

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1106 OF 2021

Babanrao S/o Bhagwan Ghorpade ...Petitioner

Versus

The State of Maharashtra & Anr ...Respondents

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Mr. N.L. Jadhav, Advocate for the Petitioner.

Mr. S.D. Ghayal, APP, for the Respondent – State.

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CORAM : SMT. ANUJA PRABHUDESSAI &
R.M. JOSHI, JJ

DATE : FEBRUARY 01, 2023

PER COURT :

1. With consent, heard finally at the stage of admission.

2. This Petition is filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 for quashing the first information report bearing C.R. No. 94/21 dated 18/02/2021 registered with the Pathardi Police Station, District Beed & R.C.C. No. 548/2022 pending on the file of learned JMFC, Pathardi for the offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955.

3. The Petitioner is a holder of license issued by Agriculture Produce Market Committee, Patoda to sell and purchase the agricultural commodities. On 18.02.2021 at about 03.15 p.m acting on a tip of, police intercepted truck bearing no. MH-16-CC-5509 and seized rice weighing 306.60 quintals. The Police Constable attached to the office of Sub-Divisional Police Officer, Shevgaon, Ahemdagar lodged the FIR against the Petitioner for illegally transporting the rice meant for the public distribution system to the State of Gujarat.

4. Learned Advocate for the Petitioner submitted that there is absolutely no material on record to indicate that the Petitioner has committed any offence under the provisions of Essential Commodities Act. He submits that the Petitioner is having licence of Agricultural Produce Market Committee (APMC), Patoda for sale and purchase of agricultural produce and food grain. He submits that the Petitioner is not running a fair price shop but is on the business of sale of food grains. The Petitioner has tendered the receipts, tax invoices, purchase register etc, to the investigating

officer. He submits that there is absolutely no material to indicate that the seized rice is of Public Distribution System. On the contrary, the report of the concerned Tehsildar clearly states that the seized rice was not meant for Public Distribution System.

5. Learned APP opposed the said submissions by pointing out the first information report and contending that Petitioner has failed to show that the rice bags which were seized at the spot were purchased from the open market. He also drew attention of the Court to the order passed by the competent authority stating that rice as essential commodity. Thus, according to him this is not a fit case for quashing criminal proceedings.

6. Section 3 of the Essential Commodities Act confers powers upon the Central Government to maintain control and regulate smooth and uninterrupted supply of essential commodities for equitable distribution at a fair price and to issue control order under the Act for regulating or prohibiting the production supply and distribution and trade and commerce thereto. The contravention of any order made under Section 3 of the

Essential Commodities Act is made punishable under Section 7 of the Essential Commodities Act. In the instant case, it is alleged that the Petitioner was transporting for sale rice which was meant for Public Distribution System.

7. A perusal of the first information report and material collected during the investigation indicates that 600 bags containing rice which were being transported by the Petitioner to Ahemdabad by truck no. MH-16-CC-5509 were seized. There is no dispute that the Petitioner is having license of Agriculture Produce Market Committee, Patoda to deal and transport the agricultural products. The Petitioner had also produced before the investigating officer invoices in respect of purchase of rice and other documents relating to transport of rice.

8. The report of Tehsildar, Shirur, Kasar, which forms part of the charge-sheet indicates that seized bags of rice were not belonging to the rationing supply. In view of the report, the seized bags have been released and handed over to the Petitioner. Further the report of the verification of the stock in

the fair price shop of the wife of the Petitioner indicates that there was no difference in the stock of grains in the shop and sold to the beneficiaries. Thus, in the course of entire investigation, investigating agency has not been able to collect any material to indicate that the seized rice bags were from the pool of grains belonging to the rationing supply in the fair price shop.

9. As against this, though there is no burden on the Petitioner to prove his innocence, the statements and the documents collected during the investigation indicate that the Petitioner had purchased rice in the open market from the traders and made payment in respect of the said purchase by RTGS transaction. Thus, the perusal of the entire material on record do not indicate any cognizable offence against present Petitioner as contemplated by Section 3 and 7 of the Essential Commodities Act.

10. The Hon'ble the Apex Court in the case of State of Haryana and Ors Vs. Ch. Bhajan Lal and Ors reported in AIR 1992 SCC 335 has clearly held that in cases where no *prima facie* offence is made out from the

perusal of FIR as well as material collected during the investigation showing cognizable offence against the accused, he cannot be called upon to undergo the criminal process. In the present case making the Petitioner to undergo the rigors of criminal proceedings on the basis of material available on record will amount to sheer abuse of the process of law.

11. In the result, the Petition is allowed in terms of prayer clauses 'B' & 'B-1'. Consequently, first information report bearing C.R. No. 94/21 dated 18/02/2021 registered with the Pathardi Police Station, District Beed & R.C.C. No. 548/2022 pending on the file of learned JMFC, Pathardi for the offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955 are hereby quashed and set aside *qua* Petitioner.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J)