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**(1985) 07 CAL CK 0021**

**Calcutta High Court**

**Case No:** None

Pradyot Kr. Das Mondal

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** July 30, 1985

**Acts Referred:**

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Essential Commodities Act, 1955 - Section 3, 6B, 6C, 6E

**Citation:** 89 CWN 1133

**Hon'ble Judges:** S.P. Das Ghosh, J

**Bench:** Single Bench

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**Judgement**

@JUDGMENTTAG-ORDER

S.P. Das Ghosh, J.

On 16-4-1985, on the basis of a secret information, the police intercepted a lorry, bearing No. WGW 1710, loaded with 147 bags of paddy on a road at Amritpal village within Raipur Police Station. The petitioner has claimed the seized 147 bags of paddy on alleging that he is the authorised agent of Bharati Rice Mills situated at Jhanti Pahari within Chatna P. S. in the district of Bankura. He has filed this revisional application under Article 227 of the Constitution of India read with Section 482 of the Criminal P.C. for quashing the confiscation case No. 3 of 1985 before the learned Collector, Bankura, regarding the seizure of the paddy and for release of the paddy to him on furnishing of bond of like amount to the satisfaction of the learned Collector, Bankura, who was pleased to pass orders on 23-4-85 and 7-6-85 for sale of the paddy.

2. The case of the petitioner is that he hired the truck, bearing No. WGW 1710 from Anil Baran Misra, the owner of the truck of Raipur. Being the authorised agent of Bharati Rice Mills, he purchased 50 Qtls. of paddy from Srikanta Patra of Sirsa under

Cash Memo. No. 524 dt. 16-4-85 and had also purchased 52 Qtls. 90 Kgs. of paddy from Satya Patra of Sirsa under Cash Memo. No. 525 dt. 16-4-85. There are seals of the Inspector of Food and Supplies at Chatna on the backside of each of these two Cash Memos. The petitioner had handed over to the driver the copies of the Cash Memos as well as one journey ticket form bearing No. 95, duly signed by the driver and the petitioner. While the Truck was moving towards its destination to Bharati Rice Mills at Jhanti Pahari, the truck was intercepted by the police on the road at Amritpal village within Raipur Police Station. The driver and the khalasi showed all the documents to the police. The police refused to see all these valid documents and initiated a false case by lodging an F.I.R. alleging that the lorry was loaded at Chiltore for unloading the paddy at the godown of one Murari Marwari of Chakulia, Bihar and alleging further that on demand, the driver and the khalasis could not produce any sort of document or paper for carrying the paddy. The case of the petitioner is that after the seizure of the paddy at about 3 P.M. on 16-4-85, the petitioner had filed a petition in the court of the Judge, Special Court, Bankura, along with a first regarding the two Cash memos and the journey ticket and had stated in the petition that he had himself loaded the truck in village Sirsa after purchase from the cultivators: Even then the learned Collector, Bankura, passed the order for sale of the paddy on 23-4-85 and had subsequently passed an order on 7-6-85 making final the order for sale and converting it into order for confiscation till the disposal of the criminal case. The petitioner challenges this order for sale and the order for confiscation of the seized paddy.

3. The contentions of the learned Advocate for the petitioner are that there was no mens rea on the part of the petitioner who was not mentioned in the F.I.R. and was not an accused but was only the authorised agent of Bharati Rice Mills. It is argued that a notice u/s 6B of the Essential Commodities Act ought to have been, issued to the petitioner before directing the confiscation of the paddy. It is also contended that the order dt. 7-6-85 of the learned Collector is not supported by reason and should be set aside.

4. The learned Advocate appearing for the State has contended that this Court, in exercise of powers under Article 227 of the Constitution or u/s 482 Cr. P.C. cannot pass any order for release of the paddy to the petitioner or for quashing of the confiscation case when there is a bar to the exercise of jurisdiction by this Court u/s 6E of the Essential Commodities Act, 1955.

