
(2012) 06 BOM CK 0074

In the Bombay High Court

Case No : Criminal Application No. 2389 of 2012

Haridas Ghumare

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 20-06-2012

Acts Referred:

Essential Commodities Act, 1955 — Section 10A, 10C, 3, 6A, 6B

Citation : (2012) BomCR(Cri) 43

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Advocate : V.D. Salunke, for the Appellant; N.H. Borade, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

T.V. Nalawade, J.

1] This application is filed for anticipatory bail in C.R. No. 30/2012 registered in Shivajinagar Police Station, Beed for offences punishable under Sections 3 and 7 The Essential Commodities Act, 1955 [hereinafter referred to as the Act]. Both sides are heard. Papers of investigation were made available. Copies of some documents are produced by the applicant also. The applicant is a Contractor and he is engaged by the State Government for transporting the food grains from Government go down to concerned Tahsil. The food grains are required to be distributed through Public Distribution System to ration card holders. The applicant was expected to lift 340 bags of rice meant for persons belonging to Below Poverty Line [BPL] from Government godown of Kedgaon, Dist. Ahmednagar. The applicant engaged one truck and the bags were collected from Government godown. On the basis of information received by MIDC, Ahmednagar police, the truck was intercepted at Dehre Toll Naka when it was proceeding towards Gujrat. One Shaikh Shahid Sattar was present on driver's seat and he informed that he was taking the truck to Ankaleshwar, Gujrat. He showed the bill of one Suyog Traders, New Mondha and this bill was showing that

the truck contained 170 Quintals of Parimal rice, rice of other quality. When police investigated the case, they found that the bags were containing rice which was meant for distribution through public distribution system and there were Government stamps and seals on the bags. The driver admitted that the bags were collected from Government godown of Kadegaon. As the aforesaid goods fall under Essential Commodities Act and they were being taken to Gujrat for selling them in black market, police seized the bags and also the truck on 25/4/2012 itself. F.I.R. came to be given by Police Officer and the crime came to be registered in MIDC police station, Ahmednagar at Cr.No.31/12.

2] The record shows that present applicant applied to J.M.F.C. for interim custody and the J.M.F.C. granted interim custody and directed the applicant to take the goods to Beed and hand it over to revenue authorities from Beed. Surprisingly, the record does not show that the report as required under the Act was made to concerned Collector about the aforesaid seizure and the action which can be taken under the provisions of Sections 3 and 7 of The Essential Commodities Act, 1955 was taken by the Collector. The record creates probability that subsequently, the applicant tried to manipulate the things. When the truck driver was holding bill of Suyog Traders showing that Suyog Traders is the owner of the goods and when the truck was engaged by the applicant, in ordinary circumstances, the inference was easy against the applicant that he was trying to take the goods out of Maharashtra State for selling the same in black market.

3] In view of the aforesaid circumstances, the District Supply Officer of Beed gave report against the applicant and then the crime at C.R.No.30/12 came to be registered in Shivajinagar Police Station, Dist. Beed. for offences punishable u/s 3 and 7 of the Essential Commodities Act, 1955. Though the commodity is reached to Beed, the applicant cannot claim at this stage that he had no knowledge about the aforesaid incident. He did not give report that the goods were stolen and on the contrary, the driver of the truck engaged by him, was having bill of Suyog Traders. The instances of selling such essential commodities in black market are increasing day by day. Thorough investigation in such incidents needs to be made. It is unfortunate that the investigating officer from Ahmednagar did not give report to Collector and the action for confiscation of truck and the commodity etc. was not taken. In view of aforesaid circumstances and provisions of the Act, such action can still be taken.

4] In view of the order made by J.M.F.C. and the facts of this case, it has become necessary to make some observations with regard to the provisions of the Act. Section 10-A of the Act shows that all the offences falling under the Act are cognizable. So police can take cognizance of the offences and can take action like making seizure. Section 6-A [Maharashtra Amendment] makes it compulsory on the part of the police officer who makes such seizure, to report to the Collector of the District about seizure without unreasonable delay.

5] Section 6-A of the Act shows that the Collector can direct production of both the essential commodity and the vehicle in which the commodity was being

carried before him. If the food grains are not seized from the procedure, the Collector can make the order of confiscation in respect of both the food grains and the vehicle. If the contravention of order made u/s 3 of the Act is found, special power is given to the Collector for disposal of the essential commodity like food grains and for making such order, he may not wait for exhaustive enquiry.

6] Section 6-C of the Act provides that appeal can be filed against the order of the Collector. Section 6-E shows that no Court or Tribunal can make order with regard to the possession etc. of the essential commodity so seized and also in respect of the vehicle if the essential commodity was being carried in a vehicle if the Collector starts confiscation proceedings. In criminal case also, there is presumption of culpable mental state available against the accused u/s 10-C of the Act if the offence requires existence of such culpable mental state.

7] In view of the aforesaid provisions, it becomes necessary for every Magistrate or other Court when a matter like present one comes before it to make necessary enquiry with regard to the compliance of Section 6-A of the Act. The Court or Magistrate or Tribunal is expected to bring to the notice of seizing officer that such report needs to be made to the Collector and it becomes necessary for the Magistrate or the Court as the case may be to make enquiry with the Collector as to whether the Collector is likely to take action u/s 6-A of the Act. So, the Magistrate cannot pass straightway the order of interim custody with regard to the essential commodity and even with regard to the vehicle before making such enquiry.

8] The defence of a person like transporter or contractor like the present one cannot be considered at this stage. The provisions of the Act show that the contravention is required to be proved only against the person who was found in possession of essential commodity and so, even at this stage, prima facie case needs to be made against the person from whose possession the essential commodity and the vehicle are seized for contravention. This can be seen in Section 6-B of the Act. This Section provides that confiscation of essential commodity can be made by giving opportunity of being heard either to the owner or to person from whom the commodity is seized. Section 6-B [2] is in respect of the vehicle only and it is not in respect of the essential commodity. u/s 6-B [2] of the Act, the owner of the vehicle has right to take defence that the vehicle was used for the purposes alleged by seizing officer without the knowledge or connivance of the owner. Thus, special powers are given to the Collector with regard to the commodity. Thus the J.M.F.C. has committed error in making the

order of interim custody in favour of the present applicant. Some observations with regard to the probable manipulation done by the applicant are already made.

9] It is surprising that the Magistrate also did not go through the provisions of Essential Commodities Act and did not try to find out the procedure which needs to be followed in such a case. It can be said that the applicant somehow could mislead the J.M.F.C. also.

10] The advocate of the applicant relied on copy of the contract made with the Government for transporting the essential commodity but this record is of no use. There is clear prima facie case against the present applicant for aforesaid offences and in such a case, custodial interrogation is must. In view of these circumstances, this Court holds that it is not fit case for grant of anticipatory bail and the application stands rejected. Copy of this order is to be sent to the Police Station, M.I.D.C. Ahmednagar, Shivajinagar Police Station, Beed, Collector, Ahmednagar, and the J.M.F.C. Ahmednagar, who made the order of interim custody.