



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

[1] CRIMINAL WRIT PETITION NO.567 OF 2023

Narendra s/o Radhakisan Bhala,
Age 61 years, Occupation-Business,
R/o. Plot No.F-3, MIDC-II,
Akola, Tq. and Distt. Akola.

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Petitioner

..Versus..

1] Anandkumar s/o Prabhudayal Agrawal,
Age 50 years, Occupation-Business,
R/o. Chohotta Bazar,
Tq. Akot & Dist. Akola.

2] State of Maharashtra, through
Police Station Officer, P.S. MIDC,
Akola, Tq. & Dist. Akola.

3] Mahananda Krushi Udyog,
through Power of Attorney
Ashish s/o Rambhau Dorkar,
Age about 45 years,
Occupation-Business,
R/o. Lahariya Apartment,
Kaulkhed, Akola, Tq. and
District-Akola.

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Respondents

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[2] CRIMINAL WRIT PETITION NO.568 OF 2023

Narendra s/o Radhakisan Bhala,
Age 61 years, Occupation-Business,
R/o. Plot No.F-3, MIDC-II,
Akola, Tq. and Distt. Akola.

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Petitioner**..Versus..**

1] Rupeshkumar s/o Ramdas Dhawale,
Age 35 years, Occupation-Business,
Prop : Rupeshkumar Ramdas Dhawale
Trading, Umashankar Apartment,
Birla Road, Akola, Tq. & Dist. Akola.

2] State of Maharashtra, through
Police Station Officer, P.S. MIDC,
Akola, Tq. & Dist. Akola.

3] Mahananda Krushi Udyog,
through Power of Attorney
Ashish s/o Rambhau Dorkar,
Age about 45 years,
Occupation-Business,
R/o. Lahariya Apartment,
Kaulkhed, Akola, Tq. and
District-Akola.

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Respondents

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[3] CRIMINAL WRIT PETITION NO.569 OF 2023

Narendra s/o Radhakisan Bhala,
Age 61 years, Occupation-Business,
R/o. Plot No.F-3, MIDC-II,
Akola, Tq. and Distt. Akola.

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Petitioner**..Versus..**

1] Manoj s/o Bhikulal Agrawal,
Age 53 years, Occupation-Business,
Prop : Bhikulal Jetmal Grain Merchant
and Commission Agent, Murtizapur,
Tq. Murtizapur, Dist. Akola.

2] State of Maharashtra, through
Police Station Officer, P.S. MIDC,
Akola, Tq. & Dist. Akola.

3] Mahananda Krushi Udyog,
through Power of Attorney
Ashish s/o Rambhau Dorkar,
Age about 45 years,
Occupation-Business,
R/o. Lahariya Apartment,
Kaulkhed, Akola, Tq. and
District-Akola.

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Respondents

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[4] CRIMINAL WRIT PETITION NO.570 OF 2023

Narendra s/o Radhakisan Bhala,
Age 61 years, Occupation-Business,
R/o. Plot No.F-3, MIDC-II,
Akola, Tq. and Distt. Akola.

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Petitioner**..Versus..**

1] Manish s/o Shivprasad Bharuka,
Age 42 years, Occupation-Business,
Proprietor Shri Shyamshri Traders,
Sarafa Line, Murtizapur,
Tq. Murtizapur, Dist. Akola.

2] State of Maharashtra, through
Police Station Officer, P.S. MIDC,
Akola, Tq. & Dist. Akola.

3] Mahananda Krushi Udyog,
through Power of Attorney
Ashish s/o Rambhau Dorkar,
Age about 45 years,
Occupation-Business,
R/o. Lahariya Apartment,
Kaulkhed, Akola, Tq. and
District-Akola.

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Respondents

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[5] CRIMINAL WRIT PETITION NO.571 OF 2023

Narendra s/o Radhakisan Bhala,
Age 61 years, Occupation-Business,
R/o. Plot No.F-3, MIDC-II,
Akola, Tq. and Distt. Akola.

