

**HIGH COURT OF JAMMU AND KASHMIR AT JAMMU**  
**Cr. Ref. Nos. 1/2007, 02/2007, 03/2007, 04/2007, 05/2007, 06/2007 and 07/2007**  
**HON'BLE MR. JUSTICE J. P. SINGH**

1.	<i>State</i>	v.	<i>Ashok Kumar &amp; ors</i>
2.	<i>State</i>	v.	<i>Rajinder Kumar</i>
3.	<i>State</i>	v.	<i>Mukhtayar Ahmed &amp; ors</i>
4.	<i>State</i>	v.	<i>Mohd Saleem &amp; ors</i>
5.	<i>State</i>	v.	<i>Mohd Arshad</i>
6.	<i>State</i>	v.	<i>Onkar Singh</i>
7.	<i>State</i>	v.	<i>Mohd Arshad &amp; ors</i>

**Decided On : 31.01.2007.**

None for the Petitioners.  
None for the Respondents.

**JUDGEMENT**

1. These seven references have been made by Learned Sessions Judge, Udhampur with the recommendation that Orders passed by Learned Judicial Magistrate, Ist Class, Chenani in File Nos. 12/Challan, 61/Challan, 70/Challan, 45/challan, 69/Challan, 141/Challan and 48/Challan committing these cases to the Sessions Judge be set aside because the orders, according to the Learned Sessions Judge were contrary to what had been held by Hon'ble Supreme Court of India in State of Tamil Nadu v. Parmasiva Pandian, reported as 2001 Cr. L. J. 4772.

2. Relying on Paramsiva Pandian's case (supra) Learned Sessions Judge has held that with the lapse of two ordinances issued under the Essential Commodities (Special Provisions) Act, the Special Judges had ceased to operate and the cases under the Essential Commodities Act were triable, as before, by a Magistrate rather than the Special Judge.

3. I have examined the judgment of Hon'ble Supreme Court of India and the recommendations made by Learned Sessions Judge, Udhampur. Paramsiva Pandian's case, in my opinion, would not be applicable to the cases registered under the Essential Commodities Act, 1955 in the State of Jammu and Kashmir because there is marked difference in the Schedule forming part of the State Code of Criminal Procedure and the Schedule forming part of the Central Code of Criminal Procedure. The Schedule forming part of the Central Code of Criminal Procedure prescribes that offences against other laws if punishable with death, IMPRISONMENT FOR LIFE OR IMPRISONMENT FOR MORE THAN SEVEN YEARS, would be triable by court of Sessions and if the offences were punishable with imprisonment for three years and upwards, but NOT MORE THAN SEVEN YEARS, these would be triable by a Magistrate of the Ist Class. The State Code of Criminal Procedure, on the other hand prescribes that offences against other laws if punishable with death or IMPRISONMENT FOR SEVEN YEARS OR UPWARDS, would be triable by Court of Sessions and if punishable with imprisonment for three years and upwards, but less than seven years, would be triable either by Court of Sessions or by Judicial Magistrate of the Ist Class.

4. In terms of Section 5 of the State Code of Criminal Procedure, the Court which has to try the offences under the Ranbir Penal Code and against other laws is that Court which is mentioned in the II<sup>nd</sup> Schedule appended to the Code of Criminal Procedure. It is the Code of Criminal Procedure and its Schedule, which would thus determine as to by which Court the offences against other laws and Ranbir Penal Code would be triable. Central Code of Criminal Procedure and its Schedule would not have any application to the offences committed within the State of Jammu and Kashmir.

5. Paramsiva Pandian's case is thus required to be considered in the light of the provisions of the State Code of Criminal Procedure rather than the Central Code of Criminal Procedure. Section 7 of the Essential Commodities Act, 1955 provides punishment of one year and fine under section 7 (1) (a) (i) when the violation pertains to an order made with reference to Clause (h) or Clause (i) of Sub-section (2) of Section 3 and for rest of the offences including the one punishable under section (7) (1) (a) (ii) for violation of any other order, the punishment prescribed is imprisonment for a term which shall not be less than three months, but which may extend to seven years and also to fine.

6. Thus considered offences punishable under section 7 (1) (a) (ii) are to be tried by Court of Sessions because the punishment prescribed therefor extends to seven years and offences punishable under section 7(1) (a) (i) shall be triable by a Judicial Magistrate, Ist Class. The police challans in question, do not indicate that the violation pertained to the infraction of Section 7 (1) (a) (i) of the Essential Commodities Act, 1955 and in that view of the matter, these challans were not triable by the Judicial Magistrate, Ist Class. All that the police challans indicate on the other hand is that the accused had committed offences punishable under section 3/7 of the Essential Commodities Act, 1955. Although the police challans do not specifically indicate specific infraction of Section 7 of the Essential Commodities Act, 1955, yet it may be inferred from the police challans that the cases pertained to the violation of Section 7(1) (a) (ii) of the Essential Commodities Act, 1955 punishment wherefor would be up to seven years.

7. In this view of the matter, the Learned Sessions Judge was not right in holding that the cases were triable by Judicial Magistrate, Ist Class, Chenani. Paramsiva Pandian's case, has thus been misapplied by the Learned Sessions Judge without taking into consideration the provisions of the State Code of Criminal Procedure and its Schedule. There is thus no force in these references which are accordingly declined.

8. Learned Sessions Judge, Udhampur shall treat the orders of the Learned Judicial Magistrate, Ist Class, Chenani as orders of committal and shall proceed with the trial of these cases in accordance with law.

A copy of this judgment shall be placed on each reference file.





