

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3809 OF 2021

Dinkar Shivaji Nikam

...Petitioner

Versus

The State of Maharashtra and Anr.

...Respondents

....

Mr. P. A. Pol a/w Mr. Ranjit S. Hatkar i/by Pol Legal Juris, Advocate
for the Petitioner.

None for Respondent No.2.

Mr. Rajesh Darvesh Advocate for the Respondent Nos.3 and 4

Mr. S.R. Agarkar, APP for the Respondent - State.

CORAM : PRAKASH D. NAIK, J.

DATE : 30th AUGUST, 2022.

P.C.

1. The Petitioner challenges the Order dated 25th February, 2021 passed by District Collector, Sangli under Section 6-A of Essential Commodities Act and Order dated 3rd September, 2021 passed by learned Additional Sessions Judge, Sangli in Criminal Appeal No.13 of 2021 preferred under Section 6-C of Essential Commodities Act.

2. On 13th January, 2021, information was received that action is required to be initiated in relation to illegal storage of Essential Commodities. Panchas were arranged. All of them went to the godown near Poultry Farm situated at Gokul Mangal Karyalay. The informant informed that rice and wheat supplied from the public distribution system is being stored in the said godown. On inquiry it was revealed that the godown is used by Rambhau Ananda Sapkal.

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He was called at the spot. Search of godown was conducted. The godown was opened and rice and wheat was found stored in the godown. 221 bags of rice having weight of 50 kg per bag and 98 bags of wheat of 50 kg were found stored in godown. Labels of Food Corporation of India were found on bags. On questioning Rambhau Ananda Sankpal he gave evasive answers. On finding of labels of F.C.I. it was believed that the commodities were meant for public distribution shops and it was illegally stored by Rambhau Sankpal. Samples of commodity were obtained. Rambhau Sankpal disclosed that the owner of the godown is Tukaram Bhau Gaikwad. Panchanama was recorded on 13th January, 2021. On 14th January, 2021 the Supply Inspector lodged FIR with Vita Police Station for offences under Sections 3 and 7 of Essential Commodities Act against Rambhau Ananda Sankpal and Tukaram Bhau Gaikwad. Rambhau Sankpal was arrested and released on bail. Petitioner's name was revealed during course of investigation. The Petitioner preferred application for anticipatory bail before District Judge, Sangli. It was allowed by Order dated 2nd February, 2021.

3. The District Collector initiated confiscation proceedings under Section 6-A of the Essential Commodities Act. The alleged illegal storage of goods/commodities was 117.13 quintal rice (221 bags) and 51.74 quintal wheat (98 bags). Tukaram Bhikaji Gaikwad,

Rambhau Sankpal and Dinkar Shivaji Nikam (Petitioner) were defendants. It was stated that, godown is owned by defendants No.1, and it is used by defendants No.2. FIR was registered on 14th January, 2021. Goods were seized. Defendant No.1 Tukaram Gaikwad appeared alongwith his Advocate. According to him godown situated at Kasaba near Jaykrishna Poultry Farm is owned by him. On 17th December, 2018 the godown is let out to Dinkar Nikam for a period of 1st January, 2019 to 31st December, 2021 for selecting and clearing commodities Agreement executed between parties was produced. Rambhau Sankpal denied his involvement in seizure. Petitioner appeared through his Advocate and contended that, the Petitioner possesses valid 'A' class license issued by Market Committee, Vita. The owner of godown is Tukaram Gaikwad. The premises is given to license basis for a period from 1st January, 2018 to 31st December, 2021 by executing agreement on 17th December, 2018. The commodity found in godown belongs to Petitioner. He had purchased the wheat from Pandurang Zhagade. He produced receipts of purchase. Rice is purchased from Sudam Raghunath Jadhav on 8th January, 2021. He produced receipt of purchase. Seized commodities are not from government fair price shop. The Collector held that, when the Supply Inspector and Police visited spot of incident, they found labels of F.C.I. with seized goods. Thus the

seized commodity was illegally stored. Action is required to be initiated under Section 6-A of the Essential Commodities Act. The District Collector vide Order dated 25th February, 2021 confiscated the goods.

