

Delhi High Court Mohd. Hashim Masood vs State on 30 September, 1999 Equivalent citations: 1999 VIAD Delhi 609, 82 (1999) DLT 272 Author: M Siddiqui Bench: M Siddiqui ORDER M.S.A. Siddiqui, J. 1. This revision is directed against the order dated 10.7.1996 passed by the Special Judge, Delhi directing separate trial of the petitioner in respect of the offence punishable under Section 420 IPC, under Section 63 of the Copyright Act and under Sections 78/79 of the Trade Mark and Merchandise Act. 2. Briefly stated the facts giving rise to this revision are that Sub Inspector Magan Singh, on the basis of some secret information, raided the godown of the Jullandhar Delhi Transport Company and recovered two cartoons containing certain gas regulators on 24.9.1991. On interrogation, Shri Ashok Kumar, an agent of the said transport company, disclosed that the seized regulators were booked by Pawan Kumar Gupta owner of M/s. Gupta Agencies. Thereupon a case under Section 63 of the Copyright Act and under Section 78/79 of the Trade Mark and Merchandise Act and Section 420-IPC was registered against the accused Pawan Kumar Gupta. During investigation of the case, house of the petitioner was also searched and 4,575 regulator plates along with certain articles were recovered therefrom. On completion of the investigation the petitioner along with the co-accused Pawan Kumar Gupta were charge sheeted for the aforesaid offences. 3. When the matter came up before the Metropolitan Magistrate for consideration on charges he found that the material collected by the Investigating Agency also discloses an offence punishable under Section 3/7 of the Essential Commodities Act which is exclusively triable by the Special Judge. He, therefore, committed the case to the Court of the Special Judge vide orders dated 1.11.1994. On 27.5.1996, the learned Special Judge formulated the following questions for making reference to this Court under Section 395 Cr.P.C: 1. Whether the Special Court can try this case? 2. If so, whether search, seizure and entry by the police is illegal and vitiate the proceedings? 4. On 10.7.1996, the learned Special Judge reviewed his earlier order of reference and directed the prosecuting agency to file a separate challan in the Court of the Metropolitan Magistrate in respect of the offences alleged to have been committed by the petitioner under Section 420 IPC, under Section 63 of the Copyright Act and under Sections 78/79 of the Trade Mark and Merchandise Act. Aggrieved by the said order, the petitioner has come up in revision before this Court. 5. At the outset, I must make it clear that the Code of Criminal Procedure does not confer power on any Court to review its earlier order or judgement. (Nilmani Routray Vs. Bennett Coleman & Co. Ltd. . Reference may, in this context, be made to the provision of Section 362 of the Code of Criminal Procedure, which specifically bars review or revision of the judgement or order by the same Court. Thus, the learned Additional Session Judge has committed a manifest illegality in reviewing his earlier order dated 27.5.1996. 6. Now, the point for consideration is: whether the special Judge can take cognizance of the offences under the Indian Penal Code along with the offences punishable under Sections 3/7 of the Essential Commodities Act (for short "the Act")? 7. Undisputedly, the Court of a Special Judge has been constituted under Section 12A of the Act to try offences punishable thereunder. Section 4 of the Code of Criminal Procedure enjoins that all offences under the

