

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3006 OF 2015

Raghu Narayan Vadnala and Another. ..Petitioners.

Versus

State of Maharashtra & Others. ..Respondents.

AND

WRIT PETITION NO. 2946 OF 2015

Dattatray S. Kalel and Another. ..Petitioners.

Versus

State of Maharashtra & Others. ..Respondents.

AND

WRIT PETITION NO. 2948 OF 2015

Riyaz Keshwani and Another. ..Petitioners.

Versus

State of Maharashtra & Others. ..Respondents.

Mr. P. A. Pol i/b Pol Legal Juris for the Petitioners.

Mr. S. K. Shinde, PP with Mr. K. V. Saste, APP for the State.

Coram : RANJIT MORE &
S. C. GUPTE, JJ.

Date : **February 3, 2016.**

P. C. :

1. Heard Mr.Pol, learned Counsel appearing for the
Petitioners and Mr. Shinde, learned for the State.

2. The Petitioners herein are arraigned as accused in
FIR No.21 of 2015 registered with Mankhurd Police Station,

wherein they are alleged to have committed the offences punishable under sections 3, 7, 8 and 10 of the Essential Commodities Act, 1955, sections 3, 5, 10 and 20 of the Maharashtra Foodgrains Rationing (Second) Order, 1966, sections 3, 4 and 5 of the Bombay Rationing Area Scheduled Commodities (Regulation of Distribution) Order, 1986, and sections 10, 10-A, 18A(2), 18A(3)(aaa), (c), (d), (e), (f), 18A(4) and 18A(5) of the Maharashtra Foodgrains Rationing (Second) Regulations, 1966.

3. The allegations against the Petitioners, in nutshell, are that the Petitioners diverted the wheat given to them under the scheme framed under National Food Security Act, 2013 without delivering the same to the particular designated fair price shop. Undisputedly, wheat is an essential commodity under the Essential Commodities Act, 1955. Wheat under the National Food Security Act, 2013 is to be distributed through the fair price shops as provided under the Public Distribution System (Control) Order 2001 [in short "Order of 2001"]. This Order of 2001 is made in exercise of powers under section 3 of the Essential Commodities Act, 1955. Under clause (4) of Order 6 of the Order of 2011, it is the duty of the Petitioners not to indulge in substitution or

adulteration or diversion or theft of stocks from Central godowns to fair price shop premises or at the premises of the fair price shop. The allegations against the Petitioners are that they have diverted the wheat meant for the fair price shops and they intended to sell the same in open market and they were apprehended with the trucks containing the said wheat. There is *prima facie* material to say that the Petitioners contravened Order-6 of the Order of 2001.

. It is true that in the subject FIR there is no reference to the said clause. However, we cannot loose sight of the fact that the FIR is not expected to be an encyclopedia. The matter is at the stage of investigation and the Investigating Officer can subsequently apply or add appropriate charges [i.e., sections or orders] on the basis of material recovered.

4. Mr. Pol, learned Counsel appearing for the Petitioner also tried to convince us that no offence at all has been committed, since the wheat was found in the trucks which were parked at Mankhurd. Admittedly, the Petitioners were expected to deliver the said wheat to the fair price shop at Matunga and trucks were found parked at a location opposite thereto. The

contention of the Petitioners is that the fair price shop was closed and therefore it was parked at Mankhurd. However, we find that this is a defence available to the Petitioners and the same cannot be considered at the stage of investigation.

5. In the light of above discussion, we are not inclined to entertain these writ petitions and quash the subject FIR.

6. So far as the Petitioners' prayer regarding release of the vehicles is concerned, the Controller of Rationing and Director of Civil Supply has passed an order under section 6 of the Essential Commodities Act, 1955 and vehicles in question came to be confiscated. The Petitioners were given liberty to take those vehicles upon deposit of market price by way of fine. The Petitioners have challenged this order in the present writ petitions. We find that the Petitioners can appeal against this order as provided under section 6-C of the said Act. Since the Petitioners have an alternate and efficacious remedy to seek redressal of their grievance, we are not inclined to consider this prayer.

7. In the light of above discussion, writ petitions are dismissed.

8. It is made clear that the observations made hereinabove are *prima facie* and are made for the limited purpose of disposal of these writ petitions. The appeal that may be filed under section 6-C or any other proceeding that may be taken up, shall be decided on its own merits without being in any manner influenced by the observations hereinabove. In the event Petitioners file appeal under section 6-C of the Essential Commodities Act, the appellate authority shall dispose of the same within four weeks of its filing.

[S. C. GUPTE, J.]

[RANJIT MORE, J.]