4. The Petitioner challenged the Order dated 25th February, 2021, by preferring Criminal Appeal No.13 of 2021 under Section 6-C of the Essential Commodities Act. It was submitted that, the District Collector, Sangli has not considered the fact that, the Petitioner is license holder. The District Collector has not considered the fact that, the godown owned by Tukaram Gaikwad was handed over to Petitioner on the basis of license from 1st September, 2019 to 31st December, 2021. In spite of objection to report submitted by Tahsildar, no personal inspection of commodities was done by District Collector. Provisions of Section 6-A of the Act are not applicable to seized commodities. The Petitioner is neither dealer nor having fair price shop. As per clause 16 of Control Order, 2001, rice is only a scheduled commodity and not essential commodity. The appellate authority had observed that, the seized commodities were having seal/label of Food Corporation of India and no explanation was given regarding purchase of these commodities by Tukaram Gaikwad and Rambhau Sankpal. The Order of District Collector was confirmed and appeal was dismissed by Order dated

3rd September, 2021.

5. Learned Advocate for the Petitioner submitted that the Order of confiscation is contrary to law. The Order dismissing appeal was passed without appreciating the facts and law. The Petitioner is in business of sale and purchase of food grains. No license under Essential Commodities Act is required. The Petitioner is in possession of valid 'A' (Class) license issued by Market Committee, Vita. The Petitioner stores the food grains at godown of Tukaram Bhikaji Gaikwad. The said godown was used by him under Agreement for a period from 1st January, 2018 to 31st December, 2021. No storage license or any other kind of permission is required to store food grains. The Respondent No.2 had visited the godown on the basis of complaint by third person. The proceedings under Section 6-A of the Essential Commodities Act were initiated to confiscate the commodities. The Petitioner produced the documentary evidence about purchase of goods. The provisions of Essential Commodities do not apply to the Petitioner. The FIR is silent about which Order issued under Section 3 of the Essential Commodities Act have been violated by the Petitioner. There is no evidence on record about diversion of commodities or black marketing. On the basis of bags with label of F.C.I., no adverse inference could be drawn. There is no evidence to show that the commodities were diverted from the

Government godown. The empty bags are recycled in the market. The Petitioner submitted all the bills of commodities to the Inspector for verification. No storage or transfer license is required for the rice or wheat under the provisions of Essential Commodities Act. Rice is scheduled commodity and not essential commodity. In the absence of violation of order made under Section 3 of Essential Commodities Act, no confiscation is permissible under Section 6-A of the Act. It is essential for application of Section 6-A to show that there is violation of Order made under Section 3 of the Act. Section 3 deals with powers of control of essential commodities, production, supply, distribution etc. Exercise of such power can be done by order. The Sessions Court failed to decide whether the rice and wheat is a scheduled commodity.

6. Learned Advocate for Petitioner has relied upon following decisions :

- i. Kailas Prasad Yadav and Anr. V/s. State of Jharkhand and Anr. 2007 AIR SCW 4741.*
- ii. Shambhu Ram V/s. State of Jharkhand and Anr., decided by High Court of Jharkhand in Cri. M.P No.1095 of 2013.*
- iii. Manju Sahu @ Maju Devi V/s. State of Jharkhand, decided by High Court of Jharkhand in Cr. M.P No. 148 of 2008.*

7. Learned APP submitted that the goods are liable for confiscation. During the interrogation of the co-accused in the FIR No.24/2021 it was revealed that the Petitioner had taken the godown on rent from Tukaram Gaikwad. Tahasildar submitted report to District Collector, Sangli. The Petitioner had admitted that there was an agreement between Petitioner and co-accused Tukaram Gaikwad and the goods stored in the godown belongs to him. The District Collector had confiscated the goods under Section 6-A of the Act. The appeal challenging the said Order has been dismissed. The goods were directed to be disposed by following procedure. Rice and wheat comes under purview of Essential Commodities Act. The seized commodities were having labels of Food Corporation of India and no explanation provided by the Petitioner.

8. The Supply Inspector and Police acted on information provided by informant that Government owned food grains are illegally stored in godown. The team proceeded to godown. It is alleged that the bags containing rice and wheat were having labels of F.C.I. Goods were seized. FIR was registered. It was presumed that commodities are belonging to F.C.I. and meant for fair price shops. However, except inferences, no cogent evidence was collected to fortify the said allegation. FIR was registered under Sections 3 and 7 of Essential Commodities Act on 14th January, 2021. The confiscation

order was passed on 25th February, 2021. Even till then the case of Respondent was based on surmises that labels of F.C.I. denotes that food grains were stored illegally. The Petitioner had produced purchase receipts. There was no evidence to show that food grains were from fair price shop. The appellate Court has drawn inferences, unsupported by any evidence.

