

Present:

Mr. Justice Borhanuddin  
and  
Mr. Justice Md. Ruhul Quddus

Criminal Appeal No. 2759 of 2008

Brindaban Mondal and another  
... Appellants

-Versus-

The State  
... Respondent

Mr. M.A. Muntakim, Advocate  
... for the appellants  
Mr. A.B.M. Mahbub, A.A.G.  
... for the respondent

Judgment on 16.5.2011

*Md. Ruhul Quddus, J:*

This appeal under section 30 of the Special Powers Act, 1974 is directed against order dated 20.4.2008 passed by the Special Tribunal No.3, Satkhira in Special Tribunal Case No.129 of 2007 rejecting an application for discharge filed by the appellants under section 265C of the Code of Criminal Procedure and framing charge against them under section 25C (b) of the Special Powers Act.

Facts relevant for disposal of the appeal, in brief, are that the informant Md. Kowsar Ali, a Sub-Inspector of police produced the arrested appellant No.1 with ninety bags of fertilizer to Patkelghata police station, Satkhira on 7.2.2007 and lodged an *ejahar* against the

appellants bringing allegation of storing adulterated fertilizer for the purpose of sale. The said *ejahar* gave rise to Patkelghata Police Station Case No.7 dated 7.2.2007 under section 25C (b) of the Special Powers Act. The police, after investigation submitted a charge sheet on 24.3.2007 against the appellants under the said section of law.

The case after being ready for trial, was sent to the Special Tribunal No.1, Satkhira, wherein it was numbered as Special Tribunal Case No.129 of 2007 and therefrom it was transferred to the Special Tribunal No.3, Satkhira for disposal. The appellants filed an application under section 265C of the Code of Criminal Procedure for their discharge from the case. The learned Judge of the Tribunal heard the application, but without disposing of the same, framed charge against them under section 25C (b) of the Special Powers Act by his order dated 20.4.2008. The appellants filed the instant criminal appeal against the said order of framing charge and subsequently obtained an order staying all further proceedings of the case.

Mr. M. A. Muntakim, learned Advocate appearing for the appellants, submits at the very outset that the offence as alleged in the *ejahar* and charge sheet does not come within the mischief of section 25C of the Special Powers Act. This section deals with the offences relating to adulteration of food, drink, drugs and cosmetics. There is a separate law, namely, *mvi e'ive' nvcbv AvBb, 2006* to deal with offences relating to fertilizer. The *mvi e'ive' nvcbv AvBb, 2006* (hereinafter referred to 'the Ain') being a subsequent special law is

only applicable in the present case and the Special Tribunal constituted under the Special Powers Act has got no jurisdiction to try an offence relating to fertilizer.

Mr. A. B. M. Mahbub, the learned Assistant Attorney General appearing for the State finds it difficult to oppose the contention of the learned Advocate for the appellants, however, he submits that the Special Tribunal having no jurisdiction to try the offence, the case may be sent to a Court of competent jurisdiction.

We have examined the law including section 25C (b) of the Special Powers Act providing punishment for adulteration of food or drink, which runs as follows:

“25C- Penalty for adulteration of, or sale of adulterated food, drink, drugs or cosmetics-(1) Whoever-

(a) ...

(b) sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink; or

(c) ....

(d) ....

(e) ....

shall be punishable with death, or with <sup>1</sup>[imprisonment for life], or with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine.”

From a plain reading of the above quoted law, it appears that there is no scope to try an offence relating to fertilizer under section 25C (b) of the Special Powers Act. There is no other provision in the said Act to try an offence relating to fertilizer. On the other hand, section 17 of the *mu e e vcbv AvBb*, 2006 provides the definition of adulterated fertilizer and prescribes punishment for production, import, storing, preservation, sale, marketing and distribution of the same, while section 21 of the said *Ain* provides the forum, where any offence relating to fertilizer would be tried. Sections 17 and 21 of the *Ain* are quoted below:

“17| †fRvj (Adulteration) |Ñ(1) †Kvb e w<sup>3</sup> †Kvb †fRvj mvi Drcv`b, Avg`vbx, s`vgRvZ, msi ¶¶Y, weµq, wecyb ev weZiY Kwi †Z cwi †e bv|

(2) wbgewyZ Kvi †Y †Kvb mvi †fRvj ewj qv MY” nBte, h\_vtÑ

(K) wewb†`R ewnfZ †Kvb mvi ;

(L) cix¶¶vMvi KZ¶¶ KZ¶ c0E mvi we†kHY mwUd†KU Abjvqx hw` mvti ¶¶wZKvi K c`v†\_P Dcw`wZ GB cwi gvY \_v†K hvnv tj †ejj ewyZ wbt`Rbv Abjv†i e`envi Kiv nBtj gwU, Dw<sup>MC</sup>, c0Yx I cwi †etki Rb” ¶¶wZKi nBte;

(M) hw` mvti i e`envi wewa†Z D<sup>3</sup> mvti i AcKvvi Zv m<sup>u</sup>†K`ch¶ß mZKZvgj K weei Y tj †ejj ewyZ bv \_v†K;

(N) hw` tj †ejj ewyZ i vmvqwbK Mvb (Composition) A†c¶¶v wbgv†bi Dcv`v†b A\_ev Ab` †Kvb Dcv†q mvi c0Z Kiv nq; Ges

(O) hw` mvti c0qvRbxq Dcv`vb e`ZixZ Abiek`K ev cwi †ek `†YKvi x ev ¶¶wZKi †Kvb c`v\_©\_v†K|

