

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 323 OF 2021

APPLICANTS :-

1. Satish Uttamrao Thakare, Aged about 44 years, Occ- Business, R/o. Ambada, Tq. Morshi, District Amravati.
2. Premnath Devanath Jogi, Aged about 50 years, Occ- Labour, R/o Balev, Tq. Badnor, District Bhilwada, Rajasthan.

...VERSUS...

NON APPLICANTS/ :-
COMPLAINANT

1. State of Maharashtra, Through Police Station Officer, Morshi, Tq. Morshi, District Rural Amravati.
2. Anand Kawaduji Pidurkar, Aged about 40 years, Occ- Service, R/o Rural Amravati, Anti-Terror Squad, Morshi, Amravati.

Mr. Suyash Agrawal, Advocate h/f Mr.S.V. Shirpurkar,
Advocate for the applicants.

Mr.S.P. Deshpande, A.P. P. for non applicant No.1.
None for non applicant No.2.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.

DATED : 22.04.2021.

ORAL JUDGMENT : (Per : Amit B. Borkar, J.)

1. Heard.

2. **Rule.** Rule is made returnable forthwith.

3. By this application under section 482 of the Code of Criminal Procedure, the applicants have challenged registration of First Information Report No.50 of 2020, dated 30/01/2020 registered with non applicant No.1-Police Station and consequent charge-sheet bearing Regular Criminal Case No.136 of 2020, pending before the Judicial Magistrate First Class, Morshi for the offence punishable under section 4-b of the Explosive Substances Act, 1908.

4. The First Information Report came to be registered against the applicants with the accusations that on 29/01/2020, non applicant No.2, who is working as Assistant Police Inspector, Anti-Terrorist Squad, Amravati (Rural) while patrolling reached at Talni Fata and saw a tractor bearing registration No. MTC-3711 was standing. When non applicant No.2 went near the said tractor, the driver ran away from the spot. The non applicant No.2 conducted search of the said tractor and found that explosive i.e. 15 gelatin sticks of Super Power Company and 13 detonators were found in the said tractor. On enquiry, it was found that applicant No.2 was the driver. The non applicant no. 1 after conducting investigation, filed charge-sheet against the applicants for the offence punishable under section 4-b of the Explosive Substances Act, 1908.

5. The applicants have therefore, challenged the registration of the FIR and consequent charge-sheet by way of filing the present application. This Court on 24/02/2019 issued notice to the non-applicants. The non applicant No.1 in pursuance of the said notice, filed reply stating that non applicant No.2 found explosive i.e. 15 gelatin sticks and 13 detonators in the tractor of the applicants. It is stated that the Investigating Officer recorded statements of witnesses including the owner of the said tractor. The statement of owner of the tractor revealed that he engaged applicant No.1 as Shot Firer to do work of blasting at the given site. The Investigating Officer in the course of investigation obtained licence of applicant No.1 duly issued by the Authority. It is also stated that in the investigation, it is revealed that the owner of M/s. Saikrupa Enterprises, who is holding licence, had engaged services of applicant No.1 as Shot Firer.

6. We have carefully considered the allegations in the FIR and material on record in the form of charge-sheet. The Advocate for the applicants invited our attention to the order of this Court in the case of *Omprakash Bhagatwar Kumar and others v. The State of Maharashtra, Criminal Application (APL) No.409 of 2016*, dated 27/02/2018. This Court in the said case quashed FIR where the fact

situation was the same as fact situation of the present case. This Court allowed the application on the ground that the applicants were having licence on the date of possession of explosive.

7. Having considered paragraph-7 of the reply filed by non applicant No.1, wherein the Investigating Agency has admitted that there was valid licence issued in favour of M/s. Saikrupa Enterprises which had engaged services of applicant No.1 as Shot Firer, we are satisfied that ingredient of offence under section 4-b of the Explosive Substances Act are not fulfilled. The said Act punishes only those persons, who unlawfully and maliciously are in possession of the explosive substance. In view of undisputed fact that M/s. Saikrupa Enterprises, who had engaged services of applicant No.1 as Shot Firer, and was having valid license, it cannot be said that the applicants were in unlawful possession of explosive substance. The applicants' get support from judgment of this Court in *Criminal Application (APL) No.409 of 2016* wherein this Court in similar fact situation had quashed the FIR against the applicants therein.

8. Hence, for the reasons stated above, we are satisfied that the FIR and the charge-sheet against the applicants deserve to be quashed and set aside.

9. We, therefore, pass following order:
- i) First Information Report No.50 of 2020 registered with non applicant No.1 and consequent charge-sheet bearing Regular Criminal Case No.136 of 2020 pending before Judicial Magistrate First Class, Morshi for the offence punishable under section 4-b of the Explosive Substances Act, 1908 against the applicants are quashed and set aside.
10. Rule is made absolute in the above terms.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)