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**(1989) 04 CAL CK 0004**  
**In the Calcutta High Court**  
**Case No : Criminal Revision No. 483 of 1984**

Gobardhan Karmakar

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision :** 12-04-1989

**Acts Referred:**

Constitution of India, 1950 — Article 254(2)  
Criminal Procedure Code, 1973 (CrPC) — Section 401  
Rice Milling Industry (Regulation) Act, 1958 — Section 13(1)  
West Bengal Rice Milling Industry (Regulation) (Amendment) Act, 1974 — Section 17A, 9

**Citation :** (1989) 2 CALLT 76 : 93 CWN 1120

**Hon'ble Judges :** A.M. Bhattacharjee, J; A.K. Nandi, J

**Bench :** Division Bench

**Advocate :** Ramapati Roy, for the Appellant; None, for the Respondent

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## Judgement

A.M. Bhattacharjee, J.—This revisional application by the petitioner is against his conviction and sentence in a prosecution u/s 13(1) of the Rice-Milling Industry (Regulation) Act, 1958. The Act is obviously a Parliamentary legislation enacted under Entry No. 52 of the Union List which relates to "Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest" and Section 2 of the Act contains the requisite declaration to the effect that "it is hereby declared that it is expedient in the public interest that the Union should take under its control the rice-milling industry". It is manifest that as a result of such a declaration as in Section 2, Rice-Milling Industry has become exclusively a subject for Union legislation.

2. By the West Bengal Act XXIV of 1974, being the Rice-Milling Industry (Regulation) (West Bengal Amendment) Act, 1974, the Union Legislation of 1958 has been amended whereby Section 9 of the Union Legislation has been substituted and a new Section being Section 17A has been inserted. While in Section 9 of the Parliamentary Act, power is given to the Licensing Officer or any person authorised by the Central Government in this behalf, to enter and inspect

any Rice Mill, to order production of any book or other documents in possession or power of any person having the control of or employed in connection with any Rice Mill and also to examine any such person, Section 9 of the Act as substituted by the West Bengal Amendment Act of 1974 authorises a Licensing Officer and also any Police Officer not below the rank of a Sub-Inspector of Police, who has reasonable grounds for believing that there has been a contravention of any of the provisions of the Act or the Rules made thereunder, to search any place where any Rice Mill is located and also to seize and retain the Rice Mill including its machineries, parts and accessories, any stock of rice or paddy, as well as books, documents or other papers as aforesaid. And Section 17A as inserted by the West Bengal Amendment Act of 1974 has provided that "an offence punishable under this Act, or any Rule or Order made thereunder shall be cognisable and non-bailable". Under the Parliamentary Act, read with the relevant provisions of the Code of Criminal Procedure, such offences are bailable as well as noncognizable..

3. The case giving rise to the present prosecution was initiated and investigated by the police and was instituted on a police-report on the strength of the provisions of Section 17A of the Act, as inserted and Section 9 of the Act, as substituted, by the West Bengal Amendment. And the only point that has been urged by Mr. Roy, the Learned Counsel for the accused-petitioner, is that the West Bengal Amendment Act of 1974 is void as in view of Entry 52 of the Union List and the requisite declaration in respect of Rice-Mills in Section 2 of the Parliamentary Act of 1958, -Rice Mills became exclusively a subject for Parliamentary legislation and the State could no longer legislate in or on any matter relating to Rice Mills. In other words, the contention is that the legislative field relating to Rice-Mill has been so occupied by Entry No. 52 of the Union List and by the Parliamentary Act of 1958, that any State legislation touching or in any way relating to Rice-Mill would be incompetent.

