

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

CRIMINAL APPLICATION NO.82 OF 2019

Lalit Kumar Ramesh Kumar & Ors. Applicants

Vs.

The State of Maharashtra & Ors. Respondents

Mr. Rahul S. Kadam for the Applicants.

Mrs. S. D. Shinde, APP for Respondent-State.

**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

DATE : 7th JUNE 2023.

P. C. (Per Sharmila U. Deshmukh, J.)

1. The Applicants seek quashing of FIR bearing CR No.10/2018 dated 14/4/2018 registered with the Yellow Gate Police Station, Mumbai for the alleged offences under section 379, 285 r/w. 34 of the Indian Penal Code and under section 3, 7(2) of the Essential Commodities Act, 1955 and the charge-sheet filed on 13/8/2019 arising out of the said FIR.

2. Heard learned counsel Mr. Rahul S. Kadam for the Applicants and Mrs. S. D. Shinde, learned APP for the Respondent-State.

3. Learned counsel appearing for the Applicants submit that the Applicants are in business of transportation of petro chemical and allied material through their barge M. T. Farzana,

BDR-IV, 00078, and Applicant Nos.2 and 3 are shipping agents and Applicant Nos.4 to 7 are the employees of the barge. He has pointed out the license of carriage of petroleum in bulk issued by the Ministry of Shipping which is annexed at page No.15 to the petition. He would submit that pursuant to the license issued in favour of the Applicant, the Applicants were carrying the petroleum products and permissible material for one Meher Petrochemicals through the barge. He would submit that the FIR in question alleges that via the said barge the Applicants were illegally transporting sludge oil and diesel. According to him the said allegations are falsified in view of the laboratory report which is annexed at page 43 to 45 of the petition which shows result of analysis of the samples which were collected by the Investigating Agency, as Used petroleum hydrocarbon oil and waste petroleum hydrocarbon oil. He would further submit that the allegation of theft is on the ground that relevant records were not produced. He would urge that the competent authority in its order under the Essential Commodities Act has given a definite finding that the products was used petroleum hydrocarbon oil and waste petroleum hydrocarbon oil and that from the material on record it does not appear that goods which were found on the concerned barge have been stolen from Vessels Dolphin and TAG, 5. He would further point out that pursuant to the order of the Competent Authority, the barge and the goods have been given back to the owners.

4. Learned APP does not dispute the position that the

analysis report of the confiscated product shows that it is not sludge oil but used petroleum hydrocarbon oil and waste petroleum hydrocarbon oil. She is further unable to demonstrate from the FIR that the ingredients of section 379, 285 of IPC are made out.

5. In the background of aforesaid submissions, we have perused the material on record.

6. From the material produced on record it is clear that pursuant to the valid license, the barge M. T. Farzana was carrying Used /waste petroleum Hydrocarbon Oil for one Meher Petrochemical. Perusal of the FIR indicates that the allegation of theft has been made only for the reason that employees of the barge were unable to produce any document in respect of the the goods which were being transported by the barge. It is undisputed position that there is no complaint of theft. To satisfy the ingredients of section 379 of IPC, it is essential to *prima facie* establish that there has been dishonest dispossession of movable property out of the possession of the owner without that person's consent. In the present case, we do not find the allegations in the FIR satisfy the ingredients of section 379 of IPC. There is no allegation that there has been any complaint by any person/entity as regards theft of the goods from their possession.

7. As regards allegation of offence under section 285 of IPC, which deals with negligent conduct with respect to fire or combustible matter which is likely to endanger human life or to

cause harm or injury to any other person, the only allegation in the FIR is that the Applicants were transporting huge stock of sludge oil, which allegation is falsified in view of report of the chemical analysis which shows that confiscated product in question was Used and Waste petroleum hydrocarbon oil. It is pertinent to note that the competent authority under the Essential Commodities Act have arrived at this finding and pursuant thereto vide order dated 29/5/2018 have directed return of the barge and the confiscated waste/used petroleum hydrocarbon oil to the Applicants. Learned APP has fairly conceded that in view of chemical analysis report which shows that same is not sludge oil, no case under the provisions of the Essential commodities Act, 1955 is made out.

8. Having regard to the above, it is evident that even taking the FIR as it stands, no offence under the provisions of sections 379, 285 of the IPC and under section 3, 7(2) of the Essential Commodities Act, 1955 is made out. In view thereof, the criminal application deserves to be allowed and is hereby allowed. FIR bearing CR No.10/2018 dated 14/4/2018 registered with Yellow Gate Police Station, Mumbai and the charge-sheet dated 13/8/2019 arising out of the said FIR is hereby quashed and set aside.

SHARMILA U. DESHMUKH, J.

NITIN W. SAMBRE, J.