

The High Court Of Madhya Pradesh
Bench Gwalior

SB:- Hon'ble Shri Justice Rajeev Kumar Shrivastava

MCRC 45489 of 2021

Krishnapal Singh Kansana

Vs.

State of MP and Anr.

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Shri Anil Kumar Mishra, counsel for petitioner.

Shri Dheeraj Budholiya, Panel Lawyer for the State.

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Reserved on

26/02/2022

Whether approved for reporting

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O R D E R

(Passed on 10/03/2022)

Per Rajeev Kumar Shrivastava, J:-

Petitioner has come up with the present petition under Section 482 of CrPC for quashment of FIR vide Crime No.754 of 2020 registered at Police Station Morar, District Gwalior for offence punishable u/S. 3/7 of Essential Commodities Act [in short " the EC Act"] r/w Sections 353, 34, 186 of IPC and other consequential criminal proceedings initiated in connection with the aforesaid Crime.

(2) Facts giving rise to present petition, in brief, are that on 21/12/2020, District Marketing Officer (herein the respondent No.2 complainant) submitted a written complaint at Police Station Morar, District Gwalior alleging therein that, at around 01:00 PM, trucks bearing registration Nos.UP75-AT3899, UP75AT6878 and MP07HB8049 were being parked with paddy under the bridge of Badagaon. The tags were being affixed by means of stapler by truck

driver. On enquiry, driver of truck disclosed that said paddy was being transported from Itawa, UP and purchased same from M/s. Dhanraj & Company vide Bilty nos. 1076 & 1078 and by M/s. OM Sairam Transport, paddy ought to be unloaded at Gwalior but during the inspection, driver of truck bearing registration No.UP75AT6878 driven away and in the meanwhile, one car bearing registration No.MP30C7228 was parked between trucks and it is alleged that present petitioner snatched documents from complainant and torn the same and thereafter, same were collected by Civil Supply Officer and Society Manager, namely Madan Tiwari tried to release aforesaid trucks. On the basis of statements given by the truck driver, namely, Somesh Yadav, the impugned FIR has been against the petitioner and other co-accused for commission of offences as mentioned in para 1 of this order. Hence, this petition.

(3) It is submitted by the counsel for the petitioner that before registering aforesaid FIR, the complainant directed petitioner for lifting paddy from Primary Agriculture Cooperative Society, Gonda, Bhitwar and Transport of Jai Maa Annapurna Devi Agro-Warehouse. Petitioner hired two trucks on rent and filled 750 bags of paddy from the society but when there was no availability of storage in the concerning ware house, he approached complainant and in turn, the petitioner was directed to unload said paddy in Gautam Warehouse, Bijoli, Gwalior. While lifting paddy filled in trucks from society at Gonda, there was signature of Purchasing Manager Shri Madan Tiwari on bill and bilty and same were very much available

with truck driver but authorities concerned did not consider said aspect and only FIR has been lodged by making bald allegations of snatching and tear off documents. One day before incident petitioner had made a complaint before the Collector against complainant,(the said Vivek Tiwari) and in order to take revenge, the said Vivek Tiwari has made false allegation against the petitioner by lodging the impugned FIR. It is further contended that initially, the petitioner filed a petition before this Court and same was dismissed with liberty to file an appeal before the Collector under Clause 15 of PDS Control Order and in pursuant to the order passed by this Court, petitioner filed an appeal before Collector. In absence of particular breach of Control Order, confiscation of paddy cannot be made but the Collector has directed to confiscate paddy in favour of the State Government under Section 6-A of EC Act and the same was put to challenge before Sessions Court and learned Sessions Judge while considering the appeal has observed that paddy which was recovered from trucks in question, does not come under the purview of EC Act. It is further contended that offence registered against petitioner under Section 3/7 of the EC Act has already been excluded from the list of the EC Act in the year 1992 by the State Government and in absence of particular violation of Control Order, FIR registered against petitioner is clear abuse of process of law. Except offence u/S 3/7 of the EC Act, other offences registered are baseless in order to take a revenge by the complainant. In support of contention, counsel for the petitioner has relied upon the order dated 17th of January, 2019 passed by this Court (Indore Bench) in the matter of **Nitin s/o.**

Vasudev Udasi vs. State of MP [MCRC 24128 of 2018] in which matter, prosecution launched by police against petitioner therein is not in accordance with law and quashed FIR and other subsequent criminal proceedings. Therefore, it is submitted that petitioner herein cannot be held guilty for offence punishable under Section 3/7 of EC Act as from perusal of FIR, it appears that it is silent about condition of Control Order which has been violated by petitioner; therefore, *prima facie* it does not appear that petitioner violated or contravened any order under Section 3/7 of EC Act. It is further contended that Clause 11(5) of MP PDS Control Order, provides that the Collector is only authorized to initiate action under EC Act if there is any violation of PDS Order or Central Order. In the present matter, complainant without obtaining any permission from the Collector before registering FIR or for seizing the paddy, on his own instance, clearly amounts to abuse of process of law. Violation of any Control Order has not been expressly shown by the police in the FIR and it is not clear which Control Order has actually been violated by the petitioner. Therefore, prosecution launched against petitioner as well as investigation is illegal and unauthorized. In support of contention, counsel for the petitioner has relied on the judgment of this Court in the case of **Banti Gupta vs. State of MP, [(2016) Criminal Law Journal 1384]**. Therefore, it is prayed that impugned FIR registered against petitioner and other consequential criminal proceedings are liable to be quashed.

(4) Learned counsel for the State, on the other hand, opposed the

prayer of petitioner and submitted that petitioner had unauthorized transported paddy in question and the driver of the trucks in question failed to produce the requisite documents and petitioner came the spot by car and torn off the documents by snatching the same from complainant. Therefore, the act of petitioner falls under the offences registered against him. Hence, prayed for dismissed of this petition.

(5) Heard the learned counsel for parties and perused documents available on record.

(6) Section 7 of EC Act provides that “the person contravenes any order made under Section 3” denotes that penalties can be imposed only when Section 3 of the EC Act is violated. Provision of Section 7 of EC Act is reproduced as under:-

“Section 7 Penalties (1) If any person contravenes any order made under Section 3- (a) he shall be punishable (i) in the case of any order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and (ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine; (provided that the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;

(b) any property in respect of which the order has been contravened shall be forfeited to the Government.

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the commodity shall, if the court so orders, be forfeited to the Government.”

(7) The aforesaid judgments cited by counsel for the petitioner are applicable in present matter. In the present matter also, complainant has not got any prior permission from the concerning Collector,

before registering the FIR or seizing the paddy. Impugned FIR registered by the petitioner at Police Station concerned was on his own instance. The impugned FIR does not indicate that which Control Order has been violated by the petitioner. Under these circumstances, the petitioner cannot be punished u/S. 3/7 of EC Act and prosecution launched by the police against petitioner is not in accordance with law and deserves to be quashed.

(8) In this view of matter, present petition filed by petitioner u/S. 482 of CrPC is **allowed**. Impugned FIR registered at Crime No.754 of 2020 by Police Station Morar, District Gwalior for offences punishable under Section 3/7 of the EC Act r/w Sections 353, 34, 186 of IPC and other subsequent criminal proceedings are hereby **quashed**.

(Rajeev Kumar Shrivastava)
Judge