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THAKUR DAS (DEAD) BY L. Rs

v.

STATE OF MADHYA PRADESH

October 14, 1977

[P. K. GOSWAMI, N. L. UNTWALIA AND D. A. DESAI, JJ.]

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*Essential Commodities Act, 1955—S.6C—Scope of Sessions Judge appointed as an appellate authority Sessions Court if an inferior criminal court in relation to the High Court—If a revision application would lie to the High Court against an order made under s.6C—Revisional jurisdiction of High Court—Scope of.*

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Section 6A of the Essential Commodities Act, 1955 confers power on the Collector of the District to confiscate any essential commodity seized under s.3. Under s. 6C the State Government is required to appoint a *judicial authority* to entertain and hear appeals against the order of confiscation. The appellate against the order of confiscation. The appellate authority is empowered to modify or annul the order of confiscation.

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On the ground that the licensee had committed a number of irregularities in contravention of the Madhya Pradesh Foodgrains Dealers Licensing Order, 1965, the licensing authority, in addition to cancelling the licence issued to him and forfeiting the security deposit, directed confiscation of the foodgrains seized from the licensee. Against that part of the order by which the foodgrains were confiscated, the licensee appealed to the Sessions Judge who was the judicial authority constituted under s. 6C of the Act. Holding that it was not just to confiscate the grains the judicial authority directed sale of the seized grains at controlled rates and refund of the sale price to the licensee. On revision application by the state the High Court held that confiscation was just and proper and restored the Collector's order.

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On further appeal to this Court it was contended on behalf of the licensee that (i) the judicial authority constituted under s. 6C is not an inferior criminal court subordinate to the High Court and, therefore, is not amenable to its revisional jurisdiction under s. 435 read with s. 439 Cr. P. C., 1898 and (ii) that the High Court, in exercise of its revisional jurisdiction, was not justified in interfering with the order of the appellate authority merely because it was of opinion that the confiscation was justified.

Allowing the appeal,

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HELD : (1) (a) Though the Sessions Judge was appointed as an appellate authority what the State Government did was to constitute an appellate authority in the Sessions Court over which the Sessions Judge presides. The Sessions Court is constituted under the Code of Criminal Procedure and indisputably it is an inferior criminal court in relation to the High Court. Therefore, against an order made under s. 6C, a revision application would lie to the High Court and the High Court would be entitled to entertain that application under ss. 435 and 439. Cr. P. C. [739 A—B]

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(a) When the Sessions Judge was appointed a judicial authority it could be said that he was *persona designata* and was not functioning as a Court. [737 E]

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(b) The expression 'Judicial' qualifying the word 'authority' clearly indicates that authority alone can be appointed to entertain and hear appeals under s. 6C on which was conferred the judicial power of the State. The expression "judicial power of the State" has to be understood in contradistinction to executive power. Under the Constitution courts are the repository of judicial power of the State. By using the expression "judicial authority" in s. 6C it was clearly indicated that the appellate authority must be one such pre-existing authority which was exercising judicial power of the State. If any other authority was to be constituted as *persona designata* there was no purpose in qualifying the word "authority" by the specific adjective "judicial". [736 D—F]

(c) Secondly the concept of appeal inheres hierarchy and the appellate authority, broadly speaking, would be higher than the authority against whose order the appeal can be entertained. Sessions Judge is the highest judicial officer in the District and this situation would provide material for determining appellate authority. [736 G—H]

(d) A look at the legislative history of the Act shows that under the Defence of India Rules, 1962 an appeal against an order of seizure of essential commodities lay to the State Government. Amending Act 25 of 1966 (by which ss. 6A to 6D were added) introduced a basic change which was that an order of confiscation being penal in character a person on whom penalty is imposed is given an opportunity of approaching a judicial authority. While before the amendment an appeal lay to the executive forum, after the amendment an appeal lies to the judicial authority which clearly envisages that a pre-existing judicial authority has to be appointed appellate authority under s. 6C. [737 A—C]

