

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

CRIMINAL WRIT PETITION NO.810/2021

Vidharbha Merchants And Trading LLP. Vs. State of Maharashtra and Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri A. M. Ghare, Advocate for Petitioner.
Shri V. A. Thakare, A.P.P. for Respondents/State.

CORAM : M. S. SONAK AND
PUSHPA V. GANEDIWALA, JJ.

DATE : 29/11/2021.

1. Heard Mr. A. M. Ghare, learned Counsel for the petitioner, and Shri V. A. Thakare learned Additional Public Prosecutor for the State.
2. This petition seeks quashing of panchanama dated 31.10.2021 in terms of which certain material from the petitioner Depot, which the petitioner styles as "Industrial Oil" have been seized. The petitioner also prays for suitable directives or guidelines to the Authorities in furtherance of the communication dated 27.09.2021 issued by the District Supply Officer, Buldhana.
3. Mr. A. M. Ghare, learned Counsel for the petitioner contends that the action of the respondents is entirely ultra-vires under the provisions of the Petroleum Act, 1934 (said Act) and the Rules made thereunder or even, the Government Resolution dated 11.05.2021, which he submits, is concerned only with Regulation of bio-diesel.

4. Mr. A. M. Ghare, the learned Counsel for the petitioner, by referring to the preliminary material placed on record, submits that the material seized by the impugned panchanama cannot be classified as Petroleum Class – A, B, or C because the laboratory test *prima facie* indicates that the flashpoint as defined under Section 2(c) of the said Act of such material is more than 93 or rather, the same is 101. He submits that even the storage quantities are well within the limit prescribed under Section 7 of the said Act and the Rules made thereunder. He submits that the reports rule out the material to be classified as Bio-diesel and therefore, even the Government Resolution dated 11.05.2021 is not at all applicable. He submits that there is no classification such as a hazardous group or duplicate diesel and based on such vague and undefined expressions, the impugned action is ultra-vires.

5. Mr. V. A. Thakare, learned Additional Public Prosecutor submits that the investigations are in progress and therefore, the impugned action may not be interfered with at this stage. He points out that in the past, the petitioner had obtained an order under Section 457 of the Criminal Procedure Code. He points out that even First Information Report was lodged against the petitioner and there is no interim relief granted about the same.

6. Mr. A. M. Ghare, learned Counsel for the petitioner submits that the petition under Section 457 of the Criminal Procedure Code may be premature at this stage because there is no record of the respondents having reported the seizure to

the jurisdictional Magistrate. He submits that at least in this case, based on the material on record, certain directions may be issued to restrain any coercive action of the similar nature in future.

7. Having considered the rival contentions as well as the material on record, we find that in terms of the provisions of Section 102 of the Criminal Procedure Code, the report of the seizure ought to have been made at the earliest to the concerned jurisdictional Magistrate. We now record the statement made by Mr. V. A. Thakare, learned Additional Public Prosecutor that such report will be made within the maximum period of 7 days from today. We direct the concerned Authorities to act accordingly.

8. Further, from the record produced before us we find that the present petitioner, in a situation almost similar to the present one, had obtained necessary orders under Section 457 of the Criminal Procedure Code from the concerned jurisdictional Magistrate. We see no good reason as to why a similar course of action cannot be adopted in the present case as well so that the jurisdictional Magistrate will have the opportunity of considering the matter in some detail and deciding the same in accord with the law. At this stage, it will not be proper for us to go into the issues that have been raised, particularly because the investigations are in progress and the preliminary material produced is capable of several divergent interpretations.

9. On one hand, the interpretation can be that since the material in question is *prima facie* not covered under classification – A, B, or C, action under the provisions of the said Act as invoked, may or may not apply. At the same time, the investigations, *prima facie*, suggest that the material is hazardous, since, the flashpoint is indicated as 101. Besides, there are allegations that the material is being used as a substitute to diesel or its duplicate or is adulterated diesel itself. Now all these are matters which require further investigations. Granting the reliefs as prayed for at this stage might amount to interference with the investigations. This, according to us, is not a fit case for interference with such investigations at this stage itself.

10. Now that we have been assured that the report about seizure will be made to the jurisdictional Magistrate within a maximum of 7 days from today, the petitioner will have the liberty to take out proper proceedings under Section 457 of the Criminal Procedure Code before the concerned jurisdictional Magistrate. Since remedies are available under the ordinary law to the petitioner, we feel that no case is made out for exercise of our extraordinary jurisdiction.

11. This petition is, therefore, disposed of by accepting the statement made on behalf of the respondent/State by Mr. V. A. Thakare, learned Additional Public Prosecutor, and further, by granting liberty to the petitioner to take resort to the ordinary remedies available under the Code. We clarify that the observations, if any, in this order are only, *prima facie*,

and the same need not influence the investigation or further action one way or the other.

12. The petition is disposed of. There shall be no order for costs. All concerned to act on an authenticated copy of this order.

13. Pending application(s), if any, stand(s) disposed of.

PUSHPA V. GANEDIWALA, J.

M. S. SONAK, J.

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