



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 821 OF 2024

Aishwarya Indane through Proprietor,
Suvarnadevi Narendra Patil,
Age : 50 years, Occ : Business,
R/o. 27, Magzin Colony, Sadar Bazar,
Satara, Maharashtra.
Through Power of Attorney,
Kamal Kishor S/o Bhanwar Lal,
Age: 28 years, Occu. Labour,
R/o. Nokhara Charana, Phalodi,
Dist. Jodhpur, State Rajasthan.

... PETITIONER

V/s.

1. The State of Maharashtra,
Through Superintendent of Police,
Ahmednagar, Maharashtra.
2. The State of Maharashtra,
At the instance of Police Inspector,
Kopargaon Police Station,
Kopargaon, Ahmednagar.

... RESPONDENTS

.....
Mr. A.D. Sonkawade h/f. Mr. Rajesh Mewara, Advocate for the Petitioner
Mr. K.K. Naik, APP for the Respondent-State
.....

CORAM : Y.G. KHOBRADE, J.
RESERVED ON : 25.02.2025
PRONOUNCED ON : 27.03.2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of both sides it is heard finally.

2. By the present petition under Article 226, 227 of the Constitution of India read with Section 482 of the Cr.PC., the Petitioner takes exception to the order dated 28.02.2024 passed by the learned Additional Sessions Judge-1, Kopargaon, Dist. Ahmednagar in Criminal Revision Application No.64/2023 and thereby upheld order dated 20.07.2023 passed by the learned JMFC, Kopargaon in Cri. Misc. Application No.45/2023 whereby refused to release Vehicle No. MH-11-CH-4480.

3. The Respondent-Police authorities intercepted the vehicle of the Petitioner while committing the offence punishable under Section 407, 411, 285 read with Section 34 of the IPC and under Section 3, 7 of the Essential Commodities Act, 1955 (for short the EC Act).

4. The prosecution case is that, on 03.01.2023, the Informant-Shakil Ahmad, Special Inspector General lodged a FIR bearing Crime No.0006/2023 alleging that, the Ashok Leyland vehicle bearing No. MH-11-CH-4480 was carrying LPG Gas and it was parked near U.P.-Haryana-Rajasthan Dhaba in Jeurkumbhari area. The accused namely (i) Budharam Anandram Bishnoi, (ii) Prakash Bhagirathramji Bishnoi, (iii) Bhuraram Kojaram Jani, (iv) Dharmendrakumar Bachanu Bind and (v) Sukhram Maganram Bishnoi were illegally pilfering the gas from the said Ashok Leyland goods carrier vehicle and were refiling it in commercial cylinders and Rs.700/- per cylinder was being paid to the driver of the tanker. The commercial LPG cylinders of LPG are being

sold to the hoteliers by charging Rs.1400/- per cylinder. The accused no.5 Sukhram Maganram Bishnoi was running the said Dhaba (Hotel) on lease.

5. During the course of raid, the Investigating Officer seized tanker and following articles at the spot which are as under:

- i) Tanker of Ashok Leyland company bearing no.MH-43-BG-7150 having 14 tyres worth Rupees Fifteen Lakhs with 17,000 kg gas bilty.
- ii) Ashok Leyland company dost vehicle no.MH-11-CH-4480
- iii) Two gas cylinders with refilled gas of Indane company. Gas pipe to unload gas from tanker MH-43-BG-7150 and to fill up the gas cylinders, 3 empty gas cylinders. Vehicle No.MH-11-CH-4480 on which the cylinders were loaded.
- iv) 14 gas cylinders with refilled gas of Indane company.
- v) 10 gas cylinders of Bharat gas company with refilled gas, 45 empty gas cylinders of Bharat gas company, one gas cylinder refilled with gas of HP company, 300 kg kit to take out gas from the tanker.
- vi) two regulators of rubber pipe, one nozzle, two rubber pipe to take out gas, 4 bilty of HP corporation, spring weigh lever, steel lever, steel pipe etc. for releasing the pressure and other articles including the currency notes as described in FIR and the spot panchanama.

6. After investigation is over, the I. O. filed charge-sheet against the accused for the offences punishable under Section 407, 411, 285 read with Section 34 of the IPC and under Section 3, 7 of the Essential Commodities Act.