(e) A seizure of an essential commodity on the allegation that the relevant licensing order is violated would incur three penalties : (1) cancellation of licence; (2) forfeiture of security deposit; and (3) confiscation of seized commodity. In respect of the first two penalties an appeal lies to the State Government but in respect of the third, though prior to the introduction of s. 6C an appeal lay to the State Government, a distinct departure is made in providing an appellate forum which must qualify for the description and satisfy the test of judicial authority. [737 C—D]

(f) Even if the judicial authority appointed under s. 6C is the Sessions Judge it would only mean the Judge presiding over the Sessions Court and discharging the functions of that Court. If by the Sessions Judge is meant the Judge presiding over the Sessions Court and that is the appointed appellate authority, the conclusion is inescapable that he was not *persona designata* which expression is understood to mean a person pointed out or described as an individual as opposed to a person ascertained as a member of a class or as filling a particular character. [737 F—G]

*Central Talkies Ltd. v. Dwarka Prasad* AIR 1961 SC 606 and *Ram Chandra v. State of U.P.* AIR 1966 SC 1888, referred to.

*Public Prosecutor (A.P.) v. L. Ramayya* (1975) Criminal Law Journal 144, approved.

*State of Gujarat v. C. M. Shah*, 1974 Criminal Law Journal 716, *State of Madhya Pradesh v. Vasant Kumar* (1972) Jabalpur Law Journal 80, and *State of Mysore v. Panduranga P. Naik* [1971] 1 Mysore Law Journal 401 not approved.

(2) The High Court was not justified in interfering with the order of confiscation. [741 E]

(a) The High Court could not have lightly interfered with the order of the Sessions Judge setting aside the confiscation especially in exercise of the revisional jurisdiction under s. 439 without marking out any of the well recognised grounds for interfering in exercise of its revisional jurisdiction. [741 C—D]

(b) For the purposes of satisfying itself as to the correctness, legality or propriety of the finding, sentence or order passed or recorded etc., by an interior criminal court the High Court, under s. 435 Cr. P. C. can call for and examine the record of any proceeding. While exercising revisional jurisdiction under s. 439 the High Court has the same power as is conferred on it as a court of appeal under s. 423, subject to certain exceptions. [740 B—C]

(c) The revisional jurisdiction of the High Court under s. 439 appears to be co-extensive with the appellate jurisdiction. In a number of cases this Court held that the revisional jurisdiction conferred upon the High Court under s. 439 is not lightly to be exercised but can be exercised only in exceptional cases where the interest of public justice requires interference or where there is a glaring defect in the procedure or there is a manifest error on point of law and consequently there has been a flagrant miscarriage of justice. [740 D—E]

- A** *Dr. Stephens v. Nosibolla* [1951] SCR 284; *Jagendra Nath Jha v. Polai Lal Biswas* [1951] SCR 676; *K Chinnaswamy Reddy v. State of Andhra Pradesh* [1963] 3 SCR 412 and *Amar Chand Agarwalla v. Shanti Bose & Another etc.* [1973] 3 SCR 179, followed.

(d) In the instant case the Sessions Judge, in exercising appellate jurisdiction, examined the penal character of the confiscation order and held that in the circumstances of the case confiscation was not just and proper. The appellate authority had power and jurisdiction to decide the same. The High Court, on the other hand, took an altogether different view and held that these defaults should not be lightly viewed. [741 A—B]

**CRIMINAL APPELLATE JURISDICTION** : Criminal Appeal No. 109 of 1974.

Appeal by Special Leave from the Judgment and Order dated 26-7-73 of the Madhya Pradesh High Court at Indore in CrI. Revision No. 90/73.

*S. K. Gambhir* and *Miss S. Ramakhini* for the Appellants.

*I. N. Shroff* and *H. S. Parihar* for the Respondent.

