HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

SINGLE BENCH

PRESENT:

HON'BLE MR. JUSTICE G.S. AHLUWALIA

Misc. Criminal Case No. 2643 OF 2011

Jagdish Kushwah

-Vs-

State of M.P.

Shri Sanjay Bahirani, counsel for the applicant.

Shri Prakhar Dhengula, Panel Lawyer for the respondent No.1/State.

O R D E R
(19/01/2017)

This petition under Section 482 of Cr.P.C. has been filed challenging the order dated 16.12.2010 by which the cognizance has been taken against the applicant for offence punishable under Section 3/7 of Essential Commodities Act, 1955.

It is contended by the counsel for the applicant that the FIR in Crime No.203/2010 has been registered against the applicant and co-accused Sirnam Singh Kushwah on the basis of the enquiry report submitted by the Assistant Supply Officer. As per the enquiry report, several irregularities were found in the Fair Price Shop Nidanpur, Tahsil Cahnderi, District Ashok Nagar in an inspection conducted on 16.3.2010. It was further alleged that on 18.3.2010 when again an inspection was sought to be done of Fair Price Shop Nidanpur, Tahsil Cahnderi, District Ashok Nagar the same was found closed which shows that the salesman had deliberately closed the shop. With the help of one Om Prakash Jain who is Branch

Manager of District Cooperative Bank, Branch Chanderi the lock of the shop was broken and 4.7 quintals of wheat, 7 quintals of sugar, 205 liters of kerosene oil and some more commodities were found but neither the stock register nor the sale register was found in the shop. It was alleged that although the food stuff meant for distribution under the Madhya Pradesh Public Distribution System (Control) Order, 2009 were supplied to the shop but the same were not distributed to the consumers.

The record of the Trial Court was summoned by this Court. From the order sheets of the Trial Court it appears that the charge sheet was filed against the applicant on 16.12.2010 and the charges were also framed.

It is contended by the counsel for the applicant that he is working as Manager of the Society under whose control the Fair Price Shop is being run and, therefore, whatever illegalities or irregularities have been committed by the salesman, he cannot be vicariously made liable. It was further submitted by the counsel for the applicant that in view of Clause 11 (5) of Madhya Pradesh Public Distribution System (Control) Order, 2009 only the Collector can initiate the proceedings under Section 7 of Essential Commodities Act and since in the present case the FIR has been lodged on the report of Assistant Supply Officer, therefore, the FIR is liable to be quashed on the ground that the same has been lodged on the information given by a non competent person.

Per contra, it is submitted by the counsel for the State that as the applicant is admittedly working on the post of Manager of the Society and, therefore, by virtue of his post it cannot be said that he is not responsible for the day to day working of the Society under whose control Fair Price Shop was being run.

Heard the learned counsel for the parties.

It is contended by the counsel for the applicant that as the applicant is working on the post of Manager of the Society and, therefore, he cannot be held vicariously liable for the acts of salesman. The contention raised by the applicant cannot be accepted as the applicant is working on the post of Manager of the Society under whose control the Fair Price Shop was being run and, therefore, by virtue of his post he is responsible for the day to day business of the Fair Price Shop being operated by the Society concerned. Accordingly, this contention raised by the counsel for the applicant cannot be accepted and is hereby rejected.

It is next contended by the counsel for the applicant that in view of Clause 11(5) of M.P. Public Distribution System (Control) Order, 2009, "only" the Collector can initiate action under Section 7 of the Essential Commodities Act, 1955. It is submitted by the Counsel for the applicant that as in this case, the F.I.R. has been registered on the basis of the letter written by the Assistant Supply Officer, and not the Collector, therefore, the F.I.R. is liable to be quashed.

Before adverting to the contention raised by the Counsel for the applicant, it would be appropriate to reproduce Clause 11(5) of M.P. Public Distribution System (Control) Order, 2009 which reads as under :

> 11(5). In the event of the Fair Price Shop violating the condition of the Central Order or this Order, the Collector, can initiate action under Section 7 of the Essential Commodities Act, 1955.

It is submitted by the Counsel for the applicant that **only** Collector can initiate the action under Section 7 of the Essential Commodities Act, 1955 and none else and as in the present case, the F.I.R. has been lodged on the basis of the complaint made by the Assistant Supply Officer, therefore, the F.I.R. is liable to be quashed.