7. The Petitioner has filed Misc. Cri. Application No.45/2023 under Section 457 of Cr.P.C. and prayed for release of Ashok Leyland Vehicle No. MH-11-CH4480 on supurtnama during the pendency of trial. On 20.07.2023, the learned JMFC, Kopargaon, passed an order and rejected said application relying on case of **Vasant Annarao Bhosale V/s. State of Maharashtra**, Cri. Writ Petition No.905/2012 decided on 05.12.2014, wherein it is held that, as per scheme of Essential Commodities Act, 1955, the Collector is empowered with regard to interim or final disposal of essential commodity seized under Section 3 of the Act. Section 6-E of the Act provides bar of jurisdiction of the Court. So also, power of interim disposal of said vehicle is with the Collector.

8. Being aggrieved by said order, the Petitioner filed Criminal Revision Application No.64/2023 before the learned Sessions Court. On 28.02.2024, the learned Revisional Court passed the impugned order and upheld the order dated 20.07.2023 passed by the learned JMFC.

9. The learned counsel appearing for the Petitioner canvassed that, if there is any contravention of Section 3 of the Essential Commodities Act and any vehicles, commodities are seized in that circumstances the Collector having

power of confiscation of the commodities and vehicles. Section 6-E provides for confiscation procedure of the essential commodity, package covering or receptacle in which such essential commodity is found and any animal vehicle, vessel or other conveyance used in carrying such essential commodity. Section 6-E of the E.C. Act provides bar to jurisdiction of the Judicial Magistrate for release, delivery, disposal, release or distribution of such essential commodity, package covering, receptacle, animal vehicle, vessel or other conveyance during pendency of confiscation proceeding. However, the prosecution has filed reply at Exh.10 in Criminal Revision before the Sessions Court as well as before the Judicial Magistrate to oppose release of vehicle. But the Investigating Officer has not pleaded that the confiscation proceeding under Section 6A of the Essential Commodities Act has been initiated and it is pending before the Collector. Therefore, the Magistrate is empowered to release the vehicle and jurisdiction of Magistrate is not ousted.

10. To buttress these submissions, the learned counsel appearing for the Petitioner relied on **State of Maharashtra V/s. Manishkumar Babulal Biyani; 1998 (1) Mh.L.J. 431**, wherein it has been held as under:

“ These provisions show that the jurisdiction of the Court or tribunal or any other authority is ousted only if the essential commodity is seized and confiscation proceeding under section 6-A is pending before the Collector and/or before the State Government under section 6-C. The net result of these provisions is that if there is no confiscation proceeding pending under section 6-A before the Collector and/or under section 6C before the State Government, then the Court or tribunal or any other authority can have jurisdiction to make orders with regard to the possession, delivery, disposal,

release or distribution of such essential commodity, etc. Thus the jurisdiction of the Court or tribunal or any other authority stands ousted only if there is a confiscation proceeding pending before the Collector and/or the State Government either under sections 6-A or 6-C. Otherwise, the Court or tribunal have a jurisdiction to dispose of the said property as per the procedure laid down. Thus, it is clarified that in view of the present provisions of section 6E before the Court proceeds to exercise the powers for disposal of the property, the said Court shall get it confirmed as to whether any proceeding for confiscation of the said essential commodity is pending before the Collector under section 6-A or under section 6-C before the State Government and if it is found that no such confiscation proceeding is pending, then the Court can proceed to dispose of the said property in view of the provisions contained in the Criminal Procedure Code. The bar contemplated under section 6E is not a blanket absolute bar, but it is clarified that once the Collector or the State Government commences the proceeding for confiscation either under sections 6-A or 6C, the Court or other authorities are barred from considering the release and disposal of the said property and to that extent, the general power of the Criminal Court to dispose of the property is modified, affected and conditioned by the provisions of section 6E and to that extent, the ratio laid down in the case of Rameshwar Rathod, cited supra, stands modified as a result of the legislation and the introduction of section 6-E of the Essential Commodities Act.

8. *If the facts in the present case are analysed, it will be evident that in spite of the specific order being passed on 5th November, 1996 that as to whether any proceeding for confiscation is pending before the Collector, the learned A.P.P. could not make any statement before the learned Additional Sessions Judge and proceeded to argue the matter on 6th November, 1996. Thus it is evident that when the Court passed an order on 7th November, 1996, there was no confiscation proceeding pending under section 6A and/or under section 6C either before the Collector or before the State Government in respect of the essential commodity involved in the present matter. Shri Wahane makes a statement that on 7th November, 1996, such application has been preferred by the Police Station Officer to the Collector, Akola. However, no action thereafter also appears to have been taken by the Collector. The above statement itself points out that on date when the matter was heard and disposed of by the learned Additional Sessions Judge, Akola, there was no proceeding pending before the Collector under section 6-A for confiscation of the essential commodity and, therefore, as discussed above, there was no bar for the learned Additional Sessions Judge, Akola, to exercise his powers under section 457 read with section 451 of the Criminal Procedure Code and,*

therefore, the order passed by the learned Additional Sessions Judge is legal and proper.”

