

(2017) 03 BOM CK 0027

In the Bombay High Court

Case No : Criminal Application No. 492 of 2017

Shri Vijay Machindra Markad

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2017) ALLMRCri 1488 : (2017) 2 BomCR(Cri) 532 : (2017) 2 MhLJCrI 540

Hon'ble Judges : S.S. Shinde and K.K. Sonawane, JJ.

Bench : Division Bench

Advocate : Mr. V.D. Sapkal, Advocate, for the Applicants; Mr. P.G. Borade, APP, for the Respondent/State; Mr. S.J. Salunke, Advocate, for the Applicant; Mrs. P.V. Diggikar, APP, for the Respondent/State; Mr. S.S. Rathi, Advocate, for the Applicants; Mr. P.G. Borade, APP, for the Respondent/State

Final Decision : Disposed Off

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. All these applications raise one and the same legal issue, hence are heard together and being disposed of by this common judgment and order.

3. By way of filing these applications, the applicants have prayed to quash and set aside the respective first information reports, which are registered against them for the offence punishable under Sections 3 and 7 of the Essential Commodities Act.

4. The brief facts in Criminal Application no. 492 of 2017, are as under :

(a) The complainant Budhanad Namdev Dhandore, resident of Newasa, Tq. Newasa, Dist. Ahmednagar lodged the complaint on 17th October, 2016 with Sonai Police Station alleging that on the relevant day at about 9.00 p.m. police officers of Police Station, Sonai apprehended Tata 608 vehicle bearing

registration No. 15/AG5209. There were 160 gunny bags of rice in the said vehicle. The gunny bags were bearing seal of State Government. Apparently, those gunny bags were meant for distribution from fair price shops. The driver and cleaner of the vehicle were having no documents of the said goods i.e. bills of challans. Therefore, the police informed said fact to the Supply Officer. Accordingly, the Supply Officer visited the spot, verified the goods and lodged the report that goods in the vehicle were for distribution under public distribution scheme and this is a case of black marketing.

(b) After receiving the said report, Crime bearing No.II46 of 2016 came to be registered with Sonai Police Station, Dist. Ahmednagar for the offence punishable under Sections 3 and 7 of the Essential Commodities Act (Hereinafter referred to as "the said Act") on 17th October, 2016.

5. The brief facts in Criminal Application no. 6038 of 2016, are as under :

(i) Respondent No. 3 had lodged report with Charthana Police Station, Charthana, District Parbhani for offences punishable under Section 3 and 7 of Essential Commodities Act on 12th July, 2016. In the said report he had alleged that upon telephonic instructions from Respondent No.2, he had been to vicinity of village Bamni. There he noticed in one tempo 105 bags of rice having brand of Tajmahal. Respondent No.3 had suspected that said rice might be meant for Public Distribution Scheme. Accordingly, Crime No.96/2016 was registered with Charthana Police Station, District Parbhani, for the offences punishable under Sections 3 and 7 of the Essential Commodities Act, against driver of said tempo. Accordingly, all 105 bags of rice were seized and kept in Government Godown.

(ii) Present applicant no.1 had approached to Respondent No.2 with Representation on 13th July, 2016 along with the copy of purchase invoice. It was specifically submitted to Respondent No.2 that he had purchased the said rice from open market on 10th July, 2016. It was also pointed out that the said rice has nothing to do with Public Distribution Scheme and accordingly prayed for return of goods.

(iii) The Police Inspector from Charthana Police Station had made communications on 13th July, 2016 and 20th July, 2016 to Respondent No.3 herein, who is informant in First Information Report. The Police had sought specific report from the authority, whether the rice is meant for Public Distribution Scheme or not.

(iv) On 2nd August, 2016, Respondent No.2 had specifically communicated to Assistant Police Sub Inspector of Charthana Police Station that prima facie, the goods seized does not appear to be from Public Distribution Scheme. Accused Govind was arrested in the crime on 6th October, 2016 and during his custody, it appears that he had named present applicants. Accordingly, present applicants are added in the crime. Hence this Criminal Application.