Considered the contentions raised by the Counsel for the

applicant.

The moot question is that whether the word **"Only"** can be read/inserted in Clause 11.5 as suggested by the Counsel for the applicant or not?

The important aspect of the matter is that as the word "Only" has not been used in Clause 11.5, therefore, under this situation whether the principle of *Casus Omissus* would apply or not and whether this Court while interpreting the Clause 11.5 can insert or add the word "Only" when it was not inserted in Clause 11.5.

It is a well established principle of law that there is no presumption that a *casus omissus* exits and the Court should avoid creating a *casus omissus* where there is none. The Court cannot read anything in statutory provisions which is plain and unambiguous. If two or more or more provisions of a Statute appear to carry different meanings, a construction which would give effect to all of them should be preferred.

The Supreme Court in the case of **UCO Bank Vs. Rajinder Lal Capoor ((2008) 5 SCC 257** has held as under :

> **28.** All the regulations must be given a harmonious interpretation. A court of law should not presume a *casus omissus* but if there is any, it shall not supply the same. If two or more provisions of a statute appear to carry different meanings, a construction which would give effect to all of them should be preferred. (See *Gujarat Urja Vikash Nigam Ltd.* v. *Essar Power Ltd (2008) 4 SCC 755.*

The Supreme Court in the case of **Babita Lila Vs. Union Of India (2016) 9 SCC 64)** has held as under :

> 63. It is a trite law that there is no presumption that a casus omissus exists and a court should avoid creating a casus omissus where there is none. It is a fundamental rule of interpretation that courts would not fill the gaps in statute, their functions being *jus discre non facere* i.e. to declare or decide the

law. In reiteration of this well-settled exposition, this Court in *Union of India* v. *Dharamendra Textile Processors* ((2008) 3 SCC 369) had ruled that it is a well-settled principle in law that a court cannot read anything in the statutory provision or a stipulated provision which is plain and unambiguous. It was held that a statute being in edict of the legislature, the language employed therein is determinative of the legislative intent. It recorded with approval the observation in *Stock* v. *Frank Jones (Tipton) Ltd.*((1978) 1 All ER 948 that it is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. The observation therein that rules of interpretation do not permit the courts to do so unless the provision as it stands is meaningless or doubtful and that the courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the statute, was underlined. It was proclaimed that a casus omissus cannot be supplied by the court except in the case of clear necessity and that reason for, is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose, all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute.

64. More recently, this Court amongst others in *Petroleum and Natural Gas Regulatory Board* v. *Indraprastha Gas Ltd. ((2015) 9 SCC 209)* had propounded that when the legislative intention is absolutely clear and simple and any omission inter alia either in conferment of power or in the ambit or expanse of any expression .used is deliberate and not accidental, filling up of the lacuna as perceived by a judicial interpretative process is impermissible. This was in reiteration of the proposition in *Sree Balaji Nagar Residential Assn.* v. *State of T.N. ((2015) 3 SCC 353)* to

> the effect that casus omissus cannot be supplied by the court in situations where omissions otherwise noticed in a statute or in a provision thereof had been a conscious legislative intendment.

It is a well established principle of law that anybody can put the Criminal Law in motion. Then whether Clause 11.5 can be said to be an exception to the General Law? In order to appreciate the above mentioned situation, reference to Section 10-A of Essential Commodities Act, 1955 would be essential. Section 10-A of Essential Commodities Act, 1955 reads as under :

> **10-A. Offences to be cognizable and bailable –** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2) of 1974), every offence punishable under this Act shall be cognizable.

This mean, that the police on receipt of information as to commission of cognizable Offence, has to register the F.I.R. The Supreme Court in the case of **Lalita Kumari Vs. State of U.P. (2014) 2 SCC 1** has held as under :

> 49. Consequently, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information. The provision of Section 154 of the Code is mandatory and the officer concerned is duty-bound to register the case on the basis of information disclosing a cognizable offence. Thus, the plain words of Section 154(1) of the Code have to be given their literal meaning.
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50. The use of the word "*shall*" in Section 154(1) of the Code clearly shows the legislative intent that it is mandatory to register an FIR if the information given to the police discloses the commission of a cognizable offence.

