

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2529 OF 2021

PANDURANG BABURAO RATHOD

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. B.M. Dhanure, Advocate for applicant

Mr. R.V. Dasalkar, APP for respondent Nos.1 to 3

...

CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.

RESERVED ON : 20th SEPTEMBER, 2022

PRONOUNCED ON : 21st OCTOBER, 2022

ORDER :

1 Present application has been filed by the public servant, who has been arrayed as accused in connection with Crime No.109/2018 dated 19.07.2018 registered with Kuntur Police Station, Tq. Naigaon, Dist. Nanded for the offence punishable under Sections 420, 120-B of the Indian Penal Code, 1860 and under Sections 3, 4 of the Essential Commodities Act, 1955; for quashment of First Information Report against him, by invoking the inherent powers of this Court under Section 482 of the Code of Criminal

Procedure, 1973.

2 Heard learned Advocate Mr. B.M. Dhanure for the applicant and learned APP for respondent Nos.1 to 3.

3 It has been vehemently submitted on behalf of the applicant that when the First Information Report was lodged at the behest of PSI Mr. Prakash Mule on behalf of State after the raid was conducted on 18.07.2018 around 2.00 p.m. name of the present applicant was not arrayed as accused. He came to be added for the first time by remand report dated 22.12.2020. The applicant came to be arrested, he was remanded to Police Custody and thereafter he was sent to Magisterial Custody and then released on bail by learned Judicial Magistrate First Class, Naigaon, Tq. Naigaon, Dist. Nanded on 06.01.2020, however, the applicant came to be suspended. Now, the position of the investigation is that the investigation is now transferred to respondent No.3 – Deputy Superintendent, Criminal Investigation Department, Nanded. The applicant was initially serving as Peon with District Collector Office, Parbhani in the year 1999, then he was transferred to District Collector Office, Hingoli. He came to be promoted to the post of Clerk in the year 2006 and transferred to Tahsil Office, Kalamnuri, Dist. Hingoli. He was working as Lifting Representative (Uchal Pratinidhi). He

was then transferred to District Collector Office, Hingoli (Supply Department) as Lifting Representative on 02.05.2018. Though the First Information Report has been lodged in 2018, yet the charge sheet is not filed. The duties and liabilities are fixed in the agreement dated 04.07.2015 which is between Transport Contractor, District Supply Office, Hingoli and the Collector, Hingoli in respect of transportation of grains from the depot/godown of the Food Corporation of India to all Government godowns and then to all Fair Price Shops. As per the duty that was cast on the applicant he had verified the authority letter, verified the truck numbers and permitted to lift the bags of rice and wheat to the concerned authorities. Except this work he has not done any other work. There was no intention to cheat anybody. The First Information Report and other documents will not show that the ingredients of the offence are attracted against the present applicant. It would be a futile exercise to ask the applicant to face the trial. Further, as per the recent order passed by the Deputy Commissioner (Revenue) – cum – Member Secretary of Divisional Suspension Review Committee, Aurangabad, the suspension of the present applicant has been revoked by order dated 30.09.2021. His promotional avenues would affect if the crime against him is not quashed and set aside.

14.10.2011 and 28.03.2018, wherein decisions have been taken to have committees to re-assess the suspension orders of the Government servants and the procedure has been laid down as to what procedure is required to be adopted. Learned APP is not disputing that the applicant has been now reinstated, however, he submits that since there is evidence that has been collected against the present applicant, case is not made out to quash the First Information Report. The investigation is still pending. The role of the present applicant is that he was the Lifting Representative, who has to permit the Contractor to lift the grains as per the order as well as the entitlement. As per the First Information Report it is stated that in all 18 trucks were filled from the godown of Food Corporation of India. All those trucks were belonging to Baheti Group and all the trucks were taken to factory in Krishnoor. The factory belong to one Ajay Baheti and Manager was Prakash Tapdiya. No documents were found with the said trucks. The magnitude of the offence has increased and, therefore, the investigation has been handed over to C.I.D. The misappropriation and the grains involved were to the tune of Rs.1,83,49,000/- and, therefore, this is not a fit case where inherent powers should be exercised.

5 First and the foremost thing, that is, required to be noted is that investigation is not yet complete and now it has been given to C.I.D. that

itself would clarify the seriousness of the offence. The First Information Report lodged by PSI Mr. Mule would show that upon the tip that was received the raiding party had gone to the godown of Food Corporation of India in Jawahar Nagar area, wherein the trucks were loaded and they were taken to factory in Krishnoor belonging to Baheti Group. It is also to be noted that at that point of time the offence came to be registered under Section 420, 120-B of the Indian Penal Code and under Section 3, 4 of the Essential Commodities Act. As the investigation progressed it was transpired that in all 10 trucks filled with grains were seized and the value of the entire material seized was to the tune of Rs.1,83,49,000/-. Learned Advocate appearing for the applicant has tried to submit that this amount is inclusive of the valuation of the truck and if that is deducted, then, the amount would be less. Even if that is done; yet, that amount is in lacs of rupees.

6 It is not in dispute that the present applicant was serving as Lifting Representative and he was supposed to permit lifting of the grains. Whether he has done his work as allotted may be a subject-matter of Departmental Enquiry; yet, if it is made with mala fide intention, in conspiracy, then, definitely, it amounts to a criminal offence also. Under such circumstance, at this stage, no inherent powers can be used for quashing the First Information Report, in which later on the involvement of the petitioner

has been transpired. The department, in which he is serving, might have reinstated him in view of the Government Resolutions, but that will not give him any right for quashment of the First Information Report. Application, therefore, stands rejected.

(Rajesh S. Patil, J.)

(Smt. Vibha Kankanwadi, J.)

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