IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPLN) NO. 3653 OF 2009

Smt. Varsha W/o Suresh Sadavarte,
Aged about 28 years, Occupation Business,
Physiotherapist,
R/o Shivaji Nagar, Parbhani,
District Parbhani. .... Applicant

- VERSUS -

(1) The State of Maharashtra,
Through Police Inspector, Parseoni,
District Nagpur.

(2) Shri. Mukesh S/o Chetandas Tirpude,
Aged about 32 years, Occupation : Nil
R/o Sidhartha Nagar, Ward No. 6,
Mahadula, Tahsil Kamptee,
District - Nagpur. .... Non-applicants

Mr. K. Nalamwar, Advocate for the petitioner
Mr. S. S. Doifode, APP for the non-applicant 1
Mr. P. S. Tiwari, Advocate for non-applicant 2

CORAM : ROHIT B. DEO, J.
DATED : 26th FEBRUARY, 2021

ORAL JUDGMENT :

The petitioner and non-applicant 2 are arraigned as accused in Regular Criminal Case 136/2008 and the allegation is

commission of offence punishable under the provisions of the Essential Commodities Act, 1955 (Act).

2. Learned counsel for the applicant Mr. Nalamwar has twin submissions to canvass. The first submission is premised on the alleged failure of the prosecution to make a reference in the charge-sheet to the precise order or the provision thereof which is infringed. The said submission deserves rejection since the position of law is settled by the Full Bench decision of this Court in ***Digambar s/o Rodji Wankhede v. State of Maharashtra and another, 2019 (5) Mh.L.J. 119***. The relevant observations in which decision reads thus :

> *"23. In view of the above, the question referred for consideration stated in paragraph-1 is answered in the negative and it is held that mere non-mention of a particular provision of an "Order" or "Order" issued under Section 3 of the Act of 1955, by itself is not sufficient to quash and set aside an FIR. It is held that the State would be entitled to demonstrate before a Court that an order issued under Section 3 of the Act of 1955, indeed exists and that there is contravention of clauses thereof, leading to offence under Section 7 of the Act of 1955. With these observations the reference is disposed of. The applications shall now be placed before the appropriate Bench for disposal."*

3. Mr. Nalamwar would submit that the ratio of the Full Bench decision would be attracted only to the omission in the FIR and

not to the omission in the charge-sheet. The said submission, is inconsistent with the observations of the Full Bench. The prosecution is entitled to bring on record relevant order of which infringement is alleged during the trial. The omission of the prosecution to make a reference to the precise order in the charge-sheet would not entitle the accused to seek discharge and the ratio of the Full Bench decision would come into play, even if, the omission is in the material in the charge-sheet.

4. The other submission canvassed is that the search and seizure was not in accordance with statutory provisions and that the collection of sample is vitiated due to breach of the provisions applicable. The courts below noted that the material on record indicates that the sample was sent for analysis to the Government Laboratory and the report is that the petrol was mixed with kerosene. Notably, the statement of an employee is recorded and is available in the charge-sheet which states that he witnessed non-applicant 2 herein mixing kerosene in the petrol in preceding night. Be that as it may, I do not propose to make any definite observation on the probative value of the material on record. It is not necessary to do so. The settled law is that if the Magistrate is of the opinion that there is a ground for presuming that the accused has committed an offence that he is

competent to try, he is required to frame charge.

5. As long as a strong suspicion is based on material on record and is not based on a moral conviction or speculation or surmises or conjunctures, even a strong suspicion is sufficient to warrant the trial.

6. It would be relevant to notice the following observations of the Supreme Court in ***Dipakbhai Jagdishchandra Patel vs. State of Gujarat, (2019) 16 SCC 547*** :

> "23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."

7. In the factual matrix, I do not find any error in the concurrent view of the Courts below that there is *prima facie* material to warrant framing of charge.

8. It is made clear that it would be ultimately for the trial Court to take a call on the contentions raised in support of the discharge application, and in this Court, at the stage of final hearing and after the evidence is recorded.

9. The trial court is requested to conduct and conclude the trial as expeditiously as possible and in any event within six months.

10. The application is dismissed.

JUDGE

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