



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 1273 OF 2024

Prashant Shashikant Kuchekar,
Age : 35 Years, Occu : Food Safety Officer,
R/o. Lane No.5, Jaymala-Nagar,
Old Sangvi, Pune - 411027

...PETITIONER

Versus

The State of Maharashtra,
Through Kavathe Mahankal Police Station,
Sangli

...RESPONDENT

* * *

Mr. Rahul R. Karpe a/w Mr. Shashikant Mane, Mr. Sidharth R. Karpe, Mr. Sanket Jangle and Mr. Saurabh Nikat, Advocate for the Petitioner.
Mr. Pankaj P. Deokar, APP for Respondent – State.

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**CORAM : ABHAY J. MANTRI, J.
DATE : OCTOBER 09, 2026**

ORAL JUDGMENT :

1. Heard Mr. Karpe, learned counsel appearing for the Petitioner and Mr. Deokar, learned APP for the Respondent – State. Perused the record.
2. By order dated 03rd October 2024, this Writ Petition was “Admitted”, and the proceedings qua the Petitioner were stayed.
3. The Petitioner has invoked the inherent jurisdiction of this Court under Section 482 of the Criminal Procedure Code (for short, the “Cr. P. C.”) to quash the First Information Report No.170 of 2023, (dated 30th April

2023), registered with the Kavathe Mahankal Police Station, District Sangli, for the offences punishable under Sections 188, 272, 273 and 328 of the Indian Penal Code, 1860 (for short, “*IPC*”), and Section 59 of the Food Safety and Standards Act, 2006 (for short, “*FSS Act*”), against the Petitioner and six other persons and initiation of further proceedings bearing R.C.C. No. 136/2023 pending before the learned Judicial Magistrate First Class, Kavathe Mahankal (for short, the “*learned Magistrate*”), pursuant to the said FIR, qua the Petitioner, preferred this Writ Petition.

4. The Petitioner is a Food Safety Officer serving at Chhatrapati Sambhajinagar. He joined the Food and Drugs Department in August 2017. He claims that he has conducted 58 raids against the syndicate and persons dealing in contraband articles. He has annexed a chart indicating the same at Exhibit “D” (page No. 34).

5. On 30th April 2023, the Informant, Deepak Gaikwad, a Police Constable, lodged a report against the Petitioner and six other persons, alleging that the Assistant Police Inspector, Local Crime Branch, received secret information that two trucks loaded with contraband articles would be passing through the local jurisdiction of Kavathe Mahankal Police Station. Accordingly, the same was intimated to the Superintendent of Police, Sangli, and the Inspector of Police, Kavathe Mahankal Police Station. Thereafter, the

Informant, along with the police party, laid a trap near Nagaj Phata on the National Highway. The Informant was heading the police party.

6. As per the information, they noticed that two trucks bearing registration Nos.MH-04-EB-0489 and MH-12-RN-3203 were proceeding along the said highway. They intercepted the trucks. Upon enquiry, the drivers disclosed their names as Mr. Tipuraya Sangappa Bamnoli, Mr. Basveshwar Topanna Katimani, and Mr. Srishail Tamaraya Halake and stated that the vehicles were loaded with contraband articles. Upon further enquiry, they disclosed that the Petitioner and three others owned the said contraband articles. Based on this information, the Informant, Gaikwad, Police Constable, lodged a report against the Petitioner and six others for the offences referred to above. Feeling aggrieved, the Petitioner has preferred this Writ Petition.

7. During the pendency of the Petition, the Investigating Officer filed the charge-sheet on 20th October 2023 before the competent Court. Accordingly, the Petitioner amended the Petition and challenged the filing of the charge-sheet and the proceedings bearing Regular Criminal Case (RCC) No. 136 of 2023, pending before the learned Judicial Magistrate First Class, Kavathe Mahankal.

8. Mr. Karpe, learned counsel appearing for the Petitioner, has vehemently contended that the Petitioner is a sincere Food Safety Officer

who had conducted 58 raids and seized contraband articles. Therefore, the persons involved in such activities have falsely implicated him in the present crime to take revenge. He has no concern with the present crime. Nothing has been seized from his possession, nor has any material been produced on record to establish his involvement in the present crime. The Call Detail Reports (CDRs) produced along with the charge-sheet are not helpful to the prosecution in establishing its case. The Petitioner's false implication is ex facie clear, as the Petitioner has no connection with the alleged crime.

