

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1728 OF 2017

Deepak Shankar Pawar

Age : 56 Years, Occu. Business,

R/o. Taloda, Taluka Taloda,

District-Nandurbar

.. PETITIONER

VERSUS

The State of Maharashtra

... RESPONDENT

...

Advocate for Applicant : Mr. G. S. Rane

A.P.P. for Respondent-State: Mr. A.R. Kale

...

CORAM : MANGESH S. PATIL, J.

Reserved on : 21.06.2018

Pronounced on : 02.07.2018

JUDGMENT:

Rule. Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

The facts leading to filing of this Writ Petition may be summarized as under :-

2] The petitioner is a Kerosene dealer holding necessary licence and running his business at Taloda. On 19 January 2008, when the Sub Divisional Officer, Taloda gave a surprise visit to his oil depot, he was allegedly found in possession of 13,319 litre of kerosene

unauthorizedly. After following necessary procedure, the FIR was lodged at the Police Station Taloda and the offence was registered as Crime No. 4/2008 for the offences punishable under Section 7 Read with Section 3 of the Essential Commodities Act, for committing breach of condition no.4 of the licence issued under the Maharashtra Kerosene Dealers Licensing Order 1966. The investigation was carried out and in due course of time the charge sheet was filed.

3] The petitioner then submitted application under Section 239 of the Code of Criminal Procedure, seeking discharge. The learned Magistrate by the order dated 16 May 2013, rejected the application. Aggrieved by such order the petitioner preferred Criminal Revision Application No. 30 of 2013 in the Court of learned Additional Sessions Judge, Shahada. By the order dated 15.07.2017, the learned Additional Sessions Judge, dismissed the revision. Hence this Writ Petition.

4] The learned Advocate for the petitioner submitted that the charge is groundless. The F.I.R. itself shows that when the raid was effected, the stock was duly accounted for. It could not have therefore, been concluded that the petitioner was in possession of excess stock. The notice of the visit was not duly served to him and it was effected on his wife. No panchnama was conducted and the investigation is faulty. The learned Advocate would further submit that in the absence of

breach of any order issued under Section 3 of the Essential Commodities Act, no offence under Section 7 would constitute. Since no such order was placed on the record, it is a fit case to discharge the petitioner. In support of his submission, he would refer to the decision of the Supreme Court in the case of *Prakash Babu Raghuvanshi Vs. State of Madhya Pradesh ; 2004 AIR SCW 5334*, and the decision of this Court in the case of *Dhanraj Anandrao Mohod and another Vs. State of Maharashtra and another ; 2016(4) Mh.L.J. (Cri) 2208* and *Chandansingh Sadhusing Chandel Vs. State of Maharashtra ; 2015 All M.R. (Cri.) 1291*.

5] The learned A.P.P. submitted that by virtue of the wording of Section 239 of the Code of Criminal Procedure the accused is entitled to seek discharge only if it is groundless. He would further submit that an accused can be discharged if after considering the police report and the documents, in the form of the charge sheet, it do not disclose commission of an offence. He would further point out that the questions of the fact cannot be gone into by this Court while exercising the powers under the writ jurisdiction.

6] The learned A.P.P. would further submit that there cannot be any dispute about the principle that there has to be some order promulgated under Section 3 of the Essential Commodities Act, for the breach of

which a person can be punished under Section 7 thereof. However, he would point out that a specific order has been quoted and referred to for the breach of which the offence would constitute. A bare perusal of the *charge sheet* would reveal that the petitioner is alleged to have committed breach of condition no.4 of the Licence, issued to him under the Maharashtra Kerosene Dealer Licencing Order, 1966. Therefore, this is not a case wherein, no order promulgated under Section 3 of the Essential Commodities Act is referred to. Consequently, the petitioner is not entitled to rely upon the decisions cited by his learned Advocate (*supra*). In all those matters, no such order was pointed out, promulgated under Section 3 of the Essential Commodities Act.

