

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

CRIMINAL APPLICATION NO.4001 OF 2022

Dhanraj s/o. Nagorao Alane
and ors.

..Applicants

Vs.

The State of Maharashtra
and ors.

..Respondents

Mr.N.P.Patil – Jamalpurkar, Advocate for applicants
Mr.A.R.Kale, APP for respondent nos.1 and 2

**CORAM : R.G.AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATE : JUNE 09, 2023**

ORDER :-

This application under Section 482 of the Code of Criminal Procedure has been filed for the following reliefs :-

(B) The FIR No.265 of 2022 registered at Vivekanand Chowk Police Station, Latur and the Charge-Sheet in S.C.C. No.1827 of 2022 filed in the Court of Judicial Magistrate, First Class, at Latur against the applicants for the offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955, may please be quashed and set aside.

(C) The order bearing O. No.2022/Supply/Kavi-632 dated 11.10.2022 issued by respondent no.1 – Collector, Latur u/sec.6-A of the Essential Commodities Act, 1955 may please be quashed and set aside and the Collector, Latur, may please be directed

to forthwith release the White Colored Tempo bearing registration No.MH-24-J-8897 and 300 (50 Kg. Each) rice bags seized in Crime No.265 of 2022 registered at Vivekanand Chowk Police Station, Latur.”

2. The crime came to be registered pursuant to the FIR lodged by Police Head Constable attached with Crime Detection Branch, Office of the Superintendent of Police, Dist.Latur.

3. The gist of the averments in the FIR is that the informant along with other police staff and their officers were on patrolling duty on the intervening night on 17th and 18th May, 2022. A tip-off was received that food-grains (rice) meant for distribution through fair price shops were transported for being sold in black market. The police officials of the team were present near Guru lodge. The tempo of a particular description was seen approaching from Basweshwar Chowk. It was made to halt. Applicant no.1 was in the driver's seat. He was accompanied by applicant no.2 – Akshay, cleaner of the tempo. On inquiry, both of them disclosed to have loaded 300 bags of rice-grains from a fair-price shop for being delivered to Sanjay Agarwal, Chaitanya Pathak and Pankaj (applicant nos.3 to 5). The Naib Tahsildar serving with Supply Department

arrived in response to a phone call. The rice-grains bags came to be seized under panchnama. Pursuant to the FIR, crime vide C.R. No.265 of 2022 came to be registered for the offence under Section 3 punishable under Section 7 of the Essential Commodities Act, 1955 ("E.C. Act", for short). On investigation of the said crime, charge sheet has been filed.

4. Heard.

5. Learned counsel for the applicants would submit that the FIR is silent to state as to what was the order promulgated under Section 3 of the E.C. Act, for the breach of which the applicants were sought to be prosecuted for offence under Section 7 of the E.C. Act. According to learned counsel, since the FIR is silent in this regard, the FIR itself was liable to be quashed. He relied on the Division Bench judgment of this Court in the case of **Vijay Machindra Markad and anr. Vs. the State of Maharashtra and anr., Criminal Application No.492 of 2017 decided on 08.03.2017**. Learned counsel would further submit that although charge sheet has been filed on completion of the investigation, none of the police papers make out a case to proceed against any of the applicants. According to him,

allowing the prosecution to proceed against the applicants would be an abuse of process of Court. He, therefore, urged for allowing the application.

6. Learned APP would, on the other hand, submit that applicant nos.1 and 2 admitted to have had loaded the rice-grains bags from the fair-price shops. It is now for them to explain during trial of the case. He would further submit that so far as breach of the order under Section 3 of the E.C. Act, the prosecution may place on record the order of which breach has been committed. The applicant will have to face the prosecution, since, on due investigation, charge sheet has been filed and cognizance of the offence has already been taken.

7. Considered the submissions advanced. Perused the police papers and the authorities relied on.

8. Section 7 of the E.C. Act makes punishable contravention of any order made under Section 3 of the E.C. Act. It is, therefore, for the prosecution to place on record the order issued under Section 3 of the E.C. Act, which has allegedly been contravened by the

applicants herein. Section 3 of the Act speaks for issuing of an order by the Central Government, providing for regulating or prohibiting the production, supply and distribution of essential commodity. The rice-grains is admittedly essential commodity in view of Clause (3) of the Schedule to the E.C. Act. The State Government has also been authorised to issue such orders.

9. Admittedly, the FIR is silent to record therein what was the order issued by either Central Government or State Government to regulate sale of essential commodity, namely, rice-grains. True, on investigation of the crime, charge sheet has been filed. A copy of the charge sheet is on record. The order issued under Section 3 of the E.C. Act, for the breach of which the applicants are sought to be prosecuted, does not form part of the police papers. As such, as of now, there is nothing before us to suggest for contravention of what order, the applicants are to be tried.

10. There is another aspect of the matter. None of the bags containing seized rice-grains, bears any monogram to identify the food-grains to have been meant for distribution only through the public distribution system. There is also nothing to suggest from

which of the fair-price shop owners, the food-grains were loaded in the tempo. What has been stated or disclosed by applicant nos.1 and 2 to the informant (police official) on interception of the tempo, is inadmissible in evidence in view of Section 25 of the Evidence Act, being confession to the police officer. The other material forming part of the charge sheet, is in the nature of the statements of police officials, who were members of the patrolling team, in whose presence, the tempo came to be intercepted and food-grains were seized.

11. In view of the above, allowing the prosecution to proceed against the applicants herein would necessarily be an abuse of process of the Court. The application, therefore, deserves to be allowed so far as quashment of the proceedings in S.C.C. No.1827 of 2022.

12. So far as the proceedings under Section 6-A of the E.C. Act are concerned, those are independent of institution of the prosecution. Section 6-A of the Essential Commodities Act, 1955 (Maharashtra Amendment) reads thus:-

6-A. Confiscation of seized commodities.-

(1) Where the essential commodity is seized in pursuance of an order made under section 3 in relation thereto, a report to that effect shall, without any unreasonable delay be sent to the Collector within whose jurisdiction the seizure is made, and the Collector may, if he thinks it expedient so to do, inspect or cause to be inspected such essential commodity, and **whether or not a prosecution is instituted for the contravention of such order**, the Collector, if satisfied that there has been 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:-

.....

13. The bold matter above would speak for itself. Not a single paper of the proceedings pending under Section 6-A of the E.C. Act before the Collector, is before this Court to judicially scrutinise the same for grant of relief in terms of prayer clause (C) above. We are, therefore, not inclined to allow the application to the extent of prayer clause (C).

14. In view of the above, the application partly succeeds. The same is allowed in terms of prayer clause (B). The proceedings,

i.e. FIR No.265 of 2022, registered at Vivekanand Chowk Police Station, Latur and the Charge-Sheet in S.C.C. No.1827 of 2022 filed in the Court of Judicial Magistrate, First Class, at Latur against the applicants for the offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955, stands quashed.

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP