

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE BIVAS PATTANAYAK

**W.P.A. 2579 of 2016
Bally Jute Company Ltd. & Anr.
versus
Jute Commissioner & Ors.**

For the Petitioners	: Mr. Probal Mukherjee, Senior Advocate Mr. Rupak Ghosh, Advocate Mr. A. P. Gomes, Advocate Ms. Debolina Dey, Advocate
For the Respondent Nos. 1 to 3-Jute Commissioner	: Mr. Rahul Karmakar, Advocate Mr. Surya Prasad Chattopadhyay, Advocate
For the Union of India	: Mr. Pralay Bhattacharjee, Advocate
For the Enforcement Branch	: Mr. T. M. Siddiqui, Advocate
Heard on	: 07.12.2023, 12.12.2023, 04.01.2024, 07.02.2024, 21.02.2024
Judgment on	: 22.05.2024

Bivas Pattanayak, J. :-

1. By the present writ petition, the petitioners have prayed for cancellation, rescission, withdrawal and/or revocation of letter No. Jute (Mktg)/106/2015/ dated 4th February, 2016 issued by respondent no.2, Deputy Jute Commissioner, Office of the Jute Commissioner, Ministry of Textiles, Government of India and not to take any further action on the complaint/FIR lodged by respondent nos. 1 to 3 with the respondent no.6, Officer-in-Charge, Bally Police Station, Howrah being Bally P.S. Case No. 19/2016 dated 5th February, 2016 under Section 7(i)(a)(ii) of the Essential Commodities Act, 1955.

2. The brief fact of the case in nutshell is as follows:

(i) The petitioner no.1 is a company incorporated under the provisions of the Companies Act, 1956 and the petitioner no.2 is one of the directors of the said company (petitioner no.1).

(ii) The petitioner no.1 is engaged in the business of manufacturing and sale of jute fabric, yarns and various types of jute products including jute bags and owns a jute mill under the name and style of *Bally Jute Company Ltd.* and about 4000 workers are employed in the said mill.

(iii) The aforesaid business is carried on by the petitioner no.1-company on the basis of licences and permissions required for carrying such business.

(iv) Over the last ten years, the petitioner no.1-company has been exporting both directly and indirectly huge quantities of jute products and has acquired immense goodwill in the market. Various purchasers both domestic and foreign have awarded contracts to the petitioner no.1-company for supply of jute products.

(v) For the purpose of fulfilling its aforesaid contractual obligations, the petitioner no.1-company requires supply of substantial quantity of good quality raw jute. Such raw jute is procured from the traders and/or brokers by way of contract/*ruccas*.

(vi) The purchase orders/*ruccas* issued by the petitioner no.1-company contain a clause whereby the price was noted as 'PTF' i.e. '*Price to be fixed*' which implies that the price shall be determined as per the prevailing price of raw jute during delivery. Such clause is

widely prevalent and accepted and practised for trade of jute/jute products.

(vii) For purchase of raw jute in the months of October/November, 2015 in order to fulfill contracts entered with purchasers/customers, petitioner no.1-company entered into contracts/*ruccas* with various jute traders and/or brokers.

(viii) On 24th November, 2015, the respondent no.1-Jute Commissioner issued an order being No. Jute (Mktg)/106/2015 dated 24th November, 2015 wherein it directed that the maximum quantity of raw jute, which a manufacturer of jute textiles may have in its possession, should be equivalent to two months' consumption requirement. The order further stated that the two months' consumption requirement would be duly intimated and one would commence buying as laid down in the succeeding paragraphs therein. Further directions were also given in the said order to give full details of stocks, purchase, consumption etc. of raw jute as on 25th November, 2015. It was further mentioned that the limits of jute stock would not include raw jute of specified qualities which are required to meet export commitments of jute goods subject to submission of documentary evidence of exports and verification and acceptance of documents by the office.

(ix) On 25th November, 2015, the petitioner no.1-company had 78418 quintals of raw jute at mill premises, 40866 quintals of raw jute in stock in pipeline and total stock of raw jute was 119284 quintals.

(x) The details of stock, consumption and purchase of raw jute for the period between 18th November, 2015 and 25th November, 2015 was

submitted before respondent no.2-Deputy Jute Commissioner by the petitioner no.1-company as per format vide its letter dated 30th November, 2015. It has also informed to the respondent no.1-Jute Commissioner that it was not purchasing jute from 24th November, 2015 onwards.

(xi) The order dated 24th of November 2015 was partially modified by order No. Jute (Mktg) /106/2015 dated 7th December, 2015 to the extent that the order would not be applicable to stocks of imported jute, provided such stock was immediately informed to the concerned office of the stock position of the imported jute and the raw jute imported and be made available in baled form for verification by personnel of the office.

(xii) The petitioner no. 1-company, in compliance to the order dated 24th November, 2015 submitted statements of stock consumption and purchase of raw jute mill on weekly basis vide letters dated 1st December, 2015, 8th December, 2015 and 15th December, 2015.

(xiii) By order no. Jute/(Mktg)/106/2015 dated 10th December, 2015 the two months consumption requirement of various jute mills as per trend of consumption of raw jute during April, 2015 to September, 2015 was defined by respondent no.2-Deputy Jute Commissioner and a list was attached. The two months consumption specified for petitioner no.1 was 54029.3 quintals.

