

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 329 OF 2017

1. Bhimrao s/o Ram Waghmare,
Age : 22 years, Occu. Driver,
R/o Kumbharga, Tq. Biloli,
Dist. : Nanded.
2. Sushil s/o Bhaguram Mohite,
Age : 22 years, Occu. Business,
R/o Godavari Mala, Lahoti
Compound, Latur.

. . .PETITIONERS

VERSUS

1. The State of Maharashtra,
Through the Police Station Officer,
Ausa Police Station, Dist. Latur.
2. Vikas s/o Ahilappa Jadhav,
Police Inspector,
Ausa Police Station, Dist. Latur.

....RESPONDENTS

Mr. N.P. Patil Jamalpurkar, Advocate for petitioners
Mr. D.R. Kale, APP for Respondent state

CORAM : S.S. SHINDE &
K.K. SONAWANE, JJ.

DATE : 25th April, 2017.

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

Heard. Rule. Rule made returnable forthwith. Heard finally by
consent of parties.

2] Brief facts, leading to filing of present petition as taken from
the memorandum are :-

That, on 26.01.2017 the respondent No.2 - Vikas Jadhav, Police Inspector, lodged a complaint at Ausa Police Station, Dist. Latur that on 21.01.2017 the Superintendent of Police received information from the secret informer that, the wheat belonging to Ration Shops/Civil Supplies Department is being transported through a Truck bearing registration No. AP-25/X-3399, from Market Yard, Latur to Maharashtra Flour Mills, Meeraj MiDC, Sangli. Therefore, upon instructions given by the SDO, Ausa, he alongwith Police Constables followed the said truck by two separate jeeps and stopped the said truck near Gayatri Dhaba at 00.30 hours. On enquiry the Driver of the truck told them that wheat bags were uploaded in the truck by Mangal Traders, Latur and it is being transported to Meeraj, Dist. Sangli. When the police Inspector Shri Bhume saw the samples of wheat, he found that the said wheat is of ration shops. After getting confirmation from the Civil Supplies Department on 21.01.2017, a panchanama was drawn in presence of the Supply Officer from the Tahsil Office, Ausa and two panchas and on completing necessary formalities, the FIR was lodged and offence under Sections 3 and 7 of the Essential Commodities Act, bearing Crime No. 0023 of 2017 was registered against the petitioners, at police Station Ausa, District Latur. Feeling aggrieved thereby, the petitioners have approached this court by invoking remedy under Section 482 of the Code of Criminal Procedure for quashing the FIR.

3] Learned counsel for the petitioners submits that the petitioners have no concern, whatsoever with the alleged offence, inasmuch as, the

wheat bags owned by M/s. Mangal Traders, Latur, were being transported from Latur to Meeraj, Dist. Sangli. They are neither proprietor of M/s. Mangal Traders, nor its agents. The entire business activities of M/s. Mangal Traders are being looked after by the father of the petitioner No.2 by name, Bhaguram s/o. Bapurao Mohite and his mother Jayashri Bhaguram Mohite is the proprietor of M/s. Mangal Traders, Latur. However, he has no concern, whatsoever, with M/s. Mangal Traders. He further submits that the wheat bags in question were purchased by M/s. Mangal Traders from APMC, Latur during 17.01.2017 to 20.1.2017 and the consideration was paid through cheque. Therefore, it cannot be said that said bags which were being transported (360 bags containing 50 kgs. each) were to be distributed under the Public Distribution Scheme. The said bags were seized under suspicion.

4] Learned counsel appearing for the petitioner relied upon the unreported judgment of the Division Bench of this Court in the matter of ***Shri Vijay Machindra Markad Vs. State of Maharashtra and others (Criminal Application No. 492 of 2017)*** with other connected matters and reported judgment of the Apex Court in the case of ***Prakash Babu Raghuwanshi vs. State of M.P.***¹, submits that there is no mention in the FIR about contravention of any order made under Section 3 of the Essential Committees Act, and, therefore, in absence of any order made under Section 3 of which the contravention is claimed, the offence under Section 7 could not be made out.

1 2004 AIR SCW 5334

4] On the other hand, learned APP appearing for the State submits that it is true that there is no mention of any specific order in the FIR which is contravened, however, subsequently contravention of Section 11,13 and 14 of the Targeted Public Distribution System (Control Order), 2015 came to be added with the permission of Chief Judicial Magistrate, who is seized of the proceedings. It is submitted that huge quantity of 360 bags was found in the seized truck and, therefore, the petitioners have committed serious offence. Therefore, the writ petition may not be entertained.

5] Upon hearing learned counsel for the petitioners and learned APP for the State and upon perusal of the entire material placed on record, admittedly, there is no mention about contravention of any order made under Section 3 of the said Act and, therefore, in absence of any order made under Section 3 of which contravention is claimed, the offence under Section 7 cannot be made out. The issue/controversy raised in this petition is no longer res-integra and is covered by the aforementioned judgments. In the case of *Shri Vijay Markad and another vs. The State of Maharashtra and another (cited supra)* the Division Bench of this court in para. 10 have held thus :-

10. Admittedly, in all these cases, there is no mention of contravention of any order made under section 3 of the said Act, and therefore, in absence of any order made under section 3 of which the contravention is claimed, the offence under section 7 could not be made out. The Supreme Court in the case of *Prakash Babu Raghuvanshi (supra)* has taken a view that for attracting the provisions of offence punishable section 7 of the said Act, the order under section 3 of the said Act is essential. The Division Bench of the

Bombay High Court at Nagpur in cases of Rakesh Mahendrakumar Jain (supra) and Dhanraj Anandrao Mohod (supra) has also taken a view that, for bringing an application under section 7 of the said Act, it is necessary to make reference in the first information reports to any order having been made under section 3 of the said Act being violated. In absence of it being shown that there was any order made under section 3 that had been contravened, proceedings for the offence punishable under section 7 would not be tenable and continuation of such proceedings, therefore, would amount to abuse of process of law.”

6] Taking into consideration the ratio laid down in the aforesaid judgments in the facts of the present case, there is no reference, whatsoever, in the FIR, to any order having been made under Section 3 of the Essential Commodities Act and, therefore, offence under Section 7 would not be tenable. Therefore, continuation of the proceedings, based upon the said FIR would amount to an abuse of process of law. In the circumstances, the writ petition deserves to be allowed. Hence, we pass the following order :-

[a] Writ petition is allowed in terms of prayer clause (C).

[b] Rule made absolute in above terms.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

grt/-