

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.96 OF 2006

Bajirao Mathaji Gatkhal,
Age – 60 years, Occu. Business,
R/o Pachod, Taluka Paithan,
District Aurangabad.

... **Petitioner**

Versus

- 1) The State of Maharashtra,
- 2) The Police Sub-Inspector,
Local Crime Branch, Aurangabad,
the Complainant of Crime No.II-41/05
of Pachod Police Station,
dated 11.11.2005.
- 3) The I.O. of Crime No.II-41/05
of Pachod Police Station,
dated 11.11.2005.
- 4) The Addl. Collector,
Aurangabad.
- 5) Bhanudas Devrao Lokare,
Age – 40 years, Occu. Agriculturist,
R/o Nath Nagar, Paithan,
District. Aurangabad.

... **Respondents**

...
Mr. Hemantkumar Pawar, Advocate for Petitioner
Mr. S.J.Salgare, APP for Respondent-State
...

**CORAM : T.V.NALAWADE AND
S.M.GAVHANE, JJ.**

DATED : 27th September, 2017

JUDGMENT :-

1. The petition is filed to challenge the decision of the Learned Additional Session Judge, Aurangabad in Criminal Revision Application No.261 of 2005, by which, the order made by learned Judicial Magistrate (First Class) of granting interim custody of goods, essential commodities, food grains meant for distribution under Public Distribution System is set aside by the Sessions Court. A relief is claimed to set aside the order made by Collector of auction sale of the food grains. Relief is claimed for quashing and setting aside the FIR given by the public servant under the provisions of Essential Commodities Act. Both the sides are heard.

2. The petitioner is a private businessman, dealing in food grains. 839 Quintals of wheat and 262 Quintals of rice came to be recovered from his godown on the information that these food grains were meant for public distribution System and they were illegally taken out of that system for selling the food grain in the black market. After the seizure, F.I.R. came to be filed and the crime at

CR. No.41 of 2005 came to be registered in Pachod Police Station, for the offences punishable under Sections 3 and 7 of the Essential Commodities Act. Due to seizure of the goods, application was moved under Section 457 of the Criminal Procedure Code by the petitioner in the Court of learned J.M.F.C. It appears that the learned J.M.F.C. made the order of interim custody in favour of petitioner, as it was not pointed out to the learned J.M.F.C. that proceeding for confiscation under the provisions of the same Act were started before competent authority i.e. Collector on 16.11.2005, before making of the order by learned J.M.F.C.

3. Due to aforesaid circumstances, the State Challenged the order of interim custody made by learned J.M.F.C. by filing aforesaid Revision. In view of the provisions of Essential Commodities Act and the power vested with the authority, the Collector under the said Act and also the restrictions on the power of the learned J.M.F.C. imposed by the same Act to make such interim order, the Revision came to be allowed. In view of the said provisions like Section 6-A etc. of the Essential Commodity

Act, it can be said that after starting of the confiscation proceeding there was no power with the learned J.M.F.C. to make the order of interim custody. Subjective satisfaction of the competent authority in this regard is necessary and only at the end of the trial of the case some powers are again there to the criminal Court. Thus, the order made by learned J.M.F.C. was illegal and that is rightly set aside by the learned Sessions Court.

4. It is not disputed that the competent authority issued notice to the present petitioner and after giving an opportunity to the present petitioner, the order of confiscation came to be passed. Under the provisions of the same Act the order of confiscation can be challenged in Sessions Court but the present proceeding does not show that the said order was challenged by filing appropriate proceeding, like an appeal in the Sessions Court. Thus, it can be said that appropriate proceeding ought to have been filed by the present petitioner in the Sessions Court, but instead of doing that the order made by Sessions Court in Criminal Revision is challenged in the present proceeding. For the single reason, interference

is not possible in the order made by learned Judge of Sessions Court.

5. So far as the relief claimed for quashing of F.I.R. is concerned, it can not be said that there is no sufficient material for going ahead with the investigation. Learned APP submitted that after making investigation even charge-sheet came to be filed in the said crime. Thus, it cannot be said that false allegations are made or that there is nothing against the petitioner on the basis of which prosecution can be launched. Due to this circumstances, this Court holds that the FIR cannot be quashed.

6. In the result, petition stands dismissed. Rule stands discharged. Interim relief, if any, granted is vacated.

(S.M.GAVHANE, J.)

(T.V.NALAWADE, J.)

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vmk/-