

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE

M.Cr.C. No.11909/2016

Imran Hanif S/o Hanif Khilzi

Vs.

State of Madhya Pradesh and others

Shri Aviral Vikas Khare, learned counsel for the applicant.

Shri C.S. Ujjainiya, learned counsel for respondents No.1 and 3/State.

Shri Abhishek Tugnawat, learned counsel for respondent No.2.

ORDER

(Passed on this day of April, 2017)

This application under Section 482 Cr.P.C. is filed for quashment of F.I.R. arising out of Crime No.394/2016 dated 16.11.2016 Police Station-Bhikangaon, District-Khargone and all the proceedings arising therefrom.

2. The relevant facts are that the complaint was lodged by District Manager, M.P. Civil Supply Corporation Limited, District-Khargone, in which, it was stated that the present applicant executed an agreement with the corporation for transportation of

wheat, rice and other grains to various places to maintain supply of grains to various fair price shops. On 25.10.2016, it is alleged that a truck belonging to the present applicant bearing registration No. MP 09 KD 1865 was loaded with 257 bags of wheat and 40 bags of rice. When the vehicle was weighted at weighting scale, there was deficiency of 4.67 quintal of wheat. It is further stated in the complaint that as per the provisions of the agreement, Rs.16,425/- was recovered from the present applicant against the deficiency found in the wheat, and thereafter, the complaint was lodged under Section 406 of IPC for criminal breach of trust. Subsequently, it appears that Section 409 of IPC was also added.

3. This application is filed on the ground that on 25.07.2016 a truck belonging to the present applicant bearing registration No. MP 09 KD 1865 was deployed for transportation of wheat and rice as aforesaid. After loading the truck, a delivery challan was prepared, in which, quantity and weight of the consignment was mentioned. The challan is added to the application as Annexure-P-2.

4. The Police Station-Bhikangaon received a complaint by some unknown person due to which, the truck was intercepted by Bhikangaon police station and was taken to the police station. There, the vehicle was again weighted in presence of some officer of the corporation, and there, some deficiency was found.

5. The truck reached the destination the shop at Kotabedha,

there each bag was weighted and total deficiency was found 188 kg in wheat and 10 kg in rice. It is also admitted by the applicant that recovery of Rs.16,425/- was made from him. It is also stated in the application that the FIR was lodged at the behest of one Subhash Jaiswal, who is a political rival of the present applicant. The Collector, under a political pressure ordered an inquiry and directed the Sub Divisional Magistrate to conduct an inquiry. In inquiry, it was found that there was some deficiency, and thereafter, the report was lodged.

6. Learned counsel for the State submits that truck bearing registration No. MP 09 KD 1865 left in the night of 25.07.2016. Another trader who saw the present applicant unloading some of the bags at Saskiya Krishi Upaj Mandi itself informed the police at Bhikangaon, on which, the truck was intercepted, taken to Bhikangaon police station. The loaded vehicle was weighted at Bhikangaon and there was total difference of 4.67 quintals in weight of the vehicle. It was left for Kotabedha where each bag was weighted and total deficiency in wheat was found to be 188 kg. As per prosecution, the present applicant again loaded 289 kg of wheat in the truck and on this basis, he submits that there was a criminal breach of trust by the present applicant.

7. I have gone through the case-diary. According to the inquiry report, inquired by Kanishth Supply officer, Bhikangaon, the loaded

vehicle was weighted at Bhikangaon, and thereafter, Kotabedha, each bag was weighted. According to prosecution, possibility was expressed that between Bhikangaon and Kotabedha, the present applicant reloaded the vehicle with deficient quantity of wheat. However, going through the case-diary this appears to be imaginary story raised by the prosecution. The vehicle left Bhikangaon only in the morning on 26.07.2016. There is no evidence to show that in between, the vehicle was taken to a place where it was reloaded. There is also no evidence to show that from its source station, where the vehicle was loaded with wheat and rice till Bhikangaon, it was taken to a place where the wheat was unloaded. This apart, there was no deficiency in number of bags. Total 257 bags of wheat were loaded and 257 bags were found at Kotabedha. There is also no evidence to show that the bags were tempered with and small quantity of wheat was removed from each bags. Apparently, this would take time. No evidence to show that each bag was open and wheat was removed. Apart from all these, it is also clear from the case-diary that each bag was not weighted before the vehicle was left for Kotabedha, while at Kotabedha each bag was weighted and weight was noted. Whether this was usual practice or it was exercise specially in case of the present applicant was also not known.

8. From the case-diary it is also apparent that complaint was

made by another trader who had nothing to do with the M.P. Civil Supply Corporation or the present applicant. Even if deficiency in quantity of wheat taken to be 4.67 quintals, the quantity is such a small quantity, that it is not possible that any transporter who is under contract with government organization would involve in such exercise of opening all the bags and removing small quantities of wheat from it. It is also admitted that under the provision of the contract, the amount has already been recovered from the present applicant.

9. In these situation, taking all the facts and circumstances of the case as they emerge from the case-diary, it appears that there is no *mens rea* necessary for the commission of the offence under Section 406 and 409 of IPC.

Accordingly, this application is allowed. The FIR arising out Crime No.394/2016 under Section 406 and 409 of IPC, Police Station-Bhikangaon, District-Khargone and all the proceedings arising therefrom are quashed. The applicant is at liberty to pursue his civil remedy in respect of recovery and compensation under appropriate provisions of law against the M.P. Civil Supply Corporation and also against other officers involved in this case.

(Alok Verma)
Judge

Ravi