

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR,**  
**[JUDICIAL DEPARTMENT]**

**Cr. Misc. (Q) Petition No. 22/2020.**

Hamid Iqbal  
Versus  
Additional Assistant Commissioner Revenue and another

For Petitioner: - Barrister Ameer Ullah Khan

For respondents: - Miss Sofia Noreen AAG,  
Noor Muhammad ASI

Date of hearing: 17.11.2020

**J U D G M E N T**

**MUHAMMAD NAEEM ANWAR, J.-** This single judgment in the instant petition shall also decide Criminal Miscellaneous (Q) No. 23-P as similar question of law is involved in both these petitions.

2. The petitioners have challenged their convictions and sentences awarded by Additional Assistant Commissioner (Rev) / Special Magistrate First Class Hangu dated 28/03/2020 whereby they were sentenced for simple imprisonment for three months and 100,000/ fine under section 6 & 9 of Food Stuffs Control Act, 1958, by exercising the powers under section 262 of Criminal Procedure Code, 1898.

3. The letter dated 27<sup>th</sup> of march 2020 issued by the section officer (security-II) of Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department addressed to Deputy Commissioners of 13 Districts including Hangu with the Subject: Shopkeepers purportedly involved in hoarding of essential items, with name address of the shopkeeper/ store owner. Though, neither the petitioners were named in the list nor any separate application/complaint was made against them, however they were produced before Additional Assistant Commissioner (Rev) Hangu, Special Magistrate of first class, on 28<sup>th</sup> march, 2020,

where they were tried summarily under Chapter XXII of Cr. P. C and were sentenced and convicted through impugned order dated 28-03-2020. They have assailed their sentences and conviction through respective appeals before learned Additional Sessions Judge, Hangu, however the appeals were returned being not appealable/competent. Hence these petitions.

4. On the point of maintainability arguments were on 27-04-2020 and while considering that Price Control and Prevention of profiteering and Hoarding Act, 1977 and Food Stuff Control Act, 1958 do not provide any provision of appeal, thus both these petitions were held maintainable.

5. Arguments heard and record perused.

6. Section 2(h) of Code of Criminal Procedure, 1898 provides the definition of complaint which reads as: -

(h)."Complaint": Complaint means the allegation made orally or in writing to a Magistrate, with a view to his taking action, under this Code that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer.

Likewise, Special Magisterial courts are constituted under section 14 of the *ibid* Act which is reproduced as under: -

(1) The Provincial Government may on the recommendation of the High Court, confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally in any local area.

(2) Such Magistrates shall be called Special Judicial Magistrates, and shall be appointed for such term as the Provincial Government may, in consultation with the High Court by general or special order, direct.

(3) The Provincial Government may also appoint Executive Magistrate for particular areas or for performance of particular functions and confer upon them or any of the powers conferred or conferrable by or under this Code on an Executive Magistrate.

(4) Such Magistrates shall be called Executive Magistrates, and shall be appointed for such term as the Provincial Government may, by general or special order, direct: Provided that no powers shall be conferred under this subsection on any police officer below the grade of Assistant Superintendent, and no powers shall be conferred on a police officer except so far as may be necessary for

preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.(5) The Provincial Government may delegate, subject to such limitations as it thinks fit, to any officer under its control the powers conferred by subsection (3).

Accordingly, chapter XXII of the Criminal Procedure Code, 1898, deals with the summary trial of the offences with restrictive limb as provided under section 260(c)(a) which is reproduced as under:

(a) offences not punishable with death, transportation or imprisonment for term exceeding six months.

In the same manner section 262(2) of the *ibid* Act deals with the limit of imprisonment which reads as: -

No sentence of Imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

Thus, it is manifested from the afore-mentioned provisions of the code of criminal procedure that summary trial could not be ordered for an offence entailing punishment exceeding six months only those offences could be tried by the special Magistrate summarily the sentence of which is less than six months, whereas the offences for which the petitioners were charged under sections 3, 6 and 9 of the Food Stuffs Control Act, 1958, which for convenience are reproduced as under: -

**Section 3** (1) The Government, so far as it appears to it to be necessary or expedient for maintaining supplies of any foodstuffs or for securing its equitable distribution and availability at fair prices, may, by notified order, provide for regulating or prohibiting the keeping, storage, movement, transport, supply, distribution disposal, acquisition, use or consumption thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section(1) an order made there under may provide:

(a)for regulating by licences, permits or otherwise the manufacture of any article of food from any foodstuffs;

(b)for controlling the prices at which any foodstuff may be bought or sold;