(xiv) By another order no. Jute/(Mktg)/106/2015 dated 14th December, 2015, it was clarified by respondent nos. 2-Deputy Jute Commissioner that the deliveries of raw jute against the contracts already entered into

before 24th November, 2015 may be received but no fresh contract can be entered into after 24th November, 2015, if stocks of raw jute in jute mill and up country godowns including stocks in pipeline exceeds two months requirement.

(xv) The petitioner no.1-company vide its letter dated 30th December, 2015 sought permission of respondent no.2-Deputy Jute Commissioner for purchase of 1421 MT of raw jute for manufacture of jute goods against export commitments. By letter dated 5th January, 2016 the petitioner no.1-company was informed that the documents of the export orders for 1420.6 MT have been accepted by the office of the respondents and the petitioner no.1-company was requested to keep the concerned office updated every week with the status of pending export orders. The petitioner no.1-company duly informed the respondents about the status of the pending export orders every week by its letter dated 12th January, 2016 and 19th January, 2016.

(xvi) The petitioner no.1-company again vide its letter dated 21st January, 2016 sought permission of respondent no.2-Deputy Jute Commissioner for purchase of 2400 MT of raw jute for manufacture of jute goods against export commitments.

(xvii) The petitioner no.1-company complied with all orders issued by the respondent authorities and has been in the process of reducing its stocks to two months consumption level by way of normal process of manufacture as required by order dated 24th November, 2015 and has not violated any of the provisions of the orders issued by the respondent authorities nor suppressed any information.

(xviii) On 23rd January, 2016 the officers of respondent no.1-Jute Commissioner came to the factory of petitioner no.1 to 5 and directed the petitioner's representatives to produce various documents relating to purchase of raw jute which was duly complied with. The office of respondent no.1-Jute Commissioner on 25th January, 2016 approached the foreign buyers for getting confirmation of the export orders, however, despite receipt of verification from the foreign buyers the respondent no.1-Jute Commissioner did not accept the same.

(xix) All of a sudden respondent no.2-Deputy Jute Commissioner vide its letter No. Jute/(Mktg)/106/2015 dated 4th February, 2016 directed the petitioner no.1-company to suspend fresh buying/receiving/entering into further contract of raw jute from any sources until the stock in the godown of petitioner no.1-company comes down below to two months consumption requirement and further directed the petitioner to meet the respondent no.2-Deputy Jute Commissioner on the subsequent date with all contract documents/*rucca* contracts of raw jute relating to 40860 quintals shown in pipeline as on 25th November, 2015.

(xx) The petitioner no.1-company by its letter dated 5th February, 2016 informed the respondent no.2-Deputy Jute Commissioner that the revised stock limit of raw jute at the petitioner's factory had increased by 1420.6 MT against export orders and, therefore, there was no basis for restraining petitioner no.1-company from fresh buying/receiving/entering into further contract for purchase of raw jute on the grounds that the stock of the petitioner no.1-company has

exceeded two months consumption requirement. The petitioners also enclosed all contract documents/*rucca* of raw jute relating to 40866 quintals submitted as stocks in pipeline as on 25th November, 2015.

(xxi) During hearing on 5th February, 2016, the petitioners' representative categorically submitted that the agreements entered into with the traders/brokers were prior to issuance of order dated 24th November, 2015 and the price to be fixed (PTF) was finalised depending on the prevailing price on the date of delivery. Further the petitioner no.1-company has acted in accordance with the orders passed by the respondents.

(xxii) Despite compliance of the orders passed by the respondents, on 5th February, 2016 complaint was lodged with the Officer-in-charge, Bally Police Station alleging of violation of order No. Jute/(Mktg)/106/2015 dated 24th November, 2015 issued by respondent no.1-Jute Commissioner.

(xxiii) Being aggrieved with the aforesaid action of the respondents, the petitioners have preferred the present writ petition for cancellation, rescission, withdrawal and/or revocation of letter No. Jute/(Mktg)/106/2015 dated 4th February, 2016 as well as not to take further action on the complaint lodged by respondent nos. 1 to 3 with the respondent No.6, Officer-in-charge, Bally Police Station, Howrah being Bally P.S. Case No. 19/2016 dated 5th February, 2016 under Section 7(i)(a)(ii) of the Essential Commodities Act, 1955.

3. The writ petition has been contested by respondent nos. 1 to 3 by filing its affidavit-in-opposition contending, *inter alia*, as follows:

(i) The order dated 25th November, 2015 was issued by the respondents in order to implement a policy decision of the Ministry of Textiles to curb black marketing and hoarding of raw jute causing artificial escalation of raw jute crisis and by such order the stock of raw jute was restricted to two months consumption level.

(ii) The possession of stock of raw jute by the writ petitioner was found to be in violation of the order dated 24th November, 2015 which subsequently gave rise to issuance of show cause notice dated 4th February, 2016 thereby inviting the writ petitioner to appear for hearing so as to satisfy the queries of the answering respondents. The writ petitioner instead of appearing and answering the queries approached this Hon'ble Court after giving notice dated 5th February, 2016 in an attempt to frustrate the steps taken by the answering respondents.

(iii) The petitioners are involved in hoarding of raw jutes causing price escalation in the market. It is apprehended that the contracts are back dated and had been concocted in order to evade the shackles of order dated 24th November, 2015. The stocks in pipeline as claimed by the writ petitioners are manufactured and fabricated.

(iv) Despite various clarifications issued by the respondents, the writ petitioners have successfully dodged the said orders.

(v) The petitioners have violated the said orders which revealed after inspection was carried out by the respondents. There is suppression of material facts by the writ petitioners.

