

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CRIMINAL MISCELLANEOUS JURISDICTION)

**Present:**

**Mr. Justice S M Kuddus Zaman**

**And**

**Mr. Justice A.K.M. Rabiul Hassan**

**Criminal Miscellaneous Case No.7450 of 2024**

Md. Shahidul Islam Sawpon

.... Accused-Petitioner

-Versus-

The State

.... Opposite Party

Mr. Md. Salequzzaman (Sagor), Advocate

.... For the petitioner.

Mr. Sujit Chatterjee, D.A.G. with

Mr. Moududa Begum, A.A.G.

Mr. Mirza Md. Soyeb Muhit, A.A.G.

Mr. Mohammad Selim, A.A.G.

Mr. Zahid Ahmed (Hero), AAG

.... For the State

**Heard and Judgment on 03.07.2024**

**S M Kuddus Zaman, J:**

On an application under section 498 of the Code of Criminal Procedure this Rule was issued calling upon the opposite party to show cause as to why the order dated 23.08.2023 passed by the learned Senior Session Judge, Rajshahi in Criminal Revision No.107 of 2022 affirming the order dated 22.05.2022 passed by the learned Judicial Magistrate, 2<sup>nd</sup> Court, Rajshahi in G.R. Case

No.168 of 2022 (Bag) arising out of Bagmara Police Station Case No.11 dated 10.05.2022 under Section 25(1)/25-D of the Special Powers Act, 1974 illegally directing the Investigation Officer of the case to sale the seized Edible Oil owned by the petitioner should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

And on an application this Supplementary Rule was issued calling upon the opposite party to show cause as to why the order dated 07.11.2023 passed by the learned Session Judge, Rajshahi in Criminal Revision No.218 of 2023 affirming the order dated 21.09.2023 passed by the learned Senior Judicial Magistrate, 4<sup>th</sup> Court, Rajshahi in G.R. Case No.168 of 2022 (Bag) arising out of Bagmara Police Station Case No.11 dated 10.05.2022 under Section 25(1)/25-D of the Special Powers Act, 1974 rejecting the application for taking custody of the seized Edible Oil owned by the petitioner should not be quashed and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that Md. Zillur Rahman, Sub-Inspector of Police of Bagmara Police Station, Rajshahi on receipt of an informant as to unlawful hoarding of food items and Edible Oil raided the godown of the petitioner at Taherpur bazar and recovered 100 barrel Edible Oil weighting 20,000 items and seized the same. Stating above facts above Police Officer lodged an ejahar under Section under Section 25(1) of the Special Powers Act, 1974.

In above case the petitioner filed a petition to the learned Judicial Magistrate for giving above seized Edible Oil in his jimma which was rejected. Being aggrieved by above order of the learned Judicial Magistrate the petitioner preferred Criminal Revision No.218 of 2023 to the learned Session Judge, Rajshahi who rejected above Criminal Revision and affirmed the judgment and order passed by the learned Judicial Magistrate.

Being aggrieved by judgment and order of the learned Session Judge the petitioner moved to this Court and obtained this Rule.

Mr. Md. Salequzzaman (Sagor), learned Advocate for the petitioner submits that the petitioner is an authorized dealer of food items and licensee of the Directorate of Food of the Government of Bangladesh. The petitioner is authorized to storage 300 metric tons of food item in his godown for a period of 30 days. The Edible Oil which was seized from the possession of the petitioner was only about 20,000 liters within the permissible quantity of storage. The learned Advocate lastly submits that the petitioner procured above Edible Oil during the period from 03.05.2022 to 07.05.2022.

The informant failed to appreciate the meaning of above documents of the petitioner and most unlawfully seized above Edible Oil from his godown and the learned Judicial Magistrate most unlawfully directed the Police Officer to sell above seized goods. The learned Session Judge should have given above seized articles in the jimma of the petitioner. But the learned Session

Judge most illegally rejected the Criminal Revision and affirmed above unlawful order of the Judicial Magistrate is not tenable in law.

Mr. Sujit Chatterjee, learned Deputy Attorney General for the State submits that since the learned Judicial Magistrate has already taken appropriate steps for selling of the seized Edible Oil by the Police Officer this Court should not interfere with the same at the stage of the proceedings.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

Undisputedly 100 barrel of Edible Oil weighting 20,000 liter was recovered and seized from the godown of the petitioner.

The learned Advocate for petitioner has produced before us a photocopy of the Food Item Dealing Licence of the petitioner (marked as Annexure-K) which shows that the petitioner was authorized to storage in his godown 300 metric tons of food items for a period of 30 days. The learned Advocate has also produced a series of purchase receipts (marked as Annexure-N) showing that the petitioner purchased above Edible Oil during the period from 02.05.2022 to 07.05.2022.

The term "Hoarding" has been defined in Section 2(e) of the Special Powers Act which is reproduced below:

2(e). "hoarding" means stocking or storing anything in excess of the maximum quantity of that thing allowed to be held in stock or storage

at any one time by any person by or under any law.”

We have carefully scrutinized the FIR but unable to find any mention as to the date of storage or keeping above Edible Oil in the godown of the petitioner nor any mention as to how the quantity of above Oil exceeded the permissible limits granted to the petitioner by the Department of Food.

Since the petitioner is the owner and possessor of above seized articles he can ensure the better storage, maintenance and disposal of seized perishable food articles rather than a police officer primary duty is to maintain law and order and investigation of crimes. The sale proceeds of above seized Oil could be recovered from the petitioner at the end of the trial if he was finally convicted in this case. The learned Session has failed to appreciate above aspect of the case and most illegally rejected the revision and affirmed the unlawful order of the learned Judicial Magistrate which is not tenable in law.

In above view of the materials on record we find substance in this application under Section 561A of the Code of Criminal Procedure and the Rule and Supplementary Rule issued in this connection deserve to be made absolute.

In the result, the Rule and Supplementary Rule are hereby made absolute.

The order dated 23.08.2023 passed by the learned Senior Session Judge, Rajshahi in Criminal Revision No.107 of 2022 is hereby quashed.

The learned Judicial Magistrate is directed to give above seized Edible Oil in the jimma of the petitioner with condition that he would produce above seized articles or if sale proceeds whenever he is directed to do so by the trial Court.

Communicate this judgment and order to the Court concerned at once.

**A.K.M. Rabiul Hassan, J:**

I agree.

MD. MASUDUR RAHMAN  
BENCH OFFICER