



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

13 CRIMINAL APPLICATION NO.1403 OF 2024

- 1 Shaikh Anis Shaikh Pasha,
Age 45 yrs., Occ. Agri.,
R/o Majalgaon, Tq. Majalgaon,
Dist. Beed.
- 2 Mosinoddin @ Moshin Muntojoboddin Kazi,
Age 29 yrs., Occ. Labour,
R/o Majalgaon, Tq. Majalgaon,
Dist. Beed.
- 3 Soyab @ Soheb Hasham Attar,
Age 21 yrs., Occ. Labour,
R/o Majalgaon, Tq. Majalgaon,
Dist. Beed.
- 4 Noor Mohammad Hasham Attar,
Age 38 yrs., Occ. Labour,
R/o Majalgaon, Tq. Majalgaon,
Dist. Beed.
- 5 Sadek @ Baba Pashamiya Shaikh,
Age 41 yrs., Occ. Labour,
R/o Majalgaon, Tq. Majalgaon,
Dist. Beed.

... Applicants

... Versus ...

- 1 The State of Maharashtra
Through it's Investigating Officer,
Police Station, Majalgaon (Rural),
Tq. Majalgaon, Dist. Beed.
- 2 Nitin Vasant Atkare,
Age 36 yrs., Occ. Service as
Police Constable, Police Station,

Ambajogai (Rural), attached with
S.D.P.O. Office, Ambajogai,
Tq. Ambajogai, Dist. Beed.

... **Respondents**

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Mr. S.S. Solanke, Advocate for applicants
Mr. A.R. Kale, APP for respondent Nos.1 and 2

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 24th APRIL, 2025

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

1 Present application has been filed for quashing proceedings in Summary Criminal Case No.121/2023 pending before Judicial Magistrate First Class, Majalgaon, Dist. Beed arising out of First Information Report vide Crime No.311/2021 dated 24.12.2021 registered with Police Station, Majalgaon (Rural), Dist. Beed, for the offence punishable under Sections 3 and 7 of the Essential Commodities Act, 1955.

2 Heard learned Advocate Mr. S.S. Solanke for applicants and learned APP Mr. A.R. Kale for respondent Nos.1 and 2.

3 Learned Advocate for applicants has taken us through contents of First Information Report and charge sheet. Respondent No.2 is the informant, who lodged the report with Majalgaon Rural Police Station. As per the prosecution story, on 24.12.2021 at about 01.30 p.m. as per the order of Sub Divisional Police Officer, Ambajogai when he and his colleagues were on patrolling duty within the limits of Majalgaon Rural Police Station, they received a secret information that one truck is standing at Parbhani 'T' point loading with rice meant for distributing public under the Public Distribution System. When he went there, he found one Ashok Leyland truck bearing No.MH 44-U-0111 loaded with rice. He made inquiry with driver. Driver told his name as - Shaikh Ismail Shaikh Matin, r/o Pimpla Dhayguda, Tq. Ambajogai. He was asked about the bill and ownership of grains, however, he had not supplied any document. Then he and his staff brought that truck in Rural Police Station, Majalgaon. Thereafter, in the morning said S.D.P.O., Ambajogai asked API Mr. Jonwal to take action with the seized truck. Thereafter, a letter was issued by API to Taluka Supply Officer, Tahsil Office, Majalgaon to verify as to whether the said rice was meant for distributing public under the Public Distribution System and then Naib Tahsildar came to Police Station. Thereafter, in the presence of Naib Tahsildar API made inquiry with the driver. Driver said that rice belongs to applicant Nos.1 to 5 and it is sold to Dhondge Uday Agro Industries, Latur. With the help of two panchas

the informant had made inspection, took out some sample, recorded statements of panchas and thereupon First Information Report was lodged. There is also no document which would show that the seized rice was meant for distribution to public through Public Distribution System. Applicants had produced receipt before Investigating Officer showing that Uday Agro Industries, Market Yard, Latur had sold rice to Jay Kisan Rice Mill, Bhandara. This document is coming from the charge sheet itself. Therefore, there is nothing on record to show that the offence under Sections 3 and 7 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 Jay Kisan Rice Mill, Bhandara issued by Uday Agro Industries, Latur i.e. Uday Dondge, original accused No.7. The original accused No.7 is not before this Court.

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 distributing 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 will not be sufficient to attract the offence under the Essential Commodities Act.

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 applicants to face the trial. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceedings in Summary Criminal Case No.121/2023 pending before Judicial Magistrate First Class, Majalgaon, Dist. Beed arising out of First Information Report vide Crime No.311/2021 dated 24.12.2021 registered with Police Station, Majalgaon (Rural), Dist. Beed, for the offence

punishable under Sections 3 and 7 of the Essential Commodities Act, 1955, stands quashed and set aside as against applicants viz. 1) **Shaikh Anis Shaikh Pasha**, 2) **Mosinoddin @ Moshin Muntojoboddin Kazi**, 3) **Soyab @ Soheb Hasham Attar**, 4) **Noor Mohammad Hasham Attar** and 5) **Sadek @ Baba Pashamiya Shaikh**.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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