

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

Criminal Writ Petition No. 355 of 2003

* Shadeo s/o Daulatrao Kashid,
Age 31 years,
Occupation : Agriculture,
R/o Near S.T. Stand, Main Road,
Umapur, Taluka Georai,
District Beed. **.. Petitioner.**

Versus

1) The State of Maharashtra.
2) Kishansing S. Bahure,
Age 45 years,
Occupation: Service as
Police Inspector
Sheogaon Police Station,
R/o Sheogaon, Taluka Sheogaon,
District Ahmednagar. **.. Respondents.**

Shri. D.G. Nagode, Advocate, for petitioner.

Shri. S.D. Ghayal, Additional Public Prosecutor, for
respondent No.1.

Shri. P.B. Patil, Advocate, for respondent No.2.

**Coram: T.V. NALAWADE &
S.M. GAVHANE, JJ.**

Date : 06 SEPTEMBER 2017

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

1) The petition is filed for relief of compensation of Rs. one lakh against the State Government and also the police officer who took action of interception of the transport vehicle of the petitioner, detention of the vehicle and then action of filing charge-sheet in the crime registered on the basis of the report given by the police officer. Both the sides are heard.

2) The incident took place on 23-11-2002. Sheogaon Police received information that present petitioner, Shadeo Kashid was not having any licence from the Agriculture Produce Marketing Committee but he had purchased cotton outside of the market and he was transporting the cotton to Madhya Pradesh as the price of the cotton was higher in the Madhya Pradesh. On the basis of this information, the truck bearing No. MH 20-A-1807 was intercepted near the market yard. On inquiry the driver gave name of the present petitioner and informed that he was the owner of the cotton and as per the instruction of the petitioner he was taking the cotton

to Shendwa, Madhya Pradesh. The present petitioner was present in the truck and some persons were present as labour. As there was no record of licence, green card etc. with the present petitioner, the vehicle along with the cotton came to be seized under panchanama and report came to be given in the police station. On the basis of that report crime came to be registered for offences punishable under sections 17,19, 43 of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971. Charge sheet is also filed and the case bearing Criminal Case No.500/2002 is pending in the Court of the Judicial Magistrate, First Class.

3) It is the contention of the petitioner that the aforesaid special enactment was not in force on the date of the incident and so the action taken of seizure and detention of the cotton was illegal and that has caused loss to the petitioner. It is contended that, the truck was hired by the petitioner for transportation and he had paid the charges to the truck owner of Rs.16000/-. It is contended that due to seizure and detention of the cotton, he sustained loss of Rs.50,000/- On various counts

aforesaid compensation is claimed from the Government and the Police Inspector who made investigation and filed charge sheet.

4) Learned counsel for the petitioner drew attention of this Court to the order made by this Court in Criminal Writ Petition No.561/2000 and submitted that with effect from 1 July 2001, the aforesaid Act was not in existence and so the action was illegal. He submitted that in the reply affidavit filed by the respondents they have not disputed that at the relevant time the provisions of the aforesaid Act were not in force. In the reply affidavit it is contended and the learned APP submitted that the action of the police cannot be called as mala fide as the relevant record was not available with the petitioner. The learned counsel representing the Police Inspector submitted that it cannot be said that no offence at all was committed. He drew attention of this Court to various provisions of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963. The learned counsel submitted that in view of the various provisions which include section 6 read with section 46 of the Act of

1963 the offence was committed at least under the other special enactment regulating sale and purchase of the cotton in Maharashtra. Attention of this Court was drawn to one Circular issued by the Government by which the State Government had informed the authority to take appropriate action if cotton from other States was brought to this State for sale at the centres opened by the State. For purchase of the cotton such centres were opened during the season by the Government to see that farmers get support price of the cotton procured in this State.

5) The submissions made and the reply affidavit filed show that at the relevant time the provisions of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971 were not in force. However, the allegations made in the F.I.R. show that no record at all was shown by the present petitioner to police in respect of the cotton which was around 80 quintals. During arguments opportunity was given to the learned counsel for the petitioner to show the record to the effect that the cotton was grown by the petitioner. Some record like 7/12 extract was shown but that record is not sufficient to

create probability that all the cotton was grown by the petitioner. There is specific allegation against the petitioner that he is dealing in cotton and he had purchased the aforesaid cotton outside of the 'market' created under the Act of 1963 and he wanted to make profit by selling this cotton outside of the Maharashtra and probably he intended to take it to other State where at the relevant time the price was higher. Thus, there is apparent breach of the provisions of the Act of 1963 though the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971 was not in force. As the petitioner did not produce any record at the relevant time to show ownership of the cotton or to show that as a farmer he had procured that cotton in his field, it cannot be said that action of the police was mala fide in nature. This Court holds that no compensation can be given to the petitioner as he was at fault and there was reasonable ground for police for taking action against him. The case is still pending. Though the case is under the provisions of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971, the criminal court has always power to find out as to whether and what other offence is

committed by the accused. In view of the aforesaid circumstances, this Court holds that it cannot be said that the case could not have been filed and cognizance also could not have been taken. In the result, the petition stands dismissed. Rule stands discharged. Interim relief stands vacated.

Sd/-
(S.M. GAVHANE, J.)

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

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