

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.610 OF 2017

- 1) Shaikh Iftekhhar s/o Abdul Rauf,
Age-32 years, Occu:Business,
R/o-Bazar Peth, Kannad,
Tq-Kannad, Dist-Aurangabad,
- 2) Kailash s/o Appa Kale,
Age-43 years, Occu:Driver,
R/o-Kankawali Nagar,
Tq-Kannad, Dist-Aurangabad,
- 3) Datta s/o Kashinath Baankar,
Age-30 years, Occu:Cleaner,
R/o-Bahirgaon, Tq-Kannad,
Dist-Aurangabad,
- 4) Ravindra s/o Laxman Mote,
Age-25 years, Occu:Driver,
R/o-Hiwarkheda, Tq-Kannad,
Dist-Aurangabad,
- 5) Naseer s/o Rasheed Pathan,
Age-21 years, Occu:Cleaner,
R/o-Hiwarkheda, Tq-Kannad,
Dist-Aurangabad.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
- 2) The Secretary, Home Department,
Government of Maharashtra,
Mantralaya, Mumbai,

- 3) The Police Head Constable,
City Chowk Police Station,
Chalisgaon, Dist-Jalgaon.

...RESPONDENTS

...

Mr.D.S. Bharuka Advocate for Petitioners.
Mr. Shashibhushan P. Deshmukh, A.P.P. for
Respondent Nos. 1 to 3.

...

**CORAM: S.S. SHINDE AND
MANGESH S. PATIL, JJ.**

DATE OF RESERVING JUDGMENT : 15TH NOVEMBER, 2017

DATE OF PRONOUNCING JUDGMENT: 24TH NOVEMBER, 2017

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 Writ Petition is filed with following substantive prayer:

"(B) The Charge-sheet bearing R.C.C. No.22/2017 pending before the Judicial Magistrate, First

Class, Chalisgaon in respect of Crime No.3054/2016 for the offences punishable under Sections 6[4] and Section 9 of the Public Distribution System [Control] Order, 2001 and under Sections 3 and 7 of Essential Commodities Act, may kindly be quashed and set aside."

3. The background facts for filing the present Petition as disclosed in the memo of the Petition, in brief, are as under:

A). It is the case of the Petitioners that Petitioner No.1 is running a business in food articles by obtaining Food Licence issued by Licensing Authority for sale of Wheat, Jawar, Rice, Maize etc and licence is renewed up-to the year 2019. One Shri Poonamchand Jaganlal Agrawal had purchased wheat, rice GRA and rice common by tender from Food Corporation of India, Nagpur, which is Government undertaking. Poonamchand Agrawal stored wheat and rice in his shop and

godown at Kannad and accordingly informed Tahsildar, Kannad by letter dated 16th May, 2016. It is the further case of the Petitioners that Petitioner No.1 has purchased rice common of F.C.I. Tender weighing 160 Quintal 40 Kilogram vide bill No.187 dated 22nd May, 2016 from Poonamchand Agrawal and also purchased rice common of F.C.I. Tender weighing 200 Quintal vide bill No.188 dated 22nd May, 2016. The Petitioners have placed on record the copies of said bills.

B) It is the further case of the Petitioners that Petitioner No.1 sold 158 Quintal 34 Kg. rice of F.C.I. tender to Gurukrupa Trading Company, Kim (Gujrat) vide Bill No.157 dated 23rd May, 2016 and it was loaded in Truck bearing Registration No.MH-22-2955 of which Petitioner Nos.2 and 3 were driver and cleaner respectively. It is submitted that Petitioner No.1 also sold rice of F.C.I. tender weighing 158 Quintal 30 Kg. to Seeta Agro Industries, Sanand through bill No.158 dated 23rd

May, 2016 and loaded the same in Truck bearing registration No.MH-21-D-9895 on which Petitioner Nos.4 and 5 were driver and cleaner respectively. It is the case of the Petitioners that on 24th May, 2016, while both the trucks were passing from Chalisgaon road, near Toll Naka, police of Chalisgaon City Chowk police station stopped both the trucks and seized the rice and trucks only on the suspicion that rice was of public distribution system and did not allow the drivers and cleaners to proceed further. The police head constable at City Chowk Police Station, Chalisgaon registered an offence vide Crime No.54 of 2016 for the offences punishable under Section 6(4) and 9 of the Public Distribution System (Control) Order, 2001 and under Sections 3 and 7 of the Essential Commodities Act. It is the case of the Petitioner that police investigated into the matter and during entire investigation it was not found that the seized rice was out of public distribution system, still the police have filed charge-sheet

before the J.M.F.C. Chalisgaon on 18th January, 2017 and the same was registered as R.C.C. No.22 of 2017 and the J.M.F.C. Chalisgaon passed an order of issuing summons to the accused. Hence this Petition is filed by the Petitioners, praying therein to quash and set aside the said charge-sheet.