3.1. The respondents filed the supplementary affidavit-in-opposition with the following contentions:

(i) As per the investigation undertaken by the investigating agency, the writ petitioner was all along maintaining raw jute stock in excess of two months consumption even after the order dated 24th November, 2015. The records collected from the mills on 22nd January, 2016 show that the petitioner was maintaining a stock of 8015.995 metric tons and the excess stock was seized by the Enforcement Branch.

(ii) During hearing on 5th February, 2016, the writ petitioner admitted that they had entered into several agreements with the raw jute brokers and traders for future delivery for the month of December, 2015 till March, 2016. The basic target was to artificially augment the raw jute prices by illegal hoarding. Illegal hoarding of raw jutes destabilises the economy. The Jute Commissioner has made out a clear case that the writ petitioner was holding more than two months consumption level and, therefore, FIR was lodged at the Bally Police Station which was subsequently taken up by the Enforcement Branch.

In view of the above, the respondents prayed for dismissal of the writ petition with exemplary cost.

4. Mr. Probal Mukherjee, learned Senior Advocate appearing on behalf of the petitioners submitted that the foundation of the enquiry and the basis of lodging the complaint with the police alleging violation of the Jute Control Order is erroneous *per se*. As per order dated 24th November, 2015, direction was passed to reduce stocks to two months consumption

level in course of normal process of manufacture in the mill and fresh purchases of raw jute from all sources either directly or through agent or third parties was directed to be suspended until the stocks come down below to two months consumption level. However, the outstanding deliveries of raw jute against the contracts concluded earlier had also to be rephrased so as to comply with the above direction. The aforesaid order was further clarified on 15th December, 2015 that the deliveries of raw jute against the contracts already entered before 24th November, 2015 may be received but no fresh contract can be entered into after 24th November, 2015 if the stocks of raw jute in the jute mills and up-country godowns including stocks in pipeline exceeded two months consumption requirement. Now going by the declaration of pipeline stock which is the subject matter of concern, the pipeline stocks as on 17th November, 2015 was 27720 quintals and during the period 18th November, 2015 to 25th November, 2015 the stock in pipeline was 40866 quintals. As per the report, the agreements for purchase of raw jute were upto 23rd November, 2015. There is no allegation of purchase of raw jute by the petitioner after 24th November, 2015. The *rucca* contracts for procuring stocks in pipeline for the period of 18th November, 2015 till 25th November, 2015 was only 40866 quintals less 27720 quintals which comes to 13146 quintals. As per the Control Orders, such raw jute was allowed to be received by the petitioner's mill. During the continuance of the Control Order, the respondent granted permission for procurement of raw jute to meet export obligation. The respondent authorities could have withheld such permission if adequate stock of raw jute was available. The chart at page

84 of the writ petition which is the weekly return of raw jute stocks particularly the stock in pipeline will show that there is diminution of quantity in pipeline as well as total stock meaning thereby that there was no fresh purchase but delivery of raw jute was against the contracts already entered into before 24th November, 2015.

In the complaint lodged before the police station, it is alleged that from the self-declared returns it is found that *M/s. Bally Jute Mill* was holding raw jute stocks in excess of two months requirement as on 25th November, 2015. The said returns would show that the mill was maintaining raw jute stocks all along in excess of two months consumption even after the order dated 24th November, 2015. The records collected from the mills on 22nd January, 2016 show that the mill was maintaining a stock of 8015.997 metric tons which was around three months consumption. Be that as it may, the respondents failed to take note of the Control Orders which permitted the mill to receive raw jute stocks, the contracts for which were made before 24th November, 2015 and the mills were directed to reduce such stocks to two months consumption level in course of normal process of manufacture in the mill. Furthermore, while calculating raw jute stock, respondents ought to have considered that there was specific permission granted to purchase raw jute to meet the export commitments over and above the permissible two months consumption level and the petitioners were also holding stock of imported jute which was given in the stock returns since inception. The imported raw jute could not have been included in the calculation of the total raw jute stock since it is outside the purview of the order dated 24th November, 2015. On the basis of a mistake

of fact, the FIR has been lodged. The *rucca*/purchase orders were found by the authority to be entered on 23rd November, 2015 and accordingly, all such raw jute purchase on the basis of purchase order made on 23rd November, 2015 cannot be termed as contravening the Jute Control Order and, therefore, the petitioner cannot be subjected to penalty under Section 7 of the Essential Commodities Act, 1955. There is no iota of any finding of the Jute Commissioner that there has been any purchase or any contract for purchase of raw jute after the order dated 24th November, 2015 was issued. Since there is a manifest highhandedness and miscarriage of justice, the case of the respondent authorities needs to be interfered with by this Court under Article 226 of the Constitution of India. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Priti Saraf and Another versus State (NCT of Delhi) and Another***¹.

The criminal proceeding, if taken at its face value and accepted in the entirety, do not *prima facie* constitute any offence or make out a case against the accused, may be quashed either in exercise of extraordinary powers of the High Court under Article 226 of the Constitution of India or in exercise of inherent powers under Section 482 of the Criminal Procedure Code. In support of his contention, he relied on the following decisions:

- i. ***State of Haryana and Others versus Bhajan Lal and Others***²
- ii. ***Arnab Manoranjan Goswami versus State of Maharashtra and Others***³

¹ (2021) 16 SCC 142

² 1992 Supp (1) SCC 335

³ (2021) 2 SCC 427

iii. ***Kapil Agarwal and Others versus Sanjay Sharma and Others***⁴

iv. ***Parbarbhai Ahir versus State of Gujarat***⁵

v. ***Varala Bharath Kumar and Another versus State of Telangana and Another***⁶

In light of his aforesaid submissions, he prayed for revocation of letter No. Jute (Mktg)/106/2015/ dated 4th February, 2016 issued by respondent no.2 and not to initiate any action and/or any further action on the basis of and/or pursuant to the aforesaid letter issued by respondent no.2 and also for quashing of the FIR initiated against the petitioners.

