

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

CRIMINAL REVISION APPLICATION No. 407 of 2016

The State of Maharashtra
(Through Mankhurd Police Station)

... Applicant
(Orig. Complainant)

Versus

- 1) Raghu Narayan Vadnala
Age 49 years Occupation: Business,
Residing at Flat No.1-437, Shah Arcade,
Sector 6, Kharghar, Navi Mumbai
 - 2) Chandrakant Rangnath Bandkar
Age 33 years, Residing at Three
Murti Chawl, Jaihind Nagar,
Sonapur (Mankhurd), Mumbai.
 - 3) Annapurna Consumers Co-op.
Society, is having address at first floor,
Ramghad Niwas, Opp Kamakshi Building
Goshala Road, Mulund (W), Mumbai
through its Secretary, Shri. Dilip VasANJI
Borichya, Age 45 years, Residing at
House No.1, ground floor, Mira Shyam Building
Goshala Road, Mulund (W),
Mumbai
- ...Respondents
(Orig.Accused Nos. 1 to 3)

**WITH
CRIMINAL REVISION APPLICATION NO. 408 OF 2016**

The State of Maharashtra
(Through Mankhurd Police Station)

... Applicant
(Orig. Complainant)

Versus

- 1) Riyaz Kassamali Keshwani,
Age 49 years, Occupation: Business,
residing at Flat No.4/13, 4th Floor,
89/G, Kishna Kunj CHS Ltd.
Opp. Clvert Company, Mazgaon,
Mumbai-10.
- 2) Jamil Ulla Amin Ulla Sheikh,
Age 45 years,
Indra Nagar, 30 foot road,
Jameli Chawl, Next to Ganesh Mandir
Mandala, Mankhurd, Mumbai-43.
- 3) Afsar Mohammad Shaikh,
Age 31 years, residing at Kamala Ramayana
Zopadpatti Nagar, near Bihari Masjid
Mankhurd Link Road, Mankhurd, Mumbai-43
- 4) Masalavala Grain Merchant Association
74, SH.A. Valji Marg, Dongari,
Mumbai-9 through its Secretary. ... Respondents
(Orig. Accused Nos. 1 to 4)

WITH
CRIMINAL REVISION APPLICATION NO. 409 OF 2016

The State of Maharashtra
(Through Mankhurd Police Station) ... Applicant
(Orig. Complainant)

Versus

- 1) Dattatray Shamrao Kalel
Age 40 years, Occu.: Business
Residing at Room No.1, Chawl No.2
Indrayani Chawl, near Shivaji Maidan,
Maharashtra Nagar, Mankhurd,
Mumbai-88.

- 2) Brahm Mumbai Grain Dealers Association,
Age 56 years, Saroday Trust
Building, Gokhale Road (W), Dadar,
Mumbai, through its Chairman,
Shri. Lalitbhai Premaji Patel, Age 54 years,
Residing at Flat No.1/A, Chitrakut Housing
Society, K.D. Road, Dadar (W),
Mumbai-28.

... Respondents
(Orig. Accused Nos. 1 and 2)

**WITH
CIVIL CONTEMPT PETITION NO. 334 OF 2016**

1. Riyaz Kassamali Keshwani,
Age: 49 years, Occupation: Business,
residing at Flat No.4/13, 4th Floor,
89/G, Kishna Kunj C H S Ltd.
Opp. Calvert Company, Mazgaon,
Mumbai-10.
2. Jamil Ulla Amin Ulla Sheikh,
age 45 years, Indra Nagar, 30 foot Road,
Jameli Chawl, Next to Ganesh Mandir,
Mandala, Mankhurd, Mumbai-43.
3. Afsar Mohammad Sheikh, age 31
years, residing at Kamala Ramayana
Zopadpatti Nagar, near Bihari Masjid,
Mankhurd Link Road, Mankhurd,
Mumbai-43.
4. Masalavala Grain Merchant
Association, 74, SH.A. Valji Marg,
Dongari, Mumbai-9, through its
Secretary.