51. In *Khub Chand* (AIR 1967 SC 1074), this Court observed as under: (AIR p. 1077, para 6)

"*6*. … The term 'shall' in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations."

52. It is relevant to mention that the object of using the word "shall" in the context of Section 154(1) of the Code is to ensure that all information relating to all cognizable offences is promptly registered by the police and investigated in accordance with the provisions of law.

53. Investigation of offences and prosecution of offenders are the duties of the State. For "cognizable offences", a duty has been cast upon the police to register FIR and to conduct investigation except as otherwise permitted specifically under Section 157 of the Code. If a discretion, option or latitude is allowed to the police in the matter of registration of FIRs, it can have serious consequences on the public order situation and can also adversely affect the rights of the victims including violating their fundamental right to equality.

54. Therefore, the context in which the word "shall" appears in Section 154(1) of the Code, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word

> "shall" used in Section 154(1) needs to be given its ordinary meaning of being of "mandatory" character. The provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer in charge of the police station for embarking upon a preliminary inquiry prior to the registration of an FIR. It is settled position of law that if the provision is unambiguous and the legislative intent is clear, the court need not call into it any other rules of construction.
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> 55. In view of the above, the use of the word "shall" coupled with the scheme of the Act lead to the conclusion that the legislators intended that if an information relating to commission of a cognizable offence is given, then it would mandatorily be registered by the officer in charge of the police station. Reading "shall" as "may", as contended by some counsel, would be against the scheme of the Code. Section 154 of the Code should be strictly construed and the word "shall" should be given its natural meaning. The golden rule of interpretation can be given a go-by only in cases where the language of the section is ambiguous and/or leads to an absurdity.
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> 56. In view of the above, we are satisfied that Section 154(1) of the Code does not have any ambiguity in this regard and is in clear terms. It is relevant to mention that Section 39 of the Code casts a statutory duty on every person to inform about commission of certain offences which includes offences covered by Sections 121 to 126, 302, 64-A, 382, 392, etc. of the Penal Code. It would be incongruous to suggest that though it is the duty of every citizen to inform about commission of an offence, but it is not obligatory on the officer in charge of a police station to register the report. The word "shall" occurring in Section 39 of the Code has to be given the same meaning as the word "shall" occurring in Section 154(1) of the Code.

Thus, in the light of Section 154 of Cr.P.C., Section 10-A of Essential Commodities Act, 1955 and the judgment passed by the Supreme Court in the case of **Lalita Kumari (Supra)**,

it is clear as day light, that once an information with regard to commission of a Cognizable Offence is received by the Police Officer, then it is its duty to register the F.I.R. It cannot refuse to register the F.I.R. on the ground that although the contents of the complaint discloses the commission of cognizable offence, but as the complaint has not been made by the Collector, therefore, it cannot register the F.I.R. It is not out of place to mention here that the M.P. Public Distribution System (Control) Order, 2009 was framed by the State Government in exercise of Power under Section 3 of the Essential Commodities Act, 1955. Therefore, Clause 11.5 of M.P. Public Distribution System (Control) Order, 2009 cannot amend or override, Section 10-A of the Essential Commodities Act, 1955. Therefore, if the word "Only" is imported in Clause 11.5 as suggested by the Counsel for the applicant, then it would mean that except on the complaint of the Collector, no F.I.R. can be lodged by the Police although it might have received information about commission of cognizable offence. As Section 10-A of Essential Commodities Act, 1955 provide that the offences punishable under this Act are Cognizable Offence, therefore, in case the word "Only" is imported by this Court in clause 11.5 of M.P. Public Distribution System (Control) Order, 2009, then it would override Section 10-A of Essential Commodities Act. Thus, it cannot be said that the omission of word "Only" in Clause 11.5 of the M.P. Public Distribution System (Control) Order, 2009 was an omission on the part of Govt.

