

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

CRIMINAL WRIT PETITION NO. 938/2018

PETITIONER : Azhar Khan s/o Mazhar Khan,
aged about 32 years, Occ. Business,
R/o. Pathanpura, Ner (Parsopant),
District Yavatmal

...VERSUS...

RESPONDENTS:

1. The State of Maharashtra,
through Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai-32.
2. The Superintendent of Police,
Yavatmal.
3. The Station Officer,
Police Station Ner (Parsopant),
District Yavatmal.
4. Umesh S/o Shankarrao Nasre,
aged about 32 years, Occ. Service,
Police Sub-Inspector,
c/o. Local Crime Branch, Yavatmal City,
Yavatmal having office at Police Station
Yavatmal City, Yavatmal

Shri F.T.Mirza, Advocate for petitioner
Shri N.R.Patil, APP for respondent nos.1 to 4

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.
DATE : 02/03/2021.

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

1] Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

2] At the outset, we must place it on record that Shri FT.Mirza, learned counsel for the petitioner, on instructions, does not press the prayers made in clauses (c), (d) and (e) of the prayer clause, in view of the admission given in paragraph No. 7 of the reply filed by Respondent No. 3 - Sub Divisional Police Officer, Darwha, District Yavatmal, that the petitioner has not made any violation of Kerosene Order under the Essential Commodities Act.

3] Once the respondents have placed it on record in no uncertain terms that the petitioner has not made any violation of Kerosene Order under the Essential Commodities Act, the Investigating Officer would forfeit any of his rights to carry out the investigation on the premise that some complaint has been filed wherein there is an allegation of commission of offence punishable under Section 7 r/w Section 3 of the Essential Commodities Act. In fact, by three orders passed on different dates, the dates of 10.04.2019, 02.03.2020 and 06.01.2021, we have placed on record

the glaring deficiencies in the whole investigation started in this case by the respondents and the unwarranted vanity shown by the Investigating Officer. But we did not then pass any final order thinking that there would be some material still which would be placed on record by the Investigating Officer and which would in the ultimate analysis convince us about the incorrectness of the observations made by us in these three orders. But, the position that has emerged today is otherwise, rather the position is that there is no change in the facts brought on record by our said three orders.

4] Today, Shri Udaysinha Mahavirsinha Chandel, Sub Divisional Police Officer, Darwaha, is personally present before the Court. He submits, on being duly authorized by the Superintendent of Police, Yavatmal, that there is an opinion given by the Supply Officer to the effect that no violation has been committed by the petitioner vis-a-vis the Essential Commodities Act. Then, he also submits that the stock of kerosene which was found at the spot on the date of the incident was within the maximum holding capacity of the petitioner under the Kerosene license granted to him. He also does not dispute the correctness of the facts brought on record vide our orders dated 10.04.2019, 02.03.2020 and 06.01.2021.

5] If this is the position, we see no warrant in continuation of the investigation for the alleged violation of Section 3 r/w Section 7 of the Essential Commodities Act against the petitioner. We find that there is no material available on record which would show commission of any offence punishable under the said provision of the Essential Commodities Act.

6] In the result, this petition deserves to be allowed in so far as it relates to prayer regarding quashing and setting aside of the impugned F.I.R. The petition is accordingly allowed. The impugned F.I.R. No. 0393/2018 registered at Police Station Ner (Parsopant), District Yavatmal, on 02.09.2018 for the offence punishable under Sections 3 and 7 of the Essential Commodities Act, is hereby quashed and set aside.

7] Rule is made absolute in above terms. No order as to costs.

JUDGE

JUDGE