

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2395 OF 2018

Nilesh Natvarlal Bhayani : Petitioner.
Versus
State of Maharashtra and anr. : Respondents.

Mr. Aaditya A Gore for the Petitioner.
Mr. K V Saste, Addl. PP for the Respondent/State.

**CORAM : R. M. SAVANT &
PRAKASH D. NAIK, JJ.**
DATE : 26th JUNE 2018

P.C.

1 The Petitioner has been arrayed as an accused in the FIR which has been registered under Sections 3, 7, 8, 9 and 10 of the Essential Commodities Act, 1955. The said FIR has been registered by the Competent Authority i.e. Assistant Supply Officer exercising powers under the Essential Commodities Act.

2 The Petitioner is the partner of the firm M/s. Mahavir Gas Services which is a distributor of LPG Cylinders. The gravamen of the allegations against the said firm is in respect of the alleged malpractices in respect of the cylinders which are meant for commercial purposes. The deficiency as regards the number of cylinders found at site has been recorded in the FIR. The Petitioner's other two brothers one Mahendra N Bhayani and Virendra N Bhayani are also the accused along with the Petitioner.

3 In his endeavour of seeking quashing of the FIR on behalf of the Petitioner, the learned counsel for the Petitioner would contend that the Petitioner in fact as a whistle blower has brought to the notice of the authorities the alleged malpractices being committed in the said M/s. Mahavir Gas Services. It was further the contention of the learned counsel for the Petitioner that Section 10 of the Essential Commodities Act would not be attracted as the said M/s. Mahavir Gas Services does not fit the requirements of the said Section 10.

4 We are unable to accept the said contentions of the learned counsel for the Petitioner implicit in the first contention of the learned counsel for the Petitioner is the fact that there seems to be a dispute between the Petitioner and his brothers as a result of which the Petitioner it seems made a complaint to the authorities. In so far as the second contention is concerned, the same cannot be accepted in view of the Explanation to the said Section, which clarifies that a “Company” would include a “Firm”, which the said M/s. Mahavir Gas Services undoubtedly is. Apart from Section 10, the offences alleged against the Petitioner are also under Sections 3, 7, 8 and 9 of the Essential Commodities Act. The contentions which were sought to be raised by the learned counsel for the Petitioner as regards non-active participation of the Petitioner in running of the business of the said M/s. Mahavir Gas Services, at

best can be the defences of the Petitioner which would be available to him for being urged at the appropriate time. We therefore do not deem this a fit case to exercise our writ jurisdiction at this stage. The above Writ Petition is accordingly dismissed. Needless to state that the trial would be proceeded with on its own merits and in accordance with law.

[PRAKASH D. NAIK, J]

[R.M.SAVANT, J]