11. The learned counsel appearing for the Petitioner further relied on case of **Geetha Decorticaters V/s. State of Andhra Pradesh; 2021 Cri.L.J. 429**, wherein the Andhra Pradesh High Court considered various case laws including case of **State of Maharashtra V/s. Manishkumar Babulal Biyani; 1998 (1) Mh.L.J. 431** and held that, if no proceedings are initiated under Section 6A of the Essential Commodities Act, the Magistrate continues to hold jurisdiction to deal with the property seized by the police in any crime registered against the violators of the order made under Section 3 of the Essential Commodities Act, when the same is pending either at the crime stage or at the trial stage. If the proceeding under Section 6A of the Essential Commodities Act are initiated, the Magistrate automatically seize it's jurisdiction.

12. Needless to say that, on 02.05.2024, this Court issued notices to the Respondent/prosecution but even after availing several opportunities, no reply has been filed. However, the learned APP relied on the reply dated 26-12-2023 filed before the learned Revisional Court and canvassed that the accused were apprehended red-hand while committing the crime under Section 407, 411, 285 read with Section 34 of the IPC and under Section 3, 7 of the E.C. Act. The police authority seized huge articles including one Ashok Leyland truck bearing no. MH-11-CH-4480, Gas Tanker No. MH-43-BG-7150 described

in seizure panchanama. On 31.01.2023, the Investigating Officer submitted the proposal with the Collector, Ahmednagar (Civil Supply Department) vide outward no.235/2023 dated 30.10.2023 for disposal of seized property. Therefore, confiscation proceeding u/s 6-A of E.C. Act pending before the District Collector in respect of seized vehicles and other articles. Therefore, the Petitioner is not entitled for custody of vehicle bearing no.MH-11-CH-4480.

13. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the record. In case in hand, only legal question arises that, whether the confiscation proceeding has been initiated by the Collector under Section 6A of the E.C. Act in respect of confiscation of seized vehicles including vehicle bearing No. MH-11-CA-4480 in pursuance of proposal dated 13.10.2023 submitted by the Investigating Officer.

14. It is not in dispute that, the police authority seized Goods Carrier vehicle bearing no.MH-11-CA-4480 in connection with Crime No.6/2023 registered with Kopargaon Police Station under Section 407, 411, 285 read with Section 34 of the IPC and under Section 3, 7 of the E.C. Act. It is also not in dispute that the present Petitioner is a owner of said vehicle. As per law laid down by this Court as well as the Andhra Pradesh High Court in ***Geetha Decorticaters V/s. State of Andhra Pradesh; 2021 Cri.L.J. 429*** and ***State of Maharashtra V/s. Manishkumar Babulal Biyani; 1998 (1) Mh.L.J. 431***, cited

supra, if the confiscation proceeding under Section 6A of the E.C. Act is pending before the Collector in that circumstances the jurisdiction of the Court or the Tribunal or any other authority is ousted in respect of release of seized commodity for contravention of Section 3 of the E.C. Act but if the confiscation proceeding is not initiated, then the jurisdiction of the Court is not ousted.

15. No doubt, the Investigating Officer filed reply before the learned Judicial Magistrate and raised objection for release of vehicle in favour of the Petitioner because seized vehicle is used in connection with serious offences under the E.C. Act. In revision, the Petitioner filed Exh.8 and stated that the Collector has not initiated confiscation proceeding. The Investigating Officer filed reply at Exh.10 before the Sessions court and stated as under:

सदर गुन्हातील जप्त मुददेमाल कमर्षियल 115 गॅस सिलेंडरच्या टाक्या, त्यामध्ये भारत गॅस सिलेंडरच्या 52 गॅसटाक्या त्यापैकी 10 सिलेंडरच्या गॅस टाक्या कमी जास्त प्रमाणात भरलेल्या व इण्डेन गॅस कंपनीच्या 62 गॅस टाक्या त्यापैकी 19 सिलेंडरच्या गॅस टाक्या कमी-जास्त प्रमाणात भरलेल्या, कंपनीची 09 सिलेंडरची गॅसटाकी जास्त प्रमाणात भरलेल्या अशा एकूण 115 गॅस सिलेंडरच्या टाक्या घटना ठिकाणावरून पोलिस निरीक्षक बी. जी.रोहोम, नेमणूक विशेष पोलिस महानिरीक्षक सो. नाषिक परिक्षेत्र नाषिक व श्री.दिपक भिंगारदिवे, पुरवठा अधिकारी, तहसील कार्यालय कोपरगाव यांनी दिनांक 06.01.2023 रोजी दोन पंचासमक्ष पंचनामा करून जप्त केलेल्या आहेत. नमुदच्या गॅस सिलेंडरच्या टाक्या या सुरक्षेच्या दृष्टीने संबंधित गॅस कंपनीचे गोडाउन मध्ये (कोळपेवाडी व कोपरगाव) येथे ठेवलेल्या आहेत.