... Appellants

Versus

1. The State of Maharashtra Through the Controller of Rationing & Director of Civil Supplies, 5th floor, Royal Insurance Bldg., J.J. Tata Road, Churchgate, Mumbai-20.
 2. The Sr. Inspector of Police (Mankhurd Police Station, Mumbai)
 3. Shri Avinash Subedar, the Controller of Rationing & Director of Civil Supplies, 5th floor, Royal Insurance Bldg., J.J. Tata Road, Churchgate, Mumbai-20.
- ... Respondents

**WITH
CIVIL CONTEMPT PETITION NO. 348 OF 2016**

1. Raghu Narayan Vadnala,
Age: 49 years, Occupation: Business,
residing at flat No. I-437, Shah Arcade,
Sector 6, Kharghar, Navi Mumbai.
 2. Chandrakant Rananath Bandkar,
age: 33 Years, residing at Three
Murti Chawl, Jaihind Nagar,
Sonapur (mankhurd), Mumbai-88
 3. Annapoorna Consumers Co-op.
Society, is having address at first
floor, Ramghad Niwas,
Opp. Kamakshi Building, Goshala Road,
Mulund (w), Mumbai-28,
through its Secretary,
Shri Dilip Vasanaji Borichya, age 45 years,
residing at House No.1, ground floor,
Mira Shyam Building, Goshala Road,
Mulund (w), Mumbai-28.
- ... Appellants

Versus

1. The State of Maharashtra
Through the Controller of
Rationing & Director of Civil Supplies,
5th Floor, Royal Insurance Bldg.,
J.J. Tata Road, Churchgate,
Mumbai-20.
 2. The Sr. Inspector of Police
(Mankhurd Police Station,
Mumbai)
 3. Shri Avinash Subedar, the
Controller of Rationing & Director
of Civil Supplies, 5th floor, Royal
Insurance Bldg., J.J. Tata Road,
Churchgate, Mumbai-20
- ... Respondents

.....

Mr. A. R. Kapadnis APP for the Applicant in Criminal Revision Applications.

Mr. P. A. Pol a/w S. S. Suryavanshi, Rajesh Daravesh, Ranjit S. Hatkar i/b Pol Legal Juris for Respondents in Criminal Revision Application Nos. 407 of 2016 and 408 of 2016 and for Petitioners in Contempt Petition Nos. 348 of 2016 and 334 of 2016.

.....

CORAM : PRAKASH D. NAIK, J.

RESERVED ON : 22nd FEBRUARY, 2018

PRONOUNCED ON : 4th JUNE, 2018

JUDGMENT :

1. With consent of both the parties, the matters were heard for final disposal.

2. The applicants-State of Maharashtra in all these revision applications have challenged the order dated 23/03/2016 passed by the learned Additional Sessions Judge, Greater Mumbai, partly allowing the appeals preferred by the respondents in these applications against the order dated 21/08/2015 passed by the Controller of Rationing and Director of Civil Supplies. The respondents in Criminal Revision Application Nos. 407 of 2016 and 408 of 2016 have preferred Contempt Petition Nos. 334 of 2016 and 348 of 2016 on the ground that the respondents therein have not complied the order dated 23/03/2016.

3. The facts leading to the passing of the impugned orders are as follows.

On 15/06/2015, the information was received that the wheat meant for distribution of fair price shops was loaded from godown and instead of delivering the same to its destination, the vehicles were diverted to Mankhurd. The flying squad of civil supplies department proceeded to Mankhurd and reached at open space near Mankhurd railway station. Trucks bearing Nos. MH-04-