4. The argument must and cannot but be repelled. Section 9, as substituted and Section 17A, as inserted, by the West Bengal Act manifestly deal with matters relating to Criminal Procedure, like investigation of offences and the like, matters which are evidently within the concurrent jurisdiction of the Union and the States, being Entry No. 2 of the Concurrent List of the Seventh Schedule of the Constitution and, therefore, the West Bengal Legislature had and has full competence to make laws relating thereto. Even if the West Bengal Act consists of provisions relating to offences in respect of Rice-Mill under the Parliamentary Legislation enacted in the exercise of its exclusive jurisdiction, the West Bengal Act, not only in pith and substance, but in form, essence and contents and every respect, is nothing but a legislation relating Criminal Procedure regarding investigation of offence. Notwithstanding the exclusive legislative jurisdiction of Parliament in respect of Rice-Milling Industry, in view of Entry No. 52 of the Union List and the requisite declaration, offences under the Parliamentary Act would have to be investigated, inquired into and tried in accordance with the Code of Criminal Procedure in view of Section 4(2) of the Code of Criminal

Procedure, 1973 and "Criminal Procedure" is a Concurrent List Matter, being Entry No. 2 of List III, in respect of which State Legislature has perfect legislative competence. And it can never be disputed that any State Legislation relating to Criminal Procedure would be validly operating in that State and may even outweigh or overthrow the provisions of Code of Criminal Procedure, 1973, provided the State Legislation is assented to by the President.

5. Under our Constitutional Scheme, no field of legislation in the Concurrent List can be so occupied by Parliament as to make the same a "no-entry" area for the State Legislature. And from that point of view, the doctrine of "occupied field" may have no application in our Constitutional Scheme in the manner in which it applies in the United States, wherefrom it is occasionally borrowed by us. Because, however pervasively or comprehensively Parliament may purport to occupy a legislative field in the Concurrent List by an all-round legislation, Under Article 254(2) of the Constitution, a later State Legislation would nevertheless prevail over the former, provided the latter is assented to by the President. The West Bengal Amendment Act of 1974 seeking, as already noted, to amend or alter only a portion of the procedural law relating to investigation of offence and search, seizure and the like, has duly been assented to by the President and even if the earlier Parliamentary Act of 1958 also provided for such matters, those have been over-borne by the State Legislation.

6. Mr. Roy, appearing for the petitioner has drawn our attention to the decision of the Supreme Court in *Bajinath Kadio Vs. State of Bihar and Others*, , but the principles laid down therein can have no application to the case at hand. Under Entry No. 54 of the Union list, requisition of Mines and Minerals would come within the exclusive legislative jurisdiction of the Union once Parliament declares such control by the Union to be expedient in the public interest and the Parliamentary legislation being Mines & Minerals (Regulation & Development) Act, 1957 has been enacted after such requisite declaration. Entry No. 23 of the State List also relates regulation of Mines and Minerals, but that has expressly been made "subject to the provisions of List I", i.e., Entry 54 thereof. The competence of the State Legislature under Entry No. 23 of the State List having been thus made expressly subject to the jurisdiction of the Union under Entry 54 of the Union List, it is obvious that State would have no jurisdiction to enact contrary to the Parliamentary Legislation. This decision, is, therefore, of no assistance in this case before us where the impugned State Legislation is on a matter in the Concurrent List and, as already noted, Under Article 254(2), a State Legislation on any such matter, if assented to by the President, would render all inconsistent provisions in any earlier Parliamentary Act absolutely inoperative in the State. We, therefore, find no reason to interfere with the Order of conviction.

7. We have, however, thought it necessary to interfere with and alter the sentence. The petitioner has been sentenced to suffer simple imprisonment for one month and to pay a fine of Rs. 500 in default to suffer simple imprisonment

for six months. Imprisonment for six months in default of payment of fine of Rs. 500 only, is very much disproportionate. But that apart, the prosecution in this case was initiated in 1979, the Trial Court convicted the petitioner in 1983, the Court of Appeal dismissed the appeal in 1984 and this Court was moved in revision in the same year in 1984. The Rule was issued on 26.3.84 and we have taken more than five years to dispose of the revision. The petitioner had to be under the stress and strain of an impending sentence of imprisonment for more than 6 years, the Trial Magistrate having imposed the same on 28.1.83. Considering all these facts and circumstances, we do not think we should send the petitioner behind the bars after such long lapse of time. We accordingly, while maintaining the conviction, set aside the sentence imposed by the Courts below and instead sentence the petitioner to pay a fine of Rs. 4000, in default to suffer simple imprisonment for 2 months. The Rule is accordingly disposed of. Records, with copy of our Order, to go down at once.

A.K. Nandi, J.

8. I agree.