

Law on
Essential Commodities Act, 1955

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1. **Release of Vehicle under E.C. Act, 1955** : Where vehicle carrying LPG cylinders was seized by police for offences u/s 3/7 of the E.C. Act, 1955 and release application of the vehicle was rejected by the ACJM on the ground that confiscation proceedings u/s 6-A of the Act were pending before the District Magistrate, Etawah and the revision preferred against the said order was also dismissed on the same ground by the Special Judge (E.C. Act), it has been held by the Hon'ble Allahabad High Court that pendency of confiscation proceedings is no ground for the rejection of the application for release of the vehicle and the same was directed to be released on certain conditions. See :
 - (i) Sirazuddin Vs. State of UP, 2011 (75) ACC 110 (All)
 - (ii) Virendra Pal Singh Vs. State of UP, 2008(60) ACC 481(All)
 - (iii) State of M.P. & others Vs. Rameshwar Rathod, 1990(27) ACC 480(SC)

2. **Release of vehicle when confiscation proceeding already pending before D.M.** : The Special Judge (EC Act) has power u/s 6-A of the E.C. Act, 1955 to release the vehicle despite confiscation proceeding pending before the District Magistrate. See : **Shyam Singh Kushwaha Vs. State of UP & another, 2012 (77) ACC 381 (All).**

3. **Release of essential commodity barred when confiscation proceeding pending before Collector** : Release of essential commodity (food grains etc.) seized for the offence u/s 3/7 of the E.C. Act, 1955 is barred u/s 457 CrPC

when the confiscation proceedings have been initiated by the Collector. The order passed by Magistrate rejecting application u/s 457 CrPC was held proper. Special Court can exercise the power to release the seized commodity only if proceedings of confiscation of commodities have not been initiated by the Collector. See : **Yogendra Rai Vs. State of UP, 2016 (93) ACC (Summary) 22 at page 10.**

4. **Release of wheat in favour of accused cancelled by the Supreme Court :**

Where the State Govt. of Bihar had seized wheat in pursuance of notification issued u/s 3 of the E.C. Act and the same was released by the Patna High Court in favour of the accused without having regard to the provisions of Sections 6A & 6E and without deciding the ownership of the accused to the said wheat, the Supreme Court found the release order improper and set aside the same. See : **State of Bihar Vs. Arvind Kumar, 2012 CrLJ 3756 (SC)**. Rulings relied on **(i) Shambhu Dayal Agarwal Vs. State of WB, (1990) 3 SCC 549 & (ii) Oma Ram Vs. State of Rajasthan, (2008) 5 SCC 502.**

5. **Probation cannot be extended under EC Act :** Benefit of probation to convict for an offence u/s 3/7 of the EC Act cannot be extended. See :

(i) **Sunil Kumar Vs. State of Haryana, AIR 2012 SC 1754.**

(ii) **M/s Precious Oil Corporation & Others Vs. State of Assam, AIR 2009 SC 1566.**

6. **Bail under E.C. Act :** For bail under E.C. Act, See :

(i) **Sections 10-A of EC Act, 1955**

(ii) **Section 12AA of EC (Special Provisions) Act, 1981**

(iii) **Section 12 AC of EC (Special Provisions) Act, 1981**

7. **Bail and jurisdiction of Special Judge and the Magistrates under EC Act :**

It is not disputed before us that prior to enforcement of the EC (Special Provision) Act, 1981 which was enforced on 01.09.1982 cases under the EC

Act were being tried by the Area Magistrates within their respective territorial jurisdiction. As noted earlier, the Special Courts were constituted under Section 12-A of the EC (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. On a fair reading of the above provisions it is clear that during the period the EC (Special Provisions) Act was in force the Special Court constituted for trial of offences under the EC Act had Exclusive jurisdiction to try such cases. The Special Court had also the power to pass order of remand under Section 167 but the position changed after the EC (Special Provisions) Act lapsed by efflux of time. Thereafter, the position that used to prevail before the EC (Special Provisions) Act was enforced stood restored and the Judicial Magistrates who were previously competent to try the EC Act cases got the jurisdiction to deal with such cases. The position is beyond any pale of doubt that the remand orders passed by the Special Court at Madurai, long after it had ceased to exercise jurisdiction in cases under the EC Act are incompetent. See : **State of T.N. Vs. Paramasiva Pandian, (2002) 1 SCC 15** (*paras 15 & 16*).