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Petitioner**..Versus..**

1] Raman s/o Shantilal Jain,
Age 58 years, Occupation-Business,
R/o. Alegaon, Tq. Patur, Dist. Akola.

2] State of Maharashtra, through
Police Station Officer, P.S. MIDC,
Akola, Tq. & Dist. Akola.

3] Mahananda Krushi Udyog,
through Power of Attorney
Ashish s/o Rambhau Dorkar,
Age about 45 years,
Occupation-Business,
R/o. Lahariya Apartment,
Kaulkhed, Akola, Tq. and
District-Akola.

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Respondents

[6] CRIMINAL WRIT PETITION NO.572 OF 2023

Narendra s/o Radhakisan Bhala,
Age 61 years, Occupation-Business,
R/o. Plot No.F-3, MIDC-II,
Akola, Tq. and Distt. Akola.

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Petitioner**..Versus..**

1] M/s. Agrawal Provision Stores,
Through Prop : Vijaykumar Shrikrushna
Agrawal, Age 60 years, Occ. Business,
R/o. Chohotta Bazar, Akot
Tq. Akot, Dist. Akola.

2] State of Maharashtra, through
Police Station Officer, P.S. MIDC,
Akola, Tq. & Dist. Akola.

3] Mahananda Krushi Udyog,
through Power of Attorney
Ashish s/o Rambhau Dorkar,
Age about 45 years,
Occupation-Business,
R/o. Lahariya Apartment,
Kaulkhed, Akola, Tq. and
District-Akola.

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Respondents

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[7] CRIMINAL WRIT PETITION NO.573 OF 2023

Narendra s/o Radhakisan Bhala,
Age 61 years, Occupation-Business,
R/o. Plot No.F-3, MIDC-II,
Akola, Tq. and Distt. Akola.

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Petitioner**..Versus..**

1] Neha Agro Industries, through
Proprietor, Santosh Nathmal
Goenka, Age 70 years,
Occ : Business, R/o. A.P.M.C.
Market, Murtizapur, Tq. Murtizapur,
Dist. Akola.

2] State of Maharashtra, through
Police Station Officer, P.S. MIDC,
Akola, Tq. & Dist. Akola.

3] Mahananda Krushi Udyog,
through Power of Attorney
Ashish s/o Rambhau Dorkar,
Age about 45 years,
Occupation-Business,
R/o. Lahariya Apartment,
Kaulkhed, Akola, Tq. and
District-Akola.

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Respondents

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INTERVENORS

1] Abhay Premraj Ostwal,
Aged about 53 years,
Occupation-Business,
R/o. Ram Mandir Ward,
Hinganghat, Dist. Wardha.

2] Anil Jawrilal Khivsara,
Aged about 58 years,
Occupation-Business,
R/o. Seminary Layout,
Yavatmal.

.. **Applicants**

INTERVENORS

1] Shri Pandurang Sadashiv Patkar,
Age about 40 years, Occ. Business,
R/o. Takli, Ta. Akot, Distt. Akola.

2] Shri Radhesham Madhukar Patkar,
Age about 33 years, Occ. Business,
R/o. Takli, Ta. Akot, Distt. Akola.

.. **Applicants**

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Mr. A.J. Thakkar, Advocate for the petitioner in all writ petitions.

Mr. Parvez Mirza, Advocate for respondent no.1 in WP Nos.567/2023, 568/2023, 569/2023 and 572/2023.

Mr. J.B. Gandhi, Advocate for respondent no.1 in WP No.570/2023,

Mr. N.R. Tekade, Advocate for respondent no.1 in WP No.571/2023,

Mr. Vidit A. Lohia, Advocate for respondent no.1 in WP No.573/2023,

Mr. Neeraj Jawade, Additional Public Prosecutor for respondent No.2-State.

Mr. S.V. Sirpurkar, Advocate for respondent no.3 in all writ petitions.