FU-1835, MH-15-BJ-9903, MH-43-U-2044 and MH-46-AF-549 were parked at the said place. The trucks were carrying wheat which was to be delivered to the registered rationing shops. One person named Manoj Gautam was present at the said place. He informed that he is working as parking collection boy at that place. The contract of parking is with Global System Company. He also stated that the trucks carrying rationing commodity are charged Rs.300/- per month. Two trucks bearing No. MH-04-FU-1835 and MH-15-BJ-9903 were owned by Riyaz Seth of Masalawala Grain Merchants Association, truck No. MH-43-U-2044 was owned by Grain Dealers Association and truck No. MH-46-F-549 was owned by Raghu Seth of Annapurna Co-operative Consumer Society. It is alleged that; instead of delivering the wheat to the rationing shops, the trucks were parked at Mankhurd with a view to use the wheat for black marketing. The Police registered the offence with Mankhurd Police Station on 16/06/2015 under Sections 3, 7, 8 and 10 of the Essential Commodities Act, Sections 3, 5, 10 and 20 of the Maharashtra Foodgrain Rationing (Second) order, 1966, Sections 3, 4 and 5 of the Bombay Rationing Area Scheduled Commodities (Regulation

of Distribution) Order, 1986 and Sections 10, 10A, 18-A(2)(3) (aaa) (d)(d)(e)(f)(4)(5) of the Maharashtra Foodgrains Rationing (Second) Resolution, 1966. The wheat was seized.

4. The drivers of the vehicles and the other accused were arrested by the Police. They were released on bail. At the instance of the Controller of Rationing, the wheat in the vehicles was distributed to the respective rationing shops on 23/06/2015. This was done on the basis of the interim order dated 17/06/2015 passed by the Controller of Rationing, Mumbai.

5. The show cause notice was issued under Section 6-B of the Essential Commodities Act, which was replied by the concerned persons. Since the order was not passed for a long time by the Controller of Rationing in the proceedings initiated under Section 6-A of the Essential Commodities Act, the respondents filed a writ petition before this Court. The writ petition was disposed of with an observation that the petitioners have an alternate remedy for redressal of grievances to challenge the final order of confiscation dated 21/08/2015 under Section 6-C of the Essential Commodities Act, 1955.

6. The respondents thereafter preferred Criminal Appeal No. 216 of 2016, Criminal Appeal No. 217 of 2016 and Criminal Appeal No. 218 of 2016 before the Court of Sessions at Bombay. The said appeals were partly allowed by setting aside the order dated 21/08/2015 passed by the Controller of Rationing and Director of Civil Supplies was directed to return the sale proceeds of the wheat in question to the respective persons and confiscated truck be returned to the owner on due identification and production of relevant documents required under Motor Vehicles Act to show ownership of the vehicle within a period of one week from the date of the order.

7. In spite of order dated 23/03/2016, the vehicle of the applicant was not released and the same continued to be detained at Police station. Since the order was not complied as stated above, two petitions alleging contempt were filed by the respondents. The applicant-State preferred these revision applications and subsequently interim order was passed by this Court on 18th October, 2016 granting stay to the effect and operation of the order directing return of confiscated truck to the concerned respondent.

8. Mr. Kapadnis, learned APP submitted that the order passed by the Sessions Court is contrary to the provisions of law. It is against the settled principles of law. Admittedly, there was violation of circulars for not parking the vehicles within particular jurisdiction. It is submitted that the vehicles were loaded at Borivali and instead of delivering the wheat to the concerned shops the vehicles were parked at Mankhurd with an intention to indulge in black marketing of the commodity. It is submitted that the vehicles were parked beyond the jurisdiction of the authority prescribed under the Essential Commodities Act. There was breach of the provisions of Essential Commodities Act and Rules therein. The respondents could not give satisfactory explanation for parking the vehicles at the said place. It is submitted that the grievance of the respondents that they were not served with the notice under Section 6-B of the Essential Commodities Act before passing the confiscation order is devoid of merits as the notice was served upon them. The show cause notice was issued on 17/06/2015 and the order of confiscation was passed on 21/08/2015. It is submitted that on 17/06/2015 interim order was passed which was confirmed on 21/08/2015 after giving an

opportunity to the respondents to deal with the show cause notice. It is submitted that FIR has been registered against the accused and the defence raised by the accused-respondents can be considered at the appropriate stage of the said proceedings initiated against them. Mr. Kapadnis submitted that the order directing release of the vehicles and return the sale proceeds of the wheat in question is bad in law and the same is required to be set aside.