The Judgment of the court was delivered by

- D** **DESAI, J.**—This appeal by special leave is directed against the order made by the High Court of Madhya Pradesh, Jabalpur in Criminal Revision No. 90 of 1973 setting aside the order made by the Sessions Judge, Mandsaur Division in Criminal Appeal No. 104 of 1972 against the order made by the Collector of Mandsaur confiscating the foodgrains in the quantity of 484 quintals 74 kg. of wheat and 135 quintals 36 kg. of rice under section 6A of the Essential Commodities Act, 1955.

- E** The petitioner Thakur Das son of Lila Ram Sindhi who died pending the petition, was a licenced dealer in foodgrains having obtained a licence under the Madhya Pradesh Foodgrains Dealers Licensing Order, 1965 (for short 'the order') issued under section 3 of the Essential Commodities Act, 1955 ('Act' for short). The licence enabled him to store for sale and sell foodgrains set out in Schedule I to the Order. By the terms of the licence the licensee was obligated to maintain a register of
- F** daily accounts in the prescribed form for each of the foodgrains for which the licence was issued and there was a further obligation to complete the accounts for each day on the day to which they relate unless prevented by reasonable cause, the burden of proving which would be upon him. The licensee had to deposit at the commencement of licence, the amount of security deposit as provided by clause (6) of the Order. Clauses (8) and (9) conferred power on the licensing authority—Collector of the District in this case—to cancel the licence and to forfeit the security in the event of contravention of any condition of
- G** licence.

- The Food Inspector on a visit to the licensed premises on 13th August 1972 found certain irregularities in the accounts and submitted a report on the basis of which the licensing authority issued notice dated 21st August 1972 to the licensee calling upon him to show cause within 24 hours why the licence should not be cancelled, the security deposit may not be forfeited and the seized foodgrains may not be confiscated. Ultimately the licensing authority directed confiscation of the seized
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foodgrains, cancelled the licence issued in favour of the licensee and forfeited the security deposit. The licensee appealed to the judicial authority constituted under s. 6C of the Act, being the Sessions Judge, Mandsaur, against that part of the order by which the seized foodgrains were ordered to be confiscated. The judicial authority was of the opinion that : 'in the facts and circumstances of the case cancellation of the licence and the forfeiture of the security deposit is quite sufficient and it is not just to confiscate the grains worth Rs. 50,000/- for the alleged contravention' and directed that the seized foodgrains be sold to some licensed dealer at controlled price and the price so realised be refunded to the licensee. The State of Madhya Pradesh and the Licensing Authority preferred a revision application to the High Court against the order of the judicial authority. The High Court disagreed with the opinion of the Sessions Judge and held that in the facts and circumstances of the case confiscation was just and proper and accordingly set aside the order of the appellate authority and restored the order of the Collector.

Two contentions were raised before the High Court and the same were canvassed before us. It was contended : (1) the judicial authority constituted by the State Government under s. 6C of the Act to hear appeals against the order of confiscation that may be made by the licensing authority under s. 6A not an inferior criminal court subordinate to the High Court and amenable to the revisional jurisdiction of the High Court under s. 435 read with s. 439 of the Code of Criminal Procedure; (2) in the facts and circumstances of this case, the High Court was not justified in interfering with the order of the appellate authority who had exercised its discretion one way merely because the High Court took a different view of the matter.

Section 6A of the Act confers power on the Collector to confiscate any essential commodity which is seized in pursuance of an order made under s. 3 in relation thereto. Clause 11 of the Order enables the licensing authority to seize stocks of foodgrains etc. which are held in contravention of the provisions of the order or of the conditions of licence issued thereunder. Before confiscating such seized essential commodity, s. 6B confers a duty on the licensing authority to give a notice informing the person to whose detriment the action is proposed to be taken, the grounds on which it is proposed to confiscate the essential commodity and further give him an opportunity to make a representation within a reasonable time as may be specified in the notice and also give a reasonable opportunity of being heard in the matter. Section 6C provides for an appeal against the order of confiscation. The State Government is required to appoint a judicial authority to entertain and hear appeals against the order of confiscation. The appellate authority so constituted has power to modify or annul the order of confiscation.

