

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.239 OF 2018

Pradip s/o Gulabchand Raisonni (Jain),
Age-50 years, Occu:Business,
R/o-Navjivan Colony, Vaijapur,
Aurangabad.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through the Police Inspector,
Police Station, Vaijapur,
Aurangabad, Dist-Aurangabad,
- 2) The District Superintendent of Police,
Aurangabad Rural, Dist-Aurangabad.

...RESPONDENTS

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Mr.R.D. Sanap Advocate for Applicant.
Mr.S.B. Joshi, A.P.P. for Respondent
Nos.1 and 2.

...

**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

DATE OF RESERVING JUDGMENT : 27TH FEBRUARY, 2019

DATE OF PRONOUNCING JUDGMENT: 1ST MARCH, 2019

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. The Applicant has filed this Application praying therein to quash and set aside the Complaint/ First Information Report bearing No.303 of 2017 registered on 22nd July, 2017, with police station, Vaijapur, Dist-Aurangabad, for the offence punishable under Section 285 of the Indian Penal Code and under Section 3 and 7 of the Essential Commodities Act.

3. Learned counsel appearing for the Applicant submits that the Applicant is wholesale kerosene dealer having valid license to that effect, issued by the Government of Maharashtra,

in the year 1998. It is submitted that on 20th July, 2017, as per routine course the Applicant went to Yeola Road, Vaijapur for distribution of the kerosene quota to his sub dealer/ customer as per list, along with Mr. Pawar, authorized officer of Tahsil Office, Vaijapur. Under the supervision and observation of Mr. Pawar from Tahsil Office, the Applicant was distributing the kerosene quota which was allotted to him as per the Government Scheme. It is submitted that, as Mr. Pawar was not feeling well, he went to medical shop for purchasing medicine, and at the same time, upon instruction of police inspector Mr. Nandedkar, police staff of Vaijapur police station came to the spot and the kerosene tanker and other vehicles were seized and taken to the police station, Vaijapur, on the allegations that the Applicant was selling the kerosene in open market which was for public distribution system.

4. Learned counsel further submits that on the very day, Mr. Pawar, authorized officer of Tahsil Office, Vaijapur given in writing to the Tahsildar, Vaijapur that he was with the tanker and in his presence distribution of kerosene was going on as per the list, but as he was not feeling well therefore he went to the medical shop for purchasing medicines and at that time police came there and kerosene tanker and other vehicles were taken to the police station, Vaijapur. Learned counsel further submits that when Tahsildar, Vaijapur, came to know that kerosene tanker was seized, by letter dated 21st July, 2017, Tahsildar, Vaijpaur informed the police inspector, police station, Vaijapur, that as the shop of the sub-dealer was in a narrow lane and it was not possible to reach the tanker to the shop of sub-dealer, therefore, the Applicant was distributing the kerosene to the sub-dealer in open space. The Tahsildar, Vaijapur, further informed that the

Applicant was distributing the kerosene as per the relevant rules and regulations and further directed the concerned police officer to release the tanker. It is submitted that there is delay of two days in lodging the First Information Report. Learned counsel submits that the Applicant has been falsely implicated in the crime. Learned counsel further submits that there is no mention in the First Information Report about contravention of any order made under Section 3 of the Essential Commodities Act, and therefore, in absence of any order made under Section 3 of which the contravention is claimed, the offence under Section 7 of the Essential Commodities Act could not be made out. Therefore, learned counsel appearing for the Applicant submits that the First Information Report deserves to be quashed.

4. On the other hand, learned A.P.P. appearing for the State submits that the Applicant

was selling kerosene in the open market which was for public distribution system and therefore, the police had seized the tanker and other vehicles. Learned A.P.P., relying upon the allegations in the F.I.R. and also statements of the witnesses and other material collected during the course of investigation, submits that the alleged offences have been disclosed, which needs investigation and therefore the Application may be rejected.

5. We have given careful consideration to the submissions of learned counsel appearing for the Applicant and learned A.P.P. appearing for the State. With their able assistance, we have perused the grounds taken in the Application, annexures thereto, and the investigation papers made available for our perusal by learned A.P.P.