9. Mr. Pol, the learned Counsel representing the respondents in revision Application Nos. 407 of 2016 and 408 of 2016 vehemently opposed grant of any reliefs to the applicants. It is submitted that the order was passed by the Sessions Court on 23/03/2016. There was deliberate violation and disobedience of the said order and in spite of the copy being served upon them, there was no compliance of the order. It is submitted that the act of the authorities is contemptuous and hence, respondents have preferred Contempt Petition Nos. 334 of 2016 and 348 of 2016. Although, the order was passed on 23/03/2016, the State filed a revision application on 04/07/2016. The interim order was passed by this Court granting stay to the operation of the said order on

18/10/2016, till then the authorities failed to comply the order. It is submitted by Mr. Pol that the respondents had reported in rationing office at Shivajinagar Govandi and as per routine practice made an entry in the register and proceeded to unload the remaining wheat to the shop. However, they refused to unload the same on that day being Monday, which was weekly off day and requested to deliver the wheat on the next day. Hence, the respondents halted at parking, near Mankhurd Railway Station as a routine practice. The rationing officer intercepted the trucks on the same night and registered a false FIR for the alleged offences. It is submitted that as per *Panchanama* executed by the Police, there was no deficiency of wheat in the vehicle. In other words, there was no diversion of commodity as suspected or otherwise. The only allegation was that the driver had parked the vehicle in the parking area without informing the officers instead of parking the vehicle at the respective rationing office. According to the prosecution the said act amounts to violation of circular dated 30/07/2009 issued by the Controller of the rationing. It is submitted that FIR has been registered, investigation has been conducted and the proceedings would be proceeded against the

accused. However, there was no evidence of any attempt on the part of the respective respondents to indulge in black marketing of the commodities lying in the trucks. It is submitted that the wheat in the vehicles were distributed to the rationing shops on 23/06/2015. Prior to that without issuing any show cause notice under Section 6-B, the articles were confiscated by the authorities vide order dated 17/06/2015 which was confirmed subsequently vide order dated 21/08/2015. The show cause notice was received by the respondents in pursuant to order dated 17/06/2015, which was replied. The reply tendered by the respondents was not considered in proper perspective while passing the final order. The respondents preferred appeal before the Sessions Court which was heard after the say was filed by the Controller of Rationing. Mr. Pol submitted that while passing the order dated 23/03/2016 the Sessions Court has observed that there is no contravention of orders made under Section 3 of the Essential Commodities Act on the part of the appellants therein. It is submitted that at the most there is breach of circular dated 30/07/2009. The vehicles were not released and continued to be detained at the Police Station. It is further submitted that the

Sessions Court has passed the order after hearing both the sides and taking into consideration all the aspects of the matter. The Sessions Court has passed a reasoned order and relied upon several decisions placed by the appellants therein. It is thus submitted that there is no reason to interfere with the order of the Sessions Court.

10. He further submitted that there is no iota of evidence even prima-facie before the authorities that the respondents had indulged into black marketing or intending to do so. The satisfaction of the authorities is based on surmises and conjectures. It is submitted that assuming that the facts as alleged by the complainant were taken as gospel truth, at the most the act would amount to preparation to commit offence and not an attempt which is not punishable under the provisions of the said Act. Mr. Pol further submitted that there is no point in parking the vehicles in the vicinity of the Police Station which are lying there since 2015 without any reason. He relied upon the decisions of the Supreme Court in the case of *Malkiat Singh and another Vs. The State of Punjab AIR 1970 SC 713* and in the case of *Sunderbhai Ambalal Desai Vs. State of Gujarat 2002 Supp(3) SCR 39*.

