

**(1949) 12 AHC CK 0011**

**Allahabad High Court**

**Case No:** Criminal Ref. No. 1092 of 1949

Ghulam Husain and Another

APPELLANT

Vs

Rex

RESPONDENT

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**Date of Decision:** Dec. 2, 1949

**Acts Referred:**

- Uttar Pradesh Shops and Commercial Establishments Act, 1947 - Section 10, 27

**Citation:** AIR 1952 All 367 : (1950) 20 AWR 281

**Hon'ble Judges:** Desai, J

**Bench:** Single Bench

**Advocate:** Jai Kishen Lal, for the Respondent

**Final Decision:** Disposed Of

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### **Judgement**

@JUDGMENTTAG-ORDER

Desai, J.

The applicants were convicted by a Magistrate u/s 27, D. P. Shopa and Commercial Establishments Act, XXII [22] of 1947, for not closing their shop on three Thursdays in compliance with an order issued by the District Magistrate. u/s 10 of the Act, every employer is bound to close his shop on one day of the week, known as the "close day", the choice of the close day is of the employer though subject to the approval of such authority as may be appointed in this behalf, and the employer is required to specify the close day in a notice permanently exhibited in the shop. Under the rules, the District Magistrate is the authority appointed to approve of close days. The case against the applicants is that the District Magistrate issued an order fixing Thursday as the close day and that the applicants failed to close their shop on three Thursdays. The reply of the applicants is that they were observing Friday as the close day and had closed their shop on Fridays. The Magistrate convicted the applicants and sentenced them to a fine of Rs. 25 each. This reference has been made by the learned Sessions Judge on the ground that the District

Magistrate had no authority to fix the close day,

2. There is much force in the opinion of the learned Sessions Judge. The District Magistrate was given power only to approve of the close day selected by an employer. The choice of a close day is of the employer under the Act. It is admitted by the Shop Inspector that the applicants communicated to the District Magistrate their selection of Friday as the close day. All that the District Magistrate could do was to withhold his approval, if he did not wish to have Friday as the close day. He could not himself fix the close day. If he refused to approve of Friday as the close day, the applicants would have been obliged to select another close day and again seek his approval. The arbitrary order of the District Magistrate fixing the close day, without regard to the provisions of Section 10 (2) leaving the choice of a close day to the employer, was ultra vires and by its breach the applicants committed no offence. The applicants were bound to close their shop once a week on a day selected by them. There is no evidence that they did not close the shop on Fridays.

3. The reference is accepted and the applicants' conviction and sentences are set aside. The fine, if realised, shall be refunded.