7] I have carefully gone through the papers. Needless to state that as far as the factual disputes are concerned, as regards the finding of the excess quantity of kerosene and service of notice to the wife instead of the petitioner personally those cannot be gone into in this proceeding, since the prosecution will have to be extended an opportunity to lead evidence to substantiate those facts. Bearing in mind the wording of Section 239 of the Code of Criminal Procedure a person can claim discharge only if it is 'groundless'. Therefore, this Court cannot go into the disputed question of facts.

8] The whole emphasis laid by the learned Advocate for the

petitioner, is regarding absence of any order, promulgated under Section 3 of the Essential Commodities Act. As is laid down in the case of Prakash Babu Raghuvanshi (supra) for bringing an application under Section 7 of the Act, the essential requirement is an order issued under Section 3, the violation of which is alleged and therefore, in order to charge a person for an offence punishable under Section 7 of the Essential Commodities Act, it is imperative that there should be violation/contravention of some order passed promulgated under Section 3 of that Act.

9] However, as is pointed out by the learned A.P.P. no such situation is obtaining in the matter in hand. The charge sheet specifically refers to such an order, breach of which is being alleged. The FIR and the charge-sheet specifically read that by possessing unaccounted and excess quantity of the Kerosene the Petitioner has committed breach of condition no.4 of the licence issued to him under the Maharashtra Kerosene Dealer Licencing Order 1966. If such is the state of affairs, the present case stands on a different footing and the observations and the conclusions in the decisions cited by the learned Advocate for the petitioner (supra) are not applicable to the fact situation.

10] Faced with the situation, the learned Advocate for the petitioner would submit that a copy of the order was not annexed to the charge

sheet and therefore, in similar fact situation, in the case of Chandansingh Sadhusingh Chandel (supra) the accused was discharged.

11] I have carefully gone through the decision. It is apparent that in that case the prosecution had not produced on record along with the charge sheet any order made by the competent authority under Section 3 of the Essential Commodities Act and the accused was discharged. However, it is pertinent to note that no such order passed under Section 3 of the Essential Commodities Act was specifically pointed out in that case. In the matter in hand, the FIR as well as the charge sheet specifically refer to an order promulgated under Section 3 of the Essential Commodities Act. The decision in Chandansingh Sadhusingh Chandel's case, with respect, does not lay down any proposition that even if there is an order under Section 3 of the Essential Commodities Act, the breach of which is complained of, the accused should be discharged under Section 239 of the Code of Criminal Procedure if a copy of the order is not supplied to him along with the charge sheet. Therefore, the submissions of the learned Advocate that since the petitioner is not supplied with a copy of the Maharashtra Kerosene Dealer Licencing Order, 1966 he should be discharged is not legally tenable.

12] The learned Advocate for the petitioner has tendered a copy of the licence, issued to him by the District Supply Officer, Nandurbar on dated 31 Mach 2003 which *inter alia* contains condition no.4 which reads as under :-

"4. The licensee shall maintain true and proper accounts of all purchases and sales of kerosene and issue cash memo to customers purchasing quantity of kerosene of an above 100 liters, in such form as may be specified by the licensing authority."

The condition clearly shows that he is expected to maintain true and proper account of all purchases and sales of kerosene, in such form as may be prescribed. The prosecution is alleging that the petitioner could not account for 13,319 litres of kerosene and thus he is alleged to have committed breach of the aforementioned condition of the licence which is issued under the Maharashtra Licence Order 1966. Therefore, apart from the earlier discussion, even on facts *prima facie* the charge cannot be said to be groundless which would enable the petitioner to seek discharge under Section 239 of the Code of Criminal Procedure.

13] The learned Magistrate as well as the learned Additional Sessions Judge have clearly applied their mind and have come to the correct conclusion in refusing to discharge the petitioner. I find no perversity or illegality in the order passed by them. The Writ Petition does not hold

merit and is liable to be dismissed.

14] The Writ Petition is dismissed.

15] The Rule is discharged.

(MANGESH S. PATIL, J.)

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