11. I have gone through the documents on record. According to prosecution the trucks were intercepted on 15/06/2015. The trucks were parked at the parking place without permission of the authorities. The interim order of confiscation and distribution of the commodity was passed on 17/06/2015. Show cause notice was issued to the respondents and the final order was passed on 21/08/2015. The appeal was preferred against the said order, which was partly allowed on 23/03/2016. Learned Sessions Judge while allowing appeal has observed that the main ground in the appeal is that main ground in the appeal is that wheat in question was not of speedy and natural decay and there is no violation of provisions of Essential Commodities Act. The notice under Section 6-B is not served before passing order under Section 3 of Essential Commodities Act by competent authority. If the order is passed violating the provisions, the same can be set aside in exercise of powers under Section 6-C of the Essential Commodities Act. It is further observed that Section 6-B of the Essential Commodities Act expects that show cause notice must be served before confiscation. In the present case, wheat in

the truck was confiscated and it was handed over to the concerned shopkeepers immediately on the next day and the vehicle and wheat were seized on the ground that vehicle was not parked within the required premises without the essential commodity being delivered to the concerned shopkeepers within particular period. It is further observed that the trucks were confiscated vide final order after show cause notice, but on condition that the owner shall pay the market value of trucks by way of fine. The Court also noted that criminal proceeding has been already initiated against the concerned persons by registration of FIR. It is observed that the interim order itself shows that the wheat was confiscated and was directed to be handed over to the concerned shopkeepers in the public interest. This was done without giving notice under Section 6-B of the Essential Commodities Act. The Court further observed that if the confiscation of wheat is not carried out legally, the amount of sale proceeds is required to be received by the respective appellants. In paragraph 15 of the impugned order, it has been observed that the main ground under which the wheat and truck in question were confiscated by the competent authority is that the respondents had indulged in black

marketing of the commodity. However, when entire goods were found intact and the Panchanama to that effect is on record. Moreover, there is nothing on record to show that there was any act on part of appellants to point out any black marketing. There may be a violation of the circular with regards to the parking of the vehicle for which prosecution is already lying against the accused. The learned Prosecutor could not point out any material to fortify the act of black marketing. It was also observed that in the notice issued by the competent authority, the reason seems to be not regarding contravention of the order under the Essential Commodities Act. Taking into consideration the above aspects and the principles laid down in the authorities cited before the said Court, the learned Judge was pleased to hold that act of confiscating the wheat by way of interim order and confirming the same by final order by confiscating the truck, is done without following procedure of law. The learned Judge therefore set aside the order dated 21/08/2015 and directed the authorities to return the sale proceeds of the wheat to the concerned persons and return of the truck to the owner on identification and production of relevant documents with regard to ownership of the vehicles.

12. The learned Judge has passed the order after hearing both the sides. Admittedly, the interim order dated 17/06/2015 was passed without hearing the respondents. It cannot be accepted that the parties were heard subsequently by issuing show cause notice when the final order was passed. It is pertinent to note that in pursuant to order dated 17/06/2015, at the instance of Controller of Rationing, the entire wheat in the vehicle was distributed to the respective rationing shops on 23/06/2015. This was done in pursuant to the said order which was passed without complying Section 6-B of the Essential Commodities Act. Section 6-A of the Essential Commodities Act relates to confiscation of essential commodity. There is a State amendment to the said provision to the State of Maharashtra which reads as follows:-

“6-A. Confiscation of seized commodities – (1) Where the essential commodity is seized in pursuance of an order made under section 3 in relation thereto, a report to that effect shall, without any unreasonable delay be sent to the Collector within whose jurisdiction the seizure is made, and the Collector may, if he thinks it expedient so to do, inspect or cause to be inspected such essential commodity, and whether or not a prosecution is

instituted for the contravention of such order, the Collector, if satisfied that there has been contravention of the order, may order confiscation of -

- (a) the essential commodity so seized;*
- (b) any package, covering or receptacle in which such essential commodity is found; and*
- (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity;*

Provided that, without prejudice to any action that may be taken under any other provision of this Act, no foodgrains or edible oilseeds seized in pursuance of an order made under section 3 in relation thereto from a producer shall, if the seized foodgrains or edible oilseeds have been produced by him, be confiscated under this section:

Provided further that where any animal, vehicle, vessel or other conveyance is used for the carriage of goods or passengers for hire, the owner of such animal, vehicle, vessel or other conveyance shall be given an option to pay in lieu of its confiscation a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried.