9. The learned counsel for the Petitioner emphasised the following points :

- (i) *As per Section 42 of the FSS Act, the Police Constable has no authority to lodge the FIR.*
- (ii) *The offences under the IPC and the FSS Act cannot be invoked simultaneously.*
- (iii) *The confessional statement of the co-accused driver is not admissible, nor does it have any evidentiary value, and, therefore, is not helpful to the prosecution.*
- (iv) *The Investigating Officer has not followed the mandatory procedure prescribed under Sections 41 and 42 of the FSS Act.*
- (v) *CDR cannot be a basis for prosecution against the Petitioner.*

Therefore, he submitted that continuing the prosecution against the Petitioner would prejudice him.

10. To buttress his submissions, he has relied on the following judgments

- (i) ***Ram Nath Vs. The State of Uttar Pradesh and Others***¹ (pointed out paragraph Nos.3, 4, 18, 19 and 20),
- (ii) ***Prasad Vs. State of Maharashtra***² (pointed out paragraph Nos.14 and 15).
- (iii) ***Mohammad Bilal Mohammad Yakub and Another Vs. State of Maharashtra and Another***³ (pointed out paragraph Nos. 7, 10, 13, and 14).
- (iv) ***Ranjitsinh H. N. Nimbalkar and Others Vs. State of Maharashtra and Another***⁴ (pointed out paragraphs Nos. 20, 21, 22 and 23).
- (v) ***Samiullah Khan Azmathullah Khan Vs. The State of Maharashtra and Anr.***⁵ (pointed out paragraph No.13).

11. Accordingly, he submitted that the Petitioner has made out a case for invoking the inherent powers of this Court and urged that the FIR and the proceedings pending against the Petitioner be quashed.

12. On the contrary, Mr. Deokar, learned APP, fairly submitted that the FIR was lodged by the Police Constable, who is not competent to lodge the same under the FSS Act. The Petitioner was implicated in the present crime based on the statement of the co-accused driver. He does not dispute the law laid down in ***Ram Nath***(supra) and ***Samiullah Khan*** (supra). However,

¹ Criminal Appeal No.472 of 2012 dated 21st February 2024

² 2025(4) MhLJ (Cri) 539

³ Criminal Application (APL) No.1776 of 2025 dated 24th April 2026.

⁴ Writ Petition No.373 of 2023 dated 05th March 2024

⁵ Criminal Application (APL) No.1371 of 2024

he opposed the relief sought in the present Petition.

13. Having considered the arguments advanced by the learned counsel appearing for the Petitioner, and having gone through the record, and the judgments relied upon and Section 42 of the FSS Act, the following questions arise for consideration:

- (i) *Whether the prosecution has followed the mandate laid down in Sections 41 and 42 of the FSS Act ?*
- (ii) *Whether the Police Constable is competent to lodge the report in respect of offences punishable under the FSS Act?*
- (iii) *Whether it would be appropriate to implicate a person on the basis of the statement of a co-accused?*

14. While dealing with these issues, it is necessary to consider Section 42 of the FSS Act, which thus reads :

- “42. Procedure for launching prosecution.—(1)** *The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.*
- (2) *The Food Analyst, after receiving the sample from the Food Safety Officer, shall analyse the sample and send the analysis report mentioning the method of sampling and analysis within fourteen days to the Designated Officer, with a copy to the Commissioner of Food Safety.*
 - (3) *The Designated Officer, after scrutiny of the report of the Food Analyst, shall decide as to whether the contravention is punishable with imprisonment or fine only, and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.*
 - (4) *The Commissioner of Food Safety shall, if he so deems fit, decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,—*
 - (a) *a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years;*

or

- (b) *a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a Court of ordinary jurisdiction.*
- (5) *The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer who shall launch prosecution before courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under section 40.”*

15. A plain reading of Section 42 indicates that the Food Safety Officer is responsible for inspecting food businesses, drawing samples and sending them to the Food Analyst. Accordingly, the procedure prescribed under sub-sections (2) to (5) of Section 42 must be followed. Upon receipt of the Commissioner of Food Safety's decision, the Designated Officer and the concerned Food Safety Officer shall launch prosecution / are empowered to initiate action against the persons concerned.

