

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application (APL) No.487 of 2017
(Ukandrao s/o. Debuji Agare vs. State and another)

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr.R.M.Daga, Advocate for the applicants.
 Mr.Ambarish Joshi, A.P.P. for the Respondent No.1/State.

CORAM : SMT VASANTI A NAIK &
 M. G. GIRATKAR, JJ.

DATE : 21.9.2017.

The Criminal Application is admitted and heard finally with the consent of the learned Counsel for the parties.

By this Criminal Application, the applicants seek the quashing and setting aside of the First Information Report registered against them for the offence punishable under Sections 3 and 7 of the Essential Commodities Act, 1955.

A report was lodged by the non-applicant no.2 on 24.5.2017 in the Police Station/non-applicant no.1 that a raid was effected in the house of one Farukhbhai and during the said raid, 76 gas cylinders were found to have been unauthorisedly retained in the said premises in contravention with the provisions of Sections 3 and 7 of the Essential Commodities Act. On the basis of the said report, an offence is registered against the applicants under the provisions of Sections 3 and 7 of the Essential Commodities

Act.

Mr.R.M.Daga, the learned Counsel for the applicants, inter alia submitted that the F.I.R. is liable to be quashed and set aside as, though the offence is registered against the applicants under Sections 3 and 7 of the Essential Commodities Act, the F.I.R. does not mention that any order issued u/s.3 of the Essential Commodities Act is violated. It is submitted that unless there is a breach of an order that issued under Section 3 of the Essential Commodities Act, there cannot be any offence under Section 7 of the Act. It is submitted that the offence punishable under Sections 3 and 7 of the Act could be registered only if the F.I.R. discloses that a particular order issued u/s.3 of the Act is violated. It is submitted that the said issue came up for consideration before the Aurangabad Bench in the case of **Bhagan s/o. Namdeo Dawkhar vs. State of Maharashtra and another** and the Court has, by the Judgment reported in 2017 ALL MR (Cri) 2878, quashed and set aside a similar F.I.R.

Mr.Ambarish Joshi, the learned Additional Public Prosecutor for the respondents does not dispute the position of law as laid down in the Judgment reported in 2007 ALL MR (Cri) 2878 (supra). It is submitted that an appropriate order may be passed in the circumstances of the case.

On a perusal of the Judgment reported in 2017 ALL MR (Cri) 2878 (supra), it appears that the issue involved in this case stands answered in favour of the applicants by the said Judgment. It is held by this Court in the aforesaid Judgment that unless there is a contravention of any order issued u/s.3 of the Essential Commodities Act,

an offence u/s.3 or 7 of the Act cannot be made out. It is observed by this Court in the said Judgment by referring to the Judgment of the Hon'ble Supreme Court reported in 2004 ALL MR (Cri) 3473 (SC), Prakash Babu Raghuvanshi vs. State of M.P. that for attracting the provisions of Section 7 of the Act, issuance of an order u/s. 3 of the Act is essential. Since in the case before the Aurangabad Bench, there was no reference in the F.I.R. to any order issued u/s. 3 of the Act being violated, the F.I.R. was quashed and set aside. In the instant case also, we are faced with an identical situation. Though the offences are registered against the applicants under the provisions of Sections 3 and 7 of the Essential Commodities Act, there is no allegation in the F.I.R. that a particular order issued u/s. 3 of the Essential Commodities Act is violated.

Hence, for the reasons aforesaid, the Criminal Application is allowed. The F.I.R. registered against the applicants for the offence punishable under Sections 3 and 7 of the Essential Commodities Act is hereby quashed and set aside. The Criminal Application is disposed of accordingly.

JUDGE

JUDGE

**jaiswal*