Madhya Pradesh State Government has appointed a judicial authority for the purposes of s. 6C but the notification constituting the authority was not placed on record. The licensee preferred an appeal in the Court of Sessions Judge, Mandsaur Division, Mandsaur, and no one questioned that the Sessions Judge presiding over the Sessions Court at Mandsaur was competent judicial authority for the purposes of s. 6C.

- A** While rejecting the contention of lack of revisional jurisdiction, the High Court observed that "all the State Governments obviously following the model notification given by the Centre, have appointed the Sessions Judge as judicial authority within the areas of that (sic) jurisdiction. Accordingly the Sessions Judge of Mandsaur heard the appeal." It, therefore, appears that the Sessions Judge presiding over the Sessions Court set up for the Sessions Division was appointed judicial authority for the purposes of s. 6C.

- B** If the Sessions Judge presiding over the Sessions Court is the judicial authority, the question is : would it be an inferior criminal courts subordinate to the High Court for the purposes of ss. 435 and 439 of the Criminal Procedure Code ? At the one end of the spectrum the submission is that the judicial authority appointed under s. 6C would be *persona designata* and that if by a fortuitous circumstance the appointed judicial authority happens to be the Sessions Judge, while entertaining and hearing an appeal under s. 6C it would not be an inferior criminal court subordinate to the High Court and, therefore, no revision application can be entertained against his order by the High Court. While conferring power on the State Government to appoint appellate forum, the Parliament clearly manifested its intention as to who should be such appellate authority.

- C** The expression "judicial" qualifying the 'authority' clearly indicates that that authority alone can be appointed to entertain and hear appeals under s. 6C on which was conferred the judicial power of the State. The expression "judicial power of the State" has to be understood in contradistinction to executive power. The framers of the Constitution clearly envisaged courts to be the repository of the judicial power of the State. The appellate authority under s. 6A must be a judicial authority. By using the expression "judicial authority" it was clearly indicated that the appellate authority must be one such pre-existing authority which was exercising judicial power of the State. If any other authority as *persona designata* was to be constituted there was no purpose in qualifying the word "authority" by the specific adjective "judicial".

- D** The expression "judicial" qualifying the 'authority' clearly indicates that that authority alone can be appointed to entertain and hear appeals under s. 6C on which was conferred the judicial power of the State. The expression "judicial power of the State" has to be understood in contradistinction to executive power. The framers of the Constitution clearly envisaged courts to be the repository of the judicial power of the State. The appellate authority under s. 6A must be a judicial authority. By using the expression "judicial authority" it was clearly indicated that the appellate authority must be one such pre-existing authority which was exercising judicial power of the State. If any other authority as *persona designata* was to be constituted there was no purpose in qualifying the word "authority" by the specific adjective "judicial".
- E** A judicial authority exercising judicial power of the State is an authority having its own hierarchy of superior and inferior court, the law of procedure according to which it would dispose of matters coming before it depending upon the nature of jurisdiction exercised by it acting in judicial manner. In using the compact expression "judicial authority" the legislative intention is clearly manifested that from amongst several pre-existing authorities exercising judicial powers of the State and discharging judicial functions, one such may be appointed as would be competent to discharge the appellate functions as envisaged by s. 6C. There is one in built suggestion indicating who could be appointed. The concept of appeal inheres hierarchy and the appellate authority broadly speaking would be higher than the authority against whose order the appeal can be entertained. Here the appellate authority would entertain appeal against the order of Collector, the highest revenue officer in a district. Sessions Judge