4. Learned counsel appearing for the Petitioners, referring to the copies of the bills, submitted that Petitioner No.1 has purchased the food articles including rice from one Poonamchand Agrawal and those were sold to the traders namely, Gurukrupa Trading Company and Seeta Agro Industries. The rice bags were loaded in the trucks for supply of the same to the above said traders but the police had stopped the said trucks alleging that the said rice bags were out of public distribution system. It is submitted that copies of said sale bills were handed over to both the drivers for submitting the same to the

purchasers. It is submitted that on application, learned Magistrate released both the trucks and also released the rice bags. It is further submitted that the Petitioners filed Criminal Writ Petition No.767 of 2016 before the High Court for quashing the First Information Report. The said Criminal Writ Petition came to be disposed of with directions to the Investigating Officer to look into the material collected during the investigation including the documents produced by the Petitioners, if any, and then to take appropriate decision, whether to file the charge-sheet or file a report under Section 169 of the Code of Criminal Procedure. It is submitted that the Petitioner has produced documentary evidence including the relevant bills before the Investigating Officer showing that the said rice bags were not from the public distribution system. However, the police proceeded to file the charge-sheet without considering the documentary evidence produced by the Petitioners.

5. Learned counsel appearing for the Applicants submitted that as per the provisions of Public Distribution System (Control) Order, 2001 the police had no authority to make search and seizure and as such the entire action of search and seizure by police is illegal and the First Information Report and consequent charge-sheet lodged on the basis of said seizure is illegal and liable to be quashed and set aside.

6. Learned counsel appearing for the Petitioners, referring to the letter dated 20th July, 2016 written by Tahsildar, Kannad to District Supply Officer, Aurangabad, submitted that, in pursuance to the offence registered against the Petitioners regarding transportation of rice from public distribution system, Tahsildar Kannad has verified the stock in the Government godowns at Kannad and Pishor and reported that there was no difference in actual stock and the

stock shown in the stock register and further reported that the seized rice was neither from Government godowns nor from fair price shops. Learned counsel submitted that the continuation of R.C.C. No.22 of 2017 before the J.M.F.C. Chalisgaon is abuse of process of law and therefore it is prayed that the charge-sheet filed by the Chalisgaon police in Crime No.3054 of 2016 may be quashed and set aside. In support of his submissions, learned counsel placed reliance upon the exposition of law by the Supreme Court in the case of Kailash Prasad Yadav and another vs. State of Jharkhand and another¹.

7. On the other hand, learned A.P.P. appearing for the State has submitted that the Petitioners were transporting the rice which was from public distribution system and therefore the police had seized the rice bags and the trucks. After investigation, the police have filed charge-

¹ (2007) 3 S.C.C. (Cri) 14

sheet against the Petitioners. He submitted that if the allegations in the First Information Report, the statement of witnesses and the material collected during the course of investigation is considered in its entirety, the alleged offences have been disclosed and the trial can proceed on the basis of said material.

8. We have carefully considered submissions of learned counsel appearing for the Petitioners, and the learned APP appearing for the Respondents. With their able assistance we have carefully perused the grounds taken in the Petition, annexures thereto, and also the other documents placed on record. It is the case of the Petitioners that the seized food articles were not from the public distribution system. In support of their contentions the Petitioners have placed on record copies of purchase bills of food articles. We have perused the copies of bills dated 22nd May, 2016, which clearly show that Petitioner No.1

has purchased the rice from one Poonamchand Jaganlal Agrawal. The documents placed on record clearly shows that said Poonamchand Agrawal had purchased the food articles from Food Corporation of India. Petitioner No.1 had purchased the food articles from said Poonamchand Agrawal. The Petitioners have placed on record bills of the purchase of said food articles.

