

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

**CRIMINAL APPLICATION (APL) NO.555 OF 2018**

**APPLICANT:** Satish @ Raju Chokhelal Gupta,  
Aged about : 43 years,  
Occ. : Business, R/o Sharda Nagar,  
Amravati, Tq. and District : Amravati.

**V E R S U S**

**NON-APPLICANT:** The State of Maharashtra,  
Through D.G.P. Buldana &  
Police Station Officer, Shivaji Nagar,  
Khamgaon, Taluka-Khamgaon,  
District - Buldana.

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Shri V. R. Deshpande, Advocate for applicant.

Shri S. D. Sirpurkar, Additional Public Prosecutor for non-  
applicant.

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**CORAM: Z.A. HAQ & AMIT B. BORKAR, JJ.**  
**DATED : 11/01/2021.**

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

1. By this application under Section 482 of the Code of Criminal Procedure, the applicant has challenged the registration of the First Information Report No.107/2018 registered with the non-applicant - Police Station for the offences punishable under Sections 3(2)(d) and 7 of the Essential Commodities Act, 1955. (for short "the Act of 1955").

2. The First Information Report came to be registered against the applicant with the allegations that the wheat meant for government distribution scheme was illegally transported for selling it in black market. On 27/03/2018, truck owned by the Appellant and another truck owned by Food Corporation of India were found on National Highways. An inspection of both the trucks was carried out. On the inspection of the vehicle, it was revealed that the truck owned by the applicant was carrying wheat to be distributed under the Antyodaya Scheme. It was also alleged that 22 plastic bags having name of Madhya Pradesh State, Civil Supplies Corporation Ltd. were found in the said truck. The First Information Report was, therefore, registered against the Manager of the Godown of Food Corporation of India, the transport contractor and the driver under the provisions of Section 3(2)(3) and Section 7 of the Act of 1955.

3. The applicant has, therefore, filed present application challenging the registration of the First Information Report. Shri V. R. Deshpande, learned advocate of the applicant submitted that the prosecution has not been able to place on record the copy of the order of which the breach is alleged in the

First Information Report and therefore, the First Information Report needs to be quashed and set aside. He further submitted that the weight of wheat in the truck owned by the applicant on a day prior to date of the registration of First Information Report was the same. Therefore, he submitted that there is no transfer of wheat from the truck owned by the Food Corporation of India to the adjoining truck owned by the Applicant. He, therefore, submitted that in the above circumstances, the prosecution against the applicant cannot be continued.

4. The non-applicant has filed reply and stated that on information received by the non-applicant - Police Station, the officials of the non-applicant - Police Station reached the said spot and caught driver of the truck of the applicant and the adjoining truck owned by Food Corporation of India red-handed while they were illegally trading essential commodities i.e. wheat. The concerned Revenue Officer, therefore, lodged a complaint in the form of First Information Report. It is stated in the reply that the driver has admitted sale of essential commodities i.e. wheat to the accused No.2. It is further stated in the reply that the investigation is still under progress and after completion of investigation, if no material is found against the applicant, he may not be prosecuted.

It is, therefore, prayed that the present application deserves to be quashed and set aside.

5. We have carefully considered the contents of the First Information Report and the other material produced by the applicant on record. We have also perused the reply filed by the non-applicant. The submission on behalf of the applicant is that the copy of the order contravention of which has been alleged in the First Information Report for invoking the offences punishable under Section 7 had not been placed on record. In our view, Full Bench of this Court in Criminal Application (APL) No.731/2015 has categorically held that it is not necessary to mention a particular provision or order issued under Section 3 of the Act of 1955 and non-mention of such order in the First Information Report is not sufficient to quash the First Information Report. The Full Bench of this Court in para No.23 of the said Judgment has held as under :-

"23. In view of the above, the question referred for consideration stated in paragraph-1 is answered in the negative and it is held that mere non-mention of a particular provision of an "Order" or "Order" issued under section 3 of the Act of 1955, by itself is not sufficient to quash and set aside an FIR. It is held that the State would be entitled to demonstrate before a Court that an order issued under section 3 of the Act of 1955, indeed exists and that there is contravention of clauses thereof, leading to offence under section 7 of the Act of 1955. With these observations the reference is disposed of. The applications shall now be placed before the appropriate Bench for disposal".

6. In our view, para No.23 of the judgment of Full Bench of this Court squarely covers the contention raised on behalf of the applicant. If the prosecution is not able to prove its case by producing the copy of order, contravention of which led to registration of the First Information Report, the Trial Court will have to decide said issue on merits at the time of trial.

7. The second contention of the applicant is based which was in reply to letter dated 27/03/2018 issued by the Tahsildar, Khamgaon wherein Transport Manager, Buldhana, Branch Khamgaon has communicated to the Tahsildar, Khamgaon that the weight of the truck of the applicant was same on a day prior to registration of the First Information Report and on the date of First Information Report. In our view, the said letter does not bear any date. It is not disputed by the Applicant that the person who had written the letter at Page No.17 is co-accused alongwith the present applicant. The said letter had been issued by him after he was roped in as accused No.2 in the First Information Report which is impugned in the present application. Therefore, it will not be safe to rely upon the said letter for the purpose of quashing the First Information Report registered

against the applicant. It is for the prosecution to explain the consequences of the said letter, if in the trial, said letter is duly proved.

8. Since in the present application, the applicant has not been able to prima facie prove that the First Information Report does not disclose ingredients of the offence punishable under Section 7 of the Act of 1955, it is not proper to quash the First Information Report at this stage. On the reply filed by the non-applicant, it is stated that if the prosecution is not able to get the material in support of their case in the trial, the Applicant may not be prosecuted and will not have to face the trial.

9. Taking into consideration the aforesaid circumstances, we are of the view that at the threshold, the First Information Report against the applicant, need not be quashed.

10. We, therefore, pass the following order :-

**ORDER**

The criminal application is dismissed in the above terms.

**JUDGE**

**JUDGE**