(2) Where the Collector on receiving a report of seizure or on inspection of any essential commodity under sub-section (1) is of the opinion that such essential

commodity is subject to speedy and natural decay or that it is otherwise expedient in the public interest so to do, he may order the same to be sold at the controlled price if any, fixed under any law for the time being in force; or where no such price is fixed by auction:

Provided that, in the case of foodgrains where there is no controlled price, the Collector may order the foodgrains seized to be sold through fair price shops at the price fixed by the Central Government or the State Government as the case may be for the sale of such foodgrains to the public through these shops:

Provided further that, whenever it is practicable so to do, having regard to the nature of the essential commodity, he shall take and preserve sample of the same before its sale or auction.

(3) Where any essential commodity is sold as aforesaid, the sale proceeds thereof after deduction of the expenses of the sale or auction, as the case may be, shall
-

(a) where no order of confiscation is ultimately passed by the Collector: or

(b) where an order passed on appeal, under sub-clause (1) of section 6-C so requires; or

(c) in the case of a prosecution being instituted for the contravention of the order in respect of which an order of confiscation has been made under be

paid to the owner thereof or the person from whom it is seized:

Provided that, in the case of foodgrains sold through fair price shops in accordance with the first proviso to sub-section (2), the owner shall be paid for the food grains so sold the price, fixed by the State Government, for retail sale of such foodgrains through such shops, less all expenses of sale of auction under sub-section (2).” - Maharashtra Act 1 of 1976, S. 4 (w.e.f. 12-11-1975).”

13. The provision requires that whether or not a prosecution is instituted for the contravention of order, the Collector is satisfied that there has been a contravention of the order he may order confiscation. Thus, the satisfaction is required to be recorded within the pervuew of the said provision. The provision also indicate that if the Collector is of opinion on receipt of report of seizure or on examination of essential commodity is of opinion that it is subject to speedy and natural decay or in the public interest may order it to be sold. Sub-section (3) of the said provision stated that in case the commodity is sold, the sale proceeds, where no order of confiscation is ultimately passed or

order passed in appeal under Section 6-C so required, if prosecution is instituted for contravention of order, be paid to the owner or persons from whom it is seized and if the commodity is sold to fair price shop the owner shall be paid for food grains so sold. *Prima-facie*, from the material on the record it is apparent that the trucks were parked at the place within the jurisdiction of Mankhurd Police Station. It appears, the vehicles are being parked at the said place in a routine manner. The material indicates that the inquiry was made with the person who is collecting the parking charges, he has stated that such vehicles are parked on the payment of fixed monthly charges. It is true that the criminal prosecution is initiated by registration of FIR which will be taken to its logical end, but *prima-facie*, there was nothing to indicate that the respondents have indulged in black marketing. There is nothing to show that there was any attempt to sell the commodities in black market. The Panchanama indicates that the entire quantity was lying in the trucks.

14. The vehicles and commodities lying in vehicles were seized on 15/06/2015. In pursuance to that, show cause notice dated 17/06/2015 was issued. The parties were asked to show

cause why the seized articles shall not be confiscated. The reply was directed to be submitted before 09/07/2015 and the date of hearing to give an opportunity to the notices to show cause was fixed on 09/07/2015 at 3.00 p.m. The reply tendered by the Masalawala Grain Merchants Association dated 09/07/2015 which is part of record in contempt petition states that the association had lifted NFSA where on 15/06/2015 by truck No. MH-15-BJ-9903 and truck No. MH-04-FU-1835 from Borivali FCI godown. Since it was the last date for lifting the quota for June as most of shops was having sufficient space, the driver decided to park trucks at regular parking lot for which monthly charges for, the same were paid by them. The parking lot is in the name of M/s. Global Power System Company which is situated near Mankhurd railway station and security is of best quality having CC camera for the security of loaded and empty trucks. It was further stated that the raiding party reached there at 8.00 p.m. Therefore, in the circumstances stated in reply the commodity was seized. M/s. Annapurna Consumer Co-operative Society also tendered reply.