The Supreme Court in the case of **Jagjit Singh Vs. State of Haryana ((2006) 11 SCC 1** has held as under :

> 78. ……. It is, ordinarily, not the function of the court to read words into a statute. The court must proceed on the assumption that the legislature did not make a mistake and it intended to say what it said. It is well settled that:

> "The court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result." (See *P.K. Unni* v. *Nirmala Industries((1990 (2) SCC 378)*

The Supreme Court in the Case of **P.K. Unni Vs. Nirmala Industries ((1990(2) SCC 378** it has been held as under :

> **15.** The court must indeed proceed on the assumption that the legislature did not make a mistake and that it intended to say what it said: See *Nalinakhya Bysack* v. *Shyam Sunder Haldar*. Assuming there is a defect or an omission in the words used by the legislature, the court would not go to its aid to correct or make up the deficiency. The court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. No case can be found to authorise any court to alter a word so as to produce a *casus omissus*: Per Lord Halsbury, *Mersey Docks and Harbour Board* v. *Henderson Brothers*. "We cannot aid the legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there": *Crawford* v. *Spooner*.

The Supreme Court in the case of **Hiradevi Vs. District Board, Shahjahanpur (AIR 1952 SC 362)** held as under:

> 14. We are afraid we cannot agree with this line of reasoning adopted by the High Court. The defendants were a board created by statute and were invested with powers which of necessity had to be found within the four corners of the statute itself. The powers of dismissal and suspension given to the Board are defined and circumscribed by the provisions of Ss. 71 and 90 of the Act and have to be culled out from the express provisions of those sections. When express powers have been given to the Board under the terms of these sections it would not be legitimate to have resort to general or implied powers under the law of master and servant or under S. 16, U. P. General Clauses Act.

> Even under the terms of S. 16 of that Act, the powers which are vested in the authority to suspend or dismiss any person appointed are to be operative only "unless a different intention appears" and such different intention is to be found in the enactment of Ss. 71 and 90 of the Act which codify the powers of dismissal and suspension vested in the Board. It would be an unwarranted extension of the powers of suspension vested in the Board to read, as the High Court type in question into the words "the orders of any authority whose sanction is necessary." It was unfortunate that when the Legislature came to amend the old S. 71 of the Act it forgot to amend S. 90 in conformity with the amendment of S. 71. But this lacuna cannot be supplied by any such liberal construction as the High Court sought to put upon the expression "orders of any authority whose sanction is necessary." No doubt it is the duty of the Court to try and harmonise the various provisions of an Act passed by the Legislature. But it is certainly not the duty of the Court to stretch the words used by the Legislature to fill in gaps or omissions in the provisions of an Act.

Therefore, this Court while interpreting Clause 11.5 of M.P. Public Distribution System (Control) Order, 2009 cannot insert/add the word “Only” so as to make, lodging of complaint by the Collector mandatory.

Further more, there is another aspect of the matter. If the word “Only” is inserted in Clause 11.5 of the M.P. Public Distribution System (Control) Order, 2009, then it would mean that the police inspite of having received a complaint of commission of Cognizable Offence, would not be able to register the F.I.R. as the said complaint has not been made by the Collector. Such an interpretation of Clause 11.5 of the M.P. Public Distribution System (Control) Order, 1955 is not permissible. It is a well established principle of law that when there is a direct conflict between the Substantive Statute and the delegated legislation, then the delegated Legislation has

to give way to the Substantive Statue. The Supreme Court in the case of **ITW Signode India Ltd. v. CCE, ((2004) 3 *SCC 48)*,** has held as under :

> **56.** It is true that Rule 173-B has not been amended. But even if the same has not been done, it would not make a material difference as now a comprehensive provision has been made in the primary Act, and, thus, a rule framed thereunder even in case of conflict must give way to the substantive statute. It is a well-settled principle of law that in case of a conflict between a substantive Act and delegated legislation, the former shall prevail inasmuch as delegated legislation must be read in the context of the primary/legislative Act and not vice versa.

The Supreme Court in the case of **Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552** has held as under :

> 63. The crucial difference between the views expressed by the appellants on the one hand and the respondents on the other hand is as to whether the absence of the word "only" in Section 2(2) clearly signifies that Part I of the Arbitration Act, 1996 would compulsorily apply in the case of arbitrations held in India, or would it signify that the Arbitration Act, 1996 would be applicable only in cases where the arbitration takes place in India. In *Bhatia International* and *Venture Global Engg.*, this Court has concluded that Part I would also apply to all arbitrations held out of India, unless the parties by agreement, express or implied, exclude all or any of its provisions. Here again, with utmost respect and humility, we are unable to agree with the aforesaid conclusions for the reasons stated hereafter.
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> 64. It is evident from the observation made by this Court in *Konkan Railway Corpn. Ltd.* that the Model Law was taken into account in drafting of the Arbitration Act, 1996. In para 9, this Court observed: (SCC p. 400)
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> "*9*. … That the Model Law was only taken

into account in the drafting of the said Act is, therefore, patent. The Arbitration Act, 1996 and the Model Law are not identically drafted."

