IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3793 OF 2022

Nobel Carrying Corporation, Omerga Through G.p.a. Holder Ansari Mohammad Nadim Mohd. Yunus And Anr
VERSUS
The State Of Maharashtra And Another

Mr. S. N. Patne, Advocate for applicants
Mr. A. R. Kale, APP for respondent-State

CORAM : R. M. JOSHI, J.
DATE : 12th OCTOBER, 2026

PER COURT :-

1. This application is filed under Section 482 of the Code of Criminal Procedure seeks quashment of the First Information Report bearing No. 187 of 2022 registered with Palam Police Station, Dist. Parbhani, for the offences punishable under Sections 3, 7, 8, 9, 10 of the Essential Commodities Act, 1955, under Sections 7, 13 of the Public Distribution System (Control) Order, 2015 and under Sections 407, 34 of the Indian Penal Code.

2. In-charge Nayab Tahsildar (supply), Tahsildar office, Palam, lodged report stating that on 11.08.2022 at about 11 AM, when he was in his office, Tahsildar authorized him to register the crime against Nobel Carrying Corporation, Omerga. It was alleged that the District Collector, Parbani, has alleged contract of transportation of Food Corporation of India (For short "**FCI**") grains, and as there is no entry in respect of FCI

vehicle in the office of government warehouse at Palam, Tahsildar directed Nobel Carrying Corporation to make entry in the office of Tahsildar office, Palam, in respect of the vehicles, and thereafter to transport the vehicle in the government warehouse for unloading. It is further claimed that as per the letter dated 10.08.2022, the food grain lifting agent has loaded the grains in vehicle number mentioned therein. After inquiry it was found that the vehicles have not reached to the government warehouse at Pethshivni, Tq. Palam. In view of the said facts, complaint came to be lodged with regard to the misappropriation/black marketing of government food grains. On the basis of this information, offence under the provisions of Essential Commodities Act as well as Public Distribution System (Control) Order, 2015, so also offences under Indian Penal Code came to be invoked against applicants.

3. Learned counsel for applicants submit that the offence under the Essential Commodities Act could not have been made applicable to the present applicants in absence of Nobel Carrying Corporation and its partners being joined as a party accused to this proceeding. It is his submission that in order to attract the provisions of Essential Commodities Act, in view of Section 10 thereof, applicants ought to have been directors, partners, officers, or persons in charge of the business of the said company. It is his submission that admittedly applicant No. 1 is not partner of the company, but is said to be a constituted attorney. In

so far as applicant No. 2 is concerned, he argues that applicant is a driver of the truck and hence, they cannot be considered to be in charge of the business of the said company. According to him, unless the present person responsible for the affairs of the company is made accused, so also the company is made as an accused, criminal proceedings cannot be maintained against applicants with regard to the offence punishable under Section 407 of Indian Penal Code is concerned, it is his contention that there is absolutely no evidence to indicate that any food grain were entrusted to the applicants and they committed breach of trust and in any case no offence is attributed by the company against them.

4. Learned APP opposed grant of any relief to the applicant by contending that offence is serious in nature and there is misappropriation of government food grain to substantial amount. It is his submission by relying upon the judgment of the Hon'ble Supreme Court in case of ***State of Panjab Vs. Kasturi Lal and others*** AIR 2004 SC 4087 that the prosecution against the persons in charge of the company, even they joined company as an accused, is permissible. He also drew attention of the court to the judgment of the Hon'ble Supreme Court in case of ***State (Government of NCT of Delhi) Vs. D.A. M. Prabhu and another*** (2009) 3 SCC 264.

5. There is no dispute about the fact that the main offence

sought to be attracted against the applicant is punishable under the Essential Commodities Act and the Public Distribution System (Control) Order, 2015. There is allegation with regard to the non-compliance of order passed by the authorities under the Act by Nobel Carrying Corporation, Omerga. It would therefore be relevant at this stage to make reference to the provisions of Section 10, which reads thus:

> *"(1) if the person contravening an order made under Section 3 is a company, every person who, at the time the contravention was committed was in charge of, and was responsible to, the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against punished accordingly:*
>
> *Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.*
>
> *(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*
>
> *Explanation - For the purpose of this section, -*
>
> *(a) "company" means any body corporate, and includes a firm or other association of individuals; and*
>
> *(b) "director" in relation to a firm means a partner in the firm.*

6. Perusal of this section clearly indicates that a person,

contravenes the order made under Section 3, and such person is a company, every person who at the time of contravention was in charge or responsible to the company shall be deemed to be guilty of the contravention. It is thus clear that in order to make some guilt or responsible for the commission of crime, such person should be in charge or responsible to the company.

