

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

CRIMINAL APPLICATION NO. 1422 OF 2022

Tushar Dagadu Jagtap

...Applicant

Versus

State Of Maharashtra And Anr.

...Respondents

....

Mr. Ashok Mundargi, Senior Advocate a/w Mr. Hrishikesh Mundargi
i/by Ms. Paavani Chadha, Advocate for the Applicant.

Mr. Y. Y. Dabake, APP for the Respondent – State.

PSI, P. Sarowar, Manmand City Police Station.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th FEBRUARY, 2024.

P.C.:

1. The Applicant is aggrieved by Order dated 16th February, 2022 passed by learned J.M.F.C., Manmad rejecting the application for discharge preferred by the Applicant under Section 239 of Code of Criminal Procedure and the Order dated 5th December, 2022 passed by learned Additional Sessions Judge, Malegaon in Criminal Revision Application No.26 of 2022.

2. First Information Report (for short 'FIR') registered on 25th January, 2010 with Manmad Police Station vide C.R. No. II 3010/2010 for offences punishable under Sections 3, 7 of the Essential Commodities Act, 1955 and Sections 3(1)(a)(b), 9 (e),

10, 13 of the L.P.G. Order, 2000 and Section 9 of L.P.G. (Regulation of use of Motor Vehicle) Order, 2001.

3. The case of the prosecution is that the complainant is the Supply Inspector and was incharge of supervising the distribution of gas, kerosene etc. Complaints were received regarding irregular supply of gas cylinder. The complaints indicate that the gas cylinder had been sold unauthorizedly to hotel owners, taxi drivers etc. at a premium. Inspection was carried out from November, 2009 to December, 2009. It was noticed that there was unauthorized sale of gas cylinders. The said fact was conveyed to Accused. Tahasildar was appointed to look into the matter. Surprise check was conducted. It was revealed that the gas agencies had failed to take action under Section 9 of L.P.G. (Regulation of use of Motor Vehicle) Order, 2000. Waiting list for demand of gas cylinders were not prepared. As per the L.P.G. (Regulation of use of Motor Vehicle) Order, 2000, it was recommended that one gas connection be given per household. It was not followed. There were several other irregularities committed by the gas agencies. Pursuant to registration of FIR investigation proceeded. On completing investigation, charge-sheet was filed.

4. Show cause notice was issued to the gas agency and Applicant. He submitted reply.

5. The Applicant preferred an application for discharge before the Court of learned Magistrate. The application was rejected vide Order dated 16th February, 2022. Criminal Revision Application No.26 of 2022 preferred by the Applicant was rejected vide Order dated 5th December, 2022.

6. The Applicant is employee of M/s. Bharat Petroleum Corporation Ltd. (for short 'BPCL'). He was working as Assistant Manager Sales (L.P.G. Sales).

7. Learned Senior Advocate Mr. Mundargi submits that the Applicant is working as the employee of BPCL which is a Government Company. The allegation against the Applicant is that he did not initiated action against the erring gas agencies. The entire charge-sheet does not indicate that the Applicant has connived with the other Accused or aided and abetted them in commission of offences. Applicant had conducted an inquiry and report dated 24th November, 2009 was submitted. The Applicant received the show cause notice after registration of FIR. The Applicant had tendered reply to the show cause notice. No case is made out to proceed against the Applicant for any offences.

8. Learned APP submitted that the Applicant has violated Order 9 of the Liquified Petroleum Gas (Regulation of use of Motor Vehicle) Order, 2001. The Applicant has power to conduct search and seizure and to take action against use of unauthorized sale of gas cylinders. The Applicant has not exercised the said power. By not exercising the powers he has connived with the dealer. Statements of consumers were recorded. They have stated that there was inaction on part of the Applicant. At this stage the grounds urged by the Applicant need not be considered. *Prima facie* case is made out against Applicant.

9. Perused charge-sheet and impugned Order. The Applicant was working as Assistant Manager with BPCL. The FIR was registered on 25th January, 2010 alleging violation of the provisions of Essential Commodities Act and Orders referred to therein. There is no material on record to show that the Applicant has connived with the gas agencies in committing the illegal activities or distributing the gas cylinders to the unauthorized persons. The charge-sheet at the most contemplates that the Applicant being the employee of BPCL was required to initiate action against the erring gas agencies. There is no material to show that the Applicant had in any manner participated in the commission of irregularities in

concert with co-accused. The prosecution case could be at the most dereliction of duty by the Applicant. There has to evidence to show involvement in violating provisions of Essential Commodities Act and the requisite Orders

ORDER

- i. Criminal Application No.1422 of 2022 is allowed;
- ii. Impugned Order dated 16th February, 2022 passed by learned J.M.F.C., Manmad and Order dated 5th December, 2022 passed by learned Additional Sessions Judge, Malegaon in Criminal Revision Application No.26 of 2022 are quashed and set aside.
- iii. The Applicant is discharged from Regular Case No.54 of 2010.
- iv. Application stands disposed off.

(PRAKASH D. NAIK, J.)