8. **Jurisdiction of Magistrate & Special Judge under EC Act, 1955 and EC (Special Provisions) Act, 1981** : For jurisdiction of Magistrate & Special Judge under EC Act, 1955 and EC (Special Provisions) Act, 1981, See :
 - (i) **Section 12-A of the EC Act, 1955 as amended vide EC (Special Provisions) Act, 1981**
 - (ii) **State of T.N. Vs. Paramasiva Pandian, (2002) 1 SCC 15.**

9. **Scope of release of case property u/s 451 Cr PC** : The object and scheme of the various provisions contained in the Cr PC appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not be retained in the custody of the court or of the police for any time longer than what is absolutely necessary. As the seizure of property by the police amounts to a clear entrustment of the property to government servant, the idea is that the property should be restored to the original owner after the necessity to return it ceases. It is manifest that there may be two stages

when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The object of the Code of criminal procedure seems to be that any property which is in the control of the court either directly or indirectly should be disposed of by the court and a just and proper order should be passed by the court regarding its disposal. In a criminal case, the police always acts under the direct control of the court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the court exercises an overall control on the actions of the police officers in every case where it has taken cognizance. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles should be handed over to the complainant after **(i)** preparing detailed proper panchnama of such articles, **(ii)** taking photographs of such articles and a bond that such articles would be produced if required at the time of trial and **(iii)** after taking proper security. See :

- (i) Multani Hanifbhai Kalubhai Vs. State of Gujarat & Another, (2013) 3 SCC 240**
- (ii) Sunder Bhai Ambalal Desai Vs. State of Gujrat, 2003(46) ACC 223 (SC)**
- (iii) Smt. Basavva Kom Dyamangouda Patil Vs. State of Mysore, 1977(14) ACC 220(SC)**

Note : In the case of **Sunder Bhai Ambalal Desai Vs. State of Gujarat, 2003(46) ACC 223 (SC)**, the police personnel were involved as accused in the commission of offences punishable u/s 429,420,465, 468, 477-A & 114 IPC and had allegedly criminally and unauthorizedly misappropriated the seized

case properties like golden ornaments by replacing the same by other spurious articles. Misappropriation of the amount which was kept at the police station and unauthorized auction of the property which was seized and kept in the police custody pending trial and tampering with the records of the police station was also done. The Hon'ble Supreme Court directed for return of the seized articles to their rightful owners.

10. **Physical production of vehicle and personal bond of insured vehicle to be distanced with** : Relying on its earlier two decisions rendered in the cases of (i) Sunderbhai Ambalal Desai Vs State of Gujarat, (2002) 10 SCC 283 and (ii) General Insurance Council vs State of A.P. (2007) 12 SCC 354, the Hon'ble Supreme Court has, in the case noted below, has held as under : It is necessary that in addition to the directions issued by this Court in Sunderbhai Ambalal Desai considering the mandate of Section 451 read with Section 457 CrPC, the following further directions with regard to seized vehicles are required to be given :

- "(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the jurisdictional court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.*
- (B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.*
- (C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle,*

*pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer.... It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy substantial space in the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its roadworthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the vehicles are either stolen or are cannibalized so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/Union Territories/Director Generals of Police shall ensure micro implementation of the statutory provisions and further direct that the activities of each and every police station, especially with regard to disposal of the seized vehicles, be taken care of by the Inspector General of Police of the division/Commissioner of Police concerned of the cities/Superintendent of Police concerned of the district concerned. In case any non-compliance is reported either by the petitioners or by any of the aggrieved party, then needless to say, we would be constrained to take a serious view of the matter against an erring officer who would be dealt with iron hands." see : **General Insurance Council Vs. State of A.P., (2010) 6 SCC 768.** (paras 13, 14 & 15)*

- 11. Duty of Magistrate for prompt exercise of power u/s 451 CrPC :**
Cautioning the Magistrates for taking prompt action u/s 451 CrPC for the release/disposal of case property seized by police, the Hon'ble Supreme Court has issued its directions thus : *"We hope and trust that the concerned Magistrates would take immediate action for seeing that the powers u/s 451 Cr PC are properly and promptly exercised and articles are not kept for a long*

*time at the police station, in any case for not more than 15 days to one month. This object can also be achieved if there is proper supervision by the registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly". See : **Sunder Bhai Ambalal Desai Vs. State of Gujarat, 2003(46) ACC 223 (SC).***

12. **Vehicle/truck seized for non-production of papers should be released in favour of its registered owner** : Where a truck was seized for non production of papers, it has been held by the Supreme Court that the truck should be released in favour of its registered owner. See : **Ramesh Chand Jain Vs. State of Haryana, (2007) 15 SCC 126.**