Mr. A.K. Sorde, Advocate for intervenors in WP Nos.567, 568 and 570 to 573 of 2023..

Mr. O.Y. Kashid, Advocate for intervenors in W.P. 569/2023.

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CORAM : M.W. CHANDWANI, J.
DATE : 29/02/2024.

JUDGMENT :

1] Heard. **Rule.** Rule made returnable forthwith. With the consent of the learned counsel appearing for the parties, the matter is taken up for final hearing.

2] The batch of 7 (seven) writ petitions under consideration filed by the common petitioner arise out of the same set of facts and involve common issue and common contentions, hence the same were heard analogously. I proposed to dispose of these writ petitions by this common judgment and order.

3] The petitions challenge the orders dated 30.06.2023 passed by the learned Judicial Magistrate, First Class, Akola in Criminal Misc. Application Nos.954/2023, 1042/2023, 861/2023, 860/2023, 914/2023, 952/2023 and 909/2023 whereby the applications for custody of Chana seized in Crime No.91/2023 of the complainant and victims of the crime have been allowed. The petitions also challenge the orders of Additional Session Judge

rejecting Criminal Revision Nos.99/2023, 100/2023, 101/2023, 102/2023, 103/2023, 104/2023 and 105/2023 filed by the petitioner by its order dated 25.07.2023.

4] The bare facts from record which are necessary to decide the present petitions can be culled out as under :

Crime No.91/2023 came to be registered with the Police Station, M.I.D.C. P.S Akola on complaint of Manish Shivprasad Bharuka, a proprietor of Shyam Shree Traders and respondent no.1 of Writ Petition No.570/2023 alleging that one Manish Vijaykumar Kotecha (Jain), a broker, agreed to purchase 1763.30 quintals of Chana from him as well as 1270.01 quintals of Chana from one Manoj Bhikulal Agrawal, a proprietor of Bhikulal Jethmal Grain Merchant and Commission Agent, Murtijapur for Mahananda Krushi Udyog, Akola. When the said quantity of Chana was dispatched, Manish Kotecha got the Chana unloaded at Shailesh Udyog, M.I.D.C. Akola, instead of Mahananda Krushi Udyog. The complainant asked the broker Manish Kotecha for the amount of the said food-grain and he avoided the same. On detailed enquiry, the complainant came to know that Manish Kotecha, in connivance with proprietor of

Mahananda Krushi Udyog Mrs. Mohini Ashish Dorkar, her husband Ashish Dorkar and the petitioner, a proprietor of Shailesh Udyog, Akola cheated the complainant and Mr. Manoj Bikulal Agrawal and misappropriated the Chana. Therefore, on 29.03.2023 on his complaint, Crime No.91/2023 came to be registered with Police Station, Akola for offences under section 420 and 409 r/w section 34 of Indian Penal Code against the petitioner, Manish Kotecha, Mohini Dorkar, Proprietor of Mahananda Krushi Udyog and her husband Ashish Dorkar as well as Lokesh Bhala. During investigation, it was revealed that those persons, including the petitioner, also cheated the other businessmen, whose statements were recorded in the said crime. During investigation, 568.15 tonnes of Chana was seized from M.K. Cold Storage and M.K. Foods, stored by the petitioner.

5] On 01.04.2023 another crime also came to be registered against Manish Kotecha, Dorkar couple, the petitioners and other accused with Police Station, Akola vide Crime No.95/2023 on similar allegations by one Raman Shantilal Jain. However, no chana was seized in this crime. After investigation,

the charge-sheets came to be filed in both Crime Nos.91 and 95/2023.

6] On similar allegations, other crimes also came to be registered against Manish Kotecha, Dorkar couple, the petitioner and other accused at Police Station Karanja, District–Washim; Police Station Khamgaon, District-Buldhana; Police Station Hinganghat, District-Wardha; and Police Station Darwaha, District-Yavatmal.