Penal Code and other laws shall be investigated, inquired into, tried or otherwise dealt with according to the provisions contained in the Code. Unless any other law prescribes a special procedure for the trial of an offence, the procedure laid down in the Code of Criminal Procedure must be followed and the existence of a special law by itself cannot be taken to exclude the operation of the Code of Criminal Procedure. Thus the Code of Criminal Procedure is the parent statute which provides for investigation, inquiry, trial or otherwise dealing with the offences. The law of procedure is not different for the trial of cases under the Penal Code and those under other statutes according to the said Section except that in the case of offences under other laws the procedure laid down by the Code of Criminal Procedure is subject to any enactment for the time being in force for regulating the manner, or place of investigation, inquiry or trial. Section 5 of the Code of Criminal Procedure saves the effect of operation of a special or local law. In analysing the anatomy of Section 5 *ibid*, their Lordships of the Supreme Court in *Maru Ram Vs. Union of India*, , separated the three components thereof as under:- “(i) that the Code generally governs matters covered by it; (ii) that if a special or local law exists covering the same area, the latter be saved and will prevail; (iii) that if there is a special provision to the contrary, then that will override the special or local law.” 8. Section 26 of the Code of Criminal Procedure prescribes the Criminal Courts by which the offences under the Penal Code or other laws are tri- able. The combined effect of the provisions of Sections 4,5 and 26 of the Code of Criminal Procedure is that all the offences punishable under the Penal Code are to be investigated, inquired into, tried or otherwise dealt with according to the provisions contained in the Code. All offences under any law other than the Indian Penal Code shall also be investigated, in- quired into, tried or otherwise dealt with according to the provisions of Code of Criminal Procedure but subject to any specific provision under the particular law regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Where any special enactment provides special procedure only for some matters, such procedure will govern those matters and in regard to the other matters on which the special enactment is silent, the provisions of the Code of Criminal Proce- dure will be applied. 9. Section 12A of the Act empowers the State Government to constitute a special court for trial of the offences punishable under the Act. Section 12-AA of the Act confers jurisdiction on a special court to try offences punishable under the Act. Section 12-AC of the Act lays down that save as otherwise provided in the Act, the provisions of the Code of Criminal Procedure shall apply to the proceedings before a special court and for the purpose of said provision the special court shall be deemed to be a court of Sessions. The effect of the provision of Section 12-AC is that the provisions of the Code of Criminal Procedure have been made applicable to the proceedings before a special Court save and except the ones specially excluded by the Act and a court of Session is transmuted as a special court, such transmutation will make the special court an other Forum in nature and substance. In *A.R. Antulay Vs. Ramdas Srinivas Nayak and Anoth- er*, , the Apex Court had an occasion to consider the ques- tion: Whether the special Judge can take cognizance of

offence on a private complaint filed in respect of an offence punishable under the Prevention of Corruption Act. In dealing with the said question, their Lordships have held that:- “.....The net outcome of this position is that a new Court of original jurisdiction was set up and whenever a question arose as to what are its powers in respect of specific question brought before it as Court of original criminal jurisdiction, it had to refer to the Criminal Procedure Code, undaunted by any designation claptrap. When taking cognizance, a Court of Special Judge enjoyed the powers under Sec. 190. When trying cases, it is obligatory to follow the procedure for trial of warrant cases by a Magistrate though as and by way of status it was equated with a Court of Session.” 10. It needs to be highlighted that the Act does not provide for a special procedure to be followed by the special court for trial of cases punishable under the Act. As noticed earlier, by virtue of the provision of Section 12-AC of the Act, provisions of the Code of Criminal Procedure have been made applicable to the proceedings before the Special Judge to the extent they are not repugnant to or inconsistent with any provision of the Act. Sub-Section (1) of Section 220 of the Code of Criminal Procedure provides that if, in one series of acts so connected together as 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. Sub-Section (3) of Section 220 further provides that if the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial, for each of such offence. The expression “same transaction” occurring in Section 220(1) of the Code has not been defined in the Code of Criminal Procedure. However, in *State of Andhra Pradesh Vs. Ganeshwara Rao*, 1983 SC 1850, it was held that the expression “same transaction” ought to be given the same meaning according to the normal rule of construction. It was also held that if several acts committed by a person show unity of purpose or design, that would be a strong circumstance to indicate that those acts form part of the same transaction. Thus the combined effect of Section 12-AC of the Act and Section 220 of the Code of Criminal Procedure is that the Special Court can try offences under Indian Penal Code along with the offences under Sections 3/7 of the Act, when conditions under Section 220(1) or (3) or (4) of the Code of Criminal Procedure are satisfied. Consequently, the impugned order passed by the Special Judge directing the prosecuting agency to file a separate charge-sheet under Sections 420 IPC/Sections 78/79 of the Trade marks Act/Sections 63 & 64 of the Copyrights Act cannot be sustained in law. 11. In view of what has been stated above, the impugned order is set aside and the learned Special Judge is directed to proceed with the trial of the case for the offence punishable under Sections 3/7 of the Essential Commodities Act and also for offences punishable under Section 420 IPC/Sections 78/79 of the Trade Marks Act/Sections 63 & 64 of the Copyrights Act.