



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4239 OF 2008

Dhairyashil Sundarao Solunke
Age: 45 years, Occu.: Business,
R/o Shriramnagar, Beed,
Tq. & Dist. Beed

..APPLICANT

VERSUS

1. State of Maharashtra

2. The Tahsildar, Beed
Tahsil Office, Dist. Beed

..RESPONDENTS

....
Mr. R.B. Magare, Advocate h/f Mr. D.J. Choudhary, Advocate for applicant
Mr. V.K. Kotecha, A.P.P. for respondents
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CORAM : HITEN S.VENEGAVKAR, J.
RESERVED ON : 05th OCTOBER, 2026
PRONOUNCED ON : 09th OCTOBER, 2026

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With the consent of learned counsel for both sides, heard finally at the stage of admission.

2. The applicant invokes the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973, to challenge the order dated 4 November 2008 passed by the Judicial Magistrate First Class, Beed, rejecting his application for discharge in S.C.C. No. 2368 of 2005. The prosecution arises from Crime No. 133 of 2005 registered at Beed City Police Station for an offence punishable under Section 7 of the Essential

Commodities Act, 1955, on the allegation of contravention of control provisions referable to Section 3 of that Act. Besides setting aside the impugned order, the applicant seeks discharge from the criminal proceedings.

3. The respondent-State states that on 6 September 2005 complaints were received by the Collector, Beed, that petrol pumps in the city had stopped supplying petrol and diesel despite having stock available. According to the prosecution, a price increase was expected to take effect from the following day and the dealers had withheld sales from about 4 p.m. with the intention of selling the existing stock at the enhanced prices. Acting upon these complaints, officers of the supply administration inspected Ramchandra and Sons Petrol Pump at Shivaji Chowk, Beed, which was operated by the applicant. The inspection took place at about 1.20 a.m. on 7 September 2005, when the outlet was found closed. The prosecution alleges that the available fuel had been unlawfully retained for this purpose. The complaint was lodged by Baban Dattatraya Wanve, an officer of the Tahsil supply administration, and it refers to State control orders concerning the display or marking of prices and the display of stocks and prices. Following investigation by Police Sub-Inspector V.G. Barkul, a police report was submitted and the criminal case came to be registered before the Magistrate.

4. The applicant states that he was an authorised dealer of Hindustan Petroleum Corporation and that the outlet had conducted its business in the

ordinary course on 6 September 2005. He relies upon the stock-register extracts and the statements of the manager, Datta Mahajan, and the watchman, Ravindra Kisanrao Shole. The manager's statement records that the outlet remained operational during the day, except for an interruption in electricity supply between 7 p.m. and 7.20 p.m., and was closed at about 9 p.m. He also states that 1,726 litres of petrol and 1,664 litres of diesel were sold that day. The watchman states that he came for night duty at about 9 p.m., when the manager closed the outlet and left, and that the supply officers arrived later during the night. The quantities referred to in the application and the manager's statement are 6,313 litres of petrol and 6,212 litres of diesel. According to the applicant, the presence of this stock at a licensed outlet after its ordinary business hours furnished no basis for a criminal prosecution.

5. Ld. Advocate for the applicant submits that the prosecution has not identified a subsisting order under Section 3 of the Essential Commodities Act whose contravention would attract Section 7. In support, he relies upon *Manoj v. State of Maharashtra and Another, 2026 SCC OnLine SC 199*, decided on 13 February 2026 in Criminal Appeal No. 1630 of 2015 with the connected appeal of Prakash, and draws attention to paragraphs 16, 17 and 25. He submits that a prosecution cannot be sustained on an appreciation of evidence alone when the statutory foundation of the alleged offence is absent. It is further submitted that there is no material showing that this outlet

remained closed between 4 p.m. and 9 p.m. on 6 September 2005. Counsel relies upon the stock register showing sales of petrol and diesel and upon the manager's and watchman's statements, which, according to him, support the operation of the outlet during its normal working hours. He contends that finding the outlet closed during a midnight inspection cannot establish the earlier withholding alleged by the prosecution.

6. Ld. Advocate for the applicant also questions the authority of the officer carrying out the search and seizure. In the oral hearing, he specifically relies upon Clause 4 of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order, 1998, whose text permits the exercise of the specified powers by authorised officers in the categories stated therein and prescribes a minimum rank of Deputy Superintendent of Police for the police category. Counsel submits that the relevant police action was undertaken by a Police Sub-Inspector and consequently did not comply with that requirement. He also questions the inspection at about 1.20 a.m., outside the outlet's ordinary working hours. The applicant also relies upon the assertion in his rejoinder that prosecutions against other dealers arising from the same exercise ended in acquittal.