Thereafter, this Court has given further instances of provisions of the Arbitration Act, 1996, not being in conformity with the Model Law and concluded that "… The Model Law and judgments and literature thereon are, therefore, not a guide to the interpretation of the Act and, especially of Section 11 thereof". The aforesaid position, according to Mr Sorabjee has not been disagreed with by this Court in *SBP & Co.* We agree with the submission of Mr Sorabjee that the omission of the word "only" in Section 2(2) is not an instance of "*casus omissus*". It clearly indicates that the Model Law has not been bodily adopted by the Arbitration Act, 1996. But that cannot mean that the territorial principle has not been accepted. We would also agree with Mr Sorabjee that it is not the function of the court to supply the supposed omission, which can only be done by Parliament. In our opinion, legislative surgery is not a judicial option, nor a compulsion, whilst interpreting an Act or a provision in the Act. The observations made by this Court in *Nalinakhya Bysack* would tend to support the aforesaid views, wherein it has been observed as follows: (AIR p. 152, para 9)

"*9*. … It must always be borne in mind, as said by Lord Halsbury in *Commissioners for Special Purposes of Income Tax* v. *Pemsel*, that it is not competent to any court to proceed upon the assumption that the legislature has made a mistake. The court must proceed on the footing that the legislature intended what it has said. Even if there is some defect in the phraseology used by the legislature the Court cannot, as pointed out in *Crawford* v. *Spooner*, aid the legislature's defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is a casus omissus, it is, as said by Lord Russell of Killowen in *Hansraj Gupta* v. *Official Liquidators of*

> *Dehra Dun-Mussoorie Electric Tramway Co. Ltd.*, for others than the courts to remedy the defect."
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> 65. Mr Sorabjee has also rightly pointed out the observations made by Lord Diplock in *Duport Steels Ltd.* In the aforesaid judgment, the House of Lords disapproved the approach adopted by the Court of Appeal in discerning the intention of the legislature; it is observed that: (WLR p. 157 C-D)
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> "… the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous *it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral*. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament's opinion on these matters that is paramount."
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> (emphasis supplied)
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> In the same judgment, it is further observed: (WLR p. 157 F)
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> "… *But if this be the case it is for Parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the Acts*…."
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> (emphasis supplied)
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> 66. The above are well-accepted principles for discerning the intention of the legislature.

In the case of **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2008) 4 SCC 755** it has been held by the Supreme Court as under :

> **52.** No doubt ordinarily the literal rule of interpretation should be followed, and

> hence the court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd.

The Supreme Court in the case of **Unique Butyle Tube Industries (P) Ltd. v. U.P. Financial Corpn., (2003) 2 SCC 455,** has held as under :

> **10.** Since a plea of casus omissus for purposes of interpretation was urged, we think it necessary to deal with that plea also.
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> **11.** It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said, "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547.) This view was reiterated in *Union of India* v. *Filip Tiago De Gama of* Vedem Vasco De Gama (1990) 1 SCC 277).
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> **12.** In *D.R.* Venkatachalam v. Dy. Transport Commr *(1977) 2 SCC 273* it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.
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> **13.** While interpreting a provision the court

only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd. *(2000) 5 SCC 515*) The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1)* is plain and unambiguous. There is no scope for reading something into it, as was done in N. Narasimhaiah v. State of Karnataka (1996) 3 SCC 88. In State of Karnataka v. D.C. Nanjudaiah (1996)10 SCC 619 the period was further stretched to have the time period run from the date of service of the High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clauses (*i*) and/or (*ii*) of the proviso to Section 6(1), but also by a non-prescribed period. The same can never be the legislative intent.

14. Two principles of construction — one relating to casus omissus and the other in regard to reading the statute as a whole — appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when the reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v.

> Procopiou (1966) 1 QB 878 (All ER p. 544-I) "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. IRC 1963 AC 557 where at AC p. 577 he also observed: (All ER p. 664 I) "This is not a new problem, though our standard of drafting is such that it rarely emerges."] Therefore, the High Court's conclusions holding proceedings under the U.P. Act to be in order are indefensible.

