

**Present:**

Mr. Justice Md. Shohrowardi

**Criminal Revision No. 125 of 2007**

Md. Mohsin Ali and another

...Convict-petitioners

-Versus-

The State

...Opposite party

No one appears.

...For the convict-petitioners

Mr. Md. Anichur Rahman Khan, D.A.G with

Mr. Mir Moniruzzaman, A.A.G with

Mr. Md. Sarwar Alam Khan, A.A.G with

Ms. Nargis Parvin (Alija), A.A.G

...For the State

Heard on 15.01.2026 and 19.01.2026

**Judgment delivered on 25.01.2026**

On an application under section 439 of the Code of Criminal Procedure, 1898 Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order of conviction and sentence dated 09.11.2006 passed by Additional Sessions Judge, Nilphamari in Criminal Appeal No. 01 of 2005 affirming the judgment and order of conviction and sentence dated 29.11.2004 passed by Additional District Magistrate, Nilphamari in G.R. No. 34 of 2000 arising out of Jaldhaka P.S. Case No. 4 dated 03.03.2000 convicting the petitioners under section 6 of the Control of Essential Commodities Act, 1956 and sentencing them thereunder to suffer rigorous imprisonment for 2(two) years should not be set aside and/or to pass such other or further order or orders as this Court may deem fit and proper.

The prosecution's case, in short, is that on the fifteenth February, 1999 S.I Md. Nurul along with Constable No. 37 Md. Mofazzal Hoque went to the locality for the execution of a warrant and obtained a secret message of hoarding adulterated fertilizer at village Bashdaha. At around 5.30 pm on the same day, he searched the house of the accused Mohsin Ali in the presence of witnesses and

found 35 rexin bags and 19 gunny bags containing adulterated fertilizer, and he seized those fertilizer. He collected the sample and sent the sample of the adulterated fertilizer for report of the chemical examiner. In the report, it has been opined that the fertilizer is neither T.S.P. nor S.S.P. fertilizer. Thereafter, he lodged the FIR on 03.03.2000 against Mohsin Ali under section 15(1)(d) of the Special Powers Act. 1974.

During investigation, the Investigating Officer visited the place of occurrence, prepared the sketch map and index, and recorded the statement of witnesses under section 161 of the Code of Criminal Procedure, 1898, and submitted charge sheet under section 15(1)(d) of the Special Powers Act, 1974 against the accused petitioners.

During trial, charge was framed against the accused under Section 6 of the Control of Essential Commodities Act, 1956, which was read over and explained to the accused, and he pleaded not guilty to the charge and claimed to be tried following the law. The prosecution examined 9(nine) witnesses to prove the charge against the accused. After examination of the prosecution witnesses, the convict-petitioners were examined under section 342 of the Code of Criminal Procedure, 1898, and they declined to adduce any defence witness. After concluding trial, the Additional District Magistrate, Nilphamari, by judgment and order dated 29.11.2004, convicted the petitioners under section 6 of the Control of Essential Commodities Act, 1956, and sentenced them thereunder to suffer rigorous imprisonment for 2(two) years, against which the convict-petitioners filed Criminal Appeal No. 01 of 2005 before the Sessions Judge, Nilphamari. The appeal was heard by the Additional Sessions Judge, Nilphamari, who, by impugned judgment and order dated 09.11.2006, affirmed the judgment and order passed by the trial Court against which the convict-petitioners obtained the Rule.

P.W. 1 S.I Khondaker Nurul Amin stated that on 15.02.1999, he went to the Dharmapaul Kherkati and Bashdaha area along with

Constable No. 37 Mozmmel Hoque for execution of the warrant based on G.D No. 552 dated 15.02.1999. He obtained secret information that adulterated fertilizer was kept in the house of the accused Mohsin Ali. At that time, sensing the presence of many locals in the said house, he went to the house of the accused Mohsin and found 54 rexin bags containing adulterated fertilizer and seized those fertilizers in the presence of witnesses. He sent the sample of the fertilizer to the expert. He obtained the report on 03.03.2003 and thereafter lodged the FIR. He proved the FIR as Exhibit 1 and his signature as Exhibit 1/1. During cross-examination, he admitted that at the time of recovery of the adulterated fertilizer, the accused was not present at his house. At the time of recovery of the fertilizer, local Chowkider Azizul Islam Lebu and Saju Barman were present there. On 19 packets, BCI was written, and on 35 bags, TSP complex, SSP fertilizer, Phosphate 18-20%, Sulphur 12% were written. He affirmed that there was a difference between the recovered fertilizer and the fertilizer available in the market. He collected the sample on 01.07.1999 after about  $4\frac{1}{2}$  months, and during this period, the seized fertilizers were kept in the local Thana. He denied the suggestion that fertilizer was not kept in the recovered bags.

P.W. 2 Abu stated that adulterated fertilizers were kept in the house of the accused Mohsin, and the police recovered 54 bags of fertilizer. During cross-examination, he stated that the police informed him that the adulterated fertilizer was recovered from the house of the accused.

P.W. 3 Amzad Hossain stated that the S.I Nurul Amin recovered the fertilizer on 15.02.1999. The Police requested him to sign the seizure list. Thereafter, he signed. He proved the seizure list as exhibit 2 and his signature as exhibit 2/1. He proved the seized fertilizer as material exhibit ka. SSP was written on the bag. During cross-examination, he stated that the recovered 54 bags of fertilizer

were not produced in Court. At the time of seizure, the fertilizer was not shown by opening the bags. He is not aware of the materials kept in the bag. On the bags, SSP was written.

