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NaimuddIn Biswas Vs. the State

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Court : Kolkata

Decided On : Nov-21-1951

Reported in : AIR1952Cal144

Judge : Harries, C.J. and ; Sinha, J.

Acts : Essential Supplies (Temporary Powers) Act, 1946 - Section 7

Appeal No. : Criminal Revn. No. 889 of 1951

Appellant : NaimuddIn Biswas

Respondent : The State

Advocate for Def. : N.K. Sen, Adv.

Advocate for Pet/Ap. : Jagannath Gangopadhyay, Adv.

Judgement :

Harries, C.J.

1. This is a petition for revision of an order made by a learned Magistrate confiscating certain property belonging to the petitioner.

2. The petitioner along with another was originally charged with an offence under the Essential Supplies Act in that they wrongfully moved certain rice of which movement was prohibited by orders in force made under the Essential Supplies

Act. It appears that when the case came before a Magistrate it was impossible to obtain any evidence at all against the accused persons and they were accordingly discharged under Section 253 of the Code of Criminal Procedure. The learned Magistrate however thought that the facts and circumstances were suspicious and he made an order of forfeiture. It is against that order that the present petition has been preferred.

3. The Essential Supplies Act allows an order of forfeiture to be made if an offence under the Act has been proved. Persons who contravene the provisions of the Act can be dealt with and their property forfeited. But the condition precedent to forfeiture is contravention of the provisions of the Act. Here the accused were discharged, it is true for want of evidence. However by no stretch of imagination can that order of discharge be said to show that the accused contravened the provisions of the Act. If it shows anything it shows the contrary. In any event, a suspicion of contravention is not contravention and the learned Magistrate had no right whatsoever to order forfeiture merely because he was suspicious, and the learned Magistrate admits that the only basis for the order of forfeiture was a suspicion, though he had to discharge the accused because no evidence at all was available against him.

4. The order of forfeiture was therefore clearly illegal and must be set aside. The Rule is accordingly made absolute. All the property confiscated, namely, two bullocks, one bullock cart and thirty seers of paddy must be returned forthwith.

Sinha, J.

5. I agree.

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