7] The eight affected persons in Crime No.91/2023, including respondent no.1 in each petition applied under Section 457 of the Code of Criminal Procedure, 1973 (hereinafter Cr.PC,) before the learned Judicial Magistrate, First Class, Akola for releasing the Chana seized in the crime pending the trial. The petitioner objected those applications on the ground that he purchased the Chana from Mahananda Krushi Udyog and, therefore, he is the owner of the Chana. The learned Judicial Magistrate, First Class, Akola by overruling the objection raised by the petitioner, allowed the applications of the respective claimants including respondent no.1 of each petition and directed that

pending trial, the chana be handed over to those persons on execution of an indemnity bond by each one of them. An unsuccessful attempt was made by the petitioner before the learned Additional Sessions Judge by filing the revisions. Feeling aggrieved with the orders impugned, the present petitions came to be filed.

8] Similarly, the complainant in Crime No.305/2023 Mr. Abhay Premraj Ostwal, r/o Hinganghat, district-Wardha, who also happens to be a victim in Crime No.305/2023 registered by Police Station Wardha and one Anil Jawrilal Khivsara have applied to intervene in the matter. Both of them supported the claim of the respondent no.1 in each petitioner and sought rejection of the petition.

9] Mr. A.J. Thakkar, learned counsel appearing on behalf of the petitioner submitted that the petitioner is a proprietor of Shailesh Udyog and he purchased the Chana seized in the crime from Mahananda Krushi Udyog by paying consideration for the same. The Chana was sold by the respective complainants and so called victims of the crime to Mahananda Krushi Udyog through

broker Manish Kotecha and, thereafter, the petitioner purchased the goods under various invoices from Mahananda Krushi Udyog. According to him, the complainant and so called victims of the crime can only claim the consideration of the Chana sold by them to Mahananda Krushi Udyog. Once the goods were dispatched by the complainant and respective victims to Mahananda Krushi Udyog, they ceased to be the owner of the said Chana, whereas the present applicant is bona-fide purchaser of the said Chana having purchased it from Mahananda Krushi Udyog. Therefore, the learned Magistrate should not have given the custody of the Chana seized from the petitioner to the complainant and other persons. He further submitted that the learned Additional Sessions Judge, Akola also did not consider all these aspects and dismissed the revision. The sum and substance of the argument of learned counsel for the petitioner is that the trial court should not have granted custody of the Chana to the complainant and other person and seeks to set aside the orders impugned passed by the learned Magistrate as well as the learned Additional Session Judge.

10] Learned counsel for the respective claimants, to whom the custody of the Chana is ordered to be given have submitted that broker Manish Kotecha and the Proprietor of Mahananda Krushi Udyog, in connivance with the Proprietor of Shailesh Udyog i.e. the present petitioner, cheated the complainant and induced them to deliver the Chana and, thereafter, misappropriated the Chana. According to them, though the Chana was purchased by Mahananda Krushi Udyog, but the trucks containing Chana were unloaded at Shailesh Udyog. This itself goes to show that since inception there was an element of cheating. When the offence was unveiled and the police alongwith traders had been to Shailesh Udyog, the petitioner immediately shifted the entire Chana from Shailesh Udyog to M.K. Cold-storage, Akola to avoid the seizure of the goods in the crime and also prepared bogus bills of Mahanada Krushi Udyog to show that he purchased the goods from Mahananda Krushi Udyog. The learned counsel for the respective claimants submitted that the bills, on which the petitioner claims to have purchased the Chana are forged and have never been issued by Mahananda Krushi Udyog. This fact itself goes to show that the goods which were seized from the petitioner were never

purchased by him but are part of a conspiracy just to deprive the claimants of their right to have the Chana. They further submitted that the petitioner who claims to have paid the amount of consideration by bank transactions towards the purchase of Chana are false entries created by the petitioner. The amounts shown as credit entries in the account of Mahananda Krushi Udyog were done just to show that the Chana was purchased by the petitioner from Mahananda Krushi Udyog. In fact, the amount returned by Mahananda through various debit entries to the petitioner, his wife and son was more than the amount credited. They further submit that the bills, by which the petitioner is claiming to have purchased the Chana are bogus, false and fabricated and, therefore, they supported the orders passed by the learned Magistrate and sought rejection of the writ petitions.

