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**(1990) 11 AHC CK 0128**

**Allahabad High Court**

**Case No:** Criminal Revision No. 1575 of 1990

Anil Kumar

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Nov. 9, 1990

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 457
- Essential Commodities Act, 1955 - Section 12A, 3, 6E, 7

**Citation:** (1990) 14 ACR 804 : (1991) 2 RCR(Criminal) 163 : (1992) 1 UPLBEC 237

**Hon'ble Judges:** S.R. Bhargava, J

**Bench:** Single Bench

**Advocate:** G.C. Saxena, for the Appellant;

**Final Decision:** Allowed

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### **Judgement**

S.R. Bhargava, J.

On 28th May, 1990 Station Officer, P.S. Urwa Bazar, Gorakhpur, lodged First Information Report against Firm M/s. Girja Shanker Daya Shanker, Daya Shanker, Girja Shanker, Anil Kumar and Ram Kesh on the basis of Recovery Memo prepared by him, for offence u/s 3/7 of the Essential Commodities Act. Allegations of the recovery report showed that Firm M/s. Girja Shanker Daya Shanker is dealer of non-levy cement, Station Officer received information that the door of the premises of the Firm was closed from outside but inside the premises bags of cement were being emptied and refilled for reducing their weight. On this information the station Officer raided the premises of the Firm and found the premises locked from outside. When the door was got opened loader Ram Kesh was found, emptying the bags and re-filling them for reducing the contents. The raiding party seized 133 bags of cement.

2. An application for release of these bags of cement was moved before the Special Judge (E.C. Act). The learned Special Judge did not record any finding whether the

case relates to non-levy cement and whether any offence under the Essential Commodities Act appears to have been committed or not the learned Special Judge noted that seizure has been reported to the District Magistrate. He treated the application as not maintainable and dismissed the same. Against that Anil Kumar preferred Criminal Revision No. 1107 of 1990 in this Court. That revision was finally heard and disposed of on 31st July, 1990. This Court observed :

Obviously, release was claimed u/s 457 Code of Criminal Procedure. If the cement seized by the police was reported to the Special Judge he has jurisdiction to pass appropriate order regarding release. It is obvious that the seizure was made in connection with offences alleged to have been committed u/s 3/7 of the E.C. Act. If cement is non-levy and no offence under E.C. Act has been committed, provisions of Essential Commodities Act would not apply and the Special Judge will have Jurisdiction to release cement u/s 457 Code of Criminal Procedure .

3. Since this Court was not possessed of the First Information Report of the case revision was allowed and case was remanded to the Special Judge for fresh disposal according to aforementioned observations within 10 days from production of certified copy of the order of the Court.

4. When the case went back to the Special Judge he was not inclined to go into the question whether the cement is non-levy. He did not also enter into the question whether any offence under the Essential Commodities Act appears to have been committed or not. He concluded that his jurisdiction is barred by Section 6-E of the Essential Commodities Act. Hence he dismissed the application for release again.

5. This time with the revision petition revisionist filed certified copy of the First Information Report which leaves no doubt that the whole case relates to non-levy cement and there is no averment that the dealer in non-levy cement was found clandestinely dealing with the levy cement. This time this Court has the advantage of the lower court record also.

6. In the case of Om Prakash Agarwal v. State of U.P. 1985 EFR 152, a Division Bench of this Court clearly laid down that although non-levy cement is an essential commodity yet it stood released from Cement Control Order and the U.P. Cement Control Order, 1973 cannot be applied to non-levy cement. The law laid down by the Division Bench has been continuously followed by this Court, for example if cases of M/s. Bajrang Cement v. District Magistrate, Fatehpur, 1989 EFR 257, Rajendra Kumar v. State of U.P., 1988 EFR 101 and Sanjay Kumar v. State of U.P. 1988 EFR 9, In the case of Kamaljeet Singh v. State 1987 EFR. 465 this Court laid down that mere pendency of confiscation proceedings cannot oust jurisdiction of the court under Code of Criminal Procedure to release seized property u/s 457 Code of Criminal Procedure. This view stands reinforced by the case of State of Madhya Pradesh v. Rameshwar Rathore 1990 SCC 522.

7. In view of the law referred to above it is evident that there could be no contravention of any order issued under the Essential Commodities Act and so no offence punishable u/s 3/7 of the Act appears to have been committed. Section 6-E of the Act bars jurisdiction of the Courts exercising powers under the Code of Criminal Procedure only when ♦any essential commodity is seized in pursuance of an order made u/s 3♦. In the instant case it is evident that non-levy cement is not governed by order issued u/s 3. Hence, approach of the learned Special Judge in readily inferring ouster of his jurisdiction cannot be appreciated. It is evident that First Information Report of the case was submitted to the Special Judge that is Special Court constituted u/s 12-A of the Act. Section 12-A makes it clear that provisions of the Code of Criminal Procedure apply to all the proceedings before a Special Court constituted u/s 12-A of the Act. It is evident from the provisions of the Essential Commodities Act that once a case under the Essential Commodities Act is registered Magistrate cannot exercise jurisdiction and it is only the Special Court constituted under the Act which can exercise jurisdiction and powers conferred by the Magistrate by the Code of Criminal Procedure. Consequently when it was evident that the cement was non levy and no offence under the Essential Commodities Act appears to have been committed nor any contravention of an order issued under the Act can be inferred, the proper course for the Special Judge should have been to release the cement.

8. In result, the revision is allowed. Order under revision is set aside. The seized non-levy cement is ordered to be released in favour of the revisionist on his furnishing of personal bond of Rs. 10,000/-.