

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

CRIMINAL WRIT PETITION NO.628 OF 2023

Vasu Pradip Shah
and another

..... Petitioners

Versus

State of Maharashtra and another

.... Respondents

.....

WITH

INTERIM APPLICATION [STAMP] NO.20412 OF 2023

IN

CRIMINAL WRIT PETITION NO.628 OF 2023

Mr. P.A. Pol, Advocate i/b. Pol Legal Juris for the Petitioners.

Mr. Arfan Sait, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 11th DECEMBER, 2023

P.C. :

1. This Criminal Writ Petition is filed challenging the different orders. The cause for filing this Petition is the action taken by the investigating agency on 31.1.2022. On prior information, a truck bearing No.MH-10-CR-5009, carrying 30 tones of rice, was intercepted and seized. It is case of the prosecution that the Petitioner No.1 was the

owner of the rice and the Petitioner No.2 was concerned with the truck. C.R. No.76/2022 was registered at Panvel City Police Station under Sections 3 & 7 of the Essential Commodities Act, 1955 (for short, 'said Act'). The Petitioners preferred separate applications at different times. The Petitioner No.1 preferred Criminal Misc. Application No.213/2022 before the Judicial Magistrate, First Class, Panvel for return of the rice. The Petitioner No.2 preferred Criminal Misc. Application No.209/2022 for return of the truck. Said application was made before the same learned Magistrate. Both these applications were rejected by the learned Magistrate vide his orders dated 4.3.2022. Learned Magistrate held that he has no jurisdiction to release the muddemal properties in view of the bar under Section 6E of the said Act. Both these orders were separately challenged before the Additional Sessions Judge, Panvel in Criminal Revision Application No.31/2022 as well as Criminal Revision Application No.30/2022. Learned Additional Sessions Judge dismissed the Revisions. He had observed

that the proceeding was already initiated before the Revenue Officer and hence the Revision Applications were not maintainable. These orders, under those Revision Applications, were passed on 15.7.2022.

2. In the meantime, the Collector, Raigad started the proceedings under said Act for confiscation of rice and the truck. Vide order dated 21.6.2022, the Collector confiscated rice and the truck. This order was challenged separately by both these Petitioners vide Criminal Appeal Nos.64/2022 and 71/2022. These Appeals were preferred before the Additional Sessions Judge, Panvel and both these Appeals were partly allowed. The confiscation of rice and the consequent order passed by the Collector for selling them in ration shops was not disturbed. However, the truck was directed to be returned to the registered owner on executing Supurtnama along with bank guarantee of 25% of the value of the truck. The Appeals were decided by the learned Additional Sessions Judge under Section 6C of the said Act.

3. At the outset, learned counsel for the Petitioners submit that the challenge to the orders passed by the Judicial Magistrate, First Class, Panvel in Criminal Misc. Application Nos.209/2022 and 213/2022 which were upheld by the Additional Sessions Judge in Criminal Revision Application Nos.31/2022 & 30/2022, is not being pressed by the Petitioners because according to Shri Pol there is bar under Section 6E of the said Act for the Court of learned Magistrate to pass order under Cr.P.C. for return of property. He submitted that in view of the order passed by the Collector, the only remedy for the Petitioners is to challenge it by way of Appeal under Section 6C of the said Act. Section 6C(1) of the said Act reads thus :

“6C. Appeal.--- (1) Any person aggrieved by an order of confiscation under section 6A may, within one month from the date of the communication to him of such order, appeal to any judicial authority by the State Government concerned and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against.”

4. Learned counsel for the Petitioners submitted that order of confiscation is passed by the Collector and it was challenged before the Additional Sessions Judge because he was the Judicial Authority appointed by the State Government before whom the Appeal was maintainable under that sub-section. This Appeal is not under the provisions of Cr.P.C. This was passed against the order of confiscation passed by the Collector.

5. Shri Pol submitted that the order of confiscation is affecting the Petitioner's rights which are civil in nature and, therefore, the proper remedy would be Civil Writ Petition and not Criminal Writ Petition. Learned APP agrees with this submission.

6. Considering the stand taken by both learned counsel, following order is passed :

:: O R D E R ::

- i. The Petition is dismissed as not pressed, as far as the challenge to the orders dated 4.3.2022 passed in Misc. Application No.209/2022 and 213/2022

passed by Judicial Magistrate, First Class, Panvel and the orders dated 15.7.2022 passed in Criminal Revision Application Nos.31/2022 and 30/2022 by learned Additional Sessions Judge, Panvel are concerned.

- ii. As far as the other orders i.e. the order passed in Criminal Appeal Nos.64/2022 & 71/2022 by Additional Sessions Judge, Panvel and the order dated 21.6.2022 passed by the Collector, Raigad under Section 6A of the Essential Commodities Act, 1955 are concerned, the Petitioners are at liberty to file a separate Civil Writ Petition and, therefore, the present Criminal Writ Petition challenging those orders is disposed of as not pressed.
- iii. With this liberty and observations, Criminal Writ Petition along with Interim Application are disposed of.

(SARANG V. KOTWAL, J.)

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PRAKASHRAO
DESHMANE

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