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**(2023) 11 CAL CK 0006**

**Calcutta High Court (Appellate Side)**

**Case No:** Criminal Revision No. 154 Of 1990

Amzed Ali

APPELLANT

Vs

State Of West Bengal

RESPONDENT

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**Date of Decision:** Nov. 20, 2023

**Acts Referred:**

- Essential Commodities Act, 1955 - Section 7(1)(a)(ii)

**Hon'ble Judges:** Subhendu Samanta, J

**Bench:** Single Bench

**Advocate:** Achin Jana, Prosenjit Ghosh, Faria Hossain, Trina Mitra

**Final Decision:** Disposed Of

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### **Judgement**

Subhendu Samanta, J

The instant appeal has been preferred against the judgment dated 23rd of March 1990 passed by the Learned Special Judge (EC Act) Birbhum, Suri

in Special Court Case No. 2 of 1988 finding the present appellant guilty of an offence punishable u/s 7(1) (a) (ii) of the Essential Commodities Act

1955 for violation of Paragraph 4 of the West Bengal Cloth and Yarn Control Order 1960 and sentencing the appellant to suffer rigorous imprisonment

for three months and to pay a fine of Rs 1 thousand in default to undergo rigorous imprisonment for one month and forfeiting the seized articles to the

state after expiry of period of appeal and/ or revision.

The brief fact of the prosecution case is that on 05.02.1988 PW 1 visited the cloth store of the accused under the name and style "Ali Cloth

Store" situated at Mallarpur Bajar, Mayureswar. During the inspection PW 1 serve a notice upon the accused and after inspection it reveals that the

cash-memos were written up without mentioning the licence number. The signboard of the said shop was also recovered wherein the licence number was also not mentioned. Accordingly, the cash-memo, signboard and a mill made saree was seized in presence of the witnesses. The accused was arrested and taken to the Mayureswar P.S. along with the seized articles. The PW 1 lodged a written complaint and the investigation started. After completion of investigation the police submitted charge sheet against the accused u/s 7(1) (a)(ii) of the Act (X) of 1955. The appellant was sent up for trial before the Learned Special Judge. During the course of trial the prosecution has adducted 04 witnesses. Learned Special Judge after recording the evidences of witnesses and after hearing the parties recorded conviction of the present appellant after finding him guilty to the offence punishable u/s 7(1) (a) (ii) Act (X) of 1955 for violation of Paragraph 4 of the West Bengal Cloth and Yarn Control Order 1960.

Hence this appeal.

Learned Advocate for the appellant submits that the impugned judgment passed by the Learned Special Judge and the order of conviction against the appellant is not permissible in the eye of law. The ingredients of the offences charged against the present appellant has not been specifically proved beyond reasonable doubt. Learned Special Judge has not considered the guidelines of the Enforcement Authorities of the Department concern regarding the chances of vexatious complaint and prosecution. Learned Special Judge has failed to appreciate the facts and circumstances of this case and the allegation of violation Paragraph 4 of the West Bengal Cotton and Yarn Control Order and the recording of conviction is baseless. The appellant was running the business with a valid licences. Only non-mentioning the licence number in the cash memo does not constitute any offence.

The prosecution has failed appreciate before the Learned Special judge as to why the PW 1 has inspected the shop room of the appellant which is beyond territorial jurisdiction of the PW 1 without any specific authority/order from the Director or the Deputy Commissioner.

Learned Advocate for the appellant further argued that there is a direct violation of order 16 of the said Order by the PW 1; thus the conduct of the

prosecution is not beyond question and mala fide. He prayed for acquittal by setting aside the impugned order of conviction.

Learned Advocate appearing on behalf of the state submits that the Learned Special Judge has categorically observed in the impugned Judgment

regarding the probative value of the evidence placed before him. The seizure was sufficiently proved by independent witnesses. The investigating

officer (PW 4) has categorically deposed that the investigation regarding the violation of Para 4 of the said order has been sufficiently proved. He

further argued that the impugned judgment and conviction suffers no illegality and the instant appeal is liable to be dismissed.

Heard the Learned Advocates.

Perused the impugned judgment. Perused the paper book and the LCR.

