(2020) 03 BOM CK 0055

In the Bombay High Court

Case No : Criminal Writ Petition No. 777, 778 Of 2018

Rajendra S/O. Janardhan Jadhav And Anr — APPELLANT

Vs

State Of Maharashtra — RESPONDENT

Date of Decision : 12-03-2020

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 7, 11
Code Of Criminal Procedure, 1973 — Section 173(2)
Indian Penal Code, 1860 — Section 21

Citation : (2020) 03 BOM CK 0055

Hon'ble Judges : T.V. Nalawade, J;M.G. Sewlikar, J

Bench : Division Bench

Advocate : D. S. Bharuka, S. B. Narwade

Final Decision : Dismissed

Judgement

T. V. Nalawade, J

1. Both the proceedings are filed for relief of quashing of cases filed against the Petitioners under the provisions of Sections 3 and 7 of the Essential Commodities Act. As one of the Petitioners of the two proceedings is the same and as similar allegations are made in both the proceedings, both the proceedings are being decided together. In the first proceeding, the relief of quashing of the proceeding of R.C.C. No.223 of 2013, pending in the Court of learned Judicial Magistrate First Class, Kannad, is claimed and this case is filed in Crime No.33 of 2013, registered with Kannad Police Station, District Aurangabad, for the aforesaid offences. The second proceeding is filed for relief of quashing of the proceeding of R.C.C. No.334 of 2013, which is pending in the same Court of Judicial Magistrate First Class and which is filed in Crime No.36 of 2013, which was registered for similar offences in Kannad Police Station, District Aurangabad.

2 Both the sides are heard.

3 In both the proceedings, crime was registered on the basis of reports given by

police officers of Kannad Police Station. In the first proceeding, one Khushal Shinde, police inspector of Kannad Police Station gave report. According to him, on 23rd April, 2013 at about 15:00 hours, they received information from their informer that in Swastik Oil Depot, its owner Sanjog Gangwal was selling kerosene of Public Distribution System as the kerosene available in open market, this sale was in black market. It was informed that he was in possession of metal tanks containing such kerosene and at the time when information was given, he was collecting more such kerosene from transport vehicle bearing No.MH-20-CT-3856.

4 The police inspector took the staff and immediately effected the raid on the aforesaid spot. Description of the place where Swastik Oil Depot is situated, was given. They noticed that the aforesaid transport vehicle was present in front of the shop and in the shop, there were tanks containing blue kerosene, the kerosene which is meant for PDS system. Sanjog Gangwal, one of the Petitioners of this proceeding was sitting at the counter of the shop. He admitted that kerosene, which was present in the shop and which he was receiving from the aforesaid transport vehicle, was from PDS system and he was selling it in black market. Samples of this kerosene were collected and the kerosene, which was around 750 liters worth more than rupees two lakhs, was seized by police under Panchanama.

5 During investigation, it transpired that the aforesaid kerosene was collected from Rajendra Jadhav, Petitioner No.1 of this proceeding. During investigation, police recorded statements of the persons like driver of the aforesaid transport vehicle and the vehicles, in which kerosene is collected from main depot. Sahebrao Kurhade, tanker driver, gave statement that kerosene was collected by him at Manmad, which was 12000 liters and he had brought it to Kannad for distribution as per the procedure. The Tahsildar was expected to distribute the kerosene as per the list given to the Manmad depot. Ordinarily, clerk Choudhari of Tahsil office used to come with the tanker to various places of retailers, who were expected to supply the kerosene to the card holders. He informed that Choudhari had not come with him on 23rd April, 2013 and Rajendra Jadhav, Petitioner, who was manager of the distributor Smita Lohad had come with him and as per his instruction he had given delivery at five places and as per his instruction he had given delivery of 750 liters to Swastik Oil Depot. Thus, when the kerosene was not meant for Swastik Oil Depot and it was of PDS system, for selling that kerosene in black market, kerosene was supplied to Swastik Oil Depot of which Sanjog Gangwal is owner. There are statements of many other persons to aforesaid effect. Panchanama of seizure is consistent with the aforesaid allegations made against the Petitioners. CA report is consistent with this case. It appears that during investigation, the entire stock was checked and it was found that there was deficit of huge quantity of kerosene if it was compared with the list on the basis of which kerosene was collected at Manmad Depot. In view of these circumstances, FIR was given and the crime was registered. Charge-sheet is filed against Sanjog Gangwal and Rajendra Jadhav. It

can be said that charge-sheet could have been filed against some other persons also, but care can be taken by the Trial Court of such possibility.

