

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3165 OF 2015

Abdul Razzak s/o Abdul Hamid,
Age-45 years, Occu:Hawkers,
R/o-Mominpura, Georai,
Tq-Georai, Dist-Beed.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through: The Police Inspector,
Georai Police Station, Georai,
Dist-Beed,
- 2) Hamid Chand Shaikh,
Age-45 years, Occu:Service,
As A.P.I. Police Station Georai,
Tq-Georai, Dist-Beed
(Deleted as per Court's order
dated 31st July 2015).

...RESPONDENTS

...
Mr.R.G. Hange Advocate for Applicant.
Mr.B.V. Virdhe, A.P.P. for Respondent No.1.
...

**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE OF RESERVING JUDGMENT : 9TH DECEMBER, 2016.

DATE OF PRONOUNCING JUDGMENT: 19TH DECEMBER, 2016.

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Application is filed by the Applicant praying therein that, the proceeding/charge-sheet of S.C.C. No.173 of 2015 pending on the file of Judicial Magistrate First Class, Georai pursuant to Crime No.121 of 2014 registered with Georai Police Station, District Beed for the offence punishable under Section 3 and 7 of the Essential Commodities Act and under Section 188 of the Indian Penal Code and F.I.R. in Crime No.121 of 2011 registered with Georai Police Station, District Beed as against the present Applicant may kindly be quashed and set aside.

3. The learned counsel appearing for the Applicant submits that the First Information

Report as well as charge-sheet does not disclose that informant had checked stock of kerosene available with Applicant in stock register and therefore there is no evidence to show that alleged kerosene was supplied to Applicant under the public distribution system, so there is no material to book the Applicant in any offence. The report and charge-sheet filed by the police does not disclose as to which order was violated by the Applicant so as to attract the provisions of Section 3 and 7 of the Essential Commodities Act. In the report and charge-sheet nowhere it is mentioned what was the Government rate for selling the kerosene at the relevant time, so allegation made in the report that Applicant was selling kerosene at higher rate appears to be false.

4. Learned counsel appearing for the Applicant also invited our attention to the other grounds taken in the Application and submits that Section 188 of the Indian Penal Code contemplates

that disobedience to order issued by public servant should cause or likely to cause harm, therefore there is no prima facie case under Section 188 of the Indian Penal Code against the Applicant.

5. The learned counsel appearing for the Applicant, in support of his contention submitted that, it is essential for bringing an application of Section 7 to show that some order has been made under Section 3 of the said Act and the order has been contravened. He placed reliance on the reported Judgment of the Supreme Court in the case of **Prakash Babu Raghuvanshi vs. State of Madhya Pradesh, 2004 ALL M.R. (Cri) 3473 (S.C.)**. The learned counsel for the Applicant, in support of his submissions, also placed reliance on the Judgment of the Bombay High Court, Nagpur Bench in the case of **Amarjeetsingh s/o Jeevansingh and another vs. State of Maharashtra and others, 2006 ALL M.R. (Cri) 489**.

6. Learned counsel appearing for the Applicant further submits that Applicant is hawker and the provisions of the Maharashtra Scheduled Commodities Retail Dealers Licensing Order, 1979 are not applicable in his case as the said provisions deal with the license order issued in favour of retail dealers. He submits that police officer is not authorized to register the offence or to file the charge-sheet. He invited our attention to the provisions of the Maharashtra P D S Kerosene Wholesalers, Semi-wholesalers and Hawkers (Licensing) Order, 2008.

7. On the other hand, the learned A.P.P., relying upon the Judgment of the Division Bench of the Bombay High Court, Nagpur Bench in the case of **Dinesh s/o Bhawarlal Sarda vs. State of Maharashtra in Criminal Writ Petition No.33 of 2007, delivered on 26th September 2008,** and submits that once the charge-sheet is filed before

the competent Court, this Court, if there is an irregularity in an investigation, unless it is shown that it is tainted by gross illegality which may have caused miscarriage of justice, would not interfere and leave it to the concerned Court to decide the case on merits. The learned A.P.P. also invited our attention to the averments in the affidavit in reply filed on behalf of Respondent and also to the provisions of the Maharashtra Scheduled Commodities Retail Dealers Licensing Order, 1979 and submits that the Application be rejected.

8. We have given careful consideration to the submissions made by the learned counsel appearing for the Applicant, perused the grounds in the Application, annexures thereto and the reply filed on behalf of Respondent State and also documents placed on record. Upon perusal of the charge-sheet and its accompaniments, we are of the opinion that the prosecution agency has collected

sufficient material. Keeping in view the exposition of law in the case of **Dinesh s/o Bhawarlal Sarda vs. State of Maharashtra**, supra, we are of the opinion that an irregularity in an investigation, unless it is shown that it is tainted by gross illegality which may have caused miscarriage of justice would be curable in terms of Section 465 of the Code of Criminal Procedure. Thus it is clear that illegal investigation does not prohibit a Court from taking cognizance upon submission of charge-sheet or final report as contemplated under Sections 170, 171, 172 and 173 of the Code of Criminal Procedure. The Applicant may also raise an objection regarding illegality of investigation. In view of Section 173(8) of the Code of Criminal Procedure, the Court may direct further investigation by an appropriate investigating officer if it considers that demands of justice require it. In the present case, as already observed, charge-sheet is already filed. The prosecution will have to and must be given

opportunity to prove that investigating officer was duly empowered to investigate into the case and also to substantiate it's stand that investigation was done according to law.

9. Therefore, in the light of discussion herein above, since the police have already filed charge-sheet in the case upon completion of investigation against the Applicant, it would be under judicial scrutiny of the trial Court. The trial Court will scrutinize the material on record and other circumstances and shall proceed with the case in accordance with law. The Applicant will be at liberty to raise plea for discharge in the Court below, if so advised, which if raised, shall be considered on its merits and in accordance with law as expeditiously as possible and preferably within three months from the date of receipt of this order.

10. For the reasons stated above, the

Application has no merits and it deserves to be dismissed. Accordingly the Application is dismissed. Rule is discharged. There shall be no order as to costs.

[K.K. SONAWANE, J.]

asb/DEC16

[S.S. SHINDE, J.]