accused was also examined Under Section. 313 and the statement of his defence witness Nasiruddin was also recorded and the case was finally heard. However, after going through the record of the proceedings of the case with a view to enable himself to write down the judgment the learned special Judge formed the opinion that in reading over and explaining the substance of accusation to the petitioner certain essential ingredients of the offence, with which the petitioner was charged, were required to be read over and explained to him. Therefore, by his order dated 11-2-97, the learned Judge directed that amended substance of accusation be read over and explained to the petitioner. Though in his order dated 13-2-1997 the learned Judge mentioned all the details of particulars of the offence, alleged to have been committed by the petitioner and read over such particulars and substance of accusation to him

obviously in sincere & bona fide effort that the petitioner be not, in any manner whatsoever, put to any prejudice in his trial and from that angle the pains taken by the learned Judge may be appreciated yet the orders made by him on 11-2-1997 & 13-2-97 happen to give 'u' turn to a case instituted in 1993 for offence committed in the year 1989. Such consequences flowing from his orders appear to have not been visualised by the learned Judge. The narration of the facts of the case, as made above in the very beginning of this order, the reading over and explaining of the substance of accusation to the petitioner for three times earlier and the recording of the statements of the prosecution witnesses at least twice in full sufficiently show that the petitioner had been made fully aware of what the position of facts constituting the offence and the substance of accusation against him was. The history of the trial, repeated thrice and the record of the proceedings prepared and maintained by the learned Special Judges in this case clearly indicate & loudly speak that the case was not being tried as a 'summary case' as per provisions contained in Section 263, Cr. P.C. so as to attract the provisions of Section 326(3) but as a 'summons case' as per provisions contained in Section 262(1) r.w. the provisions contained in Chapter XX of the Cr. P.C. which would as per provisions of clause (f) of OS. 12AA(1) of the Act is still to be considered as a 'summary trial.' Framing of formal charge against the petitioner was not necessary in view of the procedure adopted by the learned Judge for the trial and the particulars of the offences and substance of accusation had already been sufficiently & elaborately read over and explained to the petitioner. He does not appear to have ever complained of any misunderstanding of the substance of accusation to him. Even after the order dated 13-2-1997, having been read over & explained to him, he did not desire to recall, re-summon and re-examine any witness already examined. Under all such facts and circumstances it is held that the order dated 11-2-97 and the proceedings taken subsequently on the basis of that order including order dt. 13-2-97 amount to abuse of the process of the Court and accordingly be set aside and quashed. The learned Judge is directed to pronounce his judgment in the case without further delay, provided he does not feel the necessity of hearing the arguments afresh or either of the parties requests him to hear it again in which case the learned Judge may hear them and for that purpose fix the date of hearing on one or, at the most, two consecutive occasions. This petition shall accordingly

stand allowed.

53. In the case of Anil Kumar and another (S.B. Cri. Misc. No. 422 of 1997) the first Presiding Officer was transferred when the trial had been completed and the case was fixed for final arguments. The succeeding Presiding Officer, who is the present incumbent of the office, tried the case denovo and after recording the evidence of the parties heard them finally. But in the course of hearing the final arguments he was of the view that the charges framed against the petitioners were required to be suitably amended and modified. He ordered accordingly on 8-11-96. For reasons recorded above in connection with Mukesh's case the impugned order dated 8-11-1996 amounts to abuse of the process of the Court and is consequently set aside and the learned Special Judge is directed to complete the final arguments & dispose of case in accordance with the directions given in the preceding paragraph. This petition too is allowed.

54. In the final analysis the discussion made above leads me to hold as under :-

(1) All offences under the Act are triable only by a Special Judge appointed Under Section. 12A,

(2) All offences under the Act, whether punishable Under Section 7(l)(a)(i) or (ii), or Under Sections 8 and 9 are triable in a summary way and the provisions of Sub-section 262 to 265 of the Code of Criminal Procedure 1973, as far as may be are applicable to such trial,

(3) When trying an offence under the Act the Special Judge may try such offence under other laws as may be tried jointly with the offence under the Act as per provisions of Sub-section 219 to 223 of the Code of Criminal Procedure 1973.

(4) Trial of the offences under the Act in a summary way is the general rule not to be ordinarily departed from but the use of the expression 'as far as may be' in the language of clause (f) of Section 12AA (1) and the enlargement of the powers of the Special Judge to award sentence in excess of the sentence imposable in a summary trial as per provision of Sub-section 262(2) make it possible for the Special Judge to adopt the procedure of a Summons case (S. 262(2)) and even of

a warrant case (S. 259 Cr. P.C.) if the nature of the offences, including their gravity and effect against the interest of general public, so demand. Therefore, if in a particular case a Special Judge, in the trial of case, as per clause (f) of Section 12AA(1) or Section 12AA(2) adopts the procedure of a summons case or that of a warrant case and no injustice has, in fact, been occasioned thereby the trial would not be vitiated and the irregularity would be curable Under Section. 465, Cr. P.C.