5. In reply to the aforesaid contentions raised on behalf of the petitioner, Mr. Rahul Karmakar, learned advocate for the respondent nos. 1 to 3 submitted that in order to control and regulate the hoarding of the raw jute and curb the black marketeering, the Jute Commissioner issued order on 24th November, 2015 restricting the purchase and stocking of raw jute. The said order was modified from time to time in order to exclude the imported jute, include the clause of two months consumption basis and for clarification. Though it is consistent case of the petitioner that it has complied with the orders, however, upon scrutiny anomalies were detected in the accounts filed by the petitioner-company. For which reason, joint inspection was conducted. Various documents were made over to the authorities at the time of inspection, which upon scrutiny showed discrepancies. Accordingly, explanations were called for from the

⁴ (2021) 5 SCC 524

⁵ (2017) 9 SCC 641

⁶ (2017) 9 SCC 413

petitioner-company. The petitioner-company failed to provide any satisfactory explanation for such discrepancies. As such there was violation of the orders passed by the Jute Commissioner. Based on inspection and upon scrutiny of the documents, it was found that the stocks claimed to be in pipeline and entered into prior to November, 2015 were actually post order contracts. Being undated contracts the petitioner was practicing fraud upon the authorities with a claim of pre-dated contracts. Further from the documents seized by the Enforcement Branch it is found that the rates indicated for the raw jute did not match the rates prevalent on the dates claimed as transactions. It is significant to note that the rates mentioned were prevalent after 24th November, 2015. This gave a *prima facie* view that the transactions as claimed to be prior to the order dated 24th November, 2015 were actually made after the said date. During the course of hearing, the petitioner could not satisfy the queries of the Jute Commissioner. Failing such explanation, the Jute Commissioner did not have any other option but to lodge complaint against the authorities which is exactly done in the present case. It is pertinent to note that though actions were initiated under Jute Textile and Control Order, 2000 but the complaint was lodged under Rule 11 of the Jute Textiles and Control Order, 2016. Rule 13 of the said rules saved the action taken under previous rules. Hence, the action of the Jute Commissioner cannot be questioned or flawed. Since a *prima facie* case has been made out constituting offence at this stage there cannot be quashing of FIR. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***State of Haryana and Others versus Bhajan Lal and***

Others⁷. The complaint has been lodged upon *prima facie* findings of apprehension. During the course of investigation, goods have been seized and the investigation as initiated is on the verge of completion. Allegation levelled against the petitioner cannot be decided without the investigation being concluded and without the basis of evidence. In light of his aforesaid submissions, he prayed for dismissal of the writ petition.

6. Mr. T. M. Siddiqui, learned advocate for the State-respondent (Enforcement Branch) submitted that on the complaint of the Deputy Director (MKTG) Jute Commission, Bally P.S. Case No. 19/2016 dated 5th February, 2016 was initiated against the petitioner-company under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. During the course of investigation, seizure of raw jute was made and several witnesses were examined. The investigation is on the verge of completion. He filed report on behalf of the Enforcement Branch, West Bengal.

7. Having heard the learned advocates for respective parties, the only issue is whether the petitioner no.1-company violated and contravened the order dated 24th November, 2015 and order dated 7th December, 2015 issued by the Jute Commissioner and order dated 10th December, 2015 and order dated 14th December, 2015 issued by the Deputy Jute Commissioner.

8. In order to appreciate the aforesaid issue, it would be profitable to reproduce the aforesaid orders as hereunder:

"No.Jute(Mktg)106/2015

Dated: 24th November 2015

O R D E R

⁷ 1992 Supp (1) SCC 335

Whereas having regard to

- a. the quantity of raw jute being used by you;
- b. capacity to manufacture jute textiles;
- c. the availability of raw jute for manufacture of jute textiles for domestic and export markets; and
- d. the need for maintaining stability in prices and supplies of raw jute;

It is necessary to specify the **Maximum** quantity of raw jute which you may, as a manufacturer of jute textiles, have in your own possession;

Your **Two months'** consumption requirement will be duly intimated and you can commence buying as laid down in the succeeding paragraph;

Now, therefore, in exercise of the powers vested in me under clause 5 (ii) of the Jute and Jute Textiles Control (Amendment) Order, 2002 (hereinafter referred to as the said Order);

I, Subrata Gupta, Jute Commissioner, hereby direct that:

a) in case, you have already built up stocks of raw jute in your mill and up-country godowns including stocks in pipeline in excess of your **Two months'** consumption requirement, you shall reduce such stocks to **Two months'** consumption level in course of normal process of manufacture in your mill; you shall totally suspend fresh purchases of raw jute from all sources either directly or through your agent or third parties until the above mentioned stocks come down to below your **Two months'** consumption level and that outstanding deliveries of raw jute against contracts concluded earlier have also to be rephrased by you so as to comply with this direction.

b) In case, you have stocks of raw jute in your mill and up-country godowns including stocks in pipeline below your **Two months'** consumption requirement, you may buy only such quantity of raw jute to ensure that total stocks in your own possession do not exceed your **Two months'** consumption as specified above.

