

15. Accordingly Supreme Court was pleased to quash the proceedings. Here in the case also when respondent No.1 has initially filed pursis in the trial Court for compounding of the offence and subsequently has withdrawn the same, simply for the reasons best known to her and that too, after taking undue advantage on the basis of such compromise pursis, in pursuance of which petitioner had withdrawn criminal cases filed against her and her family members. In pursuance of which the petitioner had paid her substantial amount of Rs.5 lacs towards her maintenance; in pursuance of which, even Divorce Petition also disposed of, at this stage, respondent No.1 cannot be allowed to go back and take disadvantage of technical problem on account of which case could not be disposed of earlier. The continuation of the criminal proceeding before trial Court, in such situation would clearly amount to abuse of process of law. Therefore, said proceedings are required to be quashed and set aside. Hence order.

ORDER

I) Writ Petition is allowed.

II) The Criminal Proceedings bearing R.C.C.No.165 of 1997 pending on the file of Judicial Magistrate First Class, Nashik are hereby quashed and set aside.

III) Rule made absolute in above terms.

Result:- Writ Petition allowed.

**ABC 2016 (I) 312 BOM
ACQUITTAL & BAIL CASES
HIGH COURT OF BOMBAY**

(B. R. Gavai & A.S. Chandurkar, JJ.)
Criminal Application (Apl) No.728 of 2015
Decided on 16 March, 2016
Nagpur Bench

DHANRAJ ANANDRAO MOHOD & ANR.

- Appellant(s).

Versus

STATE OF MAHARASHTRA

- Respondent(s).

Law Covered:- Code of Criminal Procedure, 1973 – Section 482 – Quashing of FIR – Essential Commodities Act, 1955 – Sections 3 & 7 – FIR under – In FIR no reference of violation of any

April 2016

a *order having been made under Section 3— Held, the proceedings for an offence punishable under Section 7 of the said Act would not be tenable – FIR quashed. (Para 5)*

b *Criminal Jurisprudence – Essential Commodities Act, 1955 – Sections 7 – Application under – Essential requirement – Held, for bringing an application under Section 7 – the essential requirement is the violation of an order made under Section 3. (Para 4)*

c **Held:-** It was held therein that for bringing an application under Section 7 of the said Act, the essential requirement was the violation of an order made under Section 3 of the said Act. As the prosecution sought to rely upon a Scheme framed by the State Government which according to it was an order made under Section 3 of the said Act and as such plea was not canvassed either before the trial Court or the High Court, the proceedings were remitted to the High Court. (Para 4)

d The present case stands on a better footing inasmuch as there is no reference whatsoever in the First Information Report to any order having been made under Section 3 of the said Act being violated. The specific averments made by the applicants in paragraph 4 of the application have not been specifically controverted. In that view of the matter, in absence of it being shown that there was any order made under Section 3 of the said Act that had been e contravened, the proceedings for an offence punishable under Section 7 of the said Act would not be tenable. The continuation of these proceedings therefore would amount to an abuse of the process of law. In view of aforesaid, the application is allowed in terms of prayer clause(a) thereof with no order as to costs. (Para 5)

f **Counsel:-** For Appellant(s): Shri R. M. Daga, Advocate.

For Respondent(s): Shri J. Y. Gurde, APP.

Cases Referred:-

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1. *Rakesh s/o Mahendrakumar Jain vs. The State of Maharashtra* 2014 ALLMR (Cri) 3144.(Para 2)
 2. *Prakash Babu Raghuvanshi vs. State of M.P.* (2004) 7 Supreme Court Cases 490. (Para 2)

h **JUDGMENT**

A. S. CHANDURKAR, J.: - By the present application filed under

Section 482 of the Code of Criminal Procedure, 1972, the applicants seek quashing of the First Information Report registered against them under the provisions of Sections 3 and 7 of the Essential Commodities Act, 1955 (for short, the said Act). a

2. Shri R. M. Daga, the learned counsel for the applicant submitted that in the First Information Report there is no reference whatsoever made to breach of any order that has been made under Section 3 of the said Act. 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. b

He submits that a specific ground has been raised by him in the present application that as no order has been made under Section 3 of the said Act, there was no question of its violation. The learned counsel has placed reliance on the judgment of Division Bench in *Rakesh s/o Mahendrakumar Jain vs. The State of Maharashtra 2014 ALLMR (Cri) 3144*. It is therefore submitted that continuation of the criminal proceedings would be an abuse of the process of law. c d

3. Shri J. Y. Gurde, the learned Additional Public Prosecutor for the non-applicants on the other hand submitted that as a prima facie case had been made out against the petitioner, 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 the applicants had not been distributing food grains in accordance with law. He therefore submitted that there was no case made out to quash the proceedings. e

4. Perusal of the First Information Report indicates that on the basis of a complaint received, the investigation was carried on 05/05/2015 by the Supply Officer. The stock which was available was seized and the samples were thereafter forwarded to the Competent Authority. It is then stated that after inspection of the register, it was noticed that the entries made therein did not reveal the correct state of affairs. It is on that basis that the offence under Section 3 read with Section 7 of the said Act came to be registered. f g

In *Rakesh M. Jain (supra)* the Division Bench of this Court while considering the provisions of Section 3 read with Section 7 of the said Act has held that unless there is any order made under Section 3 of the said Act that was alleged to have been contravened, h

a there was no question of any offence under Section 7 of the said Act being made out. While holding so, the Division Bench to which one of us (B. R. Gavai, J.) was a party relied upon the judgment of the Honourable Supreme Court in *Prakash Babu Raghuvanshi vs. State of M.P. (2004) 7 Supreme Court Cases 490*. It was held therein that for bringing an application under Section 7 of the said Act, the essential requirement was the violation of an order made under Section 3 of the said Act. As the prosecution sought to rely upon a Scheme framed by the State Government which according to it was an order made under Section 3 of the said Act and as such plea was not canvassed either before the trial Court or the High Court, the proceedings were remitted to the High Court.

b
c 5. The present case stands on a better footing inasmuch as there is no reference whatsoever in the First Information Report to any order having been made under Section 3 of the said Act being violated. The specific averments made by the applicants in paragraph 4 of the application have not been specifically controverted. In that view of the matter, in absence of it being shown that there was any order made under Section 3 of the said Act that had been contravened, the proceedings for an offence punishable under Section 7 of the said Act would not be tenable. The continuation of these proceedings therefore would amount to an abuse of the process of law. In view of aforesaid, the application is allowed in terms of prayer clause (a) thereof with no order as to costs.

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e **Result:-** Application allowed.

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