(5) The indicator to tell as to whether a case under the Act has been or is being tried summarily so as to attract the non-obstante clause is Sub-Section (3) of Section 326, Cr. P.C. is the compliance of Sub-section 263 & 264 Cr. P.C. A case in which the record of proceedings has been prepared in accordance with the provisions of Section 263 & 264, Cr. P.C. would be a case of summary trial for the purposes of Section 326(3) and the evidence recorded by one special Judge cannot be read in evidence by the succeeding Judge who would be required to hold the trial denovo. However, if no record as per Sub-section 263 & 264 has been or is being maintained by the Special Judge and the case has been/is being tried as a regular summons case or a warrant case, such a case would though shall be considered as tried 'in a summary way' for the purposes of clause (f) of Section 12AA(1) of the Act but would not be a 'summary trial' so as to attract the provisions of Section 326(3) Cr. P.C. and the evidence recorded by one Special Judge may be legally read in evidence by his successor-in-office and no denovo trial would be necessitated in such a case.

(6) The provisions contained in Section 326(1) Cr. P.C. are enabling provisions and therefore, the disabling provisions contained in Sub-Section (3) thereof are required to be strictly interpreted so as to promote and advance the purpose of Section 326(1) Cr. P.C. & to curb the mischief if seeks to redre Sub-Section

(7) The decision of this Court in the case of Prakash Chand v. State of Rajasthan (1991 Cri LR (Raj) 446) (supra) and any other citing decision wherein it was held that the provisions of Section 326(1) Cr. P.C. do not apply to the case under the Act, tried in a summary way, are applicable to. such cases only in which the record of proceedings of the summary trial has been/is being prepared as per provisions of Sub-section 263 & 264, Cr. P.C. The ratio decidendi of that or other similar

decision was not intended to be made applicable to those cases under the Act which have been or are being tried as per procedure Of summons case or a Warrant case.

55. In view of the above conclusions and also taking note of the pendency of and the procedure being adopted in the un-ending trials, claimed 'summary trials', of the cases under the Act and, possibly, in the trials held under other similar socio-economic enactments by the Special Courts of Magistrates or Judges, if is considered necessary & expedient in the interest of speedy trials of such offences to issue the following guidelines/instructions/requirements for observance by the Special Courts, viz. :-

(1) Offences under the Act being non-bailable, complaints by the Public Servants, competent to file such complaints, shall invariably, be received and registered by the Special Courts on the day the accused appears or is brought before them or is/has been fixed for his appearance. For convenience of the parties and or their counsel the Special Courts may specify one or two particular days in a week for receipts of the complaints from the public servants. Such days may also be fixed for appearance of the accused, when they appear or are brought before it but no complaint is filed on that day. This direction shall, as far as possible, be followed in the matter of receipt of police reports, if, under the provisions of the relevant enactment, cognizance may be taken on a police report.

(2) All complaints shall be filed by the public person concerned in person and no exemption from personal attendance shall ordinarily be granted to him until & unless he has been examined in the case and discharged by the Court.

(3) All complaints and police reports Under Section 11 of the Act shall invariably be accompanied with (i) a copy of the order issued Under Section 3 of the Act or the relevant extract therefrom (ii) order, if any, issued by the Gov't. in the Ministry of Food and Supplies/Collector/Distt. Supply Officer/ Tehsildar etc. regulating the mode or manner of the supply and distribution of the Essential Commodity and/or controlling the price thereof having relevancy to any issue in the case and (iii) copy of the license, permission or authorisation etc. the contravention of which has been complained of in the complaint or police report. The Special Court may

decline to receive and entertain incomplete or defective complaint or police report, as the case may be.

(4) Offences under the Act being summarily triable, the Special Court shall personally examine the complaint or the police report and the documents accompanying it on the day such complaint or police report is received or on the following working day at the latest and on being satisfied with the disclosure of the commission of an offence triable under the relevant Act shall take cognizance of such offence and shall proceed to try the alleged offender thereof in accordance with the procedure required by the relevant Act to be adopted in the trial of such offence.

(5) However, before proceeding to try the accused the Presiding Officer shall comply with the requirement of Sub-section 207 & 208, Cr. P.C. The copies of the documents as mentioned in those provisions and copies of such documents, as described in instruction No. 3 above, in as many sets as is the number of the accused in the case, shall accompany the complaints or police reports to be filed in the Special Courts.

(6) Framing of charge not being essential requirement of the procedure for trial of the offences under the Act in a summary way, the particulars of the offence(s) and substance of the accusation shall be, as far as possible, explained and read over to the accused on the day the Presiding Officer of the Special Courts takes cognizance of the offence(s) against the offender. The complainant and his witnesses in attendance, if any, shall be examined on that very day unless the Presiding Officer for reasons recorded by him in writing, considers the adjournment of the trial necessary in which case the complainant and his witnesses in attendance, if any, shall be bound down for the next working day or some other day, but not later than 15 days, to which the hearing is adjourned.