9. Learned counsel appearing for the Petitioners invites our attention to the copy of the letter dated 20th July, 2016 written by Tahsildar, Kannad to District Supply Officer, Aurangabad. Upon careful perusal of the said letter, it reveals that in pursuance to the offence registered against the Petitioners regarding transportation of rice from public distribution system, Tahsildar, Kannad has verified the stock in the Government godowns at Kannad and Pishor and reported that there was no difference in the actual stock and the stock shown

in the stock registers. Tahsildar, Kannad further reported that the seized rice was neither from Government godowns nor from fair price shops. Thus, the Petitioners have proved valid custody of the rice bags which were seized by the police.

10. The Supreme Court in the case of Kailash Prasad Yadav and another vs. State of Jharkhand and another, supra, in Para 5 and 6 held as under:-

"5. Indisputably, confiscation of goods and the vehicles and vessels carrying the same amounts to deprivation of property. Confiscation of an essential commodity or a truck is permissible only if the provisions of any order made under Section 3 of the Essential Commodities Act, 1955 (for short "the Act") are violated. When a vehicle is used for carrying an essential commodity, it may be seized and

ultimately directed to be confiscated in terms of clause (c) of sub-section (1) of Section 6-A of the Act. Violation of an order made under Section 3 of the Act, therefore, is a precondition for passing an order of confiscation.

6. The 2001 Order does not deal with a matter dealing in wheat or transportation thereof. "Fair price shop" has been defined in clause 2(k) of the 2001 Order to mean

"a shop, which has been licensed to distribute essential commodities by an order issued under Section 3 of the Act to the ration card holders under the Public Distribution System".

Clause 3 provides for identification of families living below the poverty line. Clause 4 provides for issuance of ration cards. Clause 5 deals with scale of issue and issue price. Clause 6 provides for the procedure for distribution of foodgrains by Food Corporation of India to the State Government or their nominated agencies.

Sub-clause (2) of clause 6 obligates the fair price shopowners to take delivery of stocks from authorized nominees of the State Government to ensure that essential commodities are available at the fair price shop within first week of the month for which the allotment is made. Sub-clause (4) thereof obligates the authority or person who is engaged in the distribution and handling of essential commodities under the public distribution system not to wilfully 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. Explanation appended thereto defines "diversion to mean "unauthorized movement or delivery of essential commodities released from central godowns but not reaching the intended beneficiaries under the Public Distribution System".

Clause 9 provides for penalty. There is no provision for search of a vehicle. The power of search is confined to fair

price shop or any premises relevant to transaction of business of the fair price shop. The power of such authorities causing a search is confined to sub-clause (3) of clause 10 of the 2001 Order to search, seize or remove such books of accounts or stocks of essential commodities where such authority has reason to believe that these have been used or will be used in contravention of the provisions of the Order."

11. Thus, keeping in view the exposition of law as laid down by the Supreme Court in the case of Kailash Prasad Yadav and another, cited supra and taking into consideration the contents of the First Information Report and statement of the witnesses and other accompaniments of the charge-sheet, we are of the considered view that even if the allegations are read in its entirety and taken as they are, the allegations would not attract the ingredients of the offences under Sections 6(4) and Section 9 of the Public Distribution System

(Control) Order, 2001, so also under Sections 3 and 7 of the Essential Commodities Act, since the food grains seized were validly purchased by Petitioner No.1 and the bills in respect of the same are placed on record. The food grains seized were not from the Public Distribution System. As already observed, Tahsildar, Kannad has stated that the seized food grains were not from the Government godowns or fair price shops. Tahsildar, Kannad has further reported that he has verified the stock in the Government godowns at Kannad and Pishor and there was no difference in the actual stock and the stock shown in the stock registers. In that view of the matter, in our considered view, continuation of further proceedings against the Petitioners based upon the First Information Report and consequential charge-sheet will be an abuse of process of law, the chances of conviction would be bleak and the same will be an exercise in futility. Hence, we pass the following order:-

O R D E R

(I) The Writ Petition is allowed in terms of prayer clause (B) to the Petition.

(II) Rule is made absolute in above terms.

(III) The Writ Petition stands disposed of, accordingly.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]

asb/NOV17