

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

CRIMINAL WRIT PETITION NO. 8 OF 2010

Smt. Ranjana W/o Avinash Jaiswal
Age : 42 years, Occ : Household,
R/o Teacher Colony, Visarwadi,
Taluka Nawapur, Dist. Nandurbar.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Visarwadi Police Station,
Visarwadi, Tq. Nawapur,
Dist. Nandurbar.
2. Devram S/o Hiranman Ahire
(Deleted)
2. The Tahsildar,
Nawapur Tehsil,
Dist. Nandurbar.

..RESPONDENTS

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Mr.A.A. Mukhedkar, Advocate for the petitioner.
Mrs. S.S. Raut, A.P.P. For Respondent/State.

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**CORAM : S.S. SHINDE &
S.M. GAVHANE, JJ.**

**RESERVED ON : 19th April, 2018
PRONOUNCED ON : 25th April, 2018**

JUDGMENT (PER S.S. SHINDE, J)

Rule. Rule made returnable forthwith
and heard finally with the consent of the

learned counsel appearing for the parties.

2. By way of filing this Petition, the petitioner has prayed to quash and set aside the First Information Report No.37/2009 dated 23rd August, 2009 registered with Visarwadi Police Station, for the offences punishable under Sections 3 and 7 of the Essential Commodities Act and the proceedings initiated thereof.

3. The brief facts leading for filing the present Writ Petition, as disclosed in the Memo of the Petition, in brief, are as under:

(a) An informant i.e., Tahasildar, alleged in the F.I.R. that, on 23rd August, 2009 at about 11.30 a.m., when he had been to village Visarwadi, for visit on account of establishment of Shri Ganesh Idol, and when

he was going through Maruti Galli, it transpired to him that, one person was filling LPG Gas into a Maruti Omni Car bearing No.MH-15/BD- 8225 by use of a Plastic Pipe. He then called Police Station Officer of Visarwadi Police Station, namely, shri Devre. In the meantime, the Tahsildar asked the name of the said person, who was seen filling in LPG Gas in Maruti Omni, and he was informed that the said person is Mohamad @ Mehmood Bashir Shaikh, R/o Visarwadi, driver of the said vehicle. Thereafter, Police Station Officer Devre reached the spot and inquired about the Omni Car from the persons residing in nearby house. After inquiry concern Police Officer had seen the petitioner in the said house from which gas was filled in Maruti Omni vehicle, from the Gas Cylinder. On inquiry, the petitioner gave details about the said Car, which is owned by her husband. Thereafter, when search was

taken of the house of the petitioner, 5 Gas Cylinders were found in the house, those were also seized. Then those cylinders were taken in custody by the P.S.O. Since the petitioner was found in the house therefore, on suspicion that the petitioner might be doing business of illegal selling of LPG Gas, an offence came to be registered against her for contravening the provisions of the LPG (Regulation of Use in Motor Vehicle), 2001.

(b) It is the case of the petitioner that, she has no nexus with the alleged offence, as neither the said house is in the name of the petitioner nor the said Maruti Omni vehicle bearing registration No.MH-15/BD-8225 is owned by her. So also the Gas Cylinders which have been seized by the Police were also not owned by her. Even if the allegations in the FIR are taken against the petitioner as it is, no offence is made out and therefore,

continuation of the criminal proceedings against the petitioner on the basis of said FIR is sheer abuse of process of law.

4. Learned counsel appearing for the petitioner submitted that, in the First Information Report there is no reference whatsoever made about breach of any order, that has been made under section 3 of the Essential Commodities Act, 1955 (Hereinafter referred to as "the said Act"). It is submitted that unless there is breach of any order that has been made under section 3 of the said Act, there would be no question of any violation of such order to result in an offence being committed under section 7 of the said Act. Learned counsel submits that a specific ground has been raised by the petitioner in the present Petition that as no order has been made under section 3 of the said Act, therefore, there was no question of

its violation. Learned counsel appearing for the petitioner placed reliance on the exposition of law by the Supreme Court in the case of **Prakash Babu Raghuvanshi V/s State of M.P.**¹, the Division Bench of Bombay High Court bench at Nagpur in the case of **Rakesh S/o Mahendrakumar Jain V/s The State of Maharashtra**² and in the case of **Dhanraj Anandrao Mohod and another V/s State of Maharashtra and another**³.

5. Learned Additional Public Prosecutor appearing for respondent/State, on the other hand, submitted that as the prima facie case had been made out against the petitioner, the offence under section 3 of the said Act read with section 7 thereof has been registered. Therefore, she submitted that, there is no case made out to quash the F.I.R. and the proceedings arising out the same.

1 2004 AIR SCW 5334

2 2014 All M.R. (Cri.) 3144

3 2016 (2) Bom. C.R. (Cri.) 492

6. Upon hearing the learned counsel appearing for the parties and on perusal of the averments in the Petition and annexures thereto, we are of the opinion that, the Petition deserves to be allowed for the reasons stated hereinbelow.

7. Admittedly, in the present case, there is no mention of contravention of any order made under section 3 of the said Act, and therefore, in absence of any order made under section 3 of which the contravention is claimed, the offence under section 7 could not be made out. The Supreme Court in the case of **Prakash Babu Raghuvanshi (supra)** has taken a view that for attracting the provisions of offence punishable section 7 of the said Act, the order under section 3 of the said Act is essential. The Division Bench of the Bombay High Court at Nagpur in cases

of **Rakesh Mahendrakumar Jain (supra)** and **Dhanraj Anandrao Mohod (supra)** has also taken a view that, for bringing an application under section 7 of the said Act, it is necessary to make reference in the first information reports to any order having been made under section 3 of the said Act being violated. In absence of it being shown that there was any order made under section 3 that had been contravened, proceedings for the offence punishable under section 7 would not be tenable and continuation of such proceedings, therefore, would amount to abuse of process of law.

8. As already observed, in the facts of the present case also, there is no reference whatsoever in the first information report to any order having made under section 3 of the said Act being violated, and therefore, the proceedings for offence punishable under

section 7 would not be tenable. Therefore, the continuation of the proceedings based upon the said first information report would amount to abuse of process of law. In the circumstances, the Petition deserves to be allowed.

9. In the light of discussion hereinabove, the Writ Petition is allowed in terms of prayer clause "C" and the same stands disposed of. Rule made absolute in above terms.

(S.M. GAVHANE, J.)

(S.S. SHINDE, J.)

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