This Order shall come into force with immediate effect and remain valid till further orders subject to reservation of right to modify the same at any time during this period as merited on a review of the situation.

This Order shall not be applicable to delivery of raw jute by Jute Corporation of India provided this office is immediately informed for verification by the personnel of this office. This limits of jute stock shall not include, raw jute of specified qualities which will be required to meet export commitments of jute goods subject to submission of sufficient documentary evidence of exports and verification and acceptance of such documents by this office.

I further direct under clause 7(1)(a) of the said Order that you shall submit to the undersigned a singed return as per proforma Annexed herewith indicating full details of stocks, purchase, consumption, etc. of raw jute as on 25th November 2015 latest by 27th November 2015 and thereafter, for every week ending Saturday so as to reach the undersigned by every Tuesday of the following week in respect of the weekly return and by the 10th of the following month in respect of the monthly return beginning from the week ending 27th November 2015 and month of November, 2015.

If you fail to comply with the provisions of this Order, you shall be punishable under clause 9 of the said Order read with section 7 of the Essential Commodities Act, 1955.

**To
All Jute Mills**

**(Subrata Gupta)
Jute Commissioner"**

"No.Jute(Mktg)/106/2015

Dated: 7th December 2015

ORDER

In partial modification of the Order of even number dated 24-11-2015 issued by the undersigned in exercise of the powers conferred under the Jute and Jute Textiles Control (Amendment) Order, 2002, I, Subrata Gupta, Jute Commissioner, hereby state that the Order as stated above shall not be applicable to stocks of imported jute provided this office is immediately informed the stock position of the imported jute and the raw jute to be imported and are available in baled form for verification by the personnel of this office or officials of the Enforcement Directorate, West Bengal.

All terms and conditions specified in the Order dated 24-11-2015 shall remain unaltered.

**To
All Jute Mills**

**(Subrata Gupta)
Jute Commissioner"**

"No.Jute(Mktg)/106/2015

Dated: 10th December 2015

ORDER

In continuation of the Order of even number dated 24-11-2015 issued by the Jute Commissioner in exercise of the power conferred under the Jute and Jute Textiles Control (Amendment) Order, 2002, I, Dipankar Mahto, Deputy Jute Commissioner hereby define the Two months' consumption requirement, as per trend of consumption of raw jute during Apri'15 to September'15, as per list attached quintals.

All terms and conditions specified in the Order 24-11-2015 shall remain unaltered.

To
(All Jute Mills)

(Dipankar Mahto)
Deputy Jute Commissioner”

“No.Jute(Mktg.)/106/2015

Dated: 14-12-2015

To: Shri Amal Roy Chowdhury, Secretary,
Department of Labour, Govt. of West Bengal,
20B, Abdul Hamid Street,
Kolkata – 700 069

Sub : Fixatation of Raw Jute Stock Limited with Jute Mills

S i r,

A reference is invited to this office Order of even Number dated 24th November, 2015 on the above subject.

There appears to be some confusion on the interpretation of paragraph (a) of the said order in some quarters. It is clarified that deliveries of raw jute against the contracts already entered into before 24th November, 2015 may be received but no fresh contract can be entered into after 24th November, 2015, if the stocks of raw jute in jute mill and up-country godowns including stocks in pipeline exceeds two months’ consumption required. For proper understanding the following example may be referred to:

	<i>In : MT</i>
<i>Specified 2 months’ consumption of raw jute</i>	<i>100</i>
<i>Stock in mill and up-country godowns</i>	<i>150</i>
<i>Stock in pipeline</i>	<i>125</i>
<i>Total stocks</i>	<i>275</i>

Against the above example, a mill can only enter into fresh contract of raw jute after the total stocks of raw jute comes to 100 MT.

Yours faithfully

Sd/-

(Dipankar Mahto)
Deputy Jute Commissioner”

- 9.** From the order dated 24th November, 2015, it is found that the Jute Commissioner directed that in case the jute mills/manufacturers have already built-up stocks of raw jutes in the mills and up-country stocks

including stocks in pipeline which is in excess of two months consumption the mills were to reduce such stocks to two months consumption level in course of normal process of manufacture in the mill. It further directed to suspend fresh purchases of raw jutes from all sources either directly or through agent or third parties until the above-mentioned stocks come down to below their two months consumption level and the outstanding deliveries of raw jute against the contracts concluded earlier have also to be rephrased so as to comply with such directions. By order dated 7th December, 2015, modification was made to the extent that the order dated 24th November, 2015 shall not be applicable to stocks of imported jute provided the Office of Jute Commissioner is immediately informed of the stock position of the imported jute and raw jute imported and are available in baled form for verification. By order dated 10th December, 2015, the Deputy Jute Commissioner defined the two months' consumption requirement as per trend of consumption of raw jute during April, 2015 to September, 2015 as per list attached. As per the said order, two months' consumption under serial no.12 for Bally Jute Mill is 54029.3 quintals. A clarification was given by its order dated 14th December, 2015 stating that the deliveries of raw jute against the contracts already entered into before 24th November, 2015 may be received but no fresh contract can be entered into after 24th November, 2015, if the stocks of the raw jute in the jute mill and up-country godowns including stocks in pipeline exceeds two months' consumption requirement.

