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**(1982) 08 AHC CK 0041**

**Allahabad High Court**

**Case No:** Criminal Revision No. 749 of 1981

State of U.P.

APPELLANT

Vs

Mool Chand and Others

RESPONDENT

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**Date of Decision:** Aug. 9, 1982

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 397, 397(1), 397(2), 523, 525
- Essential Commodities Act, 1955 - Section 11, 6A, 6A(1), 6A(2), 6C

**Citation:** (1982) AWC 698

**Hon'ble Judges:** N.N. Sharma, J

**Bench:** Single Bench

**Advocate:** A.G.A. and Jagdish Tewari, for the Appellant; Anshuman Singh, for the Respondent

**Final Decision:** Allowed

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**Judgement**

N.N. Sharma, J.

This revision is directed against order dated 22-12-1980 recorded by Sri S. D. N. Singh, learned Sessions Judge, Allahabad in Criminal Appeal No. 134 of 1980.

2. Learned Sessions Judge allowed the appeal and set aside the order of Sri S. A. T. Rizvi, District Magistrate, Allahabad dated 21-7-1980 and directed that 20 bags and one Katta (small bag) of food grains weighing 20 quintals and 26 kilograms be returned to Appellants Mool Chand, Harish Chandra and Shanker Lal.

3. It appears that the aforesaid grain was being unloaded from truck No. 3. It appears that the aforesaid UPZ 4407 at the shop of Firm M/s Sheoratan ram Ram Autar 587, Mutthiganj, Allahabad when it was intercepted by the Additional District Magistrate (Civil Supplies), Allahabad who suspected that the grain was being stored for sale in the black market in contravention of the U.P. Foodgrains Dealers (Licensing) Order and Rules and Edible oil (Storage Control) Order, 1977

4. This seizure was reported to the District Magistrate Allahabad vide report dated 8th/19th July, submitted by Additional District Magistrate (Civil Supplies). The report further disclosed that it was a perishable commodity Magistrate recorded the order of disposal in exercise of powers u/s 6A(2) of the Essential Commodities Act.

5. The owners went up in appeal which was allowed by the impugned order.

6. The U.P. State has filed this revision.

7. I have heard learned Counsel for the parties and perused the record

8. The main grievance put forward before me on behalf of the State is that no appeal could have lain u/s 6C of the Essential Commodities Act against the order of District Magistrate for disposal of perishable commodities Section 6C of the Essential Commodities Act contemplates an appeal to a judicial authority (Sessions Judge) against an order of confiscation recorded u/s 6A No appeal has been provided against such interim order which might have been drawn by a Collector u/s 6A(2) of the said Act which reads as

(2) Where the Collector, on receiving report of seizure or inspection of any essential commodity under Sub-section (1) is of the opinion that the essential public interest so to do, he may,

(i) order the same to be sold at the controlled price, if any fixed for such essential commodity under this Act or under any other law for the time being in force; or

(ii) Where no such price is fixed, order the same to be sold by public auction:

Provided that in case of foodgrains, the Collector may, for its equitable distribution and availability at fair prices, order the same to be sold through fair price shops at these prices fixed by the Central Government or by the State Government as the case may be, for the retail sale of such foodgrains to be the public.

Sri Anshuman Singh, learned Advocate, for the Respondents, conceded that no appeal against such order of District Magistrate aforesaid lay to learned Sessions Judge, Learned counsel for parties; did not cite any authority on this point Obviously, appeal is a creature of Statute No appeal against such an interim order has been provided u/s 6A of the Essential Commodities Act. Appeal could have lain against an order of confiscation and not against such interim order of disposal. so the impugned order is unsupportable by law.

9. Such order of District Magistrate was not without jurisdiction as shown above and as such the order of learned Sessions Judge has to be set aside as no appeal could have lain to him against such order.

10. In *State v. Basdeo Bawari* reported in 1961 CriLJ 621 on the report of Inspector of Supply submitted u/s 11 of the Essential Commodities Act, the goods attached were disposed of by Magistrate who ordered the refund of sale proceeds to the owner. That order of Additional District Magistrate was attacked on behalf of the State. The contention of the State was repelled in the following terms:

Held further that the subsequent sale of the goods attached, was ordered upon the petition of the Inspector of Supply himself. If after the sale, the Magistrate passes an order releasing the stock seized and ordering refund of the price to the persons from whom it was seized the Inspector of Supply could not object to the order.

If the order for sale of goods was u/s 525 of the Code of Criminal Procedure then, provisions of Ss. 523 and 524 were automatically attracted and the Magistrate was entitled to pass order for disposal of the stock. Therefore, the Magistrate who was in seisin of the case, whether on that date he had taken cognizance or not, was entitled to pass orders u/s 525, and the Magistrate who passed the order for refund of the sale proceeds to the proper person was well within his powers u/s 525 read with Section 523 of the Code of Criminal Procedure.

11. In the instant case, whether a revision against such as interim order could have lain or not was not pressed before me. Obviously Section 397(2) of the Code of Criminal Procedure inhibits revision against interlocutory orders in the following terms:

(2) The powers of revision conferred by Sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

12. Obviously, the order of District Magistrate was not a final order. It was not revisable u/s 397 Code of Criminal Procedure. Distinction between an interlocutory order and a final order was pointed out in [The State of Madhya Pradesh Vs. Ram Pratap and Others](#), in the following terms :-

7. From the aforesaid decisions it is clear that an order can be treated as a final order if it satisfies the following tests:

(1) It must be an order which finally determines the points in dispute and brings the case to an end.

(2) It should not be a preliminary or interlocutory order made in the course of a proceeding.

(3) It should of its own force bind or effect the rights of the parties in relation to the controversy in the proceeding in which the order is passed.

13. It appears that in that case, the Magistrate disposed of the seized stock of Sal seeds of the contractors u/s 523 of the Code of Criminal Procedure in public auction. A revision

was filed against that order which failed and the aforesaid distinction was pointed out. So the aforesaid order was neither appealable nor revisable and has to be set aside being without jurisdiction.

14. In the result the revision is allowed. The impugned order of learned Sessions Judge, Allahabad dated 22-12-1980 is set aside.