

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1028 OF 2017

**PANKAJ S/O JAYKUMAR THOLE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

WITH

CRIMINAL WRIT PETITION NO. 1027 OF 2017

**SAMPAT S/O SOHANRAJ CHAJED AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. D. S. Bharuka, Advocate for the petitioners – Absent.
Mr. A. V. Deshmukh, APP for the respondent/State.

**CORAM : T. V. NALAWADE &
M. G. SEWLIKAR, JJ.**

DATED : 03-12-2020

P.C. :-

1. On 24/11/2020 after considering entire record and various orders passed, this Court had made order. This Court had made it clear that no adjournment will be given to any side on the date which this Court was fixing. Today's date was fixed for final disposal of the matter. Alongwith this matter many similar matters were kept.

2. Many matters were kept together for consideration as they involve one common point. In the past due to some observations made by some High Courts in the orders passed on proceedings filed for quashing of FIR, the Courts were going with presumption that if the control order issued under Section 3 of the Essential Commodities Act in respect of particular commodity is not mentioned in FIR then FIR can be quashed. In the case reported in **State of Bihar Appellant v. Gulab Chand Prasad Respondent, AIR**

1982 Supreme Court 58 made it clear that it is not necessary that the control order issued under Section 3 of the Essential Commodities Act in respect of particular commodity should be mentioned in FIR. The Supreme Court has laid down that the prosecution can produce such control order even during trial if that order was in existence. Further, when such order is issued, which is published in official Gazette, the Court is expected to take note of it and the Court needs to go with presumption that such order is in existence. On this point the matter is could not have been entertained. However, in most of the matters some interim relief was granted by this Court and the filing of charge-sheet was prevented. The matters are of 2017 and after granting the relief of aforesaid nature, nobody for petitioner-applicant turned up to prosecute the matter. In view of these circumstances the order was made by this Court on 24/11/2020 and the matters were kept for final disposal on today.

3. On merits also in the present matter the petitioner has no case. This Court has carefully gone through the record with includes FIR given by Naib Tahasildar. The report shows that present petitioner was present on the spot when seizure of food grains, particularly, wheat was made. They were as many as 164 bags of wheat and each wheat bag was weighing 50 kg. There were 700 empty bags which are ordinarily use by ordinary merchants and there were 51 white bags of government showing that in these bags the food-grains, wheat was sent by Madhya Pradesh State Civil Supplies Corporation. Thus, the bags in which the ration of PDS is kept in government godown were found at this place. This Court has noticed the *modus operandi* which is used in such cases. Hundreds of incidents are noticed in Maharashtra of such nature. The wheat from government godown or fair price shop is diverted to private merchants and the private merchants empty the government bags and

the contents are filled in other ordinary bags and they are sold in open market. The price of ration is always on lower side and there is huge difference between the price of ration and the same food commodity sold in open market. This way money is made by some persons from government department and the merchants. Aforesaid circumstances mentioned in FIR and panchanama are sufficient to show that such *modus operandi* was used in the present matter also. Further present petitioner Pankaj was present on the spot when such huge stock was found in the godown and he informed to Naib Tahasildar that he had taken the godown on rent basis from owner Jaykumar Jain. He could not explain as to how the empty bags used by fair price shops of government were present in that godown. He could not produce any record in respect of 164 bags of wheat which were found there. Due to this circumstance, this stock came to be seized and FIR came to be given. On the basis of these circumstances *prima-facie* inference is available against the petitioner Pankaj that by using aforesaid *modus operandi* the government wheat was diverted to the said godown and new bags were created for their sale in open market. It is a serious offence. The poor persons for whom the scheme is prepared by the government are not getting the ration and the this ration goes to open market and it is sold at higher price by the persons like the petitioner. It is not only loss to the government but the poor persons are starved by such persons. Such cases cannot be taken lightly. Due to these circumstances this Court holds that on merit also there is no case to the petitioner. So Criminal Writ Petition No. 1028 of 2017 stands dismissed.

4. The proceeding No. 1027 of 2017 is filed by three persons like (1) Sampat Sohanraj Chajed, (2) Paresh Kesharchand Chajed and (3) Narayan Jaykumar Thole. In FIR it is mentioned that the person who was found at the

site like Pankaj Thole had informed that he had taken the godown on rent basis from Paresh Chajed and this godown was present in gut No. 32 which belongs to Samapat Chajed and Paresh Chajed. Narayan Thole was also present on the spot at the relevant time and they had contended that the entire food grains belong to them. Thus, there is allegations against the petitioners of proceeding No. 1027 of 2017 that they are the owners of the premises, where aforesaid illegal activity was going on. Only on the basis of contention of two persons who were present on the spot, it cannot be believed that the owner of the land and owner of the godown were not involved in the incident. When illegal activity is going on in any premises belonging to persons, the responsibility can be fastened on him also as it is his duty to inform police and proper authority about such illegal activities, if he is not involved in such illegal activities. There is copy of the order on record showing that the order in respect of food grains supplied under fair price shops scheme is already issued under Section 3 of the Essential commodities Act i.e. PDS (Control) Order 2001 and the Government Circular dated 09/05/2008-restricting the stock limit of the food grains.

5. In view of these circumstances, this Court holds that it cannot be said that, the present petitioner were not involved in the aforesaid illegal activity. So this proceeding also deserves to be dismissed. Criminal Writ Petition No. 1027 of 2017 is also dismissed.

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE , J.]