9. The relevant part of Section 6-A of the Essential Commodities Act reads as follows:

“6-A. Confiscation of essential commodity. (1) Where any [essential commodity is seized] in pursuance of an order made under section 3 in relation thereto, [a report of such seizure shall, without unreasonable delay, be made to] the Collector of the district or the Presidency town in which such [essential commodity is seized] and whether or not a prosecution is instituted for the contravention of such order, the Collector [may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied] that there has been a contravention of the order [may order confiscation of-

- (a) the essential commodity so seized;
- (b) any package, covering or receptacle in which such essential commodity is found; and
- (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity:]

10. It is not established under which order made under Section 3 of the Act, the commodities were seized. Which Order made under Section 3 of the Act is violated. Confiscation of an Essential

commodity is permissible only if the provisions of any order made under Section 3 of the Act are violated. Violation of an order made under Section 3 of the Act, is a precondition for passing order of confiscation. The Respondents have not pointed out which order under Section 3 of the Act is violated. Merely on account of bags of grains having labels of F.C.I. would not be sufficient to draw adverse inference in the absence of any evidence to establish that goods were brought from F.C.I. or belongs to F.C.I. and or meant for fair price shop.

11. The Apex Court in the case of *Kailas Prasad Yadav and Anr. V/s. State of Jharkhand and Anr. 2007 AIR SCW 4741* has observed that confiscation of essential commodity is permissible only if any order made under Section 3 of the Essential Commodities Act is violated. A valid seizure is *sine qua non* for passing an order of confiscation of property. In the said case the High Court had drawn adverse inference since wheat seized were found kept in F.C.I. bags meant for public distribution system. It was held that the authorities must arrive at a clear finding in regard to violation made under Section 3 of the Act. In the case of *Shambu Ram V/s. State of Jharkhand (Supra)*, the facts of the case were that, 389 bags of rice were seized from premises and vehicle. 104 bags of rice were having marking of F.C.I. and therefore it was suspected that, Petitioner

therein has indulged himself in doing business of rice belonging to F.C.I. illegally. It was held that, merely on the ground that 104 bags of rice were having marking of F.C.I. does not make out a case under Section 7 of Essential Commodities Act in absence of any material to disclose that the rice belong to any of the godown of F.C.I. as empty bags having marking of F.C.I. are available openly in the market. No order relating to sale, purchase, storage of rice is in vogue. In the case of *Maju Sahu @ Manju Devi (Supra)*, case was registered against the Petitioner in that case under Section 7 of Essential Commodities Act on the allegation that 530 bags rice having marking of F.C.I. were found stored in a shop of Petitioner and as such the case was lodged under assumption that it has been brought from the godown of F.C.I. It was argued at the instance of Petitioner that, no order relating to sale, purchase, storage, transportation etc. was in vogue and therefore no offence can be said to have been committed by Petitioner even if 530 bags had been found in the shop of the Petitioner. Simply for the reason that one is found in possession of the rice or wheat in a bag having marking of F.C.I., he cannot be said to have committed offence under Section 7 of the Act as empty bags having marking of F.C.I. is easily available in the market. No order regulating sale, purchase and storage etc. issued under Section 3 of the Essential Commodities Act was in vogue. In absence of any such

order, one cannot be said to have committed offence under Section 7 of the Act, even if he indulges in sale, purchase and storage of rice.

12. There is no evidence of black marketing. It is not verified whether the goods are from F.C.I. No Order was issued under Essential Commodities Act. According to Petitioner he has purchased goods and produced receipts. Confiscation is required to be set aside.

13. In the aforesaid circumstances, the Respondent ought not to have passed an Order under Section 6-A of the Act. Hence, the impugned Order passed by the Collector and the learned Sessions Judge are required to be set aside.

14. Hence, I pass the following order;

ORDER

- i. The Criminal Writ Petition No. 3809 of 2021 is allowed.
- ii. Impugned Order dated 25th February, 2021 by District Collector, Sangli confiscated goods seized from godown situated at Vita, Karad Road, near Gokul Mangal Karyalay on 13th January, 2021 vide Section 6 and 6-A of Essential commodities Act and Order dated 3rd September, 2021 passed by Additional Sessions Judge in Criminal Appeal No.13 of 2021 confirming Order dated 25th February, 2021 passed by District Collector,

Sangli as per Section 6-A of the Essential commodities Act are quashed and set aside.

iii. Criminal Writ Petition stands disposed off.

[PRAKASH D. NAIK, J.]