(7) As soon as the Presiding Officer of a Special Court has taken cognizance of an offence under the Act, he shall maintain the record of proceedings in the case as per provisions contained in Section 263, Cr. P.C, whether or not any pro forma has or has not been prescribed by the State Govt. or the High Court and shall pass his judgment in accordance with the provisions contained in Section 264, Cr. P.C.

Once he has proceeded to try the accused in accordance with the procedure laid down in Sub-section 262 to 265, Cr. P.C. it shall be obligatory on his part to maintain such record of the proceedings. Keeping in view such procedure to be adopted in the trial of the offences under the Act, the Special Judge is required to record substance of the material evidence in the case and formal witness like those witnesses to the preparation of site-maps or seizure of such articles as do not stand connected with the offence either by evidence of identification, or evidence of an expert etc. shall either be dropped at the very commencement of the trial or the complainant prosecutor may be asked to produce affidavits of such formal witnesses for which purpose, not more than two opportunities shall be given to the prosecution. In any view of the matter, it would be the responsibility of the Special Judge to complete the trial in a summary way, as per procedure of Sub-section 263 & 264, Cr. P.C. in two or, at the most, three working days and pronounce his judgment Under Section. 364, Cr. P.C. preferably on the day the final arguments are heard or at the most within three days thereafter. In any case, a case tried summarily as per procedure of Sub-section 263 & 264, Cr. P.C. is required to be disposed of by the Special Judge within three months of the submission of the complaint or police report before him.

(8) Where a Special Judge tries a case as per procedure other than a procedure laid down in Sub-section 263 & 264, Cr. P.C. or, in other words, he adopts somewhat a lengthy procedure prescribed for the trial of summons case or warrant case, he shall hear the case on day-to-day basis as per provisions of Section 309, Cr. P.C. and shall dispose of the case within six months of the receipt of the complaint or the police report by him.

(9) All the Special Judges shall submit the complete lists of the cases under the Act pending as on 1-9-97 and being tried by them as per procedure of Sub-section 263 & 264, Cr. P.C. or otherwise, to the Registrar latest by 31 -10-97 & shall report disposal of all cases, being tried as per procedure of Sub-section 263 & 264, Cr. P.C. by 31 -12-1997 & other cases by 31 -3-1998 failing which apart from the disciplinary action which may be taken against them, they may make themselves liable for disobedience of this Order.

(10) The Registrar shall request the Secy: to Govt. of Rajasthan in the Food & Supply Ministry to depute an officer of the Deptt, not below the rank of an Inspector in each of the Court of a Special Judge for a period of at least six months to assist the Special Court in Speedy trial of the offences under the Act. An officer of the Deptt. so deputed in the Special Court shall be responsible to produce the witnesses and the relevant original records of the Deptt, if requisitioned by the Court, before the Special Court and for that purpose he may obtain necessary process, like summons, warrants, letter of request for production of document etc. from the Special Court. Non-production or non-availability of witness shall ordinarily be no good ground to postpone the hearing of a case in which trial has once begun. In case a trial fails and (he case is dismissed for want of evidence or non-production of witnesses the Special Judge shall fix the responsibility of such failure on the officer responsible for such failure and convey that fact to his Deptt. with direction to place such observation of the Court on the service record of the officer concerned.

(11) Looking to the treatment being given to the trials of socio-economic offences by the Special Courts in general and Special Courts constituted Under Section. 12A of the Act in particular and being conscious of the constitutional obligation under Article 227 of the Constitutional obligation duty Under Section 483, Cr. P.C. I sincerely feel that before it is too late and we see the ship carrying the socio-economic and peoples welfare legislations' luggage sinking in the deep waters under the load of un-ending de-novo trials of offences under. such enactments we should listen to the cries of our people in general and the litigating public in particular for 'speedy trials' of and 'speedy justice'. In such cases and try to save the fast collapsing criminal justice delivery system in the interest of our democratic policy. I, therefore, propose to the Hon'ble Chief Justice that the Presiding Officers of the Special Courts 'trying the offences under the Act and/or under similar socio-economic legislations in a summary way, be given an opportunity to evolve a procedure in the light of the instructions, directions, guidelines and requirements given hereby for speedy trials of such offences and to enable them to comply with such instructions, directions etc. and to show their worth as conscious judicial officers, they be not transferred from their present positions as Presiding Officers of the Special Courts for a period of at least six months unless administrative

exigencies compellingly demand in which case they should be asked in advance not to open the trials of new cases in a summary way & complete the trials of pending cases with intimation to this Court before they leave their present positions. This proposal shall be placed before Hon'ble the Chief Justice to-day or tomorrow for his Lordship's consideration and necessary orders, if deemed proper.

(12) A copy of this order shall, forthwith be forwarded to each and every Special Judge, trying offences in a summary way, for information and compliance by them of the instructions, directions, etc. contained herein. The Registry shall report compliance hereof to me on 14-10-97 positively.

56. The impugned orders in both the petitions are set-aside and the petitions allowed. The learned Special Judge is directed to decide both the cases as expeditiously as possible in terms of the directions given herein above.

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