6 FIR in respect of Crime No.36 of 2013 was given by Dilip Sagar, PSI. The record of this case shows that police inspector Shinde had an information and as per the instructions and when Shinde was present in the team, action was taken. In that case also, there was information against the same oil depot, Swastik Oil Depot. But this information was of different nature. There was information that one Rajendra Jadhav was distributing kerosene, which was meant for PDS system, to the persons, who were not entitled to collect the kerosene and he had supplied the kerosene to Nitin Jaichand Patni, Petitioner No.2 of the second proceeding and the quantity was 800 liters. It was informed that though the kerosene was collected by Nitin, it was stored in the shop of one lady by name Chainabai Patni and it was unauthorized possession. They went to the shop of the lady and they found that there were eight tanks created for storing kerosene and there was 1500 liters of kerosene in those tanks. Lady Chainabai Patni was having record of distribution, but the quantity which was supplied to her did not tally with the quantity available and the record maintained by her. When as per the supply and record of distribution, she was not expected to possess even single liter of kerosene on that day, she was found in possession of 1500 liters of kerosene of PDS system. Delivery of 800 liters was given on that day, when name of this lady or Nitin was not present in the list of dealers, who were to receive kerosene on that day. Thus, in this case also Rajendra Jadhav Petitioner No.1 of this proceeding was found responsible for distribution of kerosene and so report was given against both Rajendra and Nitin. Charge-sheet is filed for these offences against Rajendra, Nitin and Chainabai Patni. In this matter also, there is record of investigation, which contain seizure Panchanama, statements of witnesses and they support the aforesaid allegations made against the three accused.

7 The material produced with the charge-sheets shows that in both the matters, possession was illegal and the kerosene was stored for selling it in black market.

8 The learned counsel or Petitioners submitted that in FIR, there is no mention of Control Order, which can be issued under Section 3 of the Essential Commodities Act and so relief needs to be given in both the matters. He made another submission that investigation is not made in both the matters by police officer of the rank of inspector and so both the cases need to be quashed. In support of these contentions, he placed reliance on observations made by the learned Single Judge of Nagpur Bench of this Court in the case reported as 2006 ALL MR (Cri) 489, (Amarjeetsingh s/o. Jeevansingh & Anr. Vs. State of Maharashtra & Ors.) and A.I.R. (35) 1948 Bombay 364, (Isak Soloman Macmull Vs. Emperor). In the first case, some observations are made with regard to necessity of existence of Control Order and in the second case, there are observations with regard to liability of master in criminal law in respect of illegal activity of the servant.

9 The learned APP placed reliance on the observations made by the Apex Court in the case reported as AIR 1982 Supreme Court 58, (State of Bihar Vs. Gulab Chand Prasad). In this case, the Apex Court has laid down that omission to mention in FIR the Order which was violated is not sufficient to quash the proceeding if such Order was issued in fact under Section 3 of the Essential Commodities Act, 1955 and it was in existence at the relevant time. This case was not referred by the learned Single Judge of Nagpur Bench when some observations were made by the learned Single Judge in respect of necessity of mention of such Order in FIR. Due to these circumstances, this Court holds that the Petitioners cannot get benefit of the order made by the learned Single Judge in the case of Amarjeetsingh (supra). So far as second point raised about criminal liability is concerned, it can be said that in both the matters, the persons against whom charge-sheets were filed, were found on the spot and there are statements of witnesses against them of the nature mentioned above. There was actual seizure of the kerosene of PDS system and to that circumstance, there is no explanation at all with the Petitioners. Thus, there is no force in the aforesaid two points raised by the learned counsel for Petitioners.

10 The learned APP drew the attention of this Court to the Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993. This Court has gone through the scheme of the Order, which includes various definitions given of the terms "consumer, dealer, kerosene etc.". This Court has gone through various restrictions put by this Order with regard to use of kerosene supplied under public distribution system, restrictions put on the sale, storage and use of such kerosene. There are also directions even against the authorized retailers appointed in this system to display stock and maintain registers properly in respect of kerosene received and kerosene distributed. In view of the facts of the present matter, which are already quoted, this Court holds that the material is sufficient to make out a case for taking cognizance of the offence punishable under Section 3 read with 7 of the Essential Commodities Act.

11 The learned APP placed reliance on some observations made by the Apex Court in the case reported as 1980 (3) SCC 152, (Satya Narain Musadi Vs. State of Bihar) to show that the offence punishable under Section 3 read with 7 of the Essential Commodities Act is a cognizable offence and police can file report under Section 173(2) of the Code of Criminal Procedure and such report is sufficient compliance of the provisions of the Essential Commodities Act as the police officer, who files such report needs to be treated as public servant within the meaning of Section 21 of the Indian Penal Code. It was held in that case that there was compliance of Section 11 of the special enactment. In the present matter also, charge-sheets are filed by police (police inspector) and so it cannot be said that the Magistrate could not have taken cognizance of the aforesaid two cases. This Court holds that there is no force in the points raised in the two proceedings. In the result, both the petitions stand dismissed.

