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(1977) 12 CAL CK 0001

Calcutta High Court

Case No: None

Ram Nath Jadar

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** Dec. 20, 1977

**Acts Referred:**

- West Bengal Cattle Licensing Act, 1959 - Section 12, 2, 3, 4, 9

**Citation:** (1978) CriLJ 439

**Hon'ble Judges:** Jyotirmoyee Nag, J

**Bench:** Single Bench

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### Judgement

@JUDGMENTTAG-ORDER

Jyotirmoyee Nag, J.

This Rule is directed against an order dated 9.8.76 passed by the learned Metropolitan Magistrate, 6th Court, Calcutta, convicting the accused u/s 12(3)(b) of the West Bengal Cattle Licensing Act, 1959. The learned Magistrate sentenced him to pay a fine of Rs. 400/- in default to suffer simple imprisonment for two months, He also forfeited the four buffaloes that were seized u/s 12(3)(b) of the Act.

2. The learned Advocate appearing for the petitioner submits that the conviction and sentence are bad although the accused pleaded guilty as the plea of the accused was not recorded. I find from the order sheet of the learned Magistrate that the plea was actually recorded in Bengali although in the certified copy of the order the same has been omitted which has misled the learned Advocate to make such submission. The second point taken by the learned Advocate for the petitioner is that in order to convict the accused u/s 12 for violation of Section 9 of the Act it is necessary to establish under Sub-clause (2) of Section 9 that he was carrying on business without a licence. The learned Advocate for the petitioner has referred me also to Section 2(i) of the Act wherein "urban area" is defined. An area within Calcutta as defined in the Calcutta Municipal Act, 1951, or any part or parts of such

area is an urban area. As the offence is alleged to have been committed in Jorabagan area it certainly comes within the definition of urban area. He has referred me to Section 4 also where two classes of licenses have been specified : (a) a licence which is granted to a householder and (b) a licence which is granted to a person in respect of cattle kept in any premises or place for any purpose save as mentioned in Clause (a) of this section. Sub-section (2) provides that a licence granted to a householder will come within class (A) and licence granted for any other purpose will come under class (B) licence. Section 9(2) provides that no 440 Remembrancer, Legal Affairs, W. B. v. Kedar Nath (A. K. Sen J.) Cri.L.J, class (B) licence shall be issued in respect of any premises or place within a prohibited area and if such licence is already issued or in force in respect of any premises or place in such area shall stand cancelled on the expiry of six months from the date of the issue of the notification under Sub-section (1) or of the remaining period of the licence whichever is earlier. Admittedly Jorabagan comes within the prohibited area. Accordingly no licence would be issued for maintaining cattle for business purpose in such an area. There is however no bar to issue of "A" class licence in such an area.

3. Therefore if any person keeps cattle for a purpose other than business in a prohibited area he has to obtain an "A" class licence or else he will be punishable u/s 12(1)(vi) of the Act and it is specifically provided u/s 12(3)(b) that forfeiture is mandatory and in such a case the Magistrate has no discretion in the matter.

4. Therefore there is no substance in the submission of the learned Advocate that the instant case falls u/s 12(1)(i) for violation of the provisions of Section 3 of the Act and not Section 9(2) of the same Act. Section 3 relates to cattle kept in an "urban area" only, but for keeping cattle in a prohibited area which is also an urban area, without a licence the offence falls under Section 12(1)(vi) of the Act.

5. The learned Magistrate was therefore right in forfeiting the cattle as he did.

6. The Rule is accordingly discharged.