is the highest judicial officer in the District and this situation would provide material for determining appellate authority. In this connection the legislative history may throw some light on what the legislature intended by using the expression "judicial authority". The Defence of India Rules, 1962, conferred power on certain authorities to seize essential commodities under certain circumstances. Against the seizure an appeal was provided to the State Government whose order was made final. By the amending Act No. 25 of 1966 Sections 6A to 6D were introduced in the Act. This introduced a basic change in one respect, namely, that an order of confiscation being penal in character, the person on whom penalty is imposed is given an opportunity of approaching a judicial authority. Earlier appeal from executive officer would lie to another executive forum. The change is appeal to judicial authority. Therefore, the expression clearly envisages a pre-existing judicial authority has to be appointed appellate authority under s. 6C. When the provision contained in s. 6C is examined in the background of another provision made in the order itself it would become further distinctly clear that pre-existing judicial authority was to be designated as appellate authority under s. 6C. A seizure of essential commodity on the allegation that the relevant licensing order is violated, would incur three penalties : (1) cancellation of licence; (2) forfeiture of security deposit; and (3) confiscation of seized essential commodity, apart from any prosecution that may be launched under s. 7. In respect of the first two penalties an appeal lies to the State Government but in respect of the third though prior to the introduction of s. 6C an appeal would lie to the State Government, a distinct departure is made in providing an appellate forum which must qualify for the description and satisfy the test of judicial authority. Therefore, when the Sessions Judge was appointed a judicial authority it could not be said that he was *persona designata* and was not functioning as a Court.

Sections 7 and 9 of the Code of Criminal Procedure, 1898, envisage division of the State into various Sessions Divisions and setting up of Sessions Court for each such division, and further provides for appointment of a Judge to preside over that court. The Sessions Judge gets his designation as Sessions Judge as he presides over the Sessions Court and thereby enjoys the powers and discharges the functions conferred by the Code. Therefore, even if the judicial authority appointed under s. 6C is the Sessions Judge it would only mean the Judge presiding over the Sessions Court and discharging the functions of that Court. If by the Sessions Judge is meant the Judge presiding over the Sessions Court and that is the appointed appellate authority, the conclusion is inescapable that he was not *persona designata* which expression is understood to mean a person pointed out or described as an individual as opposed to a person ascertained as a member of a class or as filling a particular character (vide *Central Talkies Ltd. v. Dwarka Prasad*,<sup>(1)</sup> and *Ram Chandra v. State of U.P.*<sup>(2)</sup>)

Our attention was drawn to a cleavage of opinion amongst High Courts on the construction of the expression "judicial authority" used

(1) A.I.R. 1961 S.C. 606.

(2) A.I.R. 1966 S.C. 1888.

A in s. 6C. In *State of Mysore v. Pandurang P. Naik*,<sup>(1)</sup> the Mysore High Court was of the opinion that though a District and Sessions Judge was appointed as a judicial authority by the State Government in exercise of the powers conferred by s. 6C of the Act in that capacity it would not be an inferior criminal court within the meaning of s. 435. Same view was taken by the Gujarat High Court in *State of Gujarat v. C. M. Shah*<sup>(2)</sup>. The exact specification of the appellate authority constituted by the notification could not be gathered from the judgment but it appears that the appeal was heard by the Additional Sessions Judge which would indicate that even if a District & Sessions Judge was appointed as "judicial authority" that expression would comprehend the Additional Sessions Judge also or the Sessions Judge could transfer such appeal pending before him to Additional Sessions Judge which was a pointer that he was not a *persona designata*.  
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C After referring to certain sections of the Code of Criminal Procedure it has been held that the Additional Sessions Judge hearing an appeal under s. 6C is not an inferior criminal court within the meaning of s. 435(1). Our attention was also drawn to *State of Madhya Pradesh v. Vasant Kumar*.<sup>(3)</sup> Only a short note on this judgment appears in 1972 Jabalpur Law Journal 80 but it clearly transpires that the point under discussion has not been dealt with by the Court.

