

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION (APPLN) NO. 1178 OF 2010**

1) Yuvraj Pandurang Jadhav,
Age 22 Yrs, R/o. R.C.C. Stop,
Near Shanti Niketan School,
Morewadi, Kolhapur.

2) Abhijeet Sudhakar Pachindre,
Age 26 Yrs, R/o. 860,
C-Ward, Raviwar Peth,
Kolhapur

.....Applicants

V/s.

The State Of Maharashtra,
(Notices to be served on APP,
High Court, Mumbai.)

.....Respondent

WITH**CRIMINAL WRIT PETITION NO. 3037 OF 2015**

Mr. Sanjay Appaso Swami,
Aged about 50 years,
An Adult Indian Inhabitant,
Occupation-Business,
CTS No.774, "E" Ward,
Shahupuri, 5th Lane,
District Kolhapur

.....Petitioner

Vs.

The State Of Maharashtra
(At the instance of Senior
Police Inspector, Shahupuri
Police Station, Kolhapur)

.....Respondent

Mr. Jayant Bardeskar for the Applicants in APPLN. No.1178 of 2010.
Mr. Niranjana Mundargi a/w Ms. Keral Mehta for the Petitioner in WP No.3037 of 2015.
Ms. Mahalakshmi Ganpathy APP, for the Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 6th NOVEMBER, 2023.

JUDGMENT (PER- A.S. GADKARI, J.):

1) Applicants/Petitioner have invoked jurisdiction of this Court under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (for short, 'Cr.PC.') for quashing of C.C. No.93 of 2011 pending on the file of Chief Judicial Magistrate, Kolhapur arising out of C.R. No.105 of 2009 dated 2nd November, 2009 registered with Shahupuri Police Station, Kolhapur under Sections 3, 7, 8 and 10 of the Essential Commodities Act.

2) Heard Mr. Jayant Bardeskar, learned Advocate for the Applicants in Criminal Application No.1178 of 2010, Mr. Niranjana Mundargi, learned Advocate for the Petitioner in Writ Petition No.3037 of 2015 and Ms. Mahalakshmi Ganpathy learned APP, for the Respondent-State. Perused entire record produced before us.

3) In Criminal Application, Rule and interim relief was granted by an Order dated 14th March, 2012.

In Criminal Writ Petition, Rule and interim relief was granted by an Order dated 20th December, 2018.

4) It is the prosecution case that, the Applicants in Criminal Application No.1178 of 2010 are the Manager and Treasurer of Kanakratna Krida Va Sanskrutik Mandal (for short, '*Sanskrutik Mandal*'), situated in the city of Kolhapur. The Petitioner in Writ Petition No.3037 of 2015 is the owner of the premises where the office of the said Sanskrutik Mandal is situated.

4.1) That, on 1st November, 2009 at about 10.30 p.m. upon receipt of confidential information by the Sub-Divisional Police Officer, Karvir Division, Kolhapur, the police conducted raid at the premises of the said Sanskrutik Mandal. Except finding one gas cylinder used for preparing tea and snacks, nothing objectionable was found at the said premises.

4.2) It is the further prosecution case that, the cylinder found therein was for domestic use and not for commercial purpose. As per the prosecution, the Applicants ought to have taken a gas cylinder for commercial use as they were preparing food articles at the office of the said Sanskrutik Mandal.

4.3) In this brief premise, the present crime is registered under Sections 3,7,8 and 10 of the Essential Commodities Act.

4.4) After completion of investigation of the crime, the police submitted charge-sheet in the Court of Chief Judicial Magistrate, Kolhapur in C.R. No.105 of 2009 under Sections 3,7,8 and 10 of the Essential Commodities Act.

5) Minute perusal of record indicates that, the prosecution has not produced any document even to remotely infer that, the provisions of Essential Commodities Act are applicable to the present crime. No Government Order and/or Resolution issued under Section 3 of the said Act is produced on record. It is the specific case of the Applicants that, the gas cylinder which was found at the alleged scene of offence was taken from authorized dealer at Kolhapur after payment of necessary legal charges in that behalf.

6) In the absence of any reliable material least to say, material supporting the prosecution case that, the gas cylinder which was used by the Applicants falls within the purview of Section 3 of the Essential Commodities Act, we are of the view that, the further prosecution culminated after investigation of present crime will be sheer abuse of process of law and deserves to be quashed and set aside.

7) In view thereof, the C.C. No.93 of 2011 pending on the file of Chief Judicial Magistrate, Kolhapur arising out of C.R. No.105 of 2009 dated 2nd November, 2009 registered with Shahupuri Police Station, Kolhapur under Sections 3,7,8 and 10 of the Essential Commodities Act is

quashed and set aside.

- 8) In view of above, Criminal Application No.1178 of 2010 and Writ Petition No.3037 of 2015 are allowed in terms of prayer clause (b) and (a) respectively.
- 9) Rule/s are accordingly made absolute.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

Digitally signed
by SANJIV
SHARNAPPA
MASHALKAR
Date: 2023.11.28
18:15:10 +0530