11] Mr. N.B. Jawade, learned Additional Public Prosecutor appearing on behalf of the Respondent-State, submits that the investigation reveals that though the goods were shown to be purchased by the Mahananda Krushi Udyog, but they were unloaded at Shailesh Udyog for no reasons. According to him,

the investigation reveals that Shailesh Udyog financed Mahananda Krushi Udyog against the Chana which it purchased from the complainant and various other victims to the extent of 60% of the value of the Chana. However, by preparing false and fabricated bills, they claimed ownership of the Chana seized from him and, therefore, offences under section 464, 467, 468 and 471 r/w section 120 B of IPC came to be added. Further, the petitioner to support his claim also credited the amount in the account of Mahananda Krushi Udyog which has been credited from Mahananda Krushi Udyog to his bank account and in the bank accounts of his wife and son. According to him, amount debited in the account of the Mahananda Krushi Udyog is more than the amount credited in the accounts of the petitioner, his wife and son by more than 4 Crores rupees and, therefore, there is no question of giving consideration towards the said Chana. According to him, the petitioner is not the owner of the Chana. Till date, he has not claimed custody of the Chana before the trial Court and merely objected to the applications.

12] Having heard the counsels for the respective parties including the petitioner and having gone through the record, it is

revealed that the petitioner, while objecting the Supurtnama applications, produced the bills of Mahanada Krushi Udyog claiming to have purchased the Chana from Mahananda Krushi Udyog starting from date 11/02/2023 till 14/03/2023 vide bills starting at serial nos. 501 and so on. Perusal of investigation papers in Crime No.95/2023 shows that Mahananda Krushi Udyog used the bills for sale to its customer from bills at serial no.405 to 485 between the dates starting from 11.02.2023 to 22.02.2023. Following comparative chart filed alongwith the chargesheet would describe the details of bills :

Date 09/02/2023 to 02/03/2023

Sr.No.	Mahananda Krishi Udyog Bill book no.11 Receipt number (seized from Ashish Dorkar)	Date	Narendra Bhala Bill Receipt No.	Date
1	405 to 417	11/02/2023	501	11/02/2023
2	454 to 455	19/02/2023	503	19/02/2023
3	458 to 461	20/02/2023	504	20/02/2023
4	476 to 485	22/02/2023	506	22/02/2023
5	Nil	23/02/2023	520	23/02/2023
6	489 to 496	01/03/2023	521	01/03/2023
7	Receipts 497 to 504 (501,502,503,504 receipts are handwritten and the said receipts are submitted on GST Portal on 02/03/2023	02/03/2023	540	03/03/2023
8	-----	-----	543	04/03/2023
9	-----	-----	547	05/03/2023

10	-----	-----	550	06/03/2023
11	-----	-----	551	10/03/2023
12	-----	-----	553	13/03/2023
13	-----	-----	556	14/03/2023

13] Thus, if the bills at serial nos. 454 to 496 have been issued by Mahananda Krushi Udyog from 11.02.2023 to 01.03.2023, how the bills produced by the petitioner having subsequent serial nos.501 to 521 came to be issued between dated 11.02.2023 to 01.03.2023, prior to issuance of bills from Sr. No.489 to 496 which were issued to other customers. That apart, the statement of Vinod Pachgade, employee of Mahananda Krushi Udyog, recorded during investigation shows that bill book of Mahananda Krushi Udyog was taken away by one co-accused Satish Thakre who was sent by the main accused Manish Jain. This supports the argument that *prima facie* bills by which the petitioner claims to have purchased the Chana were prepared later on to show that Chana was purchased by Shailesh Udyog from Mahananda Krushi Udyog. Even, during investigation, it was revealed that the bank entries which have been shown as payment towards consideration of the Chana are less than the amount debited from the account of Mahananda Krushi Udyog in favour

of the petitioner, his wife and his son. Further, till date the petitioner has not applied before the learned Magistrate for taking the custody of the chana. However, when the applications were made by the respective claimants, the applications were objected by the petitioner.

