

**(1951) 04 CAL CK 0026**

**Calcutta High Court**

**Case No:** Criminal Revision No. 1108 of 1950

Abdul Jabbar

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** April 16, 1951

**Citation:** 55 CWN 674

**Hon'ble Judges:** P.N. Mookerjee, J; Das Gupta, J

**Bench:** Division Bench

**Advocate:** Ajit Kumar Dutt, for the Appellant; Harideb Chatterjee for the State, for the Respondent

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### **Judgement**

1. The petitioner was convicted u/s 7(1) of Act XXIV of 1946 and sentenced to rigorous imprisonment for two months. On appeal the order of conviction was upheld but the sentence was reduced to a fine of Rs. 50 in default he was ordered to suffer rigorous imprisonment for two weeks. The paddy that was seized was ordered by the Magistrate to be delivered to the State and the learned Sessions Judge in modification of this order directed that (he entire seized stock minus 100 maunds of paddy be delivered to the State, The prosecution case is that though the directive was issued in accordance with law and served on the accused person on the 14th of August, 1949, to sell to one Sew Pujan Ram 350 mds. of paddy by the 27th. of August, 1949, the accused did not so sell the paddy and he delivered only 102 maunds of paddy up to 25th January, 1950. By this refusal to deliver paddy in accordance with the directive, it is said, the accused contravened the Bengal Food-grains (Disposal and Acquisition) Order, 1947, passed u/s 3 of the Essential Supplies Act and consequently committed an offence under sec. 7(1) of Act XXIV of 1946. It is necessary therefore to examine in the first place whether there was a directive issued in accordance with the provisions of the Foodgrains Order. obviously if the directive was issued in accordance with the order the accused has contravened the provisions of clause 3 of the notification, dated 13th April, 1947, which has been issued u/s 3 of the Essential Supplies Act. If, however, the directive

was not in accordance with the provisions of the Foodgrains Order, the accused has committed no offence by failing to comply with the directive. It was decided by us in *Haripada Ghose v. The State* (Criminal revision Case No. 943 of 1951, unreported) that a directive requiring a person to sell any foodstuff can have no force in law unless there is a general or special notice by which the items mentioned in subsection (2) of section 3 of the Food Control Order have been fixed. The items to be fixed are the quantity to be exempted, the place where delivery should be made, the quantity to be sold, and most important of all, "the price which will be paid on such delivery". It was also held in that case that fixing the price as "not exceeding a certain sum of money, subject to deduction on account of poorness of quality and cost of transportation and other incidental charges incurred by Government is not a fixation of price in accordance with the requirement of law as provided in sub-section 2 of section 3 of the order. Mr. Chatterjee who appeared on behalf of the State conceded that he was not in a position to say anything to induce us to change our view in the matter from what we expressed in the above case. We may merely state here that it seems to us to be elementary that stating the price as not exceeding Rs. 6-8 does not amount to fixing any price at all. The whole idea of fixation of price connotes a definiteness of amount. If it is said that the amount does not exceed Rs. 6-8, obviously the amount may be anything from 1 anna to Rs. 6-8. The addition of the words "subject to deduction on account of poorness of quality and cost of transportation and other incidental charges incurred by Government" adds, if possible, to the indefiniteness of the amount that will be paid, for nobody knows from what is stated in the directive, as to what will be deducted. We think it proper to add here that as we read the provisions of section 3 of the Food Control Order, we do not see any authority in law for such deduction. Subsection (1) of section 3 makes it compulsory for every person holding any stock of food grains to sell it when called upon to do so at prices not exceeding the rates specified by the Provincial Government: from time to time and notified in the Official Gazette. The proviso to this sub-section is in these words: "Provided that the Requiring Authority or the Officer authorized by him in writing in that behalf may make such allowance in respect of such rates as he deems fit on account of quality, transport or incidental charges". As we read the section, it seems to us clear that this proviso gives the requiring authority, while fixing the price under sub-clause (2) of the section, power to exceed the rate specified by the Provincial Government "so the extent to which he thinks fit to make allowance on account of quality, transport or incidental charges. Ordinarily the amount he has to fix under sub-section (2) has to be within the rates specified by the Provincial Government; but the proviso empowers him to exceed that rate. The proviso is not for the purpose of empowering him to make a deduction. He has already the power to fix a rate below the rates as specified by the Provincial Government. That is the result of the very words used in sub-section (1) of section 3, viz., "at prices not exceeding the rates specified by the Provincial Government". What is abundantly clear, however, is that when the law imposes on him the duty of fixing "the price which will be paid on such delivery", he is to

mention a definite sum as the price fixed as the result of his considerations including the rates specified by the Provincial Government and the allowances he may make under the proviso.

2. In the present case all that is said as regards the price is "not exceeding Rs. 7-8 per mound for paddy subject to deduction on account of poorness of quality and cost of transportation and other incidental charges incurred by Government". In our judgment this is not a fixation of price in accordance with sub-section (2) of section 3 of the Bengal Foodgrains Order, 1947.

3. The accused must therefore be held not to have committed any offence by his omission to deliver the goods.

4. We therefore set aside the Order of conviction and sentence passed by the Courts below. The order of confiscation must also be set aside. The Rule is accordingly made absolute. Let the accused be discharged from his bail bond.