7. Ld. APP submits that the initial inspection and seizure were undertaken by an officer of the supply department, identified at the hearing as a Naib Tahsildar, whom the State describes as a Gazetted Officer.

According to the State, the police subsequently investigated the offence registered on the departmental complaint. Ld. APP seeks to distinguish the decisions relied upon by the applicant on the ground that the initial raids in those cases were undertaken by police personnel, whereas the present inspection was departmental. He relies upon the complaint and the panchnama said to form part of the prosecution and refers to the State control order concerning display and marking of prices. He submits that the departmental inspection and the ensuing police investigation furnish sufficient ground for the prosecution to proceed.

8. I have considered the submissions and examined the material placed before me. The question is whether that material supplies a sufficient foundation for continuing the prosecution against this applicant.

9. Section 7 of the Essential Commodities Act provides punishment for contravention of an order made under Section 3. It is therefore necessary to identify both the applicable obligation and the act constituting its alleged breach. Section 3 confers power to make control orders; a reference to that section does not, by itself, establish that the possession of fuel by a licensed dealer or the closure of his outlet at night amounts to an offence.

10. Ld. Advocate for the applicant relies upon *Manoj v. State of Maharashtra and Another* (supra). In that case, the Supreme Court found that the relevant controls concerning cement had ceased to operate before the

occurrence. The prosecution under Section 7 was consequently made without the requisite statutory foundation. The principle that an operative control obligation and its contravention are indispensable is relevant here. The finding concerning withdrawal of cement controls does not, however, establish the absence of petroleum controls in September 2005.

11. I must therefore qualify the applicant's submission that no control order has been referred to. The complaint names State orders concerning display of stocks and prices, although their descriptions and clause references are not consistently stated. The Maharashtra Scheduled Articles (Display and Marking of Prices) Order, 1966, includes high speed diesel and motor spirit in entry 51 of Schedule I. Clause 4(b) prohibits refusal or withholding of sale at the displayed price. It would thus be incorrect to terminate this prosecution upon a finding that petrol and diesel were altogether outside the scope of that Order. Equally, the existence of a prohibition does not dispense with material indicating that this applicant committed the prohibited act.

12. The prosecution proceeds upon complaints that petrol pumps in Beed had closed during the afternoon preceding an expected price increase. Such information could justify an inquiry. The material disclosed in the complaint concerning the applicant's outlet is, however, the inspection undertaken at about 1.20 a.m. and the presence of petrol and diesel in its tanks. Neither the receipt of general complaints nor the discovery of fuel

during that inspection establishes, without a further link, that this outlet had stopped selling fuel at about 4 p.m. The assertion of afternoon withholding must be distinguished from the facts observed several hours later.

13. Ld. APP relies upon the inspection and the panchnama. An inspection record may establish the condition of the premises and the stock at the time of inspection. On the case presented, it does not identify an observation of refusal to sell during business hours. Neither the complaint nor the State's reply identifies a particular transaction in which this applicant declined to supply available fuel, or an observation made at this outlet during the afternoon which supports the asserted cessation of sales. The allegation of withholding is stated as a conclusion drawn from the complaints and the subsequent inspection. The material placed before this court does not supply the necessary connection between those two events.

14. The applicant's submission concerning the ordinary business hours must be understood in this background. The manager's statement records closure at about 9 p.m. after the day's business, and the watchman's statement describes his arrival at that time and the subsequent visit of the officers. The manager also refers to an interruption of electricity supply between 7 p.m. and 7.20 p.m. The stock register records sales of petrol and diesel on the day in question. These entries do not fix the time of each sale and cannot be treated as conclusive proof that the outlet remained open at every moment of

the afternoon. Nevertheless, they show why closure at 1.20 a.m. cannot, without supporting material concerning the earlier period, sustain the inference upon which this prosecution rests.

15. The conclusion of this court does not depend upon a final acceptance of the manager's statement or an assessment of his credibility. Even leaving his explanation aside, the facts of the midnight inspection do not establish the missing link. The applicant was an authorised dealer, and the fuel was found in the tanks of the dealership. Its presence required examination against an actual restriction or act of withholding; it did not become unlawful merely because the premises were closed at night. No requirement that this outlet remain open throughout the night has been identified. Nor does the case presented identify a sale at an unlawful price, an undisclosed excess over a prescribed stock limit, or another concrete act which would independently sustain the allegation of unauthorised storage or black marketing against the applicant.