16. It would also be appropriate to reproduce Section 89 of the FSS Act:

- “89. *Overriding effect of this Act over all other food related laws.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*”**

The title of this Section indicates that the Legislature intended to give the FSS Act overriding effect over all other ‘food-related laws’.

17. It is also appropriate to reproduce paragraphs 3, 20 and 21 of the judgment of the Hon'ble Supreme Court in **Ram Nath** (supra), which read as under :

- “3. Criminal Appeal No. 472 of 2012 takes exception to the order dated 5th October 2010 passed by a Division Bench of Allahabad High Court. The appellant filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, ‘CrPC’) seeking quashing of the prosecution for the offences punishable under Sections 272 and 273 of the IPC. On 11th May 2010, the State of Uttar Pradesh issued an order granting power to the authorities to initiate prosecutions under Sections 272 and 273 of the IPC as well as under the Prevention of Food Adulteration Act, 1954 (for short, ‘PFA’). On 28th August 2010, a First Information Report (for short, ‘FIR’) was lodged by a food inspector representing the Regional Food Controller, Agra, against the petitioner alleging the commission of offences under Sections 272 and 273 of the IPC. The allegation was that, though the appellant did not possess a licence to sell the commodity of mustard oil, he continued to carry on the business of sale. Another allegation was that the petitioner had adulterated the mustard oil, edible oil and rice bran oil. The petitioner approached the High Court to quash the FIR on various grounds. The appellant relied on Allahabad High Court’s decision dated 8th September 2010, in the case of **M/s. Pepsico India Holdings (Pvt) Ltd. & Anr v. State of Uttar Pradesh & Ors. [reported in 2010 SCC OnLine All 1708]**. By the impugned order, the High Court dismissed the petition filed by the appellant. Incidentally, the decision in the case of **Pepsico India** is the subject matter of challenge by the State of Uttar Pradesh in Criminal Appeal No. 476-478 of 2012. In this case, FIR was registered against the respondent on 11th August 2010, alleging the commission of offences under Sections 272 and 273 of the IPC. The allegation was of adulteration in the cold drinks manufactured by the respondent. **The view taken in the case of Pepsico India was that, from 29th July 2010, when the FSSA came into force, the provisions thereof would have an overriding effect over the food-related laws, including Sections 272 and 273 of the IPC. Further, it was held that the police have no authority or jurisdiction to investigate a case under the FSSA.**
20. Thus, there are very exhaustive substantive and procedural provisions in the FSSA for dealing with offences concerning

unsafe food. In this context, we must consider the effect of Section 89 of the FSSA. Section 89 reads thus:

“89. Overriding effect of this Act over all other food related laws.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect of virtue of any law other than this Act.”

The title of the section indeed indicates that the intention is to give an overriding effect to the FSSA over all ‘food-related laws’. However, in the main Section, there is no such restriction confined to ‘food-related laws’, and it is provided that provisions of the FSSA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. So, the Section indicates that an overriding effect is given to the provisions of the FSSA over any other law. The settled law is that if the main Section is unambiguous, the aid of the title of the Section or its marginal note cannot be taken to interpret the same. Only if it is ambiguous, the title of the section or the marginal note can be looked into to understand the intention of the legislature. Therefore, the main Section clearly gives overriding effect to the provisions of the FSSA over any other law insofar as the law applies to the aspects of food in the field covered by the FSSA. In this case, we are concerned only with Sections 272 and 273 of the IPC. When the offences under Sections 272 and 273 of the IPC are made out, the offence under Section 59 of the FSSA will also be attracted. In fact, the offence under Section 59 of the FSSA is more stringent.