P.W. 4 Monjurul Haque stated that the accused Mohsin is known to him. On 15.02.1999 at 5/5.30 pm, police went to his house and recovered 54 bags of fertilizer in his presence, and police prepared the seizure list, and he signed the seizure list. He proved the seizure list as exhibit 2 and his signature as exhibit 2/2. The seized bags were not produced in Court. He is not aware of the materials kept in the bag. Police requested to sign, and accordingly, he signed the seizure list.

P.W. 5 Azizar Rahman stated that the informant S.I Nurul Amin is known to him. About 3 years back, the occurrence took place, but he could not remember the exact date of the occurrence. On the way to Hafizia Madrasa at 5 pm, he saw S.I Nurul Amin in the house of his nephew Mohsin. He entered the house of the accused along with the S.I Nurul Amin. 54 bags of fertilizer were recovered from the east Viti hut of the accused Mohsin. During cross-examination, he affirmed that the police did not open the bags.

P.W. 6 Atiqul Islam stated that the accused Md. Mohsin Ali and Sree Bijoy Chandra are known to him. On the date of occurrence, police recovered 35 rexin and 19 gunny bags containing fertilizer. During cross-examination, he affirmed that the police did not open the bags.

P.W. 7 Sukhar Mamud stated that the accused Md. Mohsin Ali and Sree Bijoy Chandra are known to him. The accused Bijoy kept the fertilizer in Mohsin's house. He, along with other drivers of the van, kept those fertilizers in Mohsin's house.

P.W. 8 Azaharul Islam stated that the accused Bijoy and Mohsin are known to him. The accused carried the fertilizer by van and kept it in Mohsin's house. He, along with the driver of the van,

was present there. Bijoy purchased the fertilizer from the Boragari Bazar.

P.W. 9 Sanju Borman Chowkider stated that the accused persons were known to him. On 15.02.2000, he went to Kherkati Bazar. He, along with S.I went to the house of the accused Mohsin and recovered 54 bags of fertilizer from the east bhiti hut of Mohsin. Police recovered 35 rexin bags and 19 gunny bags of fertilizer. The accused Bijoy deals with the fertilizer business at the local Kherkati Bazar. On the bag, TSP was written. He denied the suggestion that he deposed falsely.

No one appears on behalf of the convict-petitioners.

Learned Deputy Attorney General Mr. Md. Anichur Rahman Khan, appearing along with learned Assistant Attorney General Mr. Mir Moniruzzaman, on behalf of the state, submits that 35 rexin bags and 19 gunny bags containing adulterated fertilizer were recovered from the house of the accused Md. Mohsin Ali, and during the investigation, the Investigating Officer found the involvement of the co-accused Sree Bijoy Chandra and the chemical examiner in his report (exhibit 3) opined that the samples were adulterated, but those are neither T.S.P. nor S.S.P. fertilizer. Both the Courts below, on correct assessment and evaluation of the evidence of the prosecution witnesses, legally passed the impugned judgment and order. He prayed for discharging the Rule.

I have considered the submission of the learned Deputy Attorney General, Mr. Md. Anichur Rahman Khan, who appeared along with learned Assistant Attorney General, Mr. Mir Moniruzzaman, on behalf of the state, perused the impugned judgments and orders passed by the Courts below, the evidence adduced by the prosecution, and the records.

On perusal of the evidence, reveals that on 15.02.1999 at 5/5.30 pm, searching the house of accused Mohsin, P.W. 1 Khondaker S.I Nurul Amin recovered 35 rexin bags and 19 gunny bags

containing fertilizer from the east viti hut of accused Mohsin. The evidence of P.W. 1 informant S.I Khondaker Nurul Amin is corroborated by other P.Ws. The Investigating Officer sent the sample of fertilizer recovered from the house of the accused Mohsin Ali. In the report (exhibit 3), the chemical examiner opined that the samples produced before him are neither TSP nor SSP. No specific opinion has been arrived at by the expert that those are adulterated fertilizers.

It is found that the convict-petitioners were convicted under Section 6 of the Control of Essential Commodities Act, 1956. A bare reading of section 6 of the said Act reveals that if anyone violates any order published under section 3, he will be liable for punishment under section 6 of the said Act. Nothing has been stated by the Investigating Officer that the convict-petitioners violated any order published under section 3 of the Control of Essential Commodities Act, 1956. Furthermore, nothing has been stated in Exhibit 3 that the recovered fertilizers are adulterated fertilizers.

In view of the above evidence, findings, observation, and the proposition, I am of the view that the prosecution failed to prove the charge against the convict-petitioners Md. Mohsin Ali and Sree Bijoy Chandra under section 6 of the Control of Essential Commodities Act, 1956, and both the Courts below arrived at a wrong decision as to the guilt of the convict-petitioners.

I find merit in the Rule.

In the result, the Rule is made absolute.

The impugned judgments and orders of conviction and sentence passed by the Courts below against the convict-petitioners Md. Mohsin Ali and Sree Bijoy Chandra are hereby set aside.

Send down the lower Court's records at once.