



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

54 CRIMINAL APPLICATION NO.819 OF 2024

Sushil Bhaguram Mohite,
Age 32 yrs., Occ. Business,
R/o Deshpande Galli, Latur,
Tq. & Dist. Latur.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Station Officer,
Nandurbar Taluka Police Station,
Nandurbar, Tq. & Dist. Nandurbar.
- 2 Samraj Gambhir Wadekar,
Age 55 yrs., Occ. Service as
Supply Inspector, Tahsil Office,
Nandurbar, Tq. & Dist. Nandurbar.

... Respondents

...

Mr. PC. Mayure, Advocate for applicant

Mr. V.K. Kotecha, APP for respondent Nos.1 and 2

...

CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.

DATE : 16th JANUARY, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed for quashing proceedings in Regular Criminal Case No.89/2022 pending before 2nd Joint Civil Judge Senior Division and Additional Chief Judicial Magistrate, Nandurbar arising out of First Information Report vide Crime No.468/2021 dated 14.09.2021 registered with Nandurbar Taluka Police Station, Nandurbar, for the offence punishable under Sections 3 and 7 of the Essential Commodities Act, 1955.

2 Heard learned Advocate Mr. P.C. Mayure for applicant and learned APP Mr. V.K. Kotecha for respondent Nos.1 and 2.

3 Learned Advocate for applicant has taken us through contents of First Information Report and charge sheet. He submits that applicant is a trader dealing in grains. As per the prosecution story, the Supply Officer, who is the informant, states that there was a seizure of truck bearing No. MH-10-AW-7947 while transporting five gunny bags of rice on suspicion. They were asked about the bill and ownership of grains, however, they had not supplied the concrete information. Thereafter letter was issued to Supply Office to verify as to whether the said rice was meant for distributing public under the Public Distribution System. Therefore, with the help of two panchas the informant had made inspection, took out some sample, took the statement of

driver and thereupon First Information Report was lodged. When the First Information Report was lodged, it was against driver and co-driver of truck. It is stated that upon the inquiry in presence of panchas it was disclosed that rice belongs to one Mohite, the wholesale dealer from Latur. Even the complete name of applicant has not been given. If we consider receipt or the document, which transporter should possess while transporting food article like rice, would show that it has been written that it has been sent by Mangal Traders. No doubt, present applicant is running his business under his name as 'Mangal Traders', but the said document does not show that it is the Mangal Trader from Latur. There is also no document which would show that the seized rice was meant for distribution to public through Public Distribution System. Applicant had produced receipts before Investigating Officer showing that he had purchased rice from open market, that too, from A.P.M.C., Latur. These documents are coming from the charge sheet itself. Therefore, there is nothing on record to show that the offence under Sections 3 and 4 of the Essential Commodities Act get attracted in the present case.

4 Learned APP submits that now the investigation is over and charge sheet is filed, therefore, let the trial be held. The documents would show that the receipt was in the name of present applicant i.e. the trade name of applicant "Mangal Traders". The sample that was extracted matches

and the laboratory report dated 15.09.2021 matches to the sample of the rice, which is meant for distribution through Public Distribution System. The drivers were not having GST bill and there was also no e-weigh bill along with vehicle. Therefore, there was no evidence with them as to from where the grain was purchased. The said rice was transported from Latur to Ahmedabad, Gujarat and, therefore, it is certainly in violation of the control order.

5 At the outset, it can be seen from the contents of First Information Report and entire charge sheet that there is not a single document or piece of evidence which would show that those gunny bags and the rice belongs to Government. On the gunny bags there was no endorsement or printing of name of the Government or its agency. The Supply Officer has not even tried to enquire from the record with Government that the said rice was allotted to a particular district or taluka for distribution it under Public Distribution System. Unless it is shown that rice was meant for Public Distribution System, it cannot be then said that it cannot be sold in open market. In fact, what was written on the gunny bags appears to be private agencies. On the basis of samples it cannot be proved that the said rice was reserved or belonged to the Government. In the First Information Report it is not stated that a particular kind of rice is reserved for

distribution under Public Distribution System and no other agency or individual is allowed to sell rice of that quality in the open market. Rice would be like any other rice, whether meant for Public Distribution System or for open market. The only fact is that there is a procedure prescribed when the Government makes available a quota of rice for distribution under Public Distribution System. When record is available with the Government agency, then that ought to have been produced and not the way the investigation has been done in this matter. The evidence on record that is receipts issued by the transport agency will not be sufficient to attract the offence under the Essential Commodities Act. Statement of co-accused is not admissible.

6 One more fact that is required to be considered is Section 11 of Essential Commodities Act, which runs thus -

“11. **Cognizance of offences.**—No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code (45 of 1860) [or any person aggrieved or any recognised consumer association, whether such person is a member of that association or not].”

Therefore, taking into consideration the above Section unless there is a report in writing of the facts constituting an offence made by the public servant in writing the Court cannot take cognizance of such offence

under the Essential Commodities Act. That means, the Supply Officer ought to have lodged the report in writing directly to the concerned Magistrate. Now, he has filed First Information Report under Section 154 of the Code of Criminal Procedure Code. Therefore, under such circumstance, the Magistrate will not be having an authority or power to take cognizance of the offence and under such circumstance, it would be unjust to ask the applicant to face the trial. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) Proceedings in Regular Criminal Case No.89/2022 pending before 2nd Joint Civil Judge Senior Division and Additional Chief Judicial Magistrate, Nandurbar arising out of First Information Report vide Crime No.468/2021 dated 14.09.2021 registered with Nandurbar Taluka Police Station, Nandurbar, for the offence punishable under Sections 3 and 7 of the Essential Commodities Act, 1955 stands quashed and set aside as against applicant viz. Sushil Bhaguram Mohite.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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