

**Mahammad Idrish Vs. the State**

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**Court :** Kolkata

**Decided On :** Jul-18-1951

**Reported in :** AIR1952Cal139

**Judge :** R.P. Mookerjee and ; Lahiri, JJ.

**Acts :** Essential Supplies (Temporary Powers) Act, 1946 - Section 7(1); ; West Bengal Cotton Cloth and Yarn Cotton Textile Control Order, 1948; ; West Bengal Black Marketing Act, 1948 - Sections 3(1) and 6

**Appeal No. :** Criminal Revn. No. 222 of 1951

**Appellant :** Mahammad Idrish

**Respondent :** The State

**Advocate for Def. :** Prafulla Coomar Banerjee, Adv.

**Advocate for Pet/Ap. :** Nirmal Chandra Sen, Adv.

**Judgement :**

**R.P. Mookerjee, J.**

1. This Rule was issued on the District Magistrate, 24 Parganas why the order for sale complained of should not be set aside or such other or further order or orders made as to this Court may seem fit and proper. There were other reliefs prayed for

but the Rule as issued did not include such other reliefs.

2. The petitioner before us is the owner of a large business concern at Budge Budge. On the 12th October, 1950, Officers of the Enforcement Department of the Government visited the shop. It is alleged that along with other articles mill-made textile goods as also textiles made by power looms were kept at that shop for sale. The Enforcement Department sent a test purchaser to the shop on the date aforesaid. One piece of mill-made cloth was sold to him at a price higher than what was marked on the cloth, as being the fair price for retail sale. The shop was immediately thereafter raided and searched. No price list was exhibited at the shop and certain books required to be maintained under the various Control Orders were also not kept. The petitioner was sent up on charges framed under various provisions viz., Section 7 (1) of the Essential Supplies (Temporary Powers) Act XXIV (24) of 1946, Clauses 15, 18 (1) and 19 (1) of the West Bengal Cotton Cloth and Yarn Control Order, 1948, Clause 24 of the Cotton Textiles Control Order, 1948, and under Sections 3 (1) and 6 of the West Bengal Black Marketing Act (West Bengal Act XXXII (32) of 1948).

3. The entire shop was sealed and a large quantity of stock was also seized. A number of persons had also been arrested. The actual trial has not yet taken place. The Magistrate was moved on different occasions about the disposal of the stock which had been seized. The last order which was passed by the Sub-divisional Magistrate was one dated 27th November, 1950. He directed that the seized goods be sold by the Director of Textiles. The other portions of the order are not relevant for our present purpose.

4. On behalf of the petitioner it is contended before us in support of the Rule that the order for sale of the goods seized was without jurisdiction, There are, no doubt, clear statutory provisions authorising searches of and seizure of goods from shops where offences are alleged to have been committed.

5. Clause 18 of the West Bengal Cotton Cloth and Yarn Control Order 1948 provides that the dealer shall display in a conspicuous position at his place of business a list in the most commonly understood language of the locality, showing the maximum legal price in respect of all such kinds of cloth in his shop or store as

have its prices stamped thereon and such a dealer shall not withhold from sale any such cloth to any person on demand and offer at the maximum legal price.

6. Although therefore only one piece of cloth had been sold at an exorbitant price other pieces of cloth which had been seized may also be necessary for being produced before the Court to prove the offence under Sub-clause 1 of Clause 18 referred to above, that a proper list of all kinds of cloth with prices stamped thereon had not been kept. It is for the prosecution to consider whether the seized articles will be necessary for production at the trial for proving the offences alleged including the one under Sub-clause 1 of Clause 18 already referred to. Whether the seized goods will be relevant evidence in respect of any one or more of the other charges has not been discussed before us. If the seized goods be considered to be relevant evidence during the trial the seized textile goods should not be sold away before the trial. It may, however, be that the goods seized being of a perishable nature should be disposed of. There is however no finding in the present case that the stock of cloth seized is of a perishable nature. If properly kept, textile goods are not ordinarily perishable Within a short time, that is, the period within which the proceedings may commence or even be concluded. In this view, therefore, no order for sale of the seized goods should have been passed. The order for sale therefore cannot be allowed to stand.

7. The proper order to pass in a case of this description will be to direct the Sub-divisional Magistrate to consider in the first place whether the seized articles will be necessary for proving the ingredients of an offence under which the charges have been framed. If they are found to be relevant and be necessary for production during the trial the Court may pass the necessary direction for their proper custody so that they may not deteriorate. They may be kept either with a Government officer or the petitioner himself if the Magistrate thinks it desirable after taking proper security from him. If, on the other hand, the seized goods are either not relevant or be not necessary for production during the trial or if the goods are found by the Court to be of a perishable nature the proper order should be to hand over the goods to the petitioner in the present case; the petitioner, it is said, is still the holder of a license to deal with goods which have been seized If the goods are to be disposed of either feeling unnecessary at a later stage of the

trial I being of a perishable nature there is no ground whatsoever why the petitioner, so long as his license remains in force, should not be put back in possession of the seized goods.

8. This Rule is therefore made absolute and the order for sale made by the Magistrate on the 27th November, 1950 is set aside. The learned Magistrate will proceed to hear the Question about either the custody of or the disposal of the seized goods according to the directions given above.

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