14] On the other hand, if custody of the chana of major quantity is not handed over to the persons who are entitled, it may be possible that till the conclusion of the trial, which will take considerable time, the Chana, which has limited life, may rot. In view of the above, the learned Magistrate has rightly overruled the objection raised by the petitioner.

15] Notably, the victims of Crime No.95/2023 i.e. Pandurang Sadashiv Patkar and Radheshyam Madhukar Patkar, who also claim to be victims of crime in Crime No.91/2023, similarly filed an application for intervening in this matter on the premise that they have also been cheated by the accused and the Chana to the quantity of 291.15 tonnes and 303.06 tones, respectively has been misappropriated by the accused and, therefore, they are also entitled to the custody of the Chana.

16] It is to be noted here that the interveners i.e. Patkar brothers applied for the custody of chana in crime no.95/2023 before the learned Judicial Magistrate, First Class, Akola and their applications came to be rejected by the learned Magistrate on the ground that no chana was seized in the said crime, therefore, it can not be given to the interveners. Against the said order, they have preferred revision which is pending before the learned Additional Sessions Judge, Akola.

17] It is informed by the learned APP that even after complying the impugned orders some quantity of chana still remains and two witnesses, to whom Mahananda Krushi Udyog sold the chana are ready to pay the remaining consideration to the rightful owner/s.

18] Evidently, except for crime no.91/2023 no chana is seized in any of the crime registered on similar allegations against Manish Kotecha, Mahananda Krushi Udyog and the petitioners and other Co-accused. It is also not in disputed that the chana seized in the crime is not identifiable. Whether Chana seized in

crime no. 91/2023 belonged to the other crimes also registered at Police Stations Akola, Karanja, Khamgaon, Hinganghat and Darwha, is a matter of trial. At present the learned Judicial Magistrate, First Class, has made an interim arrangement by handing over the seized Chana in crime no. 91/2023 to the complainant and witnesses of the said crime that too upon consideration of material collected during investigation and on execution of indemnity bond. The final order is yet to be passed under Section 452 of Cr.P.C., which I believe, will be passed at the time of conclusion of the trial, while deciding the question of disposal of the property i.e. the Chana to the rightful owner after considering the evidence on record during trial. At conclusion of the trial, if the trial court comes to the conclusion that any other person is a rightful owner of the Chana, the learned Magistrate may pass the appropriate orders to that effect.

19] In view thereof, there is no interference required in the orders impugned. However, to protect the interest of intervenors and other affected person, the person in whose favour the impugned orders have been passed, can be directed to give bank guarantee or solvent surety instead of an indemnity bond.

Therefore, each claimant shall furnish bank guarantee or solvent surety instead of indemnity bond to the extent of amount mentioned in impugned orders of the learned Magistrate.

20] Needless to mention, the observations made herein are *prima facie*, the trial Court shall not get influenced with the same while conducting the trial.

21] In above said terms, the rule is made accordingly and the petitions are disposed of. All pending applications stand disposed of.

22] At this stage, the learned counsel for the petitioner submits that the petitioner wants to get this order tested before the Supreme Court and, therefore, he seeks stay to the implementation of the order of the learned Judicial Magistrate, First Class, Akola.

23] Learned Additional Public Prosecutor appearing on behalf of the respondent no.2-State opposed the same.

24] Considering the submissions and the nature of goods, the orders of the learned Judicial Magistrate, First Class, Akola shall not be implemented for three weeks from today.

(M.W. Chandwani, J.)

Gulande