

Shankarlal S/O Chandulal Tanwani vs State Of Mah. Thr. Its Officer In Charge ... on 15 January, 2024

Author: Vinay Joshi

Bench: Vinay Joshi

2024:BHC-NAG:648-DB

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 1395/2023

Shankarlal S/o. Chandulal Tanwani,
Aged 53 years, Occupation : Business,
R/o. House No.392, Shankar Nagar,
Ward No.30, Pandhurna, Chhindwara,
Madhya Pradesh - 480334.
...VERSUS...

1. State of Maharashtra
Through its Officer-in-charge of
Police Station Wardha,
Distt. - Wardha.
2. Food & Drug Department,
Wardha - 442 401.
Through its Food Safety Officer.
(Amended as per Court's Order dated... RESPONDENT
07.12.2023).

Mr. Sahil S. Dewani, Advocate for Applicant.
Mr. S. S. Doifode, A.P.P. for Non-applicant/State.

CORAM : VINAY JOSHI AND
MRS.VRUSHALI V. JOSHI, JJ.
DATED : 15.01.2024

ORAL JUDGMENT (PER : VINAY JOSHI, J.): -

1. Rule. Rule is made returnable forthwith. Heard finally by consent of learned counsel appearing for the parties.

2. This is an application seeking to quash the First Information Report vide Crime No.704 of 2023 registered with Wardha Police Station, 2 924.apl.1395.23-J.odt District Wardha for the offences punishable under Sections 272, 273, 328 read with Section 34 of the Indian Penal Code, Section 26(1), 26(2)(iv), 27(3)(e), 30(2)(a), 3(1)(zz)(iv) of the Food Safety and Standards Act, 2006.

3. It is the applicant's case that he is having grocery shop, where he used to sell scented tobacco. The Police have seized certain material within the jurisdiction of Wardha District in which they arrested two persons. During interrogation, they have disclosed that prohibited items were purchased from the applicant's shop, which situates in the State of Madhya Pradesh. It is the applicant's prime contention, that there is no prohibition/restriction to sell scented tobacco in the State of Madhya Pradesh, and thus, he cannot be connected with the alleged offence.

4. The State resisted this application by filing affidavit in reply. Precisely, it is the contention that co-accused were found selling prohibited articles in the State of Maharashtra. During investigation, it was revealed that co-accused have purchased prohibited articles from the shop of applicant, which is in the State of Madhya Pradesh. On the basis of said statement of co-accused, applicant's complicity is unrevealed. Moreover, co-accused have also shown the spot i.e. shop at Madhya Pradesh from where they purchased the articles. It is not the case of the State that scented tobacco is a prohibited articles at Madhya Pradesh State. In the 3 924.apl.1395.23-J.odt circumstances, the State has not pointed out as to how the applicant, who is authorized to sell those articles in Madhya Pradesh can be made accused in existing crime.

5. In view of that, the case is covered by the guideline Nos. (1) and (3) as set out in paragraph 102 by the Supreme Court in the case of State of Haryana and Ors. Vs. Bhajanlal and Ors. reported in 1992 Supp (1) SCC 335. The applicant has made out a case for invoking extraordinary jurisdiction. In the circumstances, the application is allowed.

6. We, hereby, quashed and set aside the First Information Report vide Crime No.704 of 2023 registered with Wardha Police Station, District Wardha for the offences punishable under Sections 272, 273, 328 read with Section 34 of the Indian Penal Code, Section 26(1), 26(2)(iv), 27(3)(e), 30(2)(a), 3(1)(zz)(iv) of the Food Safety and Standards Act, 2006 to the extent of present applicant only.

7. Rule is made absolute in the above terms.

(MRS. VRUSHALI V. JOSHI, J.)

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Signed by: Mrs. R.M. MANDADE

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Designation: PA To Honourable Judge

Date: 17/01/2024 17:56:43