(2013) 10 BOM CK 0020

In the Bombay High Court

Case No : Criminal Application No. 3729 of 2011

Sunil Shreekrishna Modani APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 169

Hon'ble Judges : K.U. Chandiwal, J;A.I.S. Cheema, J

Bench : Division Bench

Advocate : N.S. Jaju, for the Appellant; M.M. Nerlikar, Assistant Public Prosecutor, for the Respondent

Judgement

K.U. Chandiwal, J.—Heard. Rule made returnable forthwith. Heard finally.

2. The applicant questions prosecution vide F.I.R. No. 17 of 2011, registered at Mantha police station, Tq. Hadgaon, District Nanded and consequent charge sheet vide S.C.C. No. 291 of 2011 pending on the file of learned J.M.F.C. Hadgaon for the offence u/s 3/7 of Essential Commodities Act.

3. The allegations are, on 20.7.2011, the complainant police Sub Inspector was patrolling on Nanded-Hadgaon road and at around 14.00 hours, received discreet information that in a truck No. MH-26-S-6469, rice is transported from Parbhani for Nagpur. Consequently, in the trap at 17.00 hours said truck was intercepted, the contents were examined in presence of panch witnesses and it was found, the truck had 176 bags containing 96 Kg of rice each worth Rs. 2,40,575/-. The investigator-complainant had also seized the said truck above.

4. Record illustrates that the truck driver Ram Maroti More had handed over bill No. 260, having description of carrying 176 rice bags worth Rs. 2,40,575/- from Shrikrishna Agro Industries, Devri, transported through Parmar Transport Company dated 18.7.2011, with one more receipt No. 179.

5. We have perused the receipts/bills dated 4.7.2011, which shows that goods

basically were transported from Tarni Traders, Ramsagarpara, Raipur Chhattisgarh State of Parmal rice 180 bags. It is matching to receipt No. 179 dated 8.7.2011 showing consignor as Gurudeo Trading company, Parbhani, consignee as Shrikrishna Agro Industries, Devri, dated 18.7.2011.

6. The grievance is, the activities of police Officer was illegal, uncalled for. He was arrested on 29.7.2011 and released by the learned J.M.F.C. The applicant is private trader. He has not violated rules and regulations u/s 3 of Essential Commodities Act and has not committed any illegality. Under the Act, police Sub-Inspector is not empowered to stop, search and seize food grains. It is only the police inspector to do said activities. There was no prima facie evidence with complainant P.S.I. to seize the goods as were not shifted from either warehouse or Food Corporation or from fair price shop.

7. We have read the affidavit of Mr. Narayan Nivrutti Bembde, Assistant Police Inspector and S.R. Unawane, then P.S.I. who intercepted the truck. According to the attaints and the learned A.P.P. the act was legal in discharge of obligation and Police Sub Inspector has acted under the instructions and guideline issued by the Superintendent of Police, Nanded dated 28.3.2011.

8. On analysis of material placed before us, there was nothing before the police Sub Inspector at the relevant time to doubt that rice transported in the truck belonged to Food Corporation of India. When the said Officer was informed of valid permit bills, he should have primarily believed the same or should have directed transmission of truck with the rice to the competent revenue authority. As a matter of fact, it is the District Supply Officer or the Authorized Revenue Officer i.e. Tahsildar should have been contacted before conducting so called raid or their presence should have been ensured. There was nothing to indicate that P.S.I. Unawane had legal authority under the Essential Commodities Act to take charge of the goods when he was confronted with the bills thereof.

9. Learned A.P.P. has placed reliance to section 64 of Bombay Police Act 1951, which deals with the execution of powers and duties of police. Section 64 reads as under:--

64. Duties of a Police officer. It shall be the duty of every Police officer-

(a) promptly to serve every summons and obey and execute every warrant or other order lawfully issued to him by competent authority, and to endeavour by all lawful means to give effect to the lawful commands of his superior;

(b) to the best of his ability to obtain intelligence concerning the commission of cognizable offences or designs to commit such offences, and to lay such information and to take such other steps, consistent with law and with the orders of his superiors as shall be best calculated to bring offenders to justice or to prevent the commission of cognizable offences and within his view of non-cognizable offences;

(c) to prevent to the best of his ability the commission of public nuisances;

(d) to apprehend without unreasonable delay all persons whom he is legally authorized to apprehend and for whose apprehension there is sufficient reason;

(e) to aid another Police officer when called on by him or in case of need in the discharge of his duty, in such ways as would be lawful and reasonable on the part of the officer aided;

(f) to discharge such duties as are imposed upon him by any law for the time being in force.

10. Thus, it shall be the duty of every police officer to the best of his ability to act within frame work of law, however, the Special statute under Essential Commodities Act excludes the Police Officer below the rank of Police Inspector from conducting raid or intercepting the vehicle. It was obligatory for said P.S.I. to have immediately contacted the Revenue Authorities or his superior police Officer.

11. In the scenario of the matter, we find F.I.R. lodged by the P.S.I., seizure of rice when he was confronted with bills, was uncalled for and illegal too. We quash the F.I.R. and consequent charge sheet. Rule made absolute with costs.