

**(1950) 03 CAL CK 0018**

**Calcutta High Court**

**Case No:** Criminal Revision Case No. 139 of 1950

Legal Remembrancer

APPELLANT

Vs

Abdul Wadud

RESPONDENT

**Date of Decision:** March 22, 1950

**Acts Referred:**

- West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Section 33, 4, 40, 7, 9

**Citation:** (1951) 1 ILR (Cal) 547

**Hon'ble Judges:** Roxburgh, J

**Bench:** Single Bench

**Advocate:** Amaresh Chandra Roy, for the Appellant; Narendra Kumar Basu and Nalin Chandra Banerjee, for the Respondent

### **Judgement**

Roxburgh, J.

This is a Rule against an order of discharge passed by the Additional Presidency Magistrate in a case where a landlord had been prosecuted u/s 40 of the West Bengal Premises Rent Control Act. The prosecution case, very briefly, was that certain premises were let at a monthly rental of Rs. 637-8-0 and that a sum of Rs. 5,000 was paid in cash as selami. This took place in October, 1949. The police had been informed, a trap was laid when the premium was paid. The learned Magistrate has discharged the accused on the ground that Section 40 only penalises acceptance of selami in addition to "standard rent"; as there is no proof in the case that any standard rent had been fixed for the premises, it follows that it could not be said that the selami was in addition to the standard rent. His view is that the case is covered by Sections 4 and 7 of the Act, where the reference is not to "standard rent" but to "rent". In my opinion, the reasoning of the learned Magistrate is not sound. Seldmi is something quite different from rent. The seldmi paid, according to the prosecution case, was clearly not rent. Whatever might be the exact figure fixed by the Controller as the standard rent, it could always be proved that the seldmi

paid was in addition to whatever that figure might be determined to be u/s 9 of the Act. The two things were two quite different classes and it is quite clear on the prosecution case that the seldmi was in addition to rent and therefore, necessarily in addition to standard rent, whatever that might be determined to be.

2. Mr. Basu, however, asks me not to interfere with the order of discharge, pointing out the apparent intention of the Act in regard to the matter of remedies of the tenant who has been made to pay seldmi or like excess demands and the punishments of landlords who receive or try to receive such excesses. Section 4 of the Act lays down the substantive proposition that no person shall--

(a) claim, etc., selami, etc., or

(b) accept an advance of rent (subject to certain conditions).

3. Section 7 provides that the Controller can, in certain circumstances, direct refund of rent paid which is irrecoverable under the Act, or seldmi, etc., or advance rent, etc., paid contrary to the provisions of Section 4. u/s 33, the Controller himself has powers to impose what are called fines on landlords for receiving excess rent or seldmi, etc., or advance rent and he is allowed to impose enhanced fines in cases of second offence. Then we come to Section 40, which provides especially for the case where the landlord has taken seldmi, etc., "in addition to the standard "rent" and says that he--

shall also, on conviction in a criminal court, be punished with imprisonment for a term which may extend to two years or with fine or with both and without prejudice to any other method of recovery, the court may order the amount paid or the value of the consideration given to be repaid to the person by whom the payment was made or the consideration given.

4. The offence is made cognisable and bailable. The use of the word "also" certainly suggests that ordinarily Section 40 would not be used after Section 33 has been employed by the Controller. I do not go so far as to accept the suggestion of Mr. Basu that unless there had been a previous punishment by the Controller u/s 33 there can be no prosecution or punishment or, at any rate, punishment u/s 40, but I certainly think that ordinarily the procedure should be that only in cases where the Controller's powers of punishment are not deemed sufficient should Section 40 come into play. It has to be conceded that no limitation by way of requirement of sanction by the Controller or any other authority has been put on prosecution but nevertheless such seems to be the intention of the Act, though like so many other intentions in regard to this Act it has not been very clearly carried out.

5. At any rate, this case having gone the way it has gone, I think I should accept Mr. Basil's suggestion and decline to interfere with the order of" the Magistrate, although I do not accept the reason given by him. The discharge will not prevent further proceedings being taken before the Controller if deemed necessary. If such

proceedings are taken he can also fix the standard rent and remove all possible quibbles about the interpretation of Section 40.

6. The Rule is accordingly discharged.