Learned Special Judge has recorded the conviction against the appellant for the violation of Paragraph 4 of the West Bengal Cotton Cloth and Yarn

Control Order 1960. Para 4 of the state is enumerated as follows:

4. No person shall engage in any undertaking which involves the purchase, sale or storage for sale or manufacture of cloth or yarn or both or holding stock of cloth or yarn on hypothecation. Unless he holds a licence in this behalf under this order and except in accordance with the condition or conditions specified in such licence:

Provided that "Charka Spinners" and/or handloom weavers shall be exempted from the operation of the provisions of this paragraph.

The said order has mentioned the conditions of licence. Condition No. 4 and 5 of the licence directed the shop-owner to mention the licence number in

the sign board which shall be placed in the business place. Condition No. 5 directs that the licensee quote his licence Number in all his bills and cash

memos.

It is the allegation of the prosecution that the appellant has not mentioned the license number in the sign board and the bills and vouchers maintained by

him in his shop.

On the other hand it has been argued by the Learned Advocate for the appellant that the prosecution started against the present appellant is mala fide

one. He argued that Paragraph 16 of the said order authorise an officer to inspect the shop room of any licence holder with the prior authorisation of the Director or Deputy Commission. In this case such authorisation was not there; moreover the PW 1 has conducted inspection/search at the shop of the appellant which is beyond territorial jurisdiction of the said officers (PW1).

During the cross-examination of the PW 1 it appears that PW 1 i.e. the de-facto complainant admitted that the shop of the appellant is beyond territorial jurisdiction of PW 1. It further appears that the FIR contain the fact of presence of one DEB Inspector namely, S. Maitra at the time of inspection; the signature of such DEB Inspector is not appeared in any of the document of the prosecution. Moreover no member of raiding party deposed before the Learned Special Judge regarding the fact of inspection/raid. The Order 16 of the said Order is enumerated as follows:

16. Any officer authorised in this behalf by the Director, the Deputy Commissioner or any Superintendent of Enforcement by general or special order in writing may enter upon and inspect any premises in which he has reason to believe that purchase sale or storage for sale of any cloth or yarn is taking place contrary to the provisions of this order.

Order 16 direct the officer to inspect any premises by general or special order in writing from the Superintendent of Enforcement or Director or by the Deputy Commissioner. In this case it has been admitted by the PW 1 that he had no such written order or authorisation to inspect the shop of the present appellant. The Order 16 was enumerated to check the menace so that no mala fide prosecution can be lodged. In this case it appears that the P W 1 has inspected shop room of appellant which lies beyond his territorial jurisdiction and admittedly PW 1 had no written authorisation or order to inspect the premises.

The Learned Special Judge is of a view that such discrepancies cannot automatically invalidate the criminal investigation against the present appellant.

The observation of the Learned Special Judge to the effect that such illegality in the proceeding of investigation shall not cause any prejudice to the appellant. In my view the observation of the Learned Special Judge is not justified. The prosecution has no explanation that why the PW 1 has

inspected suddenly the shop of the appellant. The prosecution has failed to indicate whether there was any secret information or that whether there was a specific order or authorisation to inspect the shop of the appellant.

To constitute a criminal offence the basic ingredients is mens rea. Only by not mentioning the licence No. in the Sign board or in the cash memo does

not constitute any mens rea on behalf of the appellant. The Enforcement Authorities by the Department concern has issued guidelines; in Clause 2(a)

(viii) if the said guideline indicates that if any person during the course of normal transaction forgets to mention either the licence number or the date

on the bill or memo, such type of mistake and omission is not obligatory upon the directorate to launch a prosecution.

In this case Learned Special Judge has failed to appreciate guidelines of the said department and passed the erroneous order. The prosecution initiated

against the present appellant by inspecting his shop through PW 1 without any specific authorisation is bad in law.

Considering the entire circumstances I find that the instant appeal has got a merit and it is liable to be allowed.

The CRA is allowed.

The order of conviction passed by the Learned Special Judge Birbhum, Suri in Special Court Case No. 2 of 1988 is hereby set aside.

The present appellant be acquitted from this case. The appellant is on bail. He be set at liberty at once.

The sureties standing in his favour are also released.

The CRA is disposed of.

LCR be returned at once.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.