5. Before entering into the merits of the petitioner's case about his alleged purchase of the seized paddy under two Cash Memos Nos. 524 and 525 dated 16-4-85, stated to contain on the backside of each of these two Cash Memos the seals of the Inspector of Food and Supplies at Chatna and the journey ticket, list of which appears to have been filed in the court of the learned Judge, Special Court, Bankura, on 17-4-85, it is to be seen as to whether this Court is entitled to pass any order for quashing of the confiscation case No. 3 of 1985 or for release of the paddy

to the petitioner on bond, in spite of the bar to jurisdiction created by Section 6E of the Essential Commodities Act (hereinafter referred to as the "Act"). It appears that in the case reported in [In Re : Satish Chandra Banik,](#) it has been decided that a person is not entitled to circumvent the provisions of Section 6C of the Act and to invoke the extraordinary jurisdiction provided by Article 227. of the Constitution, though in exceptional cases jurisdiction under Article 227 of the Constitution can be invoked in spite of the existence of a specific alternative remedy In that case [In Re : Satish Chandra Banik,](#) the application under Article 227 of the Constitution was dismissed on the ground that the proper remedy of the petitioner of that case lay in an appeal u/s 6C of the Act and the petitioner was not entitled to circumvent the provisions of an appeal by invoking the extra-ordinary jurisdiction provided by Article 227 of the Constitution, After this decision in the case reported in [In Re : Satish Chandra Banik,](#), there was another single Bench decision in the case of Raj Kumar Mondal v. State of West Bengal (1983) 87 CWN 534. In the case of Raj Kumar Mondal which related to seizure of kerosene oil, it was held by this Court that the order of the Collector in that case suffered from the vice of lack of jurisdiction on his part as there was no record of the Collector's prima facie satisfaction in that case regarding violation of any order made u/s 3 of the Act by the petitioner of that case. On holding that the impugned order of the Collector in that case was wholly without jurisdiction on that ground, this Court set aside the order of the Collector for sale of the seized kerosene and directed return of the seized kerosene oil to the petitioner of that case subject to any order that could be made in the criminal case, if any, pending against him. On the basis of these two decisions of this Court reported in [In Re : Satish Chandra Banik,](#), the learned Advocate for the petitioner has asked me to invoke Article 227 of the Constitution and Section 482 Cr. P.C. for disposing of the case on the grounds (a) that there was no mens rea on the part of the petitioner, (b) that no notice u/s 6B of the Act was served on the petitioner in spite of the observation of a Division Bench of the Patna High Court in the case of [Chandeshwar Mahto and Others Vs. State of Bihar and Others,](#) about desirability of sending such a notice to a person who happens to be the real owner of the goods, though not mentioned as an accused in the FIR and (c) that the order of the Collector, though a quasi-judicial order was not supported by reason. It is difficult, however, in the facts and circumstances of the present case, on a consideration of the averments in the FIR, to invoke jurisdiction under Article 227 of the Constitution or to invoke inherent power because of the specific bar created by Section 6E of the Act. In none of the decisions of this Court in the cases reported in 87 Cal WN 221 : 1983 Cri LJ 491 and (1983) 87 Cal WN 534 the provisions of Section 6E of the Act were considered. The expression "any other court" in Section 6E of the Act includes, in my humble opinion, the High Court also. In these circumstances, when a specific bar of jurisdiction has been created by the Act itself, Article 227 of the Constitution or Section 482 Cr. P.C. cannot be invoked for setting aside or quashing the confiscation case or for directing the release of the seized paddy to the petitioner at this stage. In the circumstances, I refrain from discussing the merits of the petitioner's case.

6. The application is, accordingly, rejected. The order for staying the sale of the seized paddy is vacated.

7. Liberty is given to the petitioner to move the appellate authority u/s 6C of the Act, in accordance with law, by 30th Aug 1985. In the meantime, the operation of this order will remain stayed.