

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 409/2016

(OMPRAKASH BHAGATWAR KUMAR & OTHERS VERSUS THE STATE OF MAHARASHTRA, THR. PSO
 PS MANGRUL CHAVHALA, DISTRICT AMRAVATI)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri T.U. Tathod, counsel for the applicants.
 Shri K.L. Dharmadhikari, A.P.P. for the non-applicant.

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : FEBRUARY 27, 2018.

By this criminal application, the applicants seek the quashing and setting aside of the first information report registered against the applicants for the offences punishable under Section 9(B) of the Explosives Act, 1884, Section 5 of the Explosives Substance Act, 1908 read with Sections 130, 130(1) and 177 of the Motor Vehicles Act.

On a report made by some agriculturists, the police officials visited the agricultural field of Sanjay Latne and found two tractors on the field. Explosives, viz. 223 Super power detonators and 167 solar company gelatin, valued at Rs.3,06,000/- were also found in possession of the applicants. All the aforesaid items were seized from the applicants and since the applicants were not able to produce the license for use of explosives and were also not able to show the registration certificates in respect of the vehicles, the non-applicant lodged the report against the applicants for the offences punishable under the Explosives Act, the Explosive Substance Act and the Motor Vehicles Act. The applicants have sought the quashing and setting aside of the first information report registered against them.

Shri Tathod, the learned counsel for the applicants, submitted that merely because the applicants did not produce the license for the use of explosives at the time when the police personnel had visited the field from where the vehicles and the explosives were seized, the offences are wrongly registered against the applicants. It is stated that at the relevant time, the applicant no.1 possessed the Shot Firer's certificate issued under the provisions of the Explosives Rules, 2008. It is stated that the license was issued on 13.01.2014 and it was valid till 13.01.2019 but only because the applicants did not possess it at the time of seizure, the offence is registered on the allegation that the applicants possessed the explosives without a license. It is submitted that since the police authorities had visited the spot on 20.01.2016, i.e. during the term of the license, the offences should not have been registered against the applicants as the applicant no.1 was using the explosives on the basis of the license and the other applicants were engaged by him for the use thereof.

Shri Dharmadhikari, the learned Addl. Public Prosecutor appearing for the non-applicant, fairly states by referring to the affidavit-in-reply filed on behalf of the non-applicant and the case papers that it appears that the applicant no.1 had possessed the Shot Firer's certificate at the relevant time and the applicant no.2 also possessed the license. It is stated that at the relevant time, when the police authorities had visited the field where the explosives were found, the applicant nos.1 and 2 were not able to show the license possessed by them. It is stated that though the vehicles were indeed registered, since the registration certificates of the vehicles were not shown to the police authorities at the relevant time, the offences under the Explosives Act, the Explosive Substance Act and the Motor Vehicles Act were registered against the applicants.

In the circumstances of the case, it would be necessary to quash and set aside the first information report registered against the applicants. Admittedly, the applicant no.1 possessed the Shot Firer's certificate and the same was valid on the date on which the police authorities had visited the spot and had seized the explosives and the motor vehicles. On the relevant date, the applicants however did not carry the license and the registration certificates of the concerned vehicles along with them. It appears that though the applicants were ready to submit the license as also the registration papers and had sought time to produce the same, without granting any opportunity to the applicants, the first information report was registered against the applicants after the seizure of the explosives and the vehicles. Since the offences were registered against the applicants on a wrongful assumption that the applicants did not possess the explosives license and the registration certificates, the first information report registered against the applicants is liable to be quashed and set aside.

Hence, for the reasons aforesaid, the criminal application is allowed. The first information report registered against the applicants is hereby quashed and set aside.

Order accordingly.

JUDGE

JUDGE