

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2627 OF 2007

1. Vikki @ Vikram Gopaldas Agrawal,
Age 24 years, Occu. Business,
R/o. Hingoli, Dist. Hingoli.
2. Nilesh Damodar Bhutada,
Age 25 years, Occu. Service,
R/o. Hingoli, Dist. Hingoli.

....Applicants.

Versus

State of Maharashtra
Through Police Station Officer
Hingoli Town Police Station
Hingoli.

....Respondent.

Mr. Satyajit Bora, Advocate for applicants.

Mr. R.V. Dasalkar, APP for respondent/State.

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.**

DATED : JUNE 07, 2018.

JUDGMENT : [PER T.V. NALAWADE, J.]

1) The proceeding is filed under section 482 of Criminal Procedure Code for relief of quashing of F.I.R. of C.R. No. 3020/2007 registered in Hingoli Town Police Station for the offence punishable under section 3 r/w. sections 7 and 8 of Essential Commodities Act and also to quash further proceedings which can be filed in the said crime. Both the sides are heard.

2) The F.I.R. is given by Police Sub Inspector of Hingoli Town Police Station. On 29.5.2007 he had information from his informer that

at New Mondha, Hingoli in tin shed No. 3, the wheat which was supplied to fair price shop was kept and it was being sold in open market by mixing it with other wheat. The names of the persons, who were involved in this activity were informed by the informer and the names of the applicants were received. After receiving this information, raid was effected by the police in presence of the panchas and it was noticed that there were 150 such bags of wheat. After seeing police, the present applicants ran away from the place.

3) After examination of the contents of 150 bags, it revealed that the bags contained wheat of fair price shop. At fair price shop wheat of a particular quality is sold at subsidize price in marked baggs and the market price of wheat is always higher than the price at which wheat is sold in fair price shop. It can be said that this wheat, 150 bags, which could not have been there, were in the custody of the present applicants and it was necessary for them to give explanation about this possession. Samples of this wheat were sent to expert for the opinion. Submissions made show that after making investigation necessary material is collected by police. Copy of order made by the Sessions Court in anticipatory bail application is produced and it shows that the Court had opportunity to see the case diary and anticipatory bail was refused on 8.6.2007. It can be said that after rejection of anticipatory bail application, the present proceeding was filed and the purpose

behind it was to avoid coercive action and also avoid investigation. Interim relief was given by this Court and protection was given to the present applicants by staying further proceeding in the matter.

4) The aforesaid circumstances show that due to interim order made by this Court everything is stalled. Such incidents are increasing day by day and these days alarming quantity of food grains meant for public distribution system is seen in open market. As already observed food grains are to be sold to needy and poor persons at subsidize price, but that material is diverted by joining hands with shop owners or officers of public distribution system to open market to make money. This way, not only loss is caused to public, but the needy persons do not get food grains for their survival. Such cases cannot be taken lightly. Thorough investigation needs to be made and the source from where the food grains meant for public distribution system were collected needs to be traced and action against those officers of the Government also needs to be taken. Such cases involve not only the provisions of Essential Commodities Act, but other provisions like section 379 and 420 of IPC.

5) The learned counsel for the applicants submitted that in F.I.R. order issued under aforesaid provisions of Essential Commodities Act is not mentioned and so, the F.I.R. needs to be quashed. He placed

reliance on some observations made by this Court at Nagpur Bench in the case reported as **2016 ALL M.R. (Cri.) 2208 [Dhanraj Anandrao Mohod and Anr. Vs. State of Maharashtra and Anr.]**. This Court has carefully gone through the observations made by this Court at Nagpur Bench. The learned APP placed reliance on the observations made by the Apex Court in case reported as **AIR 1982 SUPREME COURT 58 [State of Bihar Vs. Gulab Chand Prasad]**. In this case, the Apex Court has laid down that the prosecution for possessing unaccounted soda ash cannot be quashed only on the ground that the provision of the order which was violated is not mentioned in the F.I.R. The provisions of sections 3 and 7 of the Essential Commodities Act, 1955 were considered by the Apex Court and the relevant order issued by Bihar Government was also considered. It is observed that High Court is not expected to quash the proceeding on such ground and it is the duty of the High Court to ascertain as to whether the order was issued under the aforesaid provisions. Further, it is never desirable at initial stage to use the power and opportunity needs to be given to police and prosecution to do needful.

6) In the present matter, the learned APP produced copy of order issued by Central Government in exercise of the powers conferred by section 3 of the Essential Commodities Act. This order was issued in the year 2001 and clause 9 of it shows that if any person contravenes

the provisions of the order under clauses 3, 4, 6 and 7, he shall be liable to punishment under section 7 of the Essential Commodities Act. This order is issued for maintaining supplies and securing availability and distribution of essential commodities under the public distribution system. Present matter involves such supply through public distribution system. This order was not shown to Nagpur Bench of this Court. Similarly, the observations made by the Apex Court in the case of **Gulab Chand Prasad** cited supra were not brought to the notice of Nagpur Bench of this Court. This Court holds that the observations made by the Nagpur Bench in the case cited supra for the applicants can be of no use to the applicants. Further, such orders are required to be published in Government Gazette and when the orders are published in Government Gazette, it becomes duty of the Court to take notice of such orders. Such order is shown to this Court by the learned APP. It can be said that due to interim order made by this Court in favour of applicants, the investigation is hampered. Such persons need to be severely dealt with. This Court holds that there are no merits in the present matter. The application stands dismissed. Interim relief stands vacated. Rule stands discharged.

[K.L. WADANE, J.]

[T.V. NALAWADE, J.]

ssc/