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

CRIMINAL APPLICATION (APL) NO.654 OF 2022

Shri Rupesh Balwantrao
Wankhede, aged about 41
years, r/o plot No.88, Navnit
Nagar, Wadi, Police Station
Wadi, Tahsil and District Nagpur. Applicant.

:: V E R S U S ::

1. The State of Maharashtra,
through PSO Police Station
Wadi, Amravati Road, Nagpur,
Tahsil and District Nagpur.

2. Shri Rajeshkumar Baburao
Lokhande, aged about 53
years, Superintendent, Shaleya
Poshan Aahar, Panchayat
Samiti, Nagpur (Rural), District
Nagpur. **Non-applicants.**

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Shri P.A.Jibhkate, Counsel for the Applicant.
Shri S.R.Charpe, Counsel for Non-applicant No.2.
Shri V.A.Thakare, Additional Public Prosecutor for Non-applicant
No.1/State.

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CORAM : **ROHIT B.DEO & URMILA JOSHI-PHALKE, JJ.**
DATE : **18/11/2022**

ORAL JUDGMENT (Per : Urmila Joshi-Phalke, J.)

1. Heard learned counsel Shri P.A.Jibhkate for the
applicant, learned counsel Shri S.R.Charpe for non-applicant No.2
and learned Additional Public Prosecutor Shri V.A.Thakare for non-
applicant No.1/State. **Rule.** Rule made returnable forthwith and
heard finally by consent of learned counsel for parties.

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2. By this application, the applicant seeks quashing of First Information Report vide Crime No.23 dated 19.1.2021 registered with Wadi Police Station, Amravati Road, Nagpur for offence punishable under Section 379 of the Indian Penal Code along with chargesheet No.150/2022.

3. It is contention of the applicant that report was lodged by one Rajeshkumar Baburao Lokhande with Nagpur Shahar Police Station on allegation that on 19.1.2021 the complainant was serving in Nagpur Panchayat Samiti and was looking after supervision regarding distribution of food grains of Midday Meal to students. It is duty of every school to submit submissions regarding distribution of food grains under the Scheme of Midday Meal. It revealed to him that Late Shri K.C.Thakare School Bhakta Pundlik Nagar, Wadi Nagpur was allotted 8958 Kilograms Rice, but the school distributed only 7247 Kilograms Rice and, therefore, he visited along with officials the said school and observed only 250 Kilograms Rice lying in stock. During enquiry, it revealed to him that rest of stock was misappropriated and taken out of the school. He, therefore, lodged the report to the police station alleging that rest of stock was stolen and the applicant was arraigned as an accused.

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4. It is contention of the applicant that in compliance of instructions issued by the School Education and Sports Department, State of Maharashtra by Circular dated 15.6.2020, instructions were issued regarding distribution of food grains to students at their residences. As per directions of the Incharge Headmistress, the applicant, who is working on the post of peon and having knowledge of driving, brought Car of the President of the Management for distribution of remaining food grains and he distributed the same at residences of students. He was falsely implicated in the alleged offence. As per the First Information Report, the only role attributed to him is that he drove the Car along with food grains and nothing is recovered from him. He prays that since no offence is made out against him, the First Information Report lodged against him be quashed and set aside.

5. Learned Additional Public Prosecutor Shri V.A.Thakare for the State has opposed the application strongly on the ground that one four wheeler bearing registration No.MH-40/AC/8389 came to be intercepted and 238 Kilograms Rice was found in the said Car. The said Car was driven by the applicant. Thus, *prima facie* material shows involvement of the applicant in the crime. Hence, the application deserves to be rejected.

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6. We have heard submission of rival parties and perused material on record along with the First Information Report. The offence is registered on the basis of the report lodged by an official of Nagpur Panchayat Samiti. The only allegation against the applicant is that he was found driving the Car and he was found carrying stock of Rice outside the school. On that basis, the offence was registered against the applicant. It reveals from the First Information Report that the applicant was found along with car and 25 Kilograms Rice was found in the said Car. The applicant is a peon and was asked by the headmistress to drive the car of the President and he has carried the said stock outside the school to distribute the same as he was directed. Thus, merely because he drove the Car is not sufficient to attract provisions under Section 379 of the Indian Penal Code against him. Thus, *prima facie*, it appears that he has only followed directions of Incharge Headmistress for which he cannot be held guilty. *Prima facie*, no material is against the applicant to attract provisions under Section 379 of the Indian Penal Code. In this view of the matter, we are inclined to allow the application. Hence, we proceed to pass following order:

ORDER

(1) The criminal application is allowed.

Judgment

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(2) First Information Report vide Crime No.23 dated 19.1.2021 registered with Wadi Police Station, Amravati Road, Nagpur for offence punishable under Section 379 of the Indian Penal Code along with chargesheet No.150/2022 is hereby quashed and aside.

Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(ROHIT B.DE0, J.)

!! BrWankhede !!

**BHUSHAN
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