

**Abdur Rahaman Vs. the State**

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**Court :** Kolkata

**Decided On :** Jun-27-1955

**Reported in :** AIR1955Cal631,1955CriLJ1583

**Judge :** Mitter and ;Renupada Mukherjee, JJ.

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

**Appeal No. :** Criminal Revn. No. 1199 of 1954

**Appellant :** Abdur Rahaman

**Respondent :** The State

**Advocate for Def. :** J.M. Banerjee, Adv.

**Advocate for Pet/Ap. :** Pritibhusan Burman, Adv.

**Judgement :**

**Mitter, J.**

1. There are three Rules before us, the first to show cause why an order of confiscation of 34 bundles of yarn should not be set aside, the second as to why a substantive sentence of imprisonment should not be imposed in respect of the offence said to have been committed by the petitioner, and the third as to why the

petitioner's conviction and the sentence imposed upon him should not be set aside.

2. The petitioner was at all material times a dealer in yarn holding a 'D' Group license under the West Bengal Cotton Cloth and Yarn Control Order, 1948. The prosecution case against, the petitioner was that on 25-6-1954, he sold a quantity of yarn to P.W. 2 for which no cash memo was either prepared or given to the purchaser. Soon after the purchase, the petitioner was challenged but he was unable to produce the relative cash memo for the sale in question.

In the shop were found 34 bundles of cotton yarn which were seized by the Police. On the above facts the petitioner was charged with an offence under Section 7(1), Essential Supplies Act (Act 24 of 1946) for contravention of Clause 19(1), West Bengal Cotton Cloth and Yarn Control Order, 1948. Upon the evidence adduced the learned Magistrate convicted the petitioner of the offence and sentenced him to pay a fine of Rs. 100/-, in default to suffer R. I. for 2 months.

The learned Magistrate also ordered the confiscation to the State of the 34 bundles of Yam seized by the Police.

3. It is clear that a conviction under Section 7(1), Essential Supplies Act 'must be followed by a sentence of imprisonment. Section 7(1) is in these terms :

'If any person contravenes any order under Section 3 relating to cotton textiles, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine and any property in respect of which the order has been contravened or such part, thereof as to the Court may seem fit shall be forfeited to the Government.'

In view of the mandatory provision of Section 7, the learned Magistrate was in error in not imposing a sentence of imprisonment. The section provides for a sentence of imprisonment a fine and for forfeiture of the property or a part thereof in respect of which an offence is committed.

4. Clause 19(1), West Bengal Cotton Cloth and Yam Control Order, 1948, provides that every dealer, other than hawker, shall issue to every person who

purchases any cloth or yarn from him a true cash memorandum or credit note, as the case may be, in respect of such purchase of which such dealer shall keep a duplicate which shall be produced by such dealer for inspection on demand by the Textile Licensing Officer or any officer authorised in writing by such officer in this behalf. Under Sub-clause (1) of Clause 19 the memorandum is required to contain certain details.

5. On the evidence, there could have been no doubt that the petitioner had been guilty of contravention of Clause 19(1), West Bengal Cotton Cloth and Yarn Control Order, 1948, Although we are not bound to assess the evidence afresh, we have examined the evidence and are satisfied that the petitioner was guilty of a breach of Clause 19(1) of the Control Order of 1948.

6. In view of the finding of fact, the petitioner is liable to be convicted. Under Section 7(1), Essential Supplies Act a sentence of imprisonment is obligatory. We think that in all the circumstances of the case a sentence of 7 days' simple imprisonment together with a fine of Rs. 25/- will meet the ends of justice. We must accordingly set aside the fine of Rs. 100/- imposed by me learned Magistrate and impose instead a sentence of 7 days' simple imprisonment and a fine of Rs. 25/-, in default another 7 days' simple imprisonment.

7. With regard to the, 34 bundles of cotton yarn seized it is clear that no offence was committed. Clause 29, West Bengal Cotton Cloth and Yarn Control Order, 1948, is in these terms .

'A court trying any contravention of this Order may without prejudice to any other sentence which it may pass, direct that any cloth or yarn together with the package or container thereof in respect of which it is satisfied that such contravention has occurred shall be forfeited to Government.'

Section 7(1), Essential Supplies Act also provides that any property in respect of which the Order has been contravened or such part thereof as to the Court may seem fit shall be forfeited to the Government. It is thus clear, that before any property or commodity can be forfeited to the State, it must be established that an offence in connection therewith has in fact been committed. Here no offence was

committed in Respect of the 34 bundles of cotton yarn was illegal and must I set aside. We order accordingly.

8. The Rule is disposed of accordingly.

**Renupada Mukherjee, J.**

9. I agree.

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