10. Bearing in mind the aforesaid orders, it is to be seen firstly whether fresh contract was made by the petitioner-company after 24th November,

2015 and whether the stocks of raw jute in the jute mill and up-country godowns including stock in pipeline exceeded two months' consumption of 54029.3 quintals.

11. It is the specific case of the writ petitioner made out in paragraph no.27 of writ petition that on 23rd January, 2016 various officers of respondent no.1 came to the factory of the petitioner no. 1 at 5, Sree Charan Sarani, Bally, District-Howrah and directed the petitioner's representatives present in the factory to produce various documents relating to purchase of raw jute and accordingly petitioners representatives produced all documents and provided all information as directed/acquired by the said officials. The report on inspection of raw jute stock and other details (Annexure P17 at Page 79) is also supportive of the fact that inspection was carried out at Bally Jute Mills on the aforesaid date. The said report shows that following documents were produced by the petitioner-company and collected by the respondent no.1 during inspection.

- (i) Details of registers and records.
- (ii) Entry/receipt of raw jute during the month of November, December and January, 2016 from entry register.
- (iii) Computer-generated '*rucca*' for a month of November, December, January, 2016 without signature.
- (iv) The OCC stocks statement for the month of November, December, January, 2016.
- (v) The '*rucca*' order dated 21.11.2015, Brokers name, suppliers name and rates.

- (vi) Name and proprietor name of jute brokers from which the petitioner-company purchased raw jute regularly amongst others.

12. After such inspection the Deputy jute Commissioner who was also part of the inspecting team vide its letter dated 4th February, 2016 directed the petitioner-company to suspend fresh buying/receiving/entering into any further contract of raw jute from any sources until the stock in mill godown comes down to below two months consumption requirement. In the said letter it is stated that from the figures furnished by the petitioner-company it has been observed that the quantity of raw jute in the pipeline as on 25th November, 2016 was 40866 quintals and the total raw jute stock (Mill + Upcountry + Pipeline) was more than two months consumption requirement. It is relevant to note that the above inspection report only records the documents which has been collected and supplied during the course of inspection. Such inspection report does not divulge/disclose any fact or the process of evaluation by which the authority has come to the conclusion that the total raw jute stock (Mill + Upcountry + Pipeline) was more than two months consumption requirement. Save and except the aforesaid inspection report no other report on inspection has been placed on record. The letter dated 4th February, 2016 excepting stating that it has been observed that the quantity of raw jute in the pipeline as on 25th November, 2016 was 40866 quintals and the total raw jute stock (Mill + Upcountry + Pipeline) was more than two months consumption requirement, it does not state of any other report been placed before it from which it has arrived at the

conclusion that the total raw jute stock (Mill + Upcountry + Pipeline) was more than two months consumption requirement. By the aforesaid letter the petitioner-company was directed to meet the Deputy Jute Commissioner on 5th February, 2016 at 11 A.M. along with all contract documents/*rucca* of raw jute relating to 40866 quintals shown as pipeline as on 25th November, 2015.

13. On 5th February, 2016, the petitioner-company by its letter addressed to the Deputy Jute Commissioner submitted all contract documents/*rucca* of raw jute relating to 40866 quintals. Annexure P 23 at page 87 of the writ petition shows that the officials of the petitioner-company met with the Deputy Jute Commissioner and DDM on the aforesaid date and made the following submissions with regard to raw jute shown under the heading of pipeline/stock as on 25th November, 2015.

(i) That the petitioner-company have entered into agreement on 23rd November, 2015 with raw jute traders/brokers for number of lorries to be delivered in the month of December to March, 2016. The petitioner company submitted copies of *rucca*/purchase order in support of individual consignment of raw jute purchased in their premises.

(ii) No rates were finalised against the contract entered on around 23rd November, 2015. After verbal discussions, *rucca*/contracts were finalised. The rates prevalent at the time of delivery have been paid. For such delivery the mill used the term 'PTF' called '*rucca*' stands for price to be fixed.

(iii) Despite the fact that the proposed stock of raw jute (Mill + Upcountry + Pipeline) exceeded the two months requirements limits, the petitioner company continued to receive raw jute from the traders for vis-à-vis pipeline.

(iv) Copies of *rucca*/ orders submitted primarily pertaining to the month of November, 2015 (*rucca*).

(v) That the petitioner company made brisk and large quantity purchase in an around 23rd November, 2015.

14. After such submissions were made by the petitioner-company, FIR was lodged with the allegation that the mill was maintaining raw jute stock all along in excess of two months consumption and even after two months of issuance of order dated 24th November, 2015, on 22nd January, 2016 as per the records collected from the petitioner-company it was found that it was maintaining a stock of around 8015.997 MT which is around three months consumption as is appearing from the statement in the FIR annexed to the supplementary affidavit in opposition. The FIR is silent as to how the aforesaid quantity of 8015.997 MT which is alleged to be three months consumption, was calculated and determined by the respondent-Jute Commissioner.

15. It was the specific submissions of the petitioner-company before the respondent-Jute Commissioner during hearing that it had entered into various contracts with raw jute traders/brokers for purchase of raw jute on PTF basis on 23rd November, 2015 which is prior to the order dated 24th November, 2015 of the respondent-Jute Commissioner. Further the petitioner company made brisk and large quantity of purchase in and

around 23rd November, 2015. Nothing has been placed on record from the side of the respondent-Jute Commissioner of its observation/findings with regard to the submissions as aforesaid made by the petitioner-company during hearing that the contracts were entered prior to date of order.

