

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 244/2014

1] Zubair Ahmed S/o Mushtaque Ahmed,
Aged about 31 years, Occ. Business,
R/o. 'Daulat Compound', Plot No. 20-A,
New Colony, Near Mangalwari Bazar,
PS. - Sadar, Nagpur 440 001

2] Shyamkishor Shivprasad Bilone,
Aged about 27 years, Occ. Driver,

3] Goddu Chaitram Dhurve,
Aged about 30 years, Occ. Cleaner,

Both applicant Nos. 2 & 3 are
R/o. Makardhokda, Gittikhadan,
Nagpur

.... **APPLICANT(S)**

// VERSUS //

State of Maharashtra,
Through P.S.O., Sadar,
Police Station – Sadar,
Nagpur

.... **NON-APPLICANT**

Shri A. Subhan, Advocate for the applicant(s)
Ms. M. Deshmukh, APP for the non-applicant

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.
DATED : 03/12/2020

ORAL JUDGMENT : (PER:- AMIT B. BORKAR, J.)

1] This is an application under Section 482 of the Code of Criminal
Procedure challenging F.I.R. No. 3031/2014 dated 12/01/2014 registered

under the provisions of Sections 3 and 7 of the Essential Commodities Act, 1955 (for short "the Act of 1955") by the non-applicant – Police Station.

2] In the first information report, it is alleged that the Investigating Officer found three persons adulterating diesel by mixing kerosene in the tanker owned by the applicant no. 1. The Investigating Officer seized the tanker and took sample of diesel and kerosene and it was sent to Chemical Analysis. Therefore, offence under Sections 3 and 7 of the Act of 1955 was registered against the applicants.

3] The applicants challenged registration of the first information report by filing the present application. This Court on 22/09/2014 issued Rule and granted interim relief in terms of prayer clause (b) by prima-facie observing that the police authorities who had conducted the seizure had no authority to carry out the seizure.

4] The non-applicant has filed reply by stating that first information report has been rightly registered against the applicants under Sections 3 and 7 of the Act of 1955. It is stated in para no. 10 that the seizure was carried out not by the Police Sub-Inspector but by the Assistant Police Inspector and therefore the Investigating Officer had power to carry out the seizure and investigation for offence under Sections 3 and 7 of the

Act of 1955. The non-applicant no. 1 therefore prayed for rejection of the application.

5] We have heard Shri A. Subhan, Advocate for the applicants and Ms. M. Deshmukh, learned APP for the non-applicant.

6] Learned advocate for the applicants submitted that in exercise of power under sub-clause (a) of Clause 9 of the Kerosene (Restriction on use and Fixation of Ceiling Price) Order, 1993 (for short "the said Order"), the officers who are notified by the Central Government to ensure compliance of the provisions of this Order shall have the power to carry out the seizure. He invited our attention to the Government Gazette dated 07/07/1994 issued in exercise of powers conferred by sub-clause (a) of Clause 9 of the said Order notifying that all the police officers not below the rank of Inspector of State of Maharashtra shall have the power to take necessary action under the provisions of the said Order within their respective jurisdiction. He further submitted that though in the first information report it is mentioned that the sample of diesel and kerosene was sent for Chemical Analysis, the report of Chemical Analysis is not placed on record. He further submitted that the kerosene which was allegedly mixed with diesel was procured from Public Distribution System. He therefore submitted that registration of the first

information report against the applicants was not legal and therefore prayed for quashing and setting aside of the first information report.

7] Ms. M. Deshmukh, learned APP for the non-applicant submitted that in the reply it is clearly stated that Shri S.R. Jadhav who had carried out the seizure at the relevant time was appointed as Assistant Police Inspector. It is therefore submitted that the Investigating Officer had power to carry out the seizure and conduct the investigation under the provisions of the said Act and the Order. She therefore submitted that there is no substance in the application and the same deserves to be rejected.

8] We have carefully considered the submissions of learned advocate for the applicants and learned APP and have gone through the provisions of Sections 3 and 7 of the Act of 1955 and sub-clause (a) of Clause 9 of the said Order. We have also carefully perused the official gazette dated 07/07/1994 and in particular Clause 11 of the said Order which empowers all the police officers not below the rank of Police Inspector in the State of Maharashtra. For factual adjudication of the question involved, it is necessary to quote sub-clause (a) of Clause 9 of the said Order which reads as follows:-

“9. Power of entry, search and seizure. - (a) An Officer of the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorised by such Government and notified by the Central Government or any officer authorised and

notified by the Central Government, or any office not below the rank of Sales Officer of a Government Oil Company authorised by the Government and notified by the Central Government may, with a view to ensuring compliance with the provisions of this Order, with such assistance as may be required, for the purpose of satisfying himself that this Order or any order made thereunder had been complied with:-

- (i) stop and search any vessel or vehicle or any other conveyance which the Officer has reason to believe, has been, or is about to be used in contravention of this Order;*
- (ii) enter or search any place with such aid or assistance, as may be necessary; and*
- (iii) seize and remove with such aid or assistance, as may be necessary, books, registers and other records pertaining to kerosene business, along with vehicle, vessel or any other conveyance used for carrying such stock, if he has reason to believe that any provision of this Order has been or is being or is about to be contravened and thereafter take or authorise the taking of all measures necessary for securing the production of the kerosene at the Office of the Government Oil Company and the vehicle, vessel or other conveyance so seized before the Collector having jurisdiction under the provisions of Essential Commodities Act, 1955 (10 of 1955), for their safe custody pending such procedures.”*

9] Reading of sub-clause (a) of Clause 9 of the said Order makes it clear that the Central Government can authorize an officer to ensure compliance of the provisions of the said Order. The notification dated 07/07/1994, and in particular Clause 11 in respect of the State of Maharashtra, empowers all the police officers not below the rank of Inspector to take necessary action under the provisions of the said Order within their respective jurisdiction. Undisputedly, the seizure in question has been carried out by the Assistant Police Inspector. The requirement of notification dated 07/07/1994 is that the police officer investigating the

offence under the provisions of the said Order should not be below the rank of Inspector. Therefore, we are satisfied that the person who has carried out the seizure in question was not authorized to carry out the same. Hence, the seizure of sample collected and vehicle was without authority. Once we are satisfied that the seizure carried out by the person was not authorized to carry out the same, the other submissions made by the learned advocate for the applicants need not be considered as the basis of registration of the first information report becomes illegal and no further proceedings under the provisions of Sections 3 and 7 of the Act of 1955 could be proceeded against the applicants. We find that continuance of the prosecution against the applicants would amount to abuse of process of law and the first information report registered against the applicants needs to be quashed and set aside.

10] Hence, the following order:-

F.I.R. No. 3031/2014 dated 12/01/2014 registered under Sections 3 and 7 of the Essential Commodities Act, 1955 by the non-applicant – Police Station against the applicants is quashed and set aside.

The criminal application stands **allowed** in the above terms.

JUDGE

JUDGE