21. *The decision of this Court in the case of **Swami Achyutanand Tirth** does not deal with this contingency at all. In the case of the State of Maharashtra, the question of the effect of Section 97 of the FSSA did not arise for consideration of this Court. The Court dealt with simultaneous prosecutions and concluded that there could be simultaneous prosecutions, but conviction and sentence can be only in one. This proposition is based on what is incorporated in section 26 of the GC Act. We have no manner of doubt that by virtue of Section 89 of the FSSA, Section 59 will override the provisions of Sections 272 and 273 of the IPC. Therefore, there will not be any question of simultaneous prosecution under both the statutes.”*

18. Bare perusal of the above dictum reveals that the Hon’ble

Supreme Court has categorically held that there will not be any question of simultaneous prosecution under both the IPC and the FSS Act as Section 59 will override the provisions of Sections 272 and 273 of the IPC. *Prima facie*, the facts in **Ram Nath's** case (supra) are identical to those in the present case; therefore, the law laid down in **Ram Nath's** case (supra) applies to the facts at hand.

19. This Court, in **Samiullah Khan** (supra), observed as follows :

“13. *The Hon'ble Apex Court, in various decisions, has held that “the ultimate object of justice is to find out the truth, punish the guilty, and protect the innocent. To find out the truth is a herculean task. The courts have to be extremely careful and cautious in dealing with the complaint and must consider the realities. The allegations in the complaint are required to be scrutinised with great care and circumspection”. In the case in hand, no material is produced on record to indicate that the applicant was involved in the present crime of selling the said contraband articles in Maharashtra. An undisputedly, the contraband was seized within the territorial jurisdiction of Maharashtra from accused Nos.1 and 2 and not from the possession of the applicant.”*

20. In **Prasad** (supra), this Court has held that the FIR lodged by the Police Constable for offences under the IPC relating to the sale of scented tobacco is not maintainable, as such matters fall within the purview of the FSS Act. Therefore, this Court held that “*the FIR and the consequential proceedings registered against the Applicant therein are contrary to the law laid down by the Hon'ble Supreme Court, in Ram Nath's case*”.

21. In light of Sections 42 and 89 of the FSS Act and the law laid down in the above-cited judgments, it is appropriate to scrutinise the facts of the case.

22. Undisputedly, in the case at hand, the Police Constable lodged the report without following the procedure prescribed under Section 42 of the FSS Act. Therefore, in my view, the FIR is liable to be quashed on this ground alone.

23. *Secondly*, the learned APP failed to point out any material from the record to show that the Petitioner was involved in the present crime or had any connection with the crime, except relying on the statement of the co-accused driver, whose statement is inadmissible in evidence and has no evidentiary value.

24. The next ground raised by the learned APP pertains to the CDR report. However, the said report does not assist the prosecution in establishing the Petitioner's involvement in the alleged crime, as nothing has been brought on record to establish a connection between the Petitioner, the CDR report, and the alleged crime.

25. In the wake of the above discussion, having regard to the mandate laid down in Sections 42 and 89 of the FSS Act and the law laid

down by the Hon'ble Supreme Court in ***Ram Nath*** (supra) and this Court in ***Prasad*** (supra), ***Mohammad Bilal*** (supra), ***Ranjitsinh H. N. Nimbalkvar*** (supra) and in ***Samiullah Khan*** (supra), the prosecution has failed to produce any material on record to establish the involvement of the Petitioner in the alleged crime or to demonstrate that the Petitioner owned the said contraband articles.

26. Thus, in my view, it would not be appropriate to allow the proceedings against the Petitioner to continue, as the same would amount to an abuse of the process of law and would not serve the ends of justice. In fact, having regard to the facts and circumstances of the present case, it is a fit case for exercising the inherent jurisdiction of this Court to quash the proceedings qua the Petitioner. **Hence, I answer point Nos. (i) to (iii) in the negative.**

27. In the result, **the Petition is allowed in terms of prayer clause (a) qua the Petitioner, which reads as under:**

“a. This Hon'ble Court may pass appropriate writ, order or directions and quash the FIR No.170 of 2023 dated 30th April 2023 registered with Kavathe Mahankal Police Station, /Sangli under Sections 188, 272, 273 and 328 of the IPC and Section 59 of FSS Act and the proceedings bearing RCC No.136 of 2023 pending before the learned Civil Judge, Junior Division and Judicial Magistrate

First Class at Kavathe Mahankal.”

28. The Rule is made absolute in the above terms. No order as to costs.
29. Inform the concerned Court accordingly.
30. The Petition is disposed of.

(ABHAY J. MANTRI, J.)