16. In the writ petition as well the petitioner company has consistently stated that the contracts were entered into with various raw jute traders/brokers for purchase of raw jute prior to 24th November, 2015. Such fact has been disputed by the respondent-Jute Commissioner in its affidavit in opposition only on the plea that it apprehends that the said contracts are backdated and had been concocted in order to evade the shackles of the order dated 24th November, 2015 and the stock in the pipeline claimed by the writ petitioners are manufactured and fabricated. It is relevant to note that no documents/reports have been placed with the affidavit in opposition in support of the fact that the contracts entered by the petitioner-company are backdated and concocted or the stock in pipeline are manufactured and fabricated. The respondent-Jute Commissioner in its affidavit-in-opposition categorically stated that the acts and conduct of the writ petitioner are in clear violation of the said orders and the same were revealed after inspection was carried out by the respondent. However, save and except stating that the stocks furnished by the petitioner-company are manipulated and concocted, no such inspection report has been furnished by the respondent-Jute Commissioner to show that the stocks disclosed by the petitioner-company is manipulated and it has violated the orders passed by the respondents. On the other hand, upon going through Annexure P 20 at page 84 of the

writ petition which is a tabular statement following weekly returns submitted to the Jute Commissioner office for the period 17th November, 2015 to 30th January, 2016, it manifest that the stock in pipeline is diminishing. By letter dated 4th February, 2016 the respondent-Deputy Jute Commissioner directed the petitioner company to produce all contract documents/*rucca* of raw jute relating to 40866 quintals shown as pipeline stock as on 25th November, 2015. The said letter is not specific as to how the total raw jute stock (Mill + Upcountry + Pipeline) was more than two months consumption requirement. Though the date of stocking is referred to as 25th November, 2015 yet one cannot be oblivious to the fact that the outer limit of two months consumption was declared subsequently by order dated 10th December, 2015. The order dated 24th November, 2015 in clear terms provides that in case the mill has already built up stocks of raw jute in the mill and upcountry godowns including stocks in pipeline in excess of two months consumption requirement it should reduce such stocks to two months consumption level in course of normal process of manufacture in the bale and shall suspend fresh purchases of raw jute. The diminishing trend in the statement of raw jute clearly indicates that the petitioner company has not made fresh purchases so as to exceed the two months consumption level. In the aforesaid backdrop it cannot be said that the petitioner company contravened the orders passed by the respondent-jute Commissioner.

17. In the FIR for the first time the respondent-Jute Commissioner alleged that the mill was maintaining raw jute stock all along in excess of two months consumption and even after two months of issuance of order dated

24th November, 2015, on 22nd January, 2016 as per the records collected from the petitioner-company it was maintaining a stock of around 8015.997 MT which is around three months consumption. Excepting stating that the same has revealed from the self-declared returns of the petitioner company, no independent enquiry was made by the respondent-Jute Commissioner prior to making such allegations of maintaining raw jute stock in excess of three months consumption. Precisely, no basis has been disclosed as to how the raw jute stock claimed by the petitioner-company is in excess of three months consumption.

18. It is further alleged in the FIR that the petitioner company reported that they have been purchasing/receiving raw jute from the suppliers claiming the contracts to be concluded on or before 24th of November, 2015, however, as per the documentary evidence collected from the mills, the prices quoted in the contracts are not which prevailed on or before 24th of November, 2015 but are prices as on date of delivery that is after 24th November, 2015 and thus the contracts have been concluded after 24th November, 2015 which is violation of the order dated 24th November, 2015. From the aforesaid allegation it manifest that the respondent-Jute Commissioner has proceeded on the assumption that since the price which was quoted for the raw jute was relevant as on the date of delivery which is after 24th November, 2015 hence the contract was concluded after 24th of November, 2015. At the very outset, it is found that the order dated 24th November, 2015 does not restrict that the price prevalent on the date of contract is to be quoted only in respect of the raw jute and not of the date of delivery. Therefore, even if the rates of raw jute prevalent on the date of

delivery was paid that cannot be said to be in contravention to the order dated 24th November, 2015. Further a contract is an agreement of understanding between the parties to the contract. Such understanding between the parties to the contract that the rates prevalent at the time of delivery is to be fixed cannot *per se* be construed that the contracts were actually concluded on the date of delivery and not on prior date. The report on inspection of raw jute stock at annexure P17 at page 79 shows that the petitioner company supplied the name and proprietors name of jute brokers from which the petitioner-company purchased raw jute regularly amongst others. Now whether the contracts as claimed by the petitioner company was prior to 24th November, 2015 could have been verily cross checked and verified from the jute brokers by the respondent-jute Commissioner from whom the petitioner-company regularly procured raw jute. There is nothing on record that such exercise of checking, verifying and scrutinising the contract/*rucca* from the jute brokers were done by the respondent-jute Commissioner to primarily establish that those contracts entered by the petitioner company with the jute brokers for purchase of raw jute was prior to the date of order on 24th November, 2015. Thus the allegation of the respondent-Jute Commissioner that the contracts were entered by the petitioner company after 24th of November, 2015 is born out of surmises and conjectures and without any basis.

19. In relation to the complaint lodged by the Deputy Director (Mktg) alleging of contravention of the orders passed by respondent-Jute Commissioner, FIR was registered against the petitioner-company namely

Bally Jute Co. Ltd being Bally P.S Case no.19 of 2016 dated 05.02.2016 under section 7(i)(a)(ii) of the Essential Commodities Act, 1955.

