



3

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Writ Petition (WP) No. 5972 of 2022

Pranesh S/o Deepak Maloo and another

Versus

State of Maharashtra, through Police Station Officer, Gadchandur PS,
Dist. Chandrapur and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Firdos Mirza, Advocate for the petitioners.

Shri Ujwal Phasate, AGP for the respondent/State.

CORAM : ANIL S. KILOR, J.

DATED : 16th OCTOBER, 2023.

Heard.

2. The order of confiscation of two tankers bearing Nos. MH-34 BG-6928 and MH-34 BG-8145 passed by the Collector, Chandrapur vide order dated 11th April, 2022 under Section 6(A) of the Essential Commodities Act, 1955, is under challenge in this writ petition.

3. Shri Mirza, learned counsel for the petitioners by placing reliance of the Division Bench of this Court in the case of *Madhav Keshav Mirashi Vs.*

*The State of Maharashtra*¹, has argued that it is mandatory for the Collector to state which particular order has been contravened, before passing the order of confiscation. It is submitted that there is no mention of any such order which has been contravened by the petitioners and for which the tankers in question were confiscated. He, therefore, submits that impugned order is erroneous and liable to be quashed and set aside.

4. Learned Assistant Government Pleader supports the case of the Collector, Chandrapur.

5. The Division Bench of this Court in the case of *Madhav Keshav Mirashi Vs. The State of Maharashtra* (supra) has held thus:

15. It is, therefore, clear whether a person is to be prosecuted for the imposition of any of the penalties under Section 7 or any proceedings are to be taken for the confiscation of the goods under Section 6A before the Collector, requirement to be proved is that there has been a contravention of any Order issued under the Act. In other words, the same set of circumstances must be established before an order of conviction is passed or confiscation of property is directed by the Collector under Section 6-A. This being so, it would appear to us that mens rea would be a necessary element to be proved before confiscation could be ordered. There is no doubt that an offence under Section 7 involves mens rea. That has been held by the Supreme Court in *Nathulal v.*

1 1977Cri.L.J1800

State of M.P.MANU/SC/0384/1965 : 1966CriLJ71. Their Lordships pointed out that ordinarily mens rea is an essential ingredient of a criminal offence. Unless that element is expressly eliminated by the statute or it appears to have been eliminated by necessary implication. It would be a sound rule of construction to treat mens rea as an essential ingredient of a criminal offence. According to their Lordships, this rule has been accepted in England as well as in India and is a sound rule which should be followed. They also point out whether the element of guilty mind is excluded from the ingredients of an offence the mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is not by itself decisive. Only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated that mens rea may, by necessary implication, be excluded from a statute. The nature of the mens rea that would be implied in a statute creating an offence depends on the object of the Act and the provisions thereof.

6. In the teeth of the above referred observations and after going through the impugned order, it is evident that there is no mention of which particular order has been contravened by the petitioners which gave reason for the Collector to confiscate the tankers.

7. In the circumstances, I am of the opinion that the matter needs to be remanded back to the Collector, Chandrapur to decide the same a fresh. Accordingly, I pass the following order.

- i. The writ petition is partly allowed
- ii. The order dated 11th April, 2022 passed by the Collector, Chandrapur is hereby quashed and set aside.
- iii. The Collector, Chandrapur is directed to decide the matter afresh within two weeks from the date of appearance of the petitioners and on failure to decide the matter within two weeks, the Collector, Chandrapur shall release the tankers immediately on next date after completion of two weeks.
- iv. The petitioners shall appear before the Collector, Chandrapur on **18th October, 2023** at 11 am.

[ANIL S. KILOR, J.]