

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD.****CRIMINAL APPLICATION NO.3869 OF 2017**

1. Shaikh Yunus s/o Shaikh Ajijdada,
age 35 years, occu. Business,
r/o Koli Bodkha, Tq. Paithan,
District Aurangabad.

2. Dinesh s/o Haribhau Bagade,
age 36 years, occu. Business,
r/o Pachod, Tq. Paithan,
District Aurangabad.

... **PETITIONERS.**

VERSUS

The State of Maharashtra.

... **RESPONDENT.**

...
Advocate for petitioners : Mr.D.S. Bharuka.
APP for the respondent / State : Mr.K.S. Patil.

...

CORAM : V.L. ACHLIYA, J.

JUDGMENT RESERVED ON : 06.09. 2017.

JUDGMENT PRONOUNCED ON : 19.09. 2017.

JUDGMENT:

Rule. Rule, made returnable forthwith. By
consent, heard finally at the stage of admission.

2. By present application filed under section 482 of

the Code of Criminal Procedure the petitioners herein have challenged the order dated 10th April, 2017 passed by the Collector Aurangabad. By the impugned order the Collector has directed to release the Truck in question in favour of the petitioner No.1 on furnishing Bank guarantee in the sum to the extent of 50% of estimated value of the Truck. By the same order the learned Collector, Aurangabad has ordered the sale of rice seized, by public auction and deposit sale proceeds in the Account of State Government. Being aggrieved, the petitioners have preferred this application.

3. Before advertng to appreciate the submissions advanced, it is useful to consider few facts leading to filing of present application. On 20th July, 2016, on receipt of information from its sources that the rice meant for distribution through public distribution system is being taken to Gujarat for sale in open market in a Truck bearing registration No. MH-20-CT-1579, the officer in charge of the Police Station, MIDC CIDCO, Aurangabad intercepted the said Truck in

squestion. Driver and Cleaner of said truck failed to provide satisfactory answer to query made to them. Hence, the truck was brought to police station and the offence under section 3 and 7 of the Essential Commodities Act, came to be registered against petitioners Nos. 1 and 2 and two other persons. The goods i.e. Rice lying in the trucks was unloaded in the Government godown. Petitioner No.1 who claims to be owner of the truck, filed application under section 457 of the Code of Criminal Procedure before the Court of Sessions at Aurangabad for interim custody of said Truck. Learned Additional Sessions Judge, Aurangabad vide order dated 31.8.2016 rejected the application by observing that under the provision of the Essential Commodities Act, 1955 the Collector alone holds an authority to release the vehicle in question. Being aggrieved, petitioner approached to Collector, Aurangabad, seeking custody of truck. Learned Collector passed the order as referred above. Being aggrieved, the petitioners have preferred this application.

4. Heard the learned counsel for petitioner and APP for State. Perused the impugned orders and affidavit in reply filed by Investigating Officer as well as officer from Civil Supplies Department.

5. In nutshell, it is the contention of the petitioners that no offence punishable under Section 3 r/w section 7 of the Essential Commodities Act is committed on their part and prosecution lodged against them is gross abuse of process of law. The goods i.e. rice seized by the Investigating Officer was purchased by petitioner No.2 in the name of his business concern "Hari Om Traders" from Jai Anand Food Industries, MIDC, Dhule. The goods was purchased on 19.7.2016. While the said goods being in process of transportation to Gujrat, the Investigating Officer intercepted the truck on suspicion that the truck was carrying subsidized food grain meant for distribution through public distribution system. After registration of offence, the Investigating Officer conducted the investigation. No incriminating evidence found against them to prosecute under section

3 read with section 7 of Essential Commodities Act.

6. Learned counsel for petitioner contended that it was expected on the part of the Investigating Officer to have verified the information furnished by the petitioners before taking such drastic penal action. At least before registering offence the Investigating Officer should have verified the factual position. It is contended that the entire action on the part of the Investigating Officer is *per se* illegal, arbitrary and colourable exercise of powers as a Police Officer. He submitted that there is no iota of evidence to prosecute the petitioners for offence punishable under section 3 read with section 7 of the Essential Commodities Act. In support of submission advanced learned counsel has referred and relied on decision of Apex Court in the case of ***Kailash Prasad Yadav And Another Vs. State of Jharkhand And Another reported in (2007) 3 SCC (Cri) 14*** and Division Bench Judgment of this Court in case of ***Dhanraj s/o Anandrao Mohod &***

Anr. Vs. The State of Maharashtra and Anr. (2016 ALL MR (Cri) 2208).

7. Learned APP has fairly conceded that there is no evidence to show that good seized was meant for distribution through Public Distribution System. He submitted that there was no ill intention on the part of investigating officer in seizing the goods. He submitted that investigating officer in his say filed before learned Collector has given no objection to release the truck to it's owner.

