

In Re: Satsih Chandra De

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Court : Kolkata

Decided On : Jul-20-1984

Reported in : 1984CriLJ1532

Judge : Monoj Kumar Mukherjee, J.

Appellant : In Re: Satsih Chandra De

Judgement :

ORDER

Monoj Kumar Mukherjee, J.

1. Alleging violation of certain provisions of West Bengal Kerosene Control Order, 1968 framed under Section 3 of the Essential Commodities Act, 1955 the Sub-Divisional Controller, Food and Supplies, Contai filed a complaint against the petitioner in the Special Court constituted under Section 12A of the Essential Commodities Act, 1955 (hereinafter referred to as the 'Act'), as amended by the Essential Commodities (Special Provision) Act, 1981 (hereinafter referred to as the Amending Act). On that complaint the Special Court took cognizance of an offence under Section 7 of the Act and issued warrant of arrest against the petitioner. Aggrieved by the institution of the prosecution the petitioner moved this Court for quashing of the same, by filing this revisional application which has been heard as contested one. Considering the importance of the question of law involved in this case, this Court requested Sri Balai Chandra Roy, learned Advocate, to appear as

amicus curiae; and this Court records its deep appreciation for the assistance rendered by Sri Roy in deciding the question.

2. The question so involved is, whether the Special Court constituted under Section 12A of the Act can take cognizance of such an offence under Section 11 thereof on a complaint filed by a public servant? To find out the answer it will be necessary to consider the relevant provisions of the Act, the objects and reasons for enacting the Amending Act of 1981; and the nature of the amendments.

3. The Act was amended in 1981 for a temporary period of 5 years for dealing more effectively with persons indulging in hoarding and black marketing of, and profiteering in essential commodities and with the evil of vicious inflationary prices and for matters connected therewith or incidental thereto. With that object in view, Section 10A of the principal Act was amended by Section 9 of the Amending Act to make offences punishable under the Act non-bailable. Special provisions have also been made regarding grant of bail to persons accused of offences under the Act and their trial in Special Courts with experienced persons as Judges. For these purposes Section 12A of the principal Act has been substituted and a new section, namely, Section 12AA has been added. Under the substituted provision of Section 12A, Special Courts are to be constituted for speedy trial of offences under the Act and only persons who are qualified for appointment as a Judge of a High Court or are for a period not less than one year, a Sessions Judge or an Additional Sessions Judge can preside over these Courts. Under Section 12AA offences under the Act are to be tried only by the Special Courts and the manner in which persons accused of offences under the Act are to be dealt with has also been provided thereunder. The power of a Magistrate, to whom a person arrested under the Act may be forwarded, to grant bail has been severely truncated. Similarly, when such person is forwarded to the Special Court under Sub-clause 1(b) thereof, the Special Court's power to grant him bail has been curtailed. Sub-section 1(e) of Section 12AA entitles a Special Court to take cognizance of an offence under the Act upon perusal of a police report of the facts constituting the offence; and under Sub-section 1(f) thereof the offences are to be tried in a summary way in accordance with the provisions of Sections 262 to 265 of Criminal PC as far as practicable.

4. Read in the context of the objects and reasons behind the enactment of the Amending Act and the stringent provisions enacted pursuant thereto, it appears to me that recourse to Section 11 of the Act, which provides that no Court shall take cognizance of any punishable offence under that Act except on a report in writing of the facts constituting such offences made by a person who is a public servant as defined in Section 21 of the Penal Code, would frustrate the entire scheme of the Amending Act. If a public servant files a complaint and the Special Court takes cognizance under Section 11 on that complaint, the Court can only issue process in accordance with Section 204 of Criminal P.C. In such a case the powers of the Police to arrest a person accused of an offence under the Act and to keep him in police custody, if required for the purpose of investigating, with the permission of the Court will not be available. Besides, in a case which will be instituted upon a Police report under Section 12AA(1)(e), the accused will have the right to receive the documents referred to under Section 173, Cr.P.C. and thereby to know the nature of the case he has to meet during the trial. If the cognizance is taken on a complaint under Section 11 of the Act a person accused of the same offence will not get that benefit as the trial has got to be held in a summary way according to the procedure specified in the Code of Criminal Procedure for the trial of summons cases, in which the witnesses would have to be cross-examined immediately after their examination-in-chief. In other words, for the self-same offence there would be two different modes of trial without any rational basis for the same. Considering these aspects of the matter and the objects and reasons behind the Amending Act I am of the opinion that so long as the said Act, which is a temporary one operates in the field Section 11 cannot be taken recourse to, to prosecute a person accused of an offence under the Act. That is to say, during the subsistence of the Amending Act cognizance can be taken only on Police report under Section 12AA(1)(e) and not Otherwise. For the foregoing discussions it must be held that the learned Special Judge was not competent to take cognizance upon the complaint filed by the Sub-Divisional Controller, Food and Supplies. The application, therefore, succeeds and is hereby allowed. The impugned proceeding is hereby quashed.

5. It is however made clear that this order will not debar the prosecution from proceeding against the petitioner in the light of the observations made in this

judgment.

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