

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3803 OF 2014

Sivadasan Kunju Nair
aged 57 years, having its registered
office at Cnergy Unit B, 4th Floor,
Appa Saheb Marathe Marg,
Prabhadevi, Mumbai 400 025 .. Petitioner

vs.

1. Shashikant Laxman Waghmare
Rationing Inspector, Panvel ..
2. The Senior Inspector of Police,
Panvel Taluka Police Station
Raigad ..
3. State of Maharashtra .. Respondents

Mr. Shirish Gupte, Senior Counsel with Mr. Subodh Desai i/b Bachubhai
Munim and Co. for the Petitioner.

Mr. J. P. Yagnik APP for the Respondent-State.

**CORAM: A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 30th JANUARY, 2024.

JUDGMENT [PER A. S. GADKARI, J.]:

- 1) The Petitioner-Senior Executive of M/s.Agricore Commodities
Private Limited has prayed for a writ of mandamus or any other appropriate

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This Judgment is corrected as per to the speaking to Minutes of Order dated 26/02/2024

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writ or direction in the nature of mandamus for quashing and setting aside C.R. No.3021 of 2013 registered with Panvel Taluka Police Station, District Raigad under Sections 3, 7, 8 and 10 of the Essential Commodities Act, 1955 (for short “said Act”) lodged by Respondent No.1 i.e. Supply Inspection Officer/Rationing Officer, Tahasil Office, Panvel, District Raigad.

2) Heard Mr.Gupte, learned Senior Counsel for the Petitioner and Mr.Yagnik, learned A.P.P. for the Respondent-State. Perused entire record produced before us.

2.1) Record indicates that, by an Order dated 1st December, 2014 ad-interim relief i.e. not to file the charge-sheet in the present case was granted in favour of the Petitioner and by an Order dated 1st February, 2019 the Petition was admitted by confirming the said relief as interim relief.

3) The First Information Report is lodged by the Respondent No.1, who was working as Supply Inspector Officer/Rationing Officer, Tahasil Office, Panvel, District Raigad on the date of lodgement of the crime. It is the prosecution case that, the business of warehouse was being conducted at M/s.Akshay Warehouse situated at Village Derevali, Taluka Panvel by the M/s.Care Takers and Company. The said Company used to provide space for its customers to store their commodities by accepting necessary charges in that behalf. On 1st July, 2013, the Respondent No.1 along with other

Government Officers conducted raid at M/s.Akshay Warehousing and found that various companies/traders had stored pulses and other edible items in the said godown. As far as the Petitioner is concerned, it was found that Petitioner had stored 3359 gunny bags of toor dal (pulses) in the said warehouse. It was found that the import of said toor dal and storage thereof by the company namely M/s.Agricore Commodities Pvt. Ltd. was in contravention of the Government Notification and the Licensing Order issued by the Competent Authorities under the Essential Commodities Act from time to time. The said items were seized by the Respondent No.1 and on 2nd July 2013, present crime is registered.

3.1) As noted earlier, this Court had granted ad-interim relief in favour of the Petitioner and therefore the police till date have not filed the charge-sheet against the Petitioner.

4) Perusal of record indicates that subsequently, the Collector of Raigad issued a Notice dated 15th July 2013, under Section 6 (A)(2) of the said Act for confiscation and destruction of the said commodity seized by the Respondent No.1 and the Petitioner was called upon to submit its explanation and/or say to the said Notice. Accordingly, the Petitioner filed its reply dated 23rd September, 2013 to the said show cause dated 15th July 2013. The Collector of Raigad thereafter numbered the said case as Case

No.14 of 2013. The Company of the Petitioner i.e. M/s.Agricore Commodities Pvt. Ltd. had submitted its detailed say to the said show cause notice and put forth all its contentions pertaining to the import and storage of said 3359 gunny bags of toor dal.

4.1) The Collector gave hearing to all concerned in compliance with the principles of natural justice and by its Judgment and Order dated 5th February, 2014 passed in Case No.14 of 2013, was pleased to direct that 167.950 metric tonnes of pulses of Petitioner's Company seized by Respondent No.1 be released from confiscation. The Collector of Raigad in its Judgment has recorded a finding that, the Licensing Orders issued by the Government from time to time are not applicable to the Petitioner's Company. That, the Petitioner has produced necessary and relevant documents in support of its case and therefore the Licensing Orders are not applicable to it. The Collector of Raigad exonerated the said company i.e. M/s. Agricore Commodities Pvt. Ltd. from the allegation of its import and storage in contravention of the Licensing Order dated 20th May, 2008 and other Government circulars.

5) The Hon'ble Supreme Court in the case of *Radheshyam Kejriwal Vs. State of West Bengal* reported in (2011) 3 Supreme Court Cases 581 in para 39 has held as under :

“39. In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court”.

6) Indubitably, in the present case the Competent Authority i.e. the Collector of Raigad has exonerated the Petitioner from the allegation of violation of the Licensing Orders or Government circulars while importing or storing the said alleged 3359 gunny bags of toor dal. The principles enunciated by the Hon’ble Supreme Court in the case of *Radheshyam Kejriwal* (supra), according to us are squarely applicable to the case in hand. As noted earlier, the Competent Authority has exonerated the Petitioner from the alleged violation of the Licensing Orders, for adjudication of which the principle of ‘preponderance of probability’ is applicable. For subjecting the Petitioner to trial and for securing its conviction undoubtedly the principle of ‘proof beyond reasonable doubt’ will come into play and therefore the ratio laid down by the Hon’ble Supreme Court in the case of *Radheshyam Kejriwal* (supra) is squarely applicable to the present case.

7) In view of the above, we quash and set aside C.R. No.3021 of 2013 registered with Panvel Taluka Police Station, District Raigad. Petition is allowed in terms of prayer clause (b).

8) Rule is made absolute in the aforesaid terms.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)