6. The brief facts in Criminal Application no. 5099 of 2016, are as under :

(I) The informant Naib Tahasildar alleged that, 3 licensees of the fair price shop of village Banwas, Tq. Palam, Dist. Parbhani have not distributed the food grains to the card holders in September 2015 and committed misappropriation. The accused named in the FIR No. 3036/2015, which was registered with Palam Police Station, were arrested on 28th April, 2016. On the basis of their statements in police custody, the name of applicant is appearing in remand report being accused.

(II) It is the case of the applicant that, he has no nexus with the alleged offence. Neither he is running any fair price shop nor the resident of the village Banwas. Even if though the allegations in the FIR are taken against the applicant as it is, no offence is made out and therefore, continuation of the criminal proceedings against the applicant on the basis of said FIR is sheer abuse of process of law. Hence this Criminal Application.

7. The learned counsel appearing for the applicants submitted that, in the First Information Reports there is no reference whatsoever made about breach of any order, that has been made under section 3 of the Essential Commodities Act, 1955. 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. Learned counsel submits that a specific ground has been raised by the applicants in the present application that as no order has been made under section 3 of the said Act, therefore, there was no question of its violation. The learned counsel appearing for the applicants placed reliance on the exposition of law by the Supreme Court in the case of Prakash Babu Raghuvanshi v. State of M.P., 2004 AIR SCW 5334, the Division Bench of Bombay High Court bench at Nagpur in the case of Rakesh S/o Mahendrakumar Jain v. The State of Maharashtra, 2014 All M.R. (Cri.) 3144 and in the case of Dhanraj Anandrao Mohod and another v. State of Maharashtra and another, 2016 (2) Bom. C.R. (Cri.) 492.

8. The learned Additional Public Prosecutor appearing for respondent/State, on the other hand, submitted that as a prima facie case had been made out against the applicants, 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 there is no distribution of food grains in accordance with the relevant provisions/procedure, therefore, he submitted that no case is made out to quash the F.I.R.

9. Upon hearing the learned counsel appearing for the parties and on perusal of the averments in the applications, annexures thereto and original record, we are of the opinion that, the applications deserve to be allowed for the reasons stated herein below.

10. Admittedly, in all these cases, there is no mention of contravention of any order made under section 3 of the said Act, and therefore, in absence of any

order made under section 3 of which the contravention is claimed, the offence under section 7 could not be made out. The Supreme Court in the case of Prakash Babu Raghuvanshi (supra) has taken a view that for attracting the provisions of offence punishable section 7 of the said Act, the order under section 3 of the said Act is essential. The Division Bench of the Bombay High Court at Nagpur in cases of Rakesh Mahendrakumar Jain (supra) and Dhanraj Anandrao Mohod (supra) has also taken a view that, for bringing an application under section 7 of the said Act, it is necessary to make reference in the first information reports to any order having been made under section 3 of the said Act being violated. In absence of it being shown that there was any order made under section 3 that had been contravened, proceedings for the offence punishable under section 7 would not be tenable and continuation of such proceedings, therefore, would amount to abuse of process of law.

11. As already observed, in the facts of the present cases also, there is no reference whatsoever in the first information reports to any order having made under section 3 of the said Act being violated and therefore, the proceedings for offence punishable under section 7 would not be tenable. Therefore, the continuation of the proceedings based upon the said first information reports would amount to abuse of process of law. In the circumstances, the applications deserve to be allowed. Hence we pass the following order :

ORDER

- (i) Criminal Application No. 492/2017 is allowed in terms of prayer clause "B".
- (ii) Criminal Application No.5099 of 2016 is allowed in terms of prayer clause "B".
- (iii) Criminal Application No. 6038 of 2016 is allowed in terms of prayer clause "C".

12. Rule made absolute in above terms. Accordingly, all these applications stand disposed of.