D As against this, this very question was examined by a Full Bench of the Andhra Pradesh High Court in *Public Prosecutor (A.P.) v. L. Ramayya*.<sup>(4)</sup> Two questions were referred to the Full Bench. The first was : whether the District & Sessions Judge who is appointed judicial authority for hearing appeals under s. 6C is a *persona designata* or an inferior criminal court, and the second was : whether even if  
E it is an inferior criminal court, a revision application against the order of the appellate authority would lie to the High Court? The Full Bench answered the first question in the affirmative. While summing up its conclusions, the Court held that when a judicial authority like an officer who presides over a court is appointed to perform the functions, to judge and decide in accordance with law and as nothing has been mentioned about the finality or otherwise of the decisions  
F made by that authority, it is an indication that the authority is to act as a court in which case it is not necessary to mention whether they are final or not as all the incidents of exercising jurisdiction as a Court would necessarily follow. We are in broad agreement with this conclusion.

G We are accordingly of the opinion that even though the State Government is authorised to appoint an appellate authority under s. 6C, the legislature clearly indicated that such appellate authority must of necessity be a judicial authority. Since under the Constitution the courts being the repository of the judicial power and the officer presiding over the court derives his designation from the nomenclature of the Court, even if the appointment is made by the

H (1) (1971) 1 Mysore Law Journal 401.

(2) 1974. Criminal Law Journal 716.

(3) 1972 Jabalpur Law Journal 80.

(4) (1975) Criminal Law Journal 144.

designation of the judicial officer the appellate authority indicated is the Court over which he presides discharging functions under the relevant Code and placed in the hierarchy of courts for the purposes of appeal and revision. Viewed from this angle, the Sessions Judge, though appointed an appellate authority by the notification, what the State Government did was to constitute an appellate authority in the Sessions Court over which the Sessions Judge presides. The Sessions Court is constituted under the Code of Criminal Procedure and indisputably it is an inferior criminal court in relation to High Court. Therefore, against the order made in exercise of powers conferred by s. 6C a revision application would lie to the High Court and the High Court would be entitled to entertain a revision application under ss. 435 and 439 of the Code of Criminal Procedure 1898 which was in force at the relevant time and such revision application would be competent.

It was next contended that in the facts and circumstances of this case the High Court should not have interfered with the order made by the Sessions Judge setting aside the confiscation of the seized foodgrains. Section 6A confers a discretionary power on the Collector to confiscate seized essential commodity if the seizure is on account of contravention or violation of an order made under s. 3 in relation to the commodity. The Act envisages two independent proceedings against a person charged with contravention or violation of an order made under s. 3 in relation to an essential commodity. Under s. 6A the Collector can confiscate the seized commodity. Under s. 7 such contravention is made punishable. As s. 7 stood at the relevant time, even where a prosecution is launched it was not absolutely obligatory upon the court to forfeit the property in respect of which the relevant order had been contravened. It was left to the discretion of the Court to direct forfeiture of the whole or part of the commodity brought before the Court in respect of which an offence appeared to have been committed. Since the subsequent amendment in 1974 the discretion of the Court in this behalf is taken away and it is made obligatory upon the Court to forfeit the property in respect of which an offence appears to have been committed under s. 7. Therefore, either the Collector can order the confiscation and yet s. 6D permits infliction of any punishment to which the person convicted thereby is liable under the Act irrespective of the fact that the Collector has ordered confiscation under s. 6A. The dichotomy is that Collector can proceed to seize the essential commodity and cancel the licence and forfeit the security deposit. A prosecution can be launched and the Court will have to deal both with the question of punishment and forfeiture of the property in respect of which an offence appears to have been committed. Further, even if the Collector confiscated the property it would be still open to the competent authority to launch prosecution and the Court would have to deal with the person who is charged with the offence but in such a situation of question of forfeiture of the property would not arise because the Collector has already confiscated the same.

In the case before us the prosecution is not launched. The Collector directed confiscation of the seized foodgrains. The Sessions Judge set aside the order of confiscation holding that in view of the penalty of cancellation of licence which would deny the licensee an opportunity to carry



**A** on a business of foodgrains and the forfeiture of security deposit, it would be unjust to inflict further penalty in the form of confiscation of foodgrains worth Rs. 50,000/-. It appears from the judgment of the High Court that the price so worked out was the price on which confiscated foodgrains were sold at the controlled rate.