20. By way of supplementary affidavit, the petitioner no.1-company prayed for quashing of the FIR. Mr. Mukherjee, learned Senior Advocate for the petitioner-company submitted since the materials on record clearly indicate that there is no violation and/or contravention of the orders passed by the respondent-Jute Commissioner, no purpose would subserve in allowing the FIR against the petitioner-company to continue. The uncontroverted allegations made in the FIR and the evidence collected in support does not disclose any commissioning of offence nor it makes out a case against the petitioner-company. The criminal proceeding is attended with malafide and thus there is no sufficient ground to proceed against the petitioner-company. In support of his contention, he relied on *Priti Saraf (supra)*, *Bhajan Lal (supra)*, *Arnab Manoranjan Goswami (supra)*, *Kapil Agarwal (supra)*, *Parbarbhai Ahir (supra)* and *Varala Bharath Kumar (supra)*. On the contrary, Mr. Karmakar, learned advocate for the respondents-Jute Commissioner relying *Bhajan Lal (supra)* submitted that there can occasion for quashing of the FIR only where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused. In the case at hand, specific allegation has been made out in the written complaint against the petitioner-company of maintaining raw jute stock in excess of two months consumption requirement which violates and contravenes the orders issued by the respondents-Jute Commissioner and, therefore, in view of

the principles laid down by the Hon'ble Supreme court as aforesaid, the prayer for quashing of the FIR against the petitioner-company should be dismissed.

21. In order to appreciate the aforesaid submissions made at the Bar, it would be profitable to reproduce the relevant provisions of Section 7(1)(a) of Essential Commodities Act, 1955 and Rule 11 of the Jute Textiles Control Order, 2016 as hereunder:

“7. Penalties. —(1) *If any person contravenes any order made under section 3,—*

(a) he shall be punishable,—

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine :

<i>(b)</i>	<i>x</i>	<i>x</i>	<i>x</i>	
<i>(c)</i>	<i>x</i>	<i>x</i>	<i>x</i>	<i>”</i>

“11. Penalty.— *Any person who contravenes any of the provisions of this Order or fails to carry out any direction or requisition made thereunder shall be punishable under section 7 of the Essential Commodities Act, 1955 (10 of 1955).”*

22. The aforesaid provisions clearly spell out that contravention of orders is *sine qua non* for imposing penalties for commission of offence under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. In the foregoing paragraph, upon consideration of the materials, it has been observed that there is no *iota* of materials on record in support of contravention of the orders of the respondents-Jute Commissioner by the petitioner-company. The affidavit-in-opposition of the respondents-Jute Commissioner clearly states that it apprehends that the subject contracts are back dated and is concocted in order to evade the shackles of the order dated 24th November,

2015. The stocks in pipeline as claimed by the writ petitioner are manufactured and fabricated. Such statement in the affidavit-in-opposition is not supported by any documentary evidence. The statement primarily appears to be evasive in nature without any basis and is derived from apprehension only. The respondents-Jute Commissioner failed to suffice as to how the petitioner-company has violated the orders. Since there is no contravention of any order passed by the respondents-Jute Commissioner, the question of imposition of penalty under Section 7 of the Essential Commodities Act, 1955 cannot arise at all.

23. The Hon'ble Supreme Court in *Bhajan Lal (supra)* has observed as follows:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable*

offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

103. *We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."*

24. Bearing in mind the aforesaid proposition as laid down by the Hon'ble Supreme Court, since there is no contravention of any orders, hence to allow the FIR to continue would be an abuse of process of the Court. This court finds substance in the submissions of Mr. Mukherjee, learned Senior Advocate for the petitioner relying on *Priti Saraf (supra)*, *Bhajan Lal (supra)*, *Arnab Manoranjan Goswami (supra)*, *Kapil Agarwal (supra)*, *Parbarbhai Ahir (supra)* and *Varala Bharath Kumar (supra)* in this regard.

25. It is trite law that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same and principles of *sublato fundamento cadit opus* applies in such event, meaning thereby, that in case a foundation is removed, the superstructure falls. In this

regard it would be profitable to refer the decision of the Hon'ble Supreme Court in ***Chairman-Cum-Managing Director, Coal India Limited and Others versus Ananta Saha and Others***⁸ as follows:

“32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim sublatō fundamēto cadit opus is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

33. In Badrinath v. Govt. of T.N. [(2000) 8 SCC 395 : 2001 SCC (L&S) 13 : AIR 2000 SC 3243] this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders. (See also State of Kerala v. Puthenkavu N.S.S. Karayogam [(2001) 10 SCC 191] and Kalabharati Advertising v. Hemant Vimalnath Narichania [(2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808 : AIR 2010 SC 3745].)”

26. In the instant case, there is no materials placed towards contravention of the orders by the petitioner. Precisely, no report of such contravention and how it occurred has never seen the light of the day. Therefore, the consequential proceeding in the form of FIR stood vitiated.

27. In view of the above discussion, the writ petition being no. **WPA 2579 of 2016** is hereby allowed. The letter dated 4th February, 2016 issued by respondent no.2 stands cancelled. The FIR being Bally P.S. Case No. 19/2016 dated 5th February, 2016 initiated against the petitioners is hereby quashed.

28. The petitioner-company is granted liberty to make appropriate application before the learned trial court for return of the seized raw jute.

29. There shall be no order as to costs.

30. All connected applications, if any, stand disposed of.

⁸ (2011) 5 SCC 142

- 31.** Interim order, if any, stands vacated.
- 32.** Urgent photostat certified copy of the order, if applied for, be given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)