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**(2008) 04 AHC CK 0006**  
**In the Allahabad High Court**  
**Case No : Criminal M.W.P. No. 18351 of 2007**

Gajala Parveen

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision :** 25-04-2008

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 457  
Essential Commodities Act, 1955 — Section 3, 6A, 7

**Citation :** (2008) 3 ACR 2378

**Hon'ble Judges :** M.K. Mittal, J

**Bench :** Single Bench

**Advocate :** P.C. Srivastava, for the Appellant; Desh Ratan Chaudhary and A.G.A., for the Respondent

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## Judgement

M.K. Mittal, J.—This petition has been filed for quashing the orders dated 15.10.07, passed in Criminal Revision No. 1108/07 (Annexure-6) and 18.9.07 (Annexure-5) passed in Case Crime No. 261/07. Learned C.J.M., Basti rejected the application filed by the Petitioner for release of 300 bags of rice and by order dated 15.10.07 the learned Sessions Judge dismissed the criminal revision filed against the aforesaid order.

2. The brief facts of the case, as narrated by the Petitioner in the writ petition, are that she is the owner of rice-mill and has a licence for production of rice. Its licence number is 2 MASKNWA/02 and she has also a licence for sale of dal and dalhan with No. 361 Maskana/02. The Petitioner runs a rice mill in the name and style of Hind Agro Industries, Babhanan Maskanwa, district Gonda. On 29.7.07 three hundred bags containing 150 quintals of rice were loaded in truck No. U.P. 85/8265 for sale in the open market through Manish Trading Company, Naveen Mandi Sthal, Gonda and form 9-R, bills, gate pass were duly prepared and issued as per rules. The Petitioner was required to pay 60% levy charge to the State Government and as per stock register the firm had given 60% to the levy charge of the State Government and thereafter, 150 quintals were to be sold in the

market. When the truck was carrying these bags it was seized by Respondent No. 2, Ram Nayan, who was then Incharge, Zila Khadya Vitran Adhikari. The truck was taken to the police station. At the time it was seized, illegal demand was made but the driver refused and thereafter the truck driver was also challaned u/s 3/7 E. C. Act. This rice belongs to the Petitioner and was brought from her rice mill and was being taken for sale to Manish Trading Company. The Petitioner also has a machine for stitching the bags and he also used to purchase old bags and builti threads.

3. The Petitioner filed an application for release of these bags and rice but learned Magistrate rejected the application on the ground that investigation was pending in the case and that report for confiscation u/s 6A of the E.C. Act had been sent to the District Magistrate. The revision filed by the Petitioner was also dismissed on the ground that the rice was being transported against the provisions of E.C. Act and as per the statement of the truck driver, the rice was brought from mal godam near village Didwa at Shiva Ghat road. Learned Sessions Judge also held that the matter had been referred to the District Magistrate for confiscation u/s 6A of the E. C. Act. Consequently, he dismissed the revision.

4. Feeling aggrieved, the present petition has been filed. In this case the State of U.P. filed a counter-affidavit wherein it has been alleged that this rice was of the Antyoday Scheme and was meant for public distribution. The report was lodged in the matter after obtaining consent from the District Magistrate. It is wrong to say that any gratification was demanded by the seizure officer/ Respondent No. 2 or any police personnel. The Petitioner has no licence for public distribution scheme. The release application has rightly been rejected by the Magistrate and the revision has also rightly been dismissed. The report of confiscation had been submitted to the District Magistrate. The impugned orders do not need any interference.

5. The learned Counsel for the Petitioner has contended that the Petitioner is owner of this seized rice and it should have been directed to be released in her favour but learned lower courts have erred in refusing to release on the ground that the matter for confiscation of the rice u/s 6A of the E.C. Act has been referred to the District Magistrate. Learned Counsel for the Petitioner submitted that as yet no confiscation order has been passed in the matter. He also submitted that the Petitioner is the owner of the rice mill and has a licence to produce the rice and it was produced in her mill and as per the rules, it was being sent for sale. As against it the contention of the learned Counsel for the State is that this rice belongs to the Antyoday Scheme and was meant for public distribution and was being transported from godam near village Didva for black-marketing and was rightly seized.

6. Section 457, Cr. P.C. provides that whenever seizure of property by any police officer is reported to the Magistrate under provision of this Code and such property is not produced before a criminal court during an enquiry or trial, the

Magistrate may make such order as he thinks fit respecting the disposal of the said property or delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property. Therefore, if any property is seized and the trial or enquiry is pending, the Magistrate can order for disposal of the property and order for delivery to the person entitled thereof and if such person cannot be ascertained, the Magistrate can direct for custody and production of such property. In the instant case, the Petitioner has been claiming herself to be the owner of the seized rice.

7. Learned Magistrate has not given any finding that the Petitioner is not entitled for the possession of this rice. He has presumptively held that it cannot be said that the rice was not meant for black marketing. Similarly the learned Sessions Judge has also not given any finding that the Petitioner was not entitled to the possession of this rice. So far the question of reference of the matter to District Magistrate u/s 6A of E.C. Act is concerned, a copy of the report dated 11.9.07 has been filed as C.A.-3 and it shows that a request has been made by the Investigating Officer to the District Magistrate for taking action u/s 6A. But there is nothing on record to show whether any action u/s 6A has been taken or not.

8. While deciding the application u/s 457, Cr. P.C. the Court is required to prima facie ascertain whether the person claiming the goods is entitled to have the possession. In this case, the Petitioner claims herself to be the owner of this rice but the Respondents claim that the rice belongs to Antyoday Scheme and was meant for public distribution. In these circumstances, it is necessary to decide whether the Petitioner is prima facie entitled to get the rice released in her favour or whether the rice was meant for Antyoday Scheme. This is a matter of fact and no finding regarding the fact can be recorded in the writ petition. It is also necessary to ascertain whether any confiscation order has been passed u/s 6A by the District Magistrate.

9. In this circumstances, it is necessary that the matter be remanded back to the learned Magistrate who shall decide the entitlement of the Petitioner according to law. He shall also ascertain the present position regarding the confiscation of the rice u/s 6A of the E. C. Act.

10. The seized good, i.e., rice is a perishable item and learned Magistrate shall proceed in the matter expeditiously. If the rice has been confiscated and the proceeding is still pending, that proceeding is also required to be expedited.

11. In view of the above this writ petition is liable to be allowed and it is hereby allowed. The impugned orders dated 15.10.07 and 18.9.07 are hereby set aside. The matter is remanded back to the learned Magistrate who shall after giving opportunity to the parties decide the matter afresh and expeditiously, preferably within a period of one month from the date a copy of the order is filed before him. In case any confiscation order has been passed u/s 6A the District Magistrate, Basti shall also expedite the matter and conclude the same within a

period of one month.