**B** The contention is that if the appellate authority which had power to annul or modify the order has annulled the order of confiscation, would the High Court be justified in interfering with such order in exercise of its revisional jurisdiction merely because it was of the opinion that confiscation was justified.

**C** Section 435 which confers revisional jurisdiction on the High Court enables the Court to call for and examine the record of any proceedings before any inferior criminal court for the purposes of satisfying itself as to the correctness, legality or propriety of the finding, sentence, or order recorded or passed, etc. Under s. 439 the High Court, while exercising revisional jurisdiction, has the same power as is conferred on the High Court as a Court of appeal under s. 423, except that in exercise of revisional jurisdiction it cannot convict the person and impose sentence if he is acquitted by the subordinate criminal court. As s. 439 stands subject to the exception mentioned herein, the revisional jurisdiction of the High Court appears to be co-extensive with its appellate jurisdiction but the extent and ambit of that jurisdiction has been more often examined by this Court it is clearly demarcated. The revisional jurisdiction conferred upon the High Court under s. 439 is not lightly to be exercised. It can be exercised only in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice. The jurisdiction is not ordinarily invoked or used merely because the lower Court has taken a wrong view of the law or misappreciated the evidence on the record. (Vide *D. Stephens v. Nosibolla*,<sup>(1)</sup> *Jogendra Nath Jha v. Polai Lal Biswas*,<sup>(2)</sup> and *K. Chinnaswamy Reddy v. State of Andhra Pradesh*.<sup>(3)</sup> It must, however, be confessed that these observations were in the context of a revision petition filed by a private party against the order of acquittal recorded by the trial Court. The question again figured in a different context in *Amar Chand Agarwalla v. Shanti Bose & Another etc.*,<sup>(4)</sup> wherein the High Court exercising the revisional jurisdiction under s. 439 quashed the charges and proceeding on the ground that the complainant had suppressed material facts. This power was exercised after the trial had proceeded, witnesses were examined and charges were framed and the further trial was in progress. **G** Setting aside the judgment of the High Court, this Court observed that the jurisdiction under s. 439 is to be exercised only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice.

(1) [1951] S.C.R. 284.

(2) [1951] S.C.R. 676.

(3) [1962] 3 S.C.R. 412.

(4) [1973] 3 S.C.R. 179.

In the case before us the Sessions Judge after examining the relevant factors bearing on the question of confiscation exercising the appellate jurisdiction held that confiscation in the facts and circumstances of this case was not justified. The High Court was of a different opinion as in the view of the High Court these defaults should not be lightly viewed because the orders regulating the production, supply and distribution of essential commodities are issued in public interest and the regulations are made for proper enforcement of such orders. The High Court was also of the opinion that when there is a breach committed with a view to obtaining monetary profit, the punishment in terms of money should be equivalent of a stiff and deterrent multiple of the improper profit the offender is likely or intends to make by the breach. Confiscation of property is penal in character. The Session Judge examined the penal character of confiscation order and held that in the circumstances of the case it was not just and proper. The appellate authority had power and jurisdiction to decide the same. The High Court could not have lightly interfered with the order of the Sessions Judge setting aside the confiscation especially in exercise of the revisional jurisdiction under s. 439 without making out any of the well recognised grounds for interfering in exercise of its revisional jurisdiction and straightaway proceed to interfere with the order which would not be correct exercise of its revisional jurisdiction.

The facts are that the licensee is dead and he has left behind minor children and a widow. The licence having been cancelled, the business cannot be carried on. The security deposit is forfeited, though that by itself would not have been a material consideration for our decision. But keeping in view all the factors, in our opinion the High Court was not justified in interfering with the order of confiscation.

Accordingly, this appeal is allowed and the order made by the High Court is set aside and the one made by the Sessions Judge is restored.

P.B.R.

*Appeal allowed*