

(2016) 03 BOM CK 0064

In the Bombay High Court

Case No : Criminal Application (Apl) No. 728 of 2015

Dhanraj s/o Anandrao Mohod Aged about 86 years, Occ.
Business and others

APPELLANT

Vs

The State of Maharashtra, Through P.S.O.P.S. Karanja, Dist.
Wardha and others

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 3, 7

Citation : (2016) 2 AIRBomRCri 87 : (2016) ALLMRCri 2208 : (2016) 2
BomCR(Cri) 492 : (2016) 4 MhLJCrI 208

Hon'ble Judges : B.R. Gavai;A.S. Chandurkar, JJ.

Bench : Division Bench

Final Decision : Allowed

Judgement

A.S. Chandurkar, J.(Oral) - Admit. Heard finally with consent of learned counsel for the parties.

By the present application filed under Section 482 of the Code of Criminal Procedure, 1972, the applicants seek quashing of the First Information Report registered against them under the provisions of Sections 3 and 7 of the Essential Commodities Act, 1955 (for short, the said Act).

2. Shri R.M. Daga, the learned counsel for the applicant submitted that in the First Information Report there is no reference whatsoever made to breach of any order that has been made under Section 3 of the said Act. It is submitted that unless there is breach of any order that has been made under Section 3 of the said Act, there would be no question of any violation of such order to result in an offence being committed under Section 7 of the said Act. He submits that a specific ground has been raised by him in the present application that as no order has been made under Section 3 of the said Act, there was no question of its violation. The learned counsel has placed reliance on the judgment of Division

Bench in Rakesh s/o Mahendrakumar Jain v. The State of Maharashtra 2014 ALLMR (Cri) 3144. It is therefore submitted that continuation of the criminal proceedings would be an abuse of the process of law.

3. Shri J.Y. Gurde, the learned Additional Public Prosecutor for the non-applicants on the other hand submitted that as a prima facie case had been made out against the petitioner, the offence under Section 3 of the said Act read with Section 7 thereof has been registered. He further submitted that statements of various ration card holders had also been recorded which reveal that the applicants had not been distributing food grains in accordance with law. He therefore submitted that there was no case made out to quash the proceedings.

4. Perusal of the First Information Report indicates that on the basis of a complaint received, the investigation was carried on 05/05/2015 by the Supply Officer. The stock which was available was seized and the samples were thereafter forwarded to the Competent Authority. It is then stated that after inspection of the register, it was noticed that the entries made therein did not reveal the correct state of affairs. It is on that basis that the offence under Section 3 read with Section 7 of the said Act came to be registered. In Rakesh M. Jain (supra) the Division Bench of this Court while considering the provisions of Section 3 read with Section 7 of the said Act has held that unless there is any order made under Section 3 of the said Act that was alleged to have been contravened, there was no question of any offence under Section 7 of the said Act being made out. While holding so, the Division Bench to which one of us (B.R. Gavai, J.) was a party relied upon the judgment of the Honourable Supreme Court in Prakash Babu Raghuvanshi v. State of M.P. (2004) 7 Supreme Court Cases 490. It was held therein that for bringing an application under Section 7 of the said Act, the essential requirement was the violation of an order made under Section 3 of the said Act. As the prosecution sought to rely upon a Scheme framed by the State Government which according to it was an order made under Section 3 of the said Act and as such plea was not canvassed either before the trial Court or the High Court, the proceedings were remitted to the High Court.

5. The present case stands on a better footing inasmuch as there is no reference whatsoever in the First Information Report to any order having been made under Section 3 of the said Act being violated. The specific averments made by the applicants in paragraph 4 of the application have not been specifically controverted. In that view of the matter, in absence of it being shown that there was any order made under Section 3 of the said Act that had been contravened, the proceedings for an offence punishable under Section 7 of the said Act would not be tenable. The continuation of these proceedings therefore would amount to an abuse of the process of law. In view of aforesaid, the application is allowed in terms of prayer clause (a) thereof with no order as to costs.