Thus, it is clear that the insertion/addition of word "Only" in Clause 11.5 of M.P. Public Distribution System (Control) Order, 2009 would limit the meaning of word "Cognizable" used in Section 10-A of the Essential Commodities Act, 1955, which is not permissible. Thus, if the word "Only" is inserted in Clause 11.5 of the M.P. Public Distribution System (Control) Order, 2009, then the said provision would come directly in conflict with Section 10-A of the Essential Commodities Act, 1955 and therefore, the interpretation of Clause 11.5 of the M.P. Public Distribution System (Control) Order, 2009 as suggested by the Counsel for the applicant is not permissible.

Therefore, it is clear that the word "**Only**" cannot be read in Clause 11.5 of M.P. Public Distribution System (Control) Order, 2009 so as to quash the F.I.R. on the ground that since, the complaint has not been made by the Collector, therefore, the Police cannot register the F.I.R. on the basis of the complaint made by any other person, even if the same discloses the Commission of Cognizable Offence.

Further, it is clear from the petition that the police after completing the investigation has already filed the charge

sheet.

The Supreme Court in the case of **H.N. Rishbud Vs. State of Delhi (AIR 1955 SC 196)**, has held as under :

> 9**.** The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings". The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (*a*), (*b*) and (*c*) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (*a*) or (*b*) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 of the Code of Criminal

Procedure which is in the following terms is attracted:

"Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice."

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in *Prabhu* v. *Emperor AIR 1944 PC 73 (C)* and *Lumbhardar Zutshi* v. *King AIR 1950 PC 26 (D)*. These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.

10. It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the

circumstances of an individual case may call for. Such a course is not altogether outside the contemplation of the scheme of the Code as appears from Section 202 under which a Magistrate taking cognizance on a complaint can order investigation by the police. Nor can it be said that the adoption of such a course is outside the scope of the inherent powers of the Special Judge, who for purposes of procedure at the trial is virtually in the position of a Magistrate trying a warrant case. When the attention of the Court is called to such an illegality at a very early stage it would not be fair to the accused not to obviate the prejudice that may have been caused thereby, by appropriate orders, at that stage but to leave him to the ultimate remedy of waiting till the conclusion of the trial and of discharging the somewhat difficult burden under Section 537 of the Code of Criminal Procedure of making out that such an error has in fact occasioned a failure of justice. It is relevant in this context to observe that even if the trial had proceeded to conclusion and the accused had to make out that there was in fact a failure of justice as the result of such an error, explanation to Section 537 of the Code of Criminal Procedure indicates that the fact of the objection having been raised at an early stage of the proceeding is a pertinent factor. To ignore the breach in such a situation when brought to the notice of the Court would be virtually to make a dead letter of the peremptory provision which has been enacted on grounds of public policy for the benefit of such an accused. It is true that the peremptory provision itself allows an officer of a lower rank to make the investigation if permitted by the Magistrate. But this is not any indication by the Legislature that an investigation by an officer of a lower rank without such permission cannot be said to cause prejudice. When a Magistrate is approached for granting such permission he is expected to satisfy himself that there are good and sufficient reasons for authorising an officer of a lower rank to conduct the investigation. The granting of such permission is not to be treated by a Magistrate as a mere matter of routine but it is an exercise of his judicial discretion having regard to the policy underlying it. In our opinion, therefore, when such a breach is brought to the notice of the Court at an early stage of the trial the

> Court have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5-A of the Act. It is in the light of the above considerations that the validity or otherwise of the objection as to the violation of Section 5(4) of the Act has to be decided and the course to be adopted in these proceedings, determined.

Thus, in the light of the judgment passed by the Supreme Court in the case of **H.N. Rishbud (Supra)**, when the charge sheet has been filed and the cognizance has been taken, then under this circumstance whether the investigating officer was competent to investigate the matter or not is of no importance. Thus, the contention raised by the Counsel for the applicant with regard to the incompetency of the investigating officer to investigate the offence in the light of clause 11(5) of Madhya Pradesh Public Distribution System (Control) Order 2009 is rejected.

Hence, this petition fails and is accordingly dismissed.

(G.S. AHLUWALIA)
Judge
(19.01.2017)

(alok)