7. In the backdrop of this provision, Hon'ble Supreme Court in case of ***State of Panjab Vs. Kasturi Lal and others (supra)*** has held that having regard to the nature of the said provision, the person in charge of the company or an officer of the company may be separately prosecuted, even if company itself is not prosecuted. In order to apply the said judgment, in the instant case, there must be evidence to indicate that present applicants were in charge of the company, i.e., Nobel Carrying Corporation.

8. Learned APP made an attempt to convince this court that the applicant No. 1 is constituted attorney and therefore he is responsible for the affairs of the company. It would be relevant to take note of the said power of attorney, which reads thus:

सर्वाधिकारपत्र

लिहुन घंणार :— अन्सारी मो.नदिम मो युनुस
वय : २७ वर्ष, धंदा : व्यापार
रा. कालाबावर प्लॉट परभणी ता. जि. परभणी

लिहुन देणार :— मोहियोद्दिन अबुल फेज सुलतान
वय : ४९ वर्ष, धंदा : व्यापार
रा. उमरगाा ता. उमरगा जि. उस्मानाबाद

कारणे सर्वाधिकारपत्र करण्यात येते की, मी लिहुन देणार मोहियोद्दिन अबुल फेज सुलतान असुन मला नोबल कॉरिंग कॉर्पोरेशन या कंपनीचे सर्व कामकाजाबाबत सर्वाधिकार पत्र प्राप्त आहे. सबब कंपनीला परभणी जिल्हयाचे इ. स. २०१७—२०२० चे अन्नधान्य पुरवठा वाहतुक करण्याबाबतचे कंत्राट मिळालेले आहे.

हे की, मी लिहुन देणार मोहियोद्दिन अबुल फेज सुलतान वय : ४९ वर्ष, धंदा : व्यापार रा. उमरगा ता. उमरगा जि. उस्मानाबाद माझया काही खाजगी कारणामुळे संबंधित कंत्रटाबाबत कार्यालयात पत्रव्यवहार देणे/स्विकारणे, बील बनवणे व सादर करणे, वाहतुक प्रतीनिधीची नियुक्ती करणे, इ. कामा संदर्भात सर्वाधिकार तसेच आवश्यक असणा—या काही कामासाठी निर्णय घेणे बाबत सर्वाधिकार धारक म्हणुन माझे मुखत्यार आम म्हणुन लिहून द ेणार अन्सारी मो.नदिम मो युनुस वय २७ वर्ष धंदा रा. कालाबावर प्लॉट परभणी ता. जि. परभणी आम्ही यांना देत आहे.

करिता सदरील सर्वाधिकारपत्र मी माझया राजीखुशीने कोणाच्याही दबावाला बळी न पडता लिहुन घेणार यांच्या हक्कात खालील साक्षीदारासमक्ष करुन दिले ते सत्य व बरोबर आहे.

The above power of attorney, which does not indicate that the business of Noble Carrying Corporation being entrusted to applicant No. 1. Applicant No. 1 was permitted to do certain things which are mentioned in the power of attorney and on behalf of the partners of the company. By no stretch of imagination it could be said that applicant No. 1 is the partner or in charge of the company as contemplated by Section 10 thereof. As far as applicant No. 2 is concerned, by no stretch of imagination it could be said that this applicant is in charge of the said company. This court, therefore, finds substance in the contention of the learned counsel for the applicant that in so far as offences under the Essential Commodities Act and Public Distribution System (Control) Order, 2015, are not made out against them and proceedings against them without company and/or partners thereof, being accused cannot sustain.

9. Coming to the offence punishable under Section 407 of Indian Penal Code, there is absolutely no material on record to show that any food grain was entrusted to these applicants in order to accept the existence of offence of commission of breach of trust against them. In any case such offence would be attracted in case there is breach of trust committed by the company and not of any other person. No case to that effect is sought to be made out by prosecution. Thus, the entire proceeding against applicants cannot be allowed to be continued.

10. This court is surprised to notice that during the course of the investigation on behalf of the prosecution, it was sought to be argued without justification that there was no need of the partners of the said company to be joined as accused persons. Needless to say that it was open for the prosecution to claim in case evidence is found against the partners of the company, they can be arraigned as accused at any stage of proceeding but for the reason best known to the prosecution, it is not so claimed. This court, therefore, finds no hesitation to hold First Information Report and the entire proceedings on the basis of said First Information Report against the present applicants to be not sustainable.

11. Hence, application stands allowed in terms of prayer clause "C, C-1, and C-2".

(R. M. JOSHI, J.)

B. S. Joshi