

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 380 OF 2015

SHRI ANIL BIHARILAL JOSHI
VERSUS
STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Applicant : Mr. R. S. Deshmukh, Advocate i/b Mr. S. U.
Chaudhari.
APP for Respondents: Mr. K. S. Patil.
...

CORAM : **A. B. CHAUDHARI &
INDIRA K. JAIN, JJ.**
DATE : 09th September, 2015.

Per Court:

1 Following is the prayer clause (B) in the application:

“[B] The Hon'ble High Court may pleased be quashed
and set aside the FIR dated 15/10/14 vide Crime
No.96/14 registered with Shirpur Police Station, u/s
3 & 7 of the Essential Commodities Act”

2 The learned counsel for the Applicant has vehemently
contended that the Applicant is the owner of the vehicle, which is said
to have been allegedly attempted to be diverted to a place other than
one mentioned in the TP meant for PDS wheat that was being carried
therein. According to him, as per the allegations, the driver had merely
changed the route contrary to the route or the destination mentioned in

the TP, but the driver wanted to go to his place namely Karvand rather than Holnathe, the destination. He, therefore, submits that at the best it is the driver who can be said to have committed the offence punishable under Sections 3 and 7 of the Essential Commodities Act and the present Applicant is not remotely concerned therewith. He, therefore, submits that the Applicant has no role to play and *prima-facie* there is nothing incrementing against him and therefore, FIR deserves to be quashed. He submits that on similar facts, the Division Bench of this Court in the case of **Rakesh s/o. Mahendrakumar Jain Vs. The State of Maharashtra**, reported in **2014 ALL MR (Cri) 3144**, also held accordingly and therefore, the FIR should be quashed.

3 We have perused the FIR with the assistance of the learned counsel for the Applicant. We have seen the affidavit in reply filed by Respondent No.2. We have also perused the judgment cited before us. At the outset, we find that culpability of the Applicant can be found out only after investigation is carried out to its logical conclusion and it would be premature to hold that the Applicant as an owner of the vehicle had no concern whatsoever since it is difficult to believe that the driver on his own would act contrary to the directions in the TP pass in relation to the destination and route for carrying the PDS material. That is of course a matter of investigation and we are not in

a position to record even *prima-facie* finding in favour of the Applicant in the absence of investigation. In so far as the judgment cited by the learned counsel for the Applicant is concerned, we find that these factual aspects did not fall for consideration in the said case. However, in the instant case, we find that detailed investigation is required and it would be unsafe to quash the FIR at such a preliminary stage.

4 In view of the above, we think the following order would subserve the interest of justice:

- I. Criminal Application No.380 of 2015, is not entertained and is rejected.
- II. Liberty is reserved in favour of the Applicant to apply for discharge before the competent Court after filing of final report, charge-sheet, if any.
- III. If the application for discharge is made, the same shall be decided within a period of four months from the date of filing of the said application.

[INDIRA K. JAIN, J.]

[A. B. CHAUDHARI, J.]