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**(1967) 03 AHC CK 0014**

**Allahabad High Court**

**Case No:** Criminal Reference No. 405 of 1965

Mohd. Yamin and another

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision:** March 14, 1967

**Acts Referred:**

- Uttar Pradesh Dookan Aur Vanijya Adhishthan Adhiniyam, 1962 - Section 2(13), 6

**Citation:** (1968) 38 AWR 20

**Hon'ble Judges:** M.H. Beg, J

**Bench:** Single Bench

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### **Judgement**

@JUDGMENTTAG-ORDER

M.H. Beg, J.

This is a reference made by a civil and Sessions Judge, Saharanpur, to this Court u/s 438 Code of Criminal Procedure against the conviction of the two accused persons, Mohd. Yamin and Mohd. Zakaria, u/s 35 of the UP Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, (hereinafter referred to as the Act) and the sentence of Rs. 25/- fine passed on each of them for infringing the provisions of the Act.

2. The complainant, Sri N.B. Saxena (PW 1), Labour Inspector of Saharanpur, had visited the shop, known as M/s. Mohd. Yamin and Mohd. Zakaria, Chauk Fountain, Saharanpur, which is said to be run by the accused persons as "employers" within the meaning of the term as used in the Act. The Labour Inspector found the shop of the accused persons open at 8.30 p.m. on 30-3-1954 when some weighing of goods was also taking place there. The accused persons were absent at that time. The accused pleaded that the shop was only open for purposes of stuck taking and verification of accounts as the close of the accounting year was at hand. The complaint was based merely upon the allegation that the above mentioned shop was found open at 8.30 p.m. on 30-3-1964 so that the accused had violated the provisions of Section 5 of the Act regulating the hours of business.

3. There was nothing in the complaint to give an indication to the accused persons that they were being tried or would be convicted for employing anybody for more than the time prescribed by Section 6 of the Act. It may, however, be mentioned that the proviso to Section 6 of the Act makes it possible for an employee, who is neither a young person nor a child, be employed to for more than ten hours on a day of stock taking or taking of accounts. If the complaint had contained the allegation that the employees were made to work beyond the limits prescribed for hours of work per day they may very well have pleaded and proved that they were entitled to the benefit of exemption given by the proviso to Section 6 of the Act.

4. The trying magistrate accepted the defence version that the shop was open only for verification of accounts and that payment was made for the work beyond time to an employee named Satnam Rai (PW 1). This employee had stated that he had worked from 8 p.m. to 11 p.m. for verification of accounts and was paid for the three hours" work for employment beyond time. The trying magistrate, after observing that even if the shop was open for verification of accounts upto 11 p.m., the employers were guilty of contravening the provisions of Section 6 of the Act, finally convicted the accused persons only for keeping the shop open beyond 8 p.m. Hence, the learned Sessions judge in his referring order has quoted Section 2, Sub-section (13) of the Act which reads as follows:

"open" in relation to a shop or commercial establishment means open for the service of any customer, or for the business, trade or manufacture, normally carried on in the shop or commercial establishment.

The learned Sessions Judge rightly pointed out that merely keeping shutters of the shop physically open without transacting any business did not amount to keeping it open for the purpose of service to any customer or for carrying on the actual business. The keeping open of the shop for stock-taking or taking of accounts is only incidental to or connected with the carrying of the actual business of the shop or establishment. The learned Sessions Judge has rightly relied upon State v. S.R. Chaudhary 1961 AWR 168 where it was observed the word "open" when used in relation to a shop or commercial establishment necessarily means "opened" or "closed" for the purpose for which the shop or commercial establishment exists. It does not only mean physically closing the doors or physically opening the doors. Taking such an interpretation would make the law impracticable. There are many people who live in their own shop and it is impossible for them to keep the shop physically closed on any day because they must go in and come out and their friends also must go in and come out. Then there are many people who do not have sufficient facilities at their house to do accounts and other writing work which they must bring to their shop and continue to do the work there even though the shop is closed for customers.

5. In other words, the taking of accounts is not the purpose for which a shop or commercial establishment exists. Hence, the accused persons could not be said to

have kept their shop open within the meaning of Section 2(13) of the Act. It was proved from the evidence on the record that customers who wanted to make purchases after the prescribed closing time, which was 8 p.m., were refused. Therefore, the conviction of the accused must be set aside.

6. Accordingly, I accept this reference and quash the conviction and sentence of the accused.