8. If we consider the overall controversy then the core question involved is whether there is any prima facie evidence to show that the goods seized was meant for distribution through public distribution system and accused were found to be indulged into act of illegally transporting such subsidized commodity for sale in the open market. Since the petitioner No.2 has taken a specific stand that the food article seized is not a subsidized goods meant for distribution through public distribution system, but same was purchased by him in

the course of his business and he possesses licence to carry such business and also produced documents of purchase of goods before Investigating Officer. The Investigating Officer as well as the officer from the District Food and Civil Supply were directed to file affidavits.

9. In the affidavit filed, the investigating officer has categorically admitted that during the course of investigation they have cross checked the information supplied by the petitioners about purchase and transportation of the goods. During the course of investigation, it was revealed that said rice was purchased by petitioner from Jai Anand Food Industries, Plot No.G-30, Avdhan, MIDC Dhule. The investigating officer recorded statement of Manager of the said Firm. He has confirmed that rice in question was sold to Hari Om Traders at Pachod, Taluka Pachod, District Aurangabad vide Invoice No.37 dated 19.07.2016 (wrongly mentioned as 18.07.2016 in the affidavit) and the same was loaded in the Truck

bearing No. MH-18-M-9428 i.e. the truck in question.

The contents of para No.8 of additional affidavit dated 29.8.2017 filed by the investigating officer, read as under :-

" 8. I say and submit that, initially when the truck was passing on the Cambridge school by pass based upon the statement of the driver and the cleaner and based upon the receipts from Hari Om Traders, Pachod which was recovered from the driver, the Investigating Officer visited the merchant namely Hari Om Traders, Pachod. I say and submit that, in the investigation and from the information received from the Hari Om Trader, it was revealed that the said food grain rice were originally brought from the Jai Anand Food Industry, Avdhan, MIDC, Dhule. I say and submit that, accordingly the Investigating Officer visited the Jai Anand Industries, Dhule. I say and submit that, the statement of manager of Jai Anand Industry, Dhule was recorded by the Investigating Officer. According to his statement, food grain rice was sold to Hari Om Traders, Pachod on 18.10.2016 by invoice no.37. The goods were loaded in a truck bearing No.MH-18-M-9428. I say and submit that, the said details of the inward and outward is not available with him. I say and submit that, the copy of the said statement dated 18.10.2016 is annexed herewith and marked as EXHIBIT R-1."

10. In its earlier affidavit filed on 24.8.2017, the

Investigating Officer has stated in para nos.5, 6, 7, 8 and 9 as under:

“5. The deponent say and submit that, on suspicious that, the said food grains (rice) were being carried, the deponent say and submit that, one Sk. Hakim Sk. Yakub who was the Driver on the said Truck and one Dattatraya Hatgal – Cleaner were also apprehended on the spot. The seizure panchanama was drawn. The Truck was also seized. The copy of seizure panchanama is annexed herewith and marked as **Exh.R-1**.

6. The deponent say and submit that, the Grain Merchant receipt of one Hari Om Traders was seized from the Driver. The copies of said receipts are annexed herewith and marked as **Exh.R-2 collectively**. The deponent say and submit that, the said receipts was from Hari Om Traders and Commission Agent, Pachod. The said receipt was dt.20.7.2016.

7. The deponent say and submit that, the statements of Police Constable who had accompanied during the patrolling are also recorded. The copies of statements of Police Head Constable Sanjay Mundale and Police Constable Vikrant Pawar are annexed herewith and marked as **Exh.R-3 collectively**. The deponent say and submit that, thereafter, immediately letters were given to the District Food Supply Department for ascertaining whether the seized rice was of public distribution system. The copy of said letter dt.21.7.2016 is annexed herewith and marked as **Exh.R-4**.

9. The deponent say and submit that, the food grains (rice) was referred to the Maharashtra

State Public Health Services, Regional Public Health Laboratory, Aurangabad wherein the samples which were sent for analysis, the remarks of the same are as follows:

“The above submitted samples Ex-A and B conform to the standards of Rice as per Food Safety Standards (Food Products and Food Additives) Regulations 2011.”

11. In the affidavit filed by official from District Supply Office, it is clearly stated that the goods seized not meant for distribution through public distribution system. Para 8 of affidavit dated 29.8.2017 reads, as under:

“8. The deponent says and submits that the opinion given by Food Grains Distribution Officer is annexed herewith and marked as **EXHIBIT R-2**. As r this letter prima facie the rice is not pertaining to public distribution system on the face value of rice.

Hence this affidavit.”

12. Thus, if we consider the overall case of the prosecution as against petitioners in the light of the affidavits filed by the Investigating Officer as well as the official from District Supply Office, there is no prima

facie evidence to remotely suggest that the goods in question meant for distribution through public distribution system. So also there is no prima facie evidence to show that the petitioners have violated any order issued u/s 3 of the Essential Commodities Act. Even in the FIR as well as the charge-sheet filed, there is no reference as to violation of any order issued under the provisions of section 3 of the Essential Commodities Act. The goods was seized merely on suspicion that subsidized food article meant for distribution through public distribution system being illegally transported for sale in the open market in violation of the provisions of the Essential Commodities Act. During the course of investigation, the Investigating Officer has cross checked the information supplied by petitioner Nos.1 and 2 which was found to be correct.