6. Admittedly, the Applicant is wholesale kerosene dealer possessing valid license issued by

the Government of Maharashtra, for purchase, sale and storage of kerosene. It is the case of the Applicant that as per the procedure, he was distributing the kerosene to the sub-dealers under the supervision of R.B. Pawar, Senior Clerk of Tahsil Office, Vaijapur, who was authorized officer. As said Mr. Pawar was not feeling well, he went to nearby medical shop for purchasing medicine and at that time police visited the spot and seized the tanker containing kerosene and other vehicles on the allegation that the Applicant was selling the said kerosene in open market which was meant for public distribution system. We have perused the letter dated 20th July, 2017, issued by Tahsildar, Vaijapur to the Police Inspector, police station, Vaijapur, which is at Exhibit-C to the compilation of the Application. It is specifically stated in the said letter that the Applicant was distributing the kerosene as per the relevant rules and procedure, under the

supervision of Mr. Pawar, an authorized officer from Tahsil office, Vaijapur. It is further mentioned in the said letter that, as said Pawar was not feeling well, he went to nearby medicine shop for purchasing medicine at which time police visited the said spot and seized the tanker and other vehicles on the allegation that the Applicant was selling the kerosene in open market which was for public distribution system. In the said letter, Tahsildar has directed the concerned police officer to release the said kerosene tanker forthwith, to avoid inconvenience to the poor beneficiaries.

7. Upon perusal of the entire material placed on record, and in particular, contents of the First Information Report, admittedly there is no mention about contravention of any order made under Section 3 of the Essential Commodities Act, and therefore, in absence of any order made under

Section 3 of the Act of which contravention is claimed, the offence under Section 7 of the Essential Commodities Act cannot be made out. At this juncture, it would be useful to refer the observations made by the Division Bench of the Bombay High Court, Bench at Aurangabad (CORAM: S.S. SHINDE & K.K. SONAWANE, JJ.), in the case of Shri Vijay Machindra Markad and others vs. the State of Maharashtra and others in Criminal Application No.492 of 2017 and other connected Applications, decided on 8th March, 2017. In Para 10 of the said Judgment, it is observed that:

“10. Admittedly, in all these cases, there is no mention of contravention of any order made under section 3 of the said Act, and therefore, in absence of any order made under section of which the contravention is claimed, the offence under section 7 could not be made out. The Supreme Court in the case of Prakash Babu Raghuvanshi (supra) has taken a view that for attracting the provisions of offence punishable section 7

of the said Act, the order under section 3 of the said Act is essential. The Division Bench of the Bombay High Court at Nagpur in cases of Rakesh Mahendrakumar Jain (supra) and Dhanraj Anandrao Mohod (supra) has also taken a view that, for bringing an application under section 7 of the said Act, it is necessary to make reference in the first information reports to any order having been made under section 3 of the said Act being violated. In absence of it being shown that there was any order made under section 3 that had been contravened, proceedings for the offence punishable under section 7 would not be tenable and continuation of such proceedings, therefore, would amount to abuse of process of law."

8. In the facts of the present case also, there is no reference whatsoever in the First Information Report to any order having made under Section 3 of the Essential Commodities Act being violated and therefore the proceedings for offence punishable under Section 7 of the Essential Commodities Act would not be tenable.

9. Further, after taking into consideration the contents of the First Information Report, statement of the witnesses and other investigation papers, we are of the considered view that even if the allegations are read in its entirety and taken as it is, the allegations would not attract the ingredients of the offence under Section 285 of the Indian Penal Code, and Section 3 and 7 of the Essential Commodities Act, since the documents placed on record clearly shows that the Applicant was distributing the kerosene to the sub-dealers as per the relevant rules and procedure laid down in that behalf, under valid license. In that view of the matter, in our considered view, continuation of further proceedings against the Applicant based upon the First Information Report, would be an abuse of process of law, the chances of conviction would be bleak and the same would be an exercise in

futility. Hence, we pass following order:

O R D E R

(I) The Criminal Application is allowed in terms of Prayer Clause "B)", to the extent of present Applicant only.

(II) Rule is made absolute in above terms. The Criminal Application stands disposed of, accordingly.

[R.G. AVACHAT, J.]

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[S.S. SHINDE, J.]