(3) tKvb e<sup>w3</sup> Dc-aviv (1) Gi weavb j sNb Kwi t j Dnv GB AvBtbi Aaxb Aciva  
 wnmvte MY" nBte Ges D<sup>3</sup> Acivtai Rb" D<sup>3</sup> e<sup>w3</sup> `B ermi chS-mky Kvir`U ev  
 AbaY<sup>o</sup> B j q UvKv A\_<sup>o</sup>U ev Dfq `tU `wUZ nBteb |

"21 | wePvi |-(1) tdSR`vix Kvh<sup>o</sup>waZ hnv wKQB \_vKK bv tKb, GB AvBtbi Aaxb  
 Acivamgn `vbxq Awa<sup>o</sup>q<sup>o</sup> m<sup>o</sup>ubæ c<sup>o</sup>g tkYxi g<sup>o</sup>wRt<sup>o</sup>U wKsev, c<sup>o</sup>hvr" t<sup>o</sup>q<sup>o</sup>t<sup>o</sup>,  
 t<sup>o</sup>g<sup>o</sup>U<sup>o</sup>cwj Ub g<sup>o</sup>wRt<sup>o</sup>U KZR wePvh<sup>o</sup>nBte |

(2) tdSR`vix Kvh<sup>o</sup>waZ hnv wKQB \_vKK bv tKb, GB AvBtbi Aaxb tKvb c<sup>o</sup>g tkYxi  
 g<sup>o</sup>wRt<sup>o</sup>U wKsev, c<sup>o</sup>hvr" t<sup>o</sup>q<sup>o</sup>t<sup>o</sup>, t<sup>o</sup>g<sup>o</sup>U<sup>o</sup>cwj Ub g<sup>o</sup>wRt<sup>o</sup>U t`vix mve" tKvb e<sup>w3</sup> tK ms<sup>o</sup>wk<sup>o</sup>  
 Acivtai Rb" GB AvBtb Abt<sup>o</sup>g<sup>o</sup> Z th tKvb `U Avt<sup>o</sup>vc Kwi tZ cwit<sup>o</sup>eb |

(3) Penal Code, 1860 (XLV of 1860) Gi section 21 G ms<sup>o</sup>AwqZ tKvb  
 Public Servant ev Kwl m<sup>o</sup>c<sup>o</sup>hviY Awa`Bti i ms<sup>o</sup>wk<sup>o</sup>-Dc-cwi Pvj K ev cwit`k<sup>o</sup> ev  
 Kwl m<sup>o</sup>c<sup>o</sup>hviY Awa`Bti i gnvcwi Pvj K KZR q<sup>o</sup>gZvc<sup>o</sup>B tKvb Kg<sup>o</sup>RZ<sup>o</sup>P Aciva eY<sup>o</sup>nce<sup>o</sup>  
 wj wLZ Avte`b `wLj bv Kwi t j GB AvBtbi Aaxb `U<sup>o</sup>thwM" tKvb Aciva Av`vj Z Avg<sup>o</sup>t<sup>o</sup>  
 M<sup>o</sup>Y Kwi te bv |

(4) GB AvBtbi Aaxb tKvb Acivtai m<sup>o</sup>nZ Ab" tKvb AvBtbi Aaxb tKvb Aciva  
 h<sup>o</sup> f<sup>o</sup>te ms<sup>o</sup>NwJZ nBtj GB AvBtbi Aaxb wePvh<sup>o</sup>Acivtai wePvi GLwZqvi m<sup>o</sup>ubæ c<sup>o</sup>g  
 tkYxi g<sup>o</sup>wRt<sup>o</sup>U Av`vj Z wKsev, c<sup>o</sup>hvr" t<sup>o</sup>q<sup>o</sup>t<sup>o</sup>, t<sup>o</sup>g<sup>o</sup>U<sup>o</sup>cwj Ub g<sup>o</sup>wRt<sup>o</sup>U Av`vj tZ Aby<sup>o</sup>oZ  
 nBte Ges Ab" AvBtbi Aaxb ms<sup>o</sup>NwJZ Acivtai wePvi GLwZqvi m<sup>o</sup>ubæ Ab" tKvb Av`vj Z  
 ev U<sup>o</sup>Be<sup>o</sup>v<sup>o</sup>t<sup>o</sup>j Aby<sup>o</sup>oZ nBte |"

In the present case, the appellants are accused for storing adulterated fertilizer for the purpose of sale, which comes within the mischief of section 17 of the Ain. In view of the clear provision of law, we hold that a Special Tribunal constituted under the Special Powers

Act has got no jurisdiction to try an offence relating to fertilizer. The present case is triable by the Chief Judicial Magistrate, or any Judicial Magistrate of Satkhira under the provisions of the *Cr.P.C. 2006*.

For the reasons stated above, we find substance in submissions of the learned Advocate for the appellants and are inclined to allow this appeal with necessary direction to send the case to be tried in a Court of competent jurisdiction.

In the result, the appeal is allowed. The impugned order dated 20.4.2008 passed by the Special Tribunal No.3, Satkhira in Special Tribunal Case No.129 of 2007 arising out of Patkelghata Police Station Case No.7 dated 7.2.2007 corresponding to G.R. Case No. 35 of 2007 is hereby set aside. The stay passed at the time of admission of the appeal is vacated.

The learned Judge, Special Tribunal No.3, Satkhira is directed to send back the case to the learned Sessions Judge, Satkhira so that he send it to the Chief Judicial Magistrate of Satkhira to proceed with the case in accordance with law.

Communicate a copy of this judgment to the learned Sessions Judge, Satkhira with a copy to the Special Tribunal No.3, Satkhira.

Borhanuddin, J:

I agree.