13. Mr. Bharuka, learned Counsel for the petitioners has referred and relied upon the decision of the Apex Court in case of ***Kailash Prasad Yadav and another***

Vs State of Jharkhand and another¹, wherein the Apex Court has categorically held that the order of confiscation to be made u/s 6-A of the Essential Commodities Act can be passed only after reaching to a clear finding as to violation of the order made u/s 3 of the Essential Commodities Act. It is held that a valid seizure is a sine qua non for passing an order of confiscation of property. It is pointed out that neither in the FIR nor the charge-sheet filed, there is reference of violation of any order made u/s 3 of the Essential Commodities Act. It is further pointed out that there is no *iota* of evidence to show that the commodity seized was meant for distribution through public distribution system. In the light of overall facts of the case, the learned Counsel submits that in absence of any finding on the part of the learned Collector that the commodity seized was meant for distribution through public distribution system, the entire action on the part of the District Collector is vitiated in law and the impugned order passed by the learned Collector to

1 (2007) 3 SCC (Cri) 14;

auction the goods and to credit the sale proceeds in the Government account liable to be set aside.

14. In my view, the decision in the case of **Kailash Prasad Yadav and another** (supra) is squarely applicable in the light of facts and circumstances of the instant case. In the instant case, there is categorical admission on the part of the Investigating Officer as well as officers from Civil Supply that there is no evidence to show that the goods in question was meant for distribution through public distribution system. So also there is no violation of any order issued under the provisions of section 3 of the Essential Commodities Act mentioned in the F.I.R. In this view, the impugned order 10.04.2017 passed by learned Collector, Aurangabad as well as the order dated 31.8.2016 passed by learned Additional Sessions Judge-8, Aurangabad dated 31.8.2016 deserves to be set aside.

15. Mr. Bharuka, learned Counsel for petitioners further referred and relied upon the decision of the

Division Bench of this Court in the case of ***Dhanraj s/o Anandrao Mohod & Anr. Vs. The State of Maharashtra & Anr.*** wherein, the Division Bench of this Court has categorically held that in order to bring section 7 into action, it is essential to show violation of order made in exercise of powers under Section 3 of the Essential Commodities Act on the part of **accused**. In absence of reference in the FIR as to violation of any order made u/s 3 of the Essential Commodities Act, the proceeding filed u/s 7 of the Essential Commodities Act is liable to be set aside. In my view, the decision in the case of Dhanraj Mohod (Supra) is squarely applicable to present case. The facts of the case in hand are more or less identical to the facts of the case referred. In para 5 of the judgment the court has observed, thus:

“5. The present case stands on a better footing inasmuch as there is no reference whatsoever in the First Information Report to any order having been made under Section 3 of the said Act being violated. The specific averments made by the applicants in paragraph 4 of the application have not been specifically controverted. In that view of the matter, in

absence of it being shown that there was any order made under Section 3 of the said Act that had been contravened, the proceedings for an offence punishable under Section 7 of the said Act would not be tenable. The continuation of these proceedings therefore would amount to an abuse of the process of law. In view of aforesaid, the application is allowed in terms of prayer clause (a) thereof with no order as to costs.”

16. Thus, considering the overall facts of the case, the admitted position emerges from the affidavit filed by the Investigating Officer as well as the official from District Supply Officer, Aurangabad that there is no evidence to show that the goods in question were transported in violation of any order issued under the provisions of Section 3 of the Essential Commodities Act. In this view, the impugned orders are liable to be set aside as there is no *prima facie* material to show that the accused have acted in violation of any order issued under the provisions of section 3 of the Essential Commodities Act. In absence of prima facie evidence to show violation of any provision of Essential Commodities Act, no bar operates u/s 6-E of the Essential Commodities Act to entertain the application seeking interim custody of the vehicle as well as the

goods seized by Sessions Court. In this view, I am inclined to allow the application and pass the following order :

: ORDER :

i) The impugned order dated 10.04.2017 passed by the Collector, Aurangabad and the order dated 31.08.2016 passed by the Additional Sessions Judge-8, Aurangabad below Exh.1 in CRI.M.A. No.190/2016 are set aside.

ii) Petitioners are granted liberty to make appropriate application seeking custody of the vehicle as well as goods before the court concerned where charge-sheet is filed and proceeding is pending.

iii) In case, such application is made, the Court concerned is directed to decide the application as expeditiously as possible, within two weeks from the date of filing of such application. The application be decided on its own merit.

(iv) It is clarified that the observations made as above are made for limited purpose of deciding the present application and same shall not be treated as finding recorded by this Court as to

merit of the case.

v) Rule made absolute in the above terms.
Application stands disposed of in above terms.

(V.L. ACHLIYA, J.)

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