(c)for regulating by licences, permits or other-wise, the storage, transport, distribution, disposal, acquisition, use or consumption of any foodstuff;

(d)for prohibiting the withholding from sale of any foodstuff ordinarily kept for sale;

(e) for requiring any person holding stock of any foodstuff to sell the whole or a specified part of the stock to such persons or class of persons or in such circumstances as may be specified in the order;

(f) for regulating or prohibiting any class of commercial or financial transactions relating to any foodstuff which, in the opinion of the authority making the order is, or is likely to be, detrimental to public interest;

(g) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters; for requiring persons engaged in the supply or distribution of, or trade or commerce in, any foodstuffs, to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto as may be specified in the order; and (i) for any incidental and supplementary matters including, in particular, the entering and search of premises, vehicles, vessels and aircraft, the seizure by a person authorized to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be committed, or any records connected therewith, the grant or issue of licences, permits or other documents, and the charging of fees therefor.

**Section 6.** (1) If any person contravenes any order made under section 3, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both and, if the order so provides, any Court trying such contravention shall direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to the Government, unless for reasons to be recorded in writing, it is of the opinion that the direction should not be made in respect of the whole, or as the case may be, a part of the property.

(2) The owner of any vessel, conveyance or animal carrying any property in respect of which an order under section 3 is contravened, shall, if the carrying is part of the transaction involving the contravention and if he knew or had reason to believe that the contravention was being committed, be deemed to have contravened the order, and, in addition to the punishment to which he is liable under sub-section (1), the vessel, conveyance, or animal shall when the order provides for forfeiture of the property in respect of which the order is contravened, be forfeited to the Government.

(3) If any person to whom a direction is given under subsection (3) of section 3 fails to comply with the direction, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

**Section 9.** If any person (i) when required by an order made under section 3 to make any statement or furnishes any information, which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or

furnish, he shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

7. Though the petitioners were convicted and sentenced under the above-mentioned provisions of Food Stuffs Control Act, 1958, however, warrant of imprisonment reveals that they were convicted under sections 7 & 10 of price control and prevention of profiteering and hoarding Act, 1977, whereunder **Section 7** it was provided as under: -

Section 7. (1) Any person who contravenes any order made under section 3 or a notification issued, or order made under section 6 shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to one lac rupees; Provided that, if a person convicted for an offence punishable under this subsection is again convicted for such offence, the term of imprisonment awarded to him shall not be less than one year. (2) If the order made under section 3 so provides, any Court trying any contravention of such order may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited by the Federal Government.

**Section 10.** False Statement. If any person—(i) when required by an order made under section 3 to make a statement or furnish any information makes any statement or furnishes any statement which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true; or (ii) makes any statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain furnish, he shall be punishable with imprisonment for a term which may extend to three years or with fine, or with both.

8. Not only the offences for which the petitioners were charged, convicted and sentenced either under the provisions of Food Stuffs Control Act, 1958 or Price Control and Prevention of Profiteering and Hoarding Act, 1977 provide the sentence which may extend to three years but also the petitioners were not named in the letter No. So (Security-II)/1-1/L&O/2019 dated 27<sup>th</sup> march, 2020, of the subject of shopkeepers reportedly involved in hoarding of essential items in all thirteen districts including Hangu. Likewise, the accused of only those offences could be tried summarily the punishment whereof is less than six months as explicit from section 260(c)(a) of the Criminal Procedure Code,

1898. No doubt the section 10(2) Food Stuffs (Control) Act, 1958 & section 11 of Price Control and Prevention of Profiteering and Hoarding Act, 1977 provide that all the offences punishable under these Act shall be tried summarily in consonance with the procedure provided in chapter XXII of the Code, 1998. It is pertinent to mention that section 5 of both the enactments provided overriding effect which may be read as an addition to the catalogue of cases enumerated in section 260, Cr. P.C. which could prevail against the general provisions made in the Cr. P. C. but when the petitioners were not named in the report / letter issued by the government and when no evidence is available on record against them then how they were entangled is a question mark on the part of respondents regarding which when the learned AAG was confronted he could not explained it and candidly conceded that the petitioners were not named in the report, however, added that during the course of investigation/inquiry their names were surfaced. Although learned AAG agitated the issue of involvement of petitioners in the commission of offence yet the analysis of record shows that nothing was brought on record to connect the petitioners with the commission of offence.

9. For the reasons discussed above, both these petitions are allowed, the impugned orders are hereby quashed along with the proceedings against the petitioners, they are on bail their bail bond stands cancelled and sureties are discharged.

**Announced**

**17.11.2020.**

\*M.Zafra PS\*

**J U D G E**