16. The expected increase in price explains the suspicion which prompted the inspection. It does not establish that the applicant acted upon that expectation by withholding fuel. An inference of the prohibited act requires a factual basis concerning this dealer. The State's reply substantially repeats the allegation in the complaint and states that witnesses were examined and a Panchama prepared. The existence of an investigation and a

witness list cannot substitute for identification of the material which supplies the essential link. The deficiency here concerns the basis of the alleged contravention, rather than the weight to be assigned to competing accounts at trial.

17. This court is conscious that the Court must not conduct a mini-trial under Section 482. The Supreme Court reiterated that limitation in ***C.S. Prasad v. C. Satyakumar and Others, 2026 SCC OnLine SC 50***. That limitation does not require continuation of proceedings merely because an accusation employs the words of an offence. This court have not resolved a conflict in testimony. I have examined whether the facts and material placed before me, taken at their stated value, connect the applicant with the act prohibited by the control provision. For the reasons already given, that connection has not been shown in the present case.

18. The submission concerning the officer's rank requires a separate consideration. Clause 4 of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order, 1998, prescribes a minimum rank of Deputy Superintendent of Police for exercise of its specified powers by a police officer. That condition governs action under that provision. It does not prescribe the rank for every act of investigation under every control order. The State Order of 1966 defines a specified officer to include a police officer not below the rank of Sub-Inspector and contains its

own powers under Clause 5. I therefore do not accept that the participation of a PSI necessarily renders the entire prosecution void.

19. Ld. APP submits that the initial inspection was departmental and was undertaken by a Naib Tahsildar, whom the State describes as a Gazetted Officer. If an officer acts under Clause 4 of the Central Order, his status and authorisation must satisfy that provision; describing the action as departmental does not dispense with its conditions. Likewise, an earlier departmental seizure would not authorise a PSI to undertake a distinct seizure under a provision which reserves that power to an officer of higher rank. These propositions do not, however, answer the more fundamental deficiency in the alleged offence. Even assuming the initial inspection and seizure to have been lawfully undertaken, their results, as presented in this proceeding, do not supply the missing basis for the alleged afternoon withholding. It is unnecessary to decide the disputed legal source of each subsequent act to dispose of this application.

20. Nor is the hour of inspection, by itself, a ground to declare the search illegal. Ordinary business hours are relevant to the inference drawn from finding the outlet closed. They are not necessarily a restriction upon the inspection power. Our conclusion rests upon the failure to connect the facts discovered at night with the earlier act alleged, rather than upon a proposition that every inspection after business hours is prohibited.

21. The assertion that other dealers were acquitted does not independently support the relief. Their judgments and evidentiary records are not before this court and we cannot assume that their cases were identical. The applicant's request must be decided upon the prosecution against him. Similarly, the warrant referred to in the State's reply concerns his attendance before the trial Court and cannot supply an ingredient of the substantive offence.

22. The Magistrate rejected the request by observing that the complaint *prima facie* disclosed contravention of Sections 3 and 7 and that the cited decisions concerned different facts. That discussion did not examine how the facts concerning this applicant amounted to breach of an applicable control obligation. The necessary inquiry could not be replaced by a general reference to the nature of the offence. Upon my own consideration, the lawful availability of fuel at the dealership and closure during the midnight inspection do not furnish the requisite basis for continuing the prosecution on the allegation presented. Requiring the applicant to face trial on that foundation would amount to an abuse of the process of the Court.

23. The age of the proceedings reinforces the need to decide the application finally but is not an independent ground for quashing. This Court recognise that the trial remained stayed during the pendency of this application and do not attribute the entire interval to the prosecution. The

relief follows from the deficiency identified in the prosecution's foundation. There is consequently no purpose in sending the discharge request back for another order on the same material.

24. In view of above, following order is passed

ORDER

- a) Criminal Application No. 4239 of 2008 is allowed. The order dated 4 November 2008 passed by the Judicial Magistrate First Class, Beed, rejecting the applicant's application for discharge in S.C.C. No. 2368 of 2005 is quashed and set aside.
- b) In exercise of the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973, the criminal proceedings in S.C.C. No. 2368 of 2005 arising from Crime No. 133 of 2005 registered at Beed City Police Station are quashed and set aside .
- c) The applicant stands discharged from those proceedings. His bail bonds, if any, stand cancelled. The interim applications, if any, stand disposed of. Rule is made absolute in the above terms.
- d) There shall be no order as to costs.
- e) Rule is made absolute.

(HITEN S. VENEGAVKAR, J.)

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