नमुदचे जप्त गॅस सिलेंडरचे टाक्यामध्ये अवैधरित्या कमी-जास्त प्रमाणात गॅस भरलेला आहे. त्यापासून काही अनुचित घटना घडण्याची शक्यता नाकारता येत नाही.. करीता सदरचा जप्त मुददेमाल (गॅस सिलेंडरच्या टाक्या) संदर्भात पुढील योग्य ती कार्यवाही होणे बाबत मा. जिल्हाधिकारी सो.अहमदनगर (पुरवठा विभाग) यांना 1) इकडिल जावक क्रमांक 235 / 2023 दिनांक 31 / 01 / 2023 अन्वये, 2) इकडिल जावक क्रमांक

2885 /2023 दिनांक 13 /10 /2023 अन्वये विनंती रिपोर्ट सादर केलेला आहे.परंतु सदर नमुद जप्त मुददेमाल कमर्शियल गॅसच्या टाक्याच्या निर्गती संदर्भात मा.जिल्हाधिकारी सो.अहमदनगर , कार्यालयाकडून सदर बाबतची कार्यवाही सुरू झालेली नाही.

16. On careful perusal of Reply Exh.10, it appears that, the Investigating Officer submitted proposal with the Collector under outward no.2885/2023 dated 13.10.2023 for disposal of seized Gas Cylinders. However, the Investigating Officer has not submitted a proposal for the confiscation of vehicle No. MH-11-CA-4480. It is not the case of the prosecution that, the confiscation proceeding has been initiated by the Collector under Section 6A of the Essential Commodities Act and it is pending.

17. Section 6E of the Essential Commodities Act introduced by Act No.92/1976 expressly provides bar of jurisdiction of the Court/Tribunal or any other authority if the essential commodities are seized in contravention of Section 3 of the E.C. Act for confiscation procedure of the essential commodity, package covering or receptacle in which such essential commodity is found and any animal vehicle, vessel or other conveyance used in carrying such essential commodity. Since the prosecution failed to bring material on record to show that the proceeding for confiscation of the vehicle was pending before the Collector on the day of filing of application under Section 457 of the Cr.P.C. for release of vehicle no.MH-11-CH-4480, hence, to my view jurisdiction of the Magistrate is not ousted for releasing of said vehicle on supurnama. However,

the learned Revisional Court failed to consider the scope of Sec. 6-E of the Essential Commodities Act. Therefore, the impugned order dated 28.02.2024 passed by the Revisional Court in Criminal Revision No.64/2023 as well as order dated 20.07.2023 passed by the learned Judicial Magistrate in Misc. Cri. Application No.45/2023 are hereby liable to be quashed and set aside and Vehicle no.MH-11-CH-4480 needs to be release in favour of the Petitioner on certain terms and conditions. Accordingly, I proceed to pass the following order:

ORDER:

1. Cri. Writ Petition No. 821 of 2024 is hereby allowed.
2. The Vehicle No.MH-11-CH-4480 bearing chassis no. MB 1AA 22E1KRH 50491, Engine No. HKH014702P be released in favour of the Petitioner during the pendency of trial in Crime No.0006/2023 registered with Kopergaon City Police Station on supratnama under Section 457 of the Cr.P.C. on the following terms and conditions:
 - i) The Petitioner shall furnish personal security bond of Rs. 5,00,000/- and Bank Guarantee of Nationalized Bank of Rs. Five Lakhs before the trial Court for release of vehicle.
 - ii) The Petitioner shall furnish an undertaking that, he shall not transfer, dispose of or create any third party interest over the said vehicle in favour of any person, he shall not change nature of vehicle, during course of trial.

- iii) The Petitioner shall furnish an undertaking that, he will produce the said vehicle before the learned Magistrate during the course of trial, if required.
3. In view of above, Rule is made absolute in the above terms.

[Y.G. KHOBRADE, J.]