



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1655 OF 2022

Yunus @ Yusuf S/o. Isaq Attar
Age : 38 Years, Occu. : Business,
R/o. Idgah Mohalla, Majalgaon,
Tq. Majalaon, Dist. Beed.

.... Applicant

VERSUS

The State of Maharashtra
Through its Investigation Officer,
Police Station Majalgaon City,
Dist. Beed.

.... Respondent

....
Advocate for Applicant : Mr. S.S. Solanke And Mr. P.N. Muley
APP for Respondent No.1-State : Mr. A.M. Phule
....

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

Dated : 11th March 2025

ORDER [PER SANJAY A. DESHMUKH, J.] :-

1. This is an application for quashing of the First Information Report (for short “the F.I.R.”) and the consequential proceedings in R.C.C. No.87 of 2022, pending before the learned Judicial Magistrate First Class, Majalgaon, Dist. Beed, arising out of Crime bearing No.0034 of 2022, registered with Majalgaon City Police Station, Dist. Beed on 12.02.2022, for the offences punishable

under Sections 3 and 7 of the Essential Commodities Act, 1955 (for short “the Act”).

2. The informant, who is Police Head Constable attached to the Office of Sub Divisional Police Officer, Kaij, Dist. Beed averred in the report that, on 11.02.2022, at about 21.00 Hrs., Assistant Superintendent of Police viz. Mr. Pankaj Kumawat, called him in his office and informed him about the secret information that the applicant has collected the ration's rice from the people and stored it in a warehouse adjacent to his house at Bramhangaon Shivar, Tq. & Dist. Beed. He has planned to transport it in a truck in Gujarat State and to sell the said rice in the black market. He, therefore, directed the informant to nab the applicant. Similar directions were given by him to Police Nayak Mr. Wanjare and API Mr. Rathod and staff.

3. The informant further averred that, two panchas were called and they all proceeded by a private vehicle towards the Majalgaon City Police Station. He met API Rathod and informed him about the raid as directed by Pankaj Kumawat. They all along with two panchas went for raiding by a Government vehicle. Accordingly, at around 05.30 p.m., raid was effected. They found one Ashok Leyland Truck bearing No.MH-51-FV-6357 and behind the vehicle,

three persons were tying to pack the truck with the tarpaulin and rope. He asked them their names and on inquiry, they told their names viz. Yunus Isak Attar, Hanumant Warhade and Satish Waghmare.

4. The informant further averred in the report that, accused No.2 Hanumant told that the applicant loaded the rice bags with the help of labours and will transport it to Gujarat. He and other police staff verified as to whether there is rice in the white coloured gunny bags. The applicant could not produce bill or documents of purchase of that rice. On inspection of the truck, it was found that, there was 558 gunny bags of 50 Kg. each, worth of Rs.6,98,000/-. All those gunny bags and the said truck of Rs.25,00,000/-, in total Rs.31,98,000/- were seized. Driver of the truck viz. Hanumant told them that he had weighed the truck and it was found to be 13120 Kg., but afterwards when it was weighed along with rice at Satyam Weigh Bridge, it was 27920 Kg. Thereafter, the said truck was brought to the police station. On 12.02.2022, at 05.30 a.m., a report was lodged against the applicant under Section 3 and 7 of the Act.

5. Learned Advocate for the applicant submitted that the applicant is falsely implicated in the crime. The order of prohibiting of sell of such rice is not produced in the charge-sheet. The applicant is a

businessman dealing with wholesale business of food grains. There is no question of transportation of rice belonging to the Government. There is no statement of any of the ration card holder from whom the alleged rice has been purchased. The applicant has produced the receipt of purchase of the said rice from the wholesaler for transportation of it. The learned Magistrate has handed over the gunny bags of said rice to the applicant for disposal. The essential ingredients of Section 3 and 7 of the Act are not establishing.

6. The learned Advocate for the applicant further submitted that though there are statements of witnesses, the applicant is falsely implicated in the crime. He submitted if the applicants is compelled to face the trial, it would certainly be an abuse of process of Court. It is lastly prayed to quash the report and charge-sheet.

7. Learned APP for the State strongly opposed the application and submitted that huge quantity of rice is seized from the applicant. The applicant is booked for serious crime i.e. trading of rice, which was meant for poor people under Public Distribution System i.e. Ration. There is no reason for the informant to implicate the applicant in this crime. On that account, the application cannot be allowed. It is lastly prayed to reject the application.

8. In the contextual situation, it would be relevant to refer the decision of the Hon'ble Supreme Court in ***Kailash Prasad Yadav and Another Vs. State of Jharkhad and Another, MANU/SC/7602/2007 : (2007) 3 SCC (Cri) 14***, wherein the Hon'ble Apex Court has categorically held that the order of confiscation to be made under Section 6-A of the Essential Commodities Act can be passed only after reaching to a clear finding as to violation of the order made under Section 3 of the Essential Commodities Act. It is held that a valid seizure is a *sine qua non* for passing an order of confiscation of property. It is pointed out that neither in the FIR nor the charge-sheet filed, there is reference of violation of any order made under Section 3 of the Essential Commodities Act.

9. A reference can also be made to the judgment in the case of ***CBI vs. Aryan Singh, reported in 2023 SCC Online SC 379***, in which the Hon'ble Supreme Court held as under :-

“10. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 of Cr.P.C., the Court is not required to conduct the mini trial.”

10. We have perused the report and entire charge-sheet. There are statements of panch witnesses as well as police officials of

raiding party. They have stated the facts as per the allegations made by the informant in the report. The applicant's contention is that he is a trader and selling food grains. Though the prosecution came with a case that some villagers have sold that rice to the applicant, their statements are not recorded. The Investigating Officer has also not recorded the statements of Revenue officials to establish that the seized rice was distributed to the villagers from Public Distribution System i.e. Ration to establish the overt act of the applicant with regard to this crime.

11. Even if the rice was distributed to the villagers and it was only for their utilization as a beneficiaries, the Investigating Officer must collect the evidence of selling of the said rice to the applicant and then, they should have made those villagers as co-accused in the said crime. No such investigation is done in this regard. Even if it is assumed that the applicant has collected the said rice from the villagers, it can be held that it is not in violation of any of the order under Section 3 of the Act. There is no breach of the order of authority as per Section 3 of the Act as held in the case of **Kailash Prasad (Supra)**. The evidence collected by the Investigating Officer is not sufficient to hold the applicant liable.

12. If all these aspects are considered together, the essential ingredients of Section 3 and 7 of the Act are not establishing from the report and the statements of the witnesses. If the applicant would be directed to face the trial, it would certainly be an abuse of process of Court. We are, therefore, inclined to exercise our inherent powers under Section 482 of the Code of Criminal Procedure, 1973 for quashing the report and charge-sheet filed against the applicant. The application deserves to be allowed. Hence, the following order.

ORDER

1. The application stands allowed.
2. The First Information Report and the consequential proceedings in R.C.C. No.87 of 2022, pending before the learned Judicial Magistrate First Class, Majalgaon, Dist. Beed, arising out of Crime bearing No.0034 of 2022, registered with Majalgaon City Police Station, Dist. Beed on 12.02.2022, for the offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955 stands quashed against the applicant.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE