

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

Criminal Writ Petition No.424 of 2007

- 1) Dr. Ratnadeep Ramchandra Gaikwad,
Age 35 years, Occupation : Service
Tahsildar, Osmanabad,
R/o C/o Tahasil Office, Osmanabad,
District Osmanabad.
- 2) Bharat Angad Waghmare,
Age 39 years, Occupation: Service
Food Grain Distribution Officer,
Solapur, R/o C/o The Collector Office,
Solapur, District Solapur. .. **Petitioners.**

Versus

- 1) The State of Maharashtra.
- 2) Keraba Vitthal Gadhwe,
Age 72 years, Occupation : Service,
R/o. At Post Mauje Waruda,
Taluka & Dist. Osmanabad. .. **Respondents.**

Shri. Mukul Kulkarni, Advocate, for petitioners.
Shri. S.J. Salgare, Additional Public Prosecutor, for
respondent No.1.
Shri. R.P. Bhumkar, Advocate, for respondent No.2.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**
Date : 28 July 2017

JUDGMENT (Per T.V. Nalawade, J.) :

- 1) The petition is filed for challenging the order
made by learned Chief Judicial Magistrate, Osmanabad in

R.C.C. No.215/2007 by which the learned Chief Judicial Magistrate has directed Rural Police Station Osmanabad to make investigation of the matter under section 156(3) of the Code of Criminal Procedure. Both the sides are heard. Learned Additional Public Prosecutor supported the order.

2) Private complaint was filed by respondent No.2 Kerba against present petitioners. The complainant is a ration card holder of village Waruda. Accused No.1 had a kerosene licence for this village for selling kerosene under Public Distribution Scheme. Accused Nos.2 and 3 are the officers of the Government involved in the distribution system and also in issuing licence.

3) The complainant had made complaint to the officers on 19-6-2006 that accused No.1 was not selling kerosene in the village and there were irregularities. Accounts were not maintained by accused No.1 of kerosene and so licence was suspended with immediate effect. It is the contention of the complainant that the villagers had given statements that accused No.1 was not

supplying kerosene to them and whatever sale was made it was at higher price than the price fixed. For some time the distribution work was given to other licence holder but after making inquiry the suspension order was revoked and the quota was again given to accused No.1. It is the contention of the complainant that by selling kerosene at the rate of Rs. 11/- per liter which was higher than the rate fixed by the Government, for public distribution system, accused No.1 was deceiving the people and other accused, officers of the Government, had joined hands with him. Thus, there is allegation that proper account was not maintained and false record of sale was made and the sale was made at the rate of Rs.11/- per litre. Though the complaint was filed for offences under sections 406, 420 etc. of the Indian Penal Code, in view of the provisions of the Essential Commodities Act, it can be said that provisions of the Essential Commodities Act can also be used. There is allegation of creation of false record and supply of false information and that offence under section 9 is cognizable. Other offences mentioned in the complaint are also cognizable in nature. Provisions of the Essential

Commodity Act show that when complaint is made by a person aggrieved like petitioner, cognizance can be taken by the Magistrate of the offence. In view of these circumstances, there is nothing wrong in the order by which the complaint was entertained.

5) Learned counsel for the petitioners placed reliance on the observations made by the Apex Court in the case reported as **(2016) 9 SCC 598 (L. Narayana Swami v. State of Karnataka)** and submitted that in absence of the sanction no investigation could have been ordered by the Magistrate. This Court has carefully gone through the observations made by the Apex Court. The observations were made with regard to requirement of sanction under section 19 of the Prevention of Corruption Act, 1988. Provision of section 197 of the Code of Criminal Procedure has different scope. There is allegation of creation of false record by joining hands and of selling essential commodities at higher price against all the accused. The circumstance that initially the licence was suspended is there. Some argument was advanced for taking benefit of the provision of the Judges Protection Act but this

provision cannot be used by petitioners, officers in the matter like the present one in view of the nature of dispute involved.

6) The instances of selling essential commodities in black market are increasing and there are also instances of releasing of more quota than which can be permitted in favour of licence holder. These things need to be investigated. It can be said that if police find that there is no substance in the allegation made against the accused they may file report accordingly under section 169 of the Code of Criminal Procedure but there is clear possibility that kerosene was being sold at higher price and accounts of kerosene were not maintained. The investigation cannot be prevented when there are such serious allegations. This Court sees no reason to interfere in the order. The petition stands dismissed. Rule discharged. Interim relief is vacated. Learned counsel for the petitioners requested for continuation of interim protection. It is refused.

Sd/-
(SUNIL K. KOTWAL, J.)
rsl

Sd/-
(T.V. NALAWADE, J.)