

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL APPEAL NO. 446 of 1999****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE P.P.BHATT**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

JIGNESHKUMAR ASHWINLAL SHETH....Appellant(s)

Versus

STATE OF GUJARAT....Opponent(s)/Respondent(s)

Appearance:

MR NM KAPADIA, ADVOCATE for the Appellant(s) No. 1

MR K L PANDYA, APP for the Opponent(s)/Respondent(s) No. 1

**CORAM: HONOURABLE MR.JUSTICE P.P.BHATT**

**Date : 25/07/2017**

**ORAL JUDGMENT**

1. Present appeal is preferred by the appellant original accused under Section 374 of the Code of Criminal Procedure, 1973, being aggrieved and dissatisfied with the judgment and order dated

22.04.1999 passed by the learned Special Judge, Panchmahals at Godhra, in Special Case No.3 of 1999 (E.S.T.P.), whereby, the appellant herein original accused held to be guilty for the offence punishable under Section 12-AA of the Essential Commodities Act, 1955, (hereinafter referred to as the "said Act") for the breach of provisions of Section 3 of the said Act and sentenced him to suffer rigorous imprisonment of three months with fine of Rs.10,000/- and in default of payment of fine, to undergo further rigorous imprisonment for one month.

2. Brief facts of the case are as under :

2.1 The appellant-accused is doing business as a partner of M/s. Chandravadan Harshadray & Co. While carrying out search on 11/11/1998 and 12/11/1998 at the shop of the appellant-accused by the Director, Civil Supplies, Gandhinagar, deficit of 972 kilogram of Groundnut oil was found. It was also found that the stock which was seized by earlier seizure order has been sold by transferring the same without any permission, and thereby, the appellant has committed punishable offence u/s. 12-AA violating the condition of license obtained u/s. 23, 26 of Essential Commodities Act. The complaint to that effect is registered.

2.2 On the basis of complainant's complaint, the plea of the appellant-accused was recorded, wherein he did not plead guilty and requested to conduct the trial of

the case further. Hence, in order to prove the case, the prosecution has produced some documentary evidences vide Exh-3. Hiralal Ranchhodji Patel, Inspector, Civil Supplies, has been examined vide Exh-4. The complaint lodged by him is produced vide Exh-5. Panchnama has been produced vide Exh-6. The statement of the accused has been produced vide Exh-7. The seizure order and sanction given for lodgment of the complaint have been produced vide Exh-8 and Exh-9 respectively. Satishchandra Shantilal Shah, Assistant Director, Civil Supplies, Gandhinagar, has been examined vide Exh-10. The prosecution declares completion of the evidence by producing the receipt of seized card vide Exh-11 and the letter written to the District Supply Officer vide Exh-12.

2.3 At the end of the trial, Further Statement of the accused under Section 313 of Criminal Procedure Code, 1973 (*for brevity, 'the Code'*) were recorded, in which, the accused denied the evidence forthcoming on the record and stated that a false case has been registered against the accused. Thus, after recording above-referred Further Statement and hearing the arguments on behalf of prosecution and the defence, the learned Special Judge convicted the accused as aforesaid by impugned judgment and order.

3. Heard Mr. N.M. Kapadia, the learned advocate for the appellant accused and Mr. K. L. Pandya, the learned Additional Public Prosecutor, for the respondent - State.

4. The learned advocate for the appellant accused submits that the impugned judgment and order dated 22.04.1999, passed by the learned Special Judge deserves to be quashed and set aside, as the said judgment and order came to be passed by the learned Special Judge without having jurisdiction. In this context, learned advocate submits that the Special Court was constituted for trial of offences under the Essential Commodities Act ceased to exist after October, 1998, when the last period of extension of the Essential Commodities (Special Provisions) Act lapsed. It is further submitted that in the present case, the offence under the Essential Commodities Act was registered on 04.01.1999 in respect of the incident which has taken place on 11.11.1998, whereas the ordinance lapsed on 25.10.1998. It is further submitted that in view of the aforesaid position, the Special Courts designated under the Essential Commodities (Special Provisions) are not having jurisdiction to try such cases under the Essential Commodities Act and such cases are required to be tried by the Area Magistrates within their respective territorial jurisdiction. The Special Courts were constituted under Section 12-A of the Essential Commodities (Special Provisions) Act. The said section provided, inter alia, that the State Government may for the purpose of providing speedy trial of the offence under the Act by notification in the Official Gazette constitute as many Special Courts as necessary for such areas as may be specified in the notification. The said notification was initially

issued for a period of five years, and thereafter the said period was renewed for further period of 10 years by subsequent notification, and thereafter, after the period of 15 years is over, the period which was extended by virtue of one ordinance of 1997 was also lapsed on 25.10.1998 and after 25.10.1998, the period was not extended and the jurisdiction is now vested with the Area Magistrates within their respective territorial jurisdiction. It is further submitted that the impugned judgment and order, passed by the learned Court below may be quashed and set aside and present appeal may be allowed on the ground of jurisdiction alone. While concluding his submissions, learned advocate for the appellant submits that the appellant is having good case on facts as well as law.

5. Mr. Pandya, the learned Additional Public Prosecutor for the respondent-State, while opposing the present appeal has not disputed the fact with regard to question of jurisdiction, but it is submitted that the appellant has not raised any such ground before the learned Court below at any stage and this ground is raised for the first time before this Court. It is further submitted that so far as the merit of the case is concerned, learned Additional Public Prosecutor submits that there is no infirmity with the findings recorded by the learned Court below.

6. Considering the rival submissions and having regard to the facts and circumstances of the case, it appears that the last ordinance issued by the Government



lapsed on 25.10.1998, whereas in the instant case the complaint was registered on 04.01.1999 under the Essential Commodities Act as per Exh.2 in pursuant to the incident which has taken place on 11.11.1998. In view of the ordinance referred hereinabove, the Special Court does not have jurisdiction. Under the circumstances, the impugned judgment and order passed by the learned Special Court is without jurisdiction. The judgment delivered by the Hon'ble Apex Court in the case of **State of Tamil Nadu v. Paramasiva Pandian**, reported in (2002) 1 Supreme Court Cases 15 : 2002 Supreme Court Cases (Cri) 62, cited by the learned advocate for the appellant is applicable to the facts and circumstances of the present case. The issue raised in the present appeal is pure question of law, and therefore, it can be raised at any stage. Considering the above mentioned factual as well as legal position, the impugned judgment and order passed by the learned Court below deserves to be set aside and the present appeal is required to be allowed.

7. In light of the aforesaid discussion, the present appeal is allowed. The judgment and order dated 22.04.1999, passed by the learned Special Judge, Panchmahals at Godhra, in Special Case No.3 of 1999 (E.S.T.P.) is hereby set aside. The appellant accused is acquitted from the charge for which he is convicted and sentenced. The appellant accused is reported to be on bail. His bail bond shall stand cancelled. The appellant is not required to surrender to custody except he is required so in any other case. Fine, if

paid by the appellant shall be refunded to him.  
Registry to return the R&P to the trial Court.

**(P.P.BHATT, J.)**

BD Songara

