

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.35 OF 2022

Nilesh s/o Rajendra Gorte,
Age : 33 years, Occupation : Agri.,
Malwade Galli, Hadgaon,
District Nanded. ...Applicant

VERSUS

The State of Maharashtra
Through P.P., High Court Aurangabad
Copy served on G.P. Office,
High Court Bench at Aurangabad ...Respondent

...

Ms. Surekha G. Chincholkar, Advocate for the applicant.
Mr. S.P. Sonpawale, APP for the respondent/State.

...

CORAM : S.G. MEHARE, J.

RESERVED ON : FEBRUARY 02, 2023

PRONOUNCED ON : APRIL 19, 2023

JUDGMENT :-

1. Heard.
2. The petitioner has impugned the judgments and orders of conviction passed by the learned Judicial Magistrate First Class, Hadgaon, in R.C.C. No.34 of 2013 dated 16.03.2015 and confirmed by the learned Additional Sessions Judge-2, Nanded in Criminal Appeal No.35 of 2015 dated 20.01.2022 for the offences punishable under Section 3 and 7 of the Essential Commodities Act.
3. The prosecution case, in brief, is that on 23.06.2010, the SDPO Bhokar, received the secret information that the

applicant/accused was using domestic gas cylinders for commercial use in his tea shop. Therefore, on information and instructions of SDPO, Bhokar, a police head constable Wahidkhan Pathan took a raid with other policemen in the shop of the accused. They found a domestic gas cylinder attached to the stove and two empty gas cylinders in the tea shop. They seized those cylinders and lodged the report. The panchnamas of the spot and recovery of articles were drawn.

4. As per the statement of the applicant under Section 313 of Cr.PC., he has a case of total denial.

5. Against the two concurrent judgments in the present revision petition, his counsel Ms. Chincholkar has vehemently argued that the regulator allegedly used to connect the stove was not recovered. PW-1 did not support the seizure panchanama. The API had no jurisdiction to investigate the crime. The applicant did not violate the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 (for short, 'L.P.G. Order, 2000'). Clause 13 of the said order did not empower the A.S.I., to enter, search and seize the alleged cylinders used in the crime. To bolster her arguments, she relied on the case of Zubair Ahmed Mushtaque Ahmed and Others Vs. State of Maharashtra, 2020 DGLS (Bom.) 640 and Sunil Premasukh Sancheti and Ors Vs. State of Maharashtra, 2006 BCI 188. She further argued that the learned Judicial Magistrate First Class has

erroneously held that the applicant has violated the L.P.G. Order, 2000. The prosecution did not prove that the applicant was the owner of the shop where the alleged gas cylinders were found. However, it was erroneously observed that the accused admitted his proprietary in respect of the tea shop and seizure of gas cylinders from the said shop. In the absence of document/evidence about the ownership document of the shop in which the alleged gas cylinders were recovered, the learned Additional Sessions Judge committed a grave error of law in believing that the applicant was the owner of the cylinders found in the shop. The evidence of PW-4 describes that the applicant has not committed the alleged offence. The legal aspects, like no power to the investigation officer and not proving the title or ownership of the applicant over the tea shop, have not been considered by both courts. Therefore, the revision is liable to be allowed.

6. Learned APP opposing the application would argue that the applicant was running the tea shop and never denied ownership over the tea shop. The applicant was illegally using domestic gas cylinders to make money. The applicant has no explanation of how he was in possession of the said cylinders. The circumstances have been correctly considered, and the applicant was correctly held as owner of the shop premises. The judgments relied upon by the applicant were

against the dealer and not the unauthorized user. Therefore, the petition deserves to be dismissed.

7. Appreciating the arguments advanced by both learned lawyers, the following legal questions were raised :

(I) Whether the API had the power to investigate the crime for violating the L.P.G. Order, 2000?

(II) Was it essential to prove that the applicant was the owner of the shop where the domestic cylinders were found?

8. The prosecution has a case that the applicant had violated the L.P.G. Order, 2000. The use of domestic gas for commercial use has been prohibited. The offence under the Essential Commodities Act is cognizable; hence, any police officer, as a part of the duty, may investigate the crime. The acts of the accused were offences under the Essential Commodities Act as well as the Indian Penal Code. Three cylinders were found in the tea shop of the applicant. The investigation has been done by a competent A.P.I.

9. In the case of Zubair Ahmed Mushtaque Ahmed (cited supra), the Division Bench of Bombay High Court at Nagpur Bench held that in L.P.G. Order, 1998, the power to enter, search and seizure was entrusted to the Officer of the Department of Food and Civil Supplies of the Government, not below the rank of an Inspector authorised by such Government and notified by the Central Government, or any officer not below the rank of a Sales Officer of a

Government Oil Company authorised by the State Government and notified by the Central Government, may with a view to ensuring compliance with the provisions of L.P.G. Order, for the purpose of satisfying himself that this order or any order made there under has been complied with.