15. The controller however passed an order purportedly interim order on 17/06/2015. As noted above, the show cause notice was also issued on the same day. The interim order makes it clear that the commodities were directed to be confiscated and for the reasons stated in order the same was directed to be distributed to rationing shops. Pertinently show cause notice was issued to explain why the seized articles/commodities shall not be confiscated. The final order was passed on 21/08/2015. The parties were heard prior to that, but commodity was confiscated without giving opportunity by issuing show cause notice under Section 6-B of the Act. May be the trucks were ordered to be confiscated by final order, but the entire approach of the authorities is casual and contrary to law. The learned Sessions Judge while passing the order under challenge has observed that the prosecutor could not point out any material to show any act regarding black marketing. The authorities have drawn adverse inferences on surmises. The act of confiscating the wheat by way of interim order and confirming the same by final order and confiscating the vehicles by final order is done without following the procedure. The show cause notice shows that the parties to

show cause to refrain from confiscation, which was done qua commodities on the same day. The act of confiscation of commodity and the vehicles used in carrying the commodity are corelated and hence the order releasing vehicles on condition of price of vehicles is also unwarranted as the confiscation was bad in law. In the circumstances, I do not find any infirmity in the order passed by the Sessions Court setting aside the order dated 21/08/2015 and directing return of sale proceeds as well as vehicles.

16. Mr. Pol had submitted that although the order of the Sessions Court was passed on 23/03/2016 and which was to the knowledge of the authorities, since, the order was passed in the present of both the parties and in spite of the copy of the order was furnished to the authorities, the same was not complied with and there is deliberate disobedience of the order, which amounts to contempt of Court and hence, the proceedings be initiated against the contemnors named in the Contempt Petitions. Vide order dated 19/06/2017 the Contempt Petitions were directed to be tagged along with Criminal Revision Applications. It is true that the order was passed on 23/03/2016, however, subsequently, the

State has preferred revision applications on 04/07/2016. Interim order was passed by this Court on 18/10/2016. Although, there was a gap between the day of the impugned order, filing of revision application and the day of interim order passed by this Court in revision applications. It cannot be said that there was willful disobedience to flout order or to show disrespect to this Court. In these circumstances, no case is made out for initiating the action under the Contempt of Courts Act against the contemnours in the contempt petitions. The Contempt Petitions are therefore required to be dismissed. In the case of ***Malkiat Singh*** (supra) the Supreme Court has observed that preparation for committing an offence is different from attempt to commit it. The preparation consist in devising or arranging the means or measures necessary for the commission of the offence. On the other hand, an attempt to commit the offence is a direct movement towards the commission after preparations are made. It is true that the observations are made by the Supreme Court in relation to the Criminal prosecution. However, Mr. Pol has adverted to the said decision to show that there was neither preparation nor attempt to indulge in black marketing. The

decision in the case of ***Sunderbhai Desai*** (supra) was in relation to return of property pending the proceedings, wherein it was observed that the vehicles are kept unattending at the Police Station and they become junk day by day. Even this decision relates to the return of the property during pendency of criminal proceedings.

17. In the result, the revision applications preferred by the State are devoid of merits and the same are required to be dismissed. Hence, I pass the following order:

ORDER

- (a) Criminal Revision Application Nos. 407 of 2016, 408 of 2016 and 409 of 2016 stand dismissed.
- (b) Interim order dated 18/10/2016 stands vacated.
- (c) The authorities are directed to comply order dated 23/03/2016 passed by the Additional Sessions Judge, Greater Mumbai in Criminal Appeal Nos. 216 of 2016, 217 of 2016 and 218 of 2016.

- (d) Contempt Petition Nos. 334 of 2016 and 348 of 2016 are dismissed.
- (e) The observations made in this order shall not influence the criminal proceedings, if any, initiated by authorities in relation to the seizure dated 15/06/2015.

(PRAKASH D. NAIK, J.)