10. The L.P.G. Order, 2000 replaced the order of 1998. Clause 13 of the said Order empowers the Officer listed therein to enter, search and seize articles with the view to secure due compliance of the said order or any other order made thereunder. Admittedly in the said clause, the police officer below the rank of Inspector was not empowered to enter, search or seize the petroleum products. However, the State of Maharashtra, Mumbai, had issued a Government Resolution dated 31.01.2011 under L.P.G. Order, 2000 and conferred the powers upon the Police Inspector to be an investigation officer. In case of Jayendra Sadarmal Talereja Vs. State of Maharashtra, 2019 DGLS (Bom.) 1388, the Court held that the person not below the rank of Inspector had the power to enter, search and seize the essential commodities and set aside the order of the trial Court. In the case of Zubair Ahmed Mushtaque Ahmed (cited supra) also, the Court held that the A.S.I. is not empowered to exercise the powers under the said Order of 2000. However, in the case of Dinesh Bhawarlal Sarda Vs. State of Maharashtra and Ors, 2009 (1) Bom CR (C.R.I.) 47, the Division Bench held that in view of Section 10A of the

Act (Essential Commodities Act), 1955 read with Section 156 of the Cr.P.C., any Police Officer in-charge of a Police Station can start investigation if it comes to his knowledge that a cognizable offence has been committed within the jurisdiction of Police Station. Anti-social and economic offenders with the motive of profiteering ought not to go unpunished due to hallow technicality. Police do have statutory power to investigate and present charge-sheet in Court in accordance with the law. It cannot be laid down as a general rule of law that where there is a special law, making a particular Act an offence and providing punishment for such offence; the General Law must be held to be inapplicable. Where the statute is silent, and there is no exclusion, then the Code (Criminal Procedure Code) will apply as a parent statute in respect of inquiry, investigation and trial of Criminal cases. Section 4(2) of the Cr.P.C. provides that the provisions of the Code of Criminal Procedure are also applicable in cases where an offence under any other law is being enquired, investigated, tried or otherwise dealt with subject to any enactment for the time being in force regulating the manner and basis of investigation inquiry, trial or otherwise dealing with such offence. Therefore, Police do have the power to inquire, investigate offences, and take steps, such as search, seizure, etc., in case there is reason to believe that a cognizable crime is committed. In short, the law has been laid down that the Police have unfettered powers to make an enquiry, enter the premises and

seize the material. The judgment of Sunil Premasukh Sancheti was of Single Bench, and the judgment of Zubair Ahmed Mushtaque Ahmed was of the Division Bench. In addition to the above, the Government Resolution dated 31.01.2011 has conferred the powers to make the investigation upon the designated Police Inspector. The constable who had received the information was admittedly not the Officer of the rank of Police Inspector. However, the prosecution has a case that he acted upon the direction of the Deputy Superintendent of Police, who received the secret information. Usually, expressed power conferred upon the Officer with designation cannot be delegated. In the case at hand, an objection about the power of A.S.I. to investigate was raised, but the prosecution did not prove that an officer below the rank of Inspector had the power to investigate the crimes for the violation of the L.P.G. Order 2000.

11. The prosecution has a case that since the accused was in unauthorized possession and illegally using the domestic gas cylinders for commercial use, it is not unnecessary to prove the title of the shop. The accused did not deny the seizer from the shop where he was present. The learned Judicial Magistrate First Class discarded the defence, giving the reasons that even if, for the time being, it is assumed that the accused was not the proprietor, he still cannot escape the law of contravening L.P.G. Order, 2000. In criminal cases, ownership of the articles, if the offence pertains to its illegal

possession, the ownership assumes importance. It was possible to the prosecution to prove the ownership of the shop by collecting the documents. Therefore, in the case at hand, the mere presence of the applicant in the shop was insufficient to believe that he was in possession of the cylinders as its owner. The prosecution was to prove the case beyond a reasonable doubt. The regulator used for the gas cylinder was also not seized. Therefore, the Court is of the view that the prosecution has failed to prove the case against the applicant beyond a reasonable doubt.

12. For the above reasons, the Court is of the view that both impugned judgments and orders are erroneous, illegal and improper, therefore, warrant interference. Now the Court proceeds to pass the following order:

ORDER

- I) The revision application is allowed.
- II) The judgments and orders of conviction passed by the learned Judicial Magistrate First Class, Court No.1, Hadgaon in R.C.C. No.34 of 2013 dated 16.03.2015 and confirmed by the learned Additional Sessions Judge-2, Nanded in Criminal Appeal No.35 of 2015 dated 20.01.2022, are quashed and set aside.
- III) The applicant is acquitted under Section 248 of Cr.P.C. for the offence punishable under Section 3/7 of the Essential Commodities Act, 1955.

- IV) The fine amount, if any, deposited by the applicant be returned to him.
- V) The bail bonds and surety bond stand cancelled, and surety stands discharged.
- VI) Record and proceedings be returned to the learned Judicial Magistrate First Class, Court No.1, Hadgaon.
- VII) Rule is made absolute in above terms.

(S.G. MEHARE, J.)