

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

2 CRIMINAL APPLICATION NO. 805 OF 2016

ASHOK KUMAR RANA & ORS.

VERSUS

THE STATE OF MAHARASHTRA & ANR.

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Mr. K.H.Parekh h/f Mr. K.C.Sant,
Advocate for Applicants.

Mr. G.O.Wattamwar, A.P.P. for R – 1 – State.

Mr. A.P.Aghav, Advocate for R – 2.

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CORAM : Z.A.HAQ, J.

DATE : 16th DECEMBER, 2016

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ORAL ORDER :

01. Heard Mr. K.H.Parekh, learned Advocate holding for Mr. K.C.Sant, Advocate for the Applicants, Mr. G.O.Wattamwar, learned A.P.P. for non-applicant No. 1 – State and Mr. A.P.Aghav, learned Advocate for non-applicant No. 2.

02. The applicants have assailed the order of

the Magistrate directing registration of the complaint filed by the non-applicant No. 1 at the instance of non-applicant No. 2 praying that the applicants and 2 others be prosecuted for contravention of Section 26 (i), 26 (2) (i), 27 (2) (c) read with Section 3 (1) (zz) (xii) read with Regulation No. 2.2.6 (1) of Chapter 2 of FSS (Food Products Standards and Food Additives) Regulations 2011 punishable u/s 59 (1) of the Food Safety and Standards Act, 2006. The applicants have prayed that the complaint against them be quashed.

03. The applicants have submitted that the complaint against them is not maintainable, as sanction as required by Section 30 (2) (e) of the Food Safety and Standards Act, 2006 for prosecution for the offences punishable under the Food Safety and Standards Act, 2006 is not granted

It is further argued that the learned Magistrate has not applied his mind and without examining whether the necessary pre-requisites are

complied with, the directions to register the complaint are given.

04. To substantiate the first contention that sanction as required by Section 30 (2) (e) of the Food Safety and Standards Act, 2006 is not granted, the learned Advocate for the applicants has pointed out the communication issued by the Joint Commissioner on 16/03/2015, in which reference is about co-accused M/s Vijaykumar Mundada and brothers i.e. retail out-let only. It is submitted that the communication dated 16/03/2015 which is treated as sanction order does not show that the Joint Commissioner, who has exercised powers as per Section 30 (2) (e) of the Food Safety and Standards Act, 2006 has applied his mind on the point whether the applicants can be or are required to be prosecuted for the offence alleged in the complaint. It is submitted that though communication sent by the Food Safety Officer on 04/03/2015 refers the name of the applicant No. 1 as the proposed accused for contravention of the provisions stated above, the

Food Safety Officer has not requested for sending proposal for seeking sanction to prosecute the applicant No. 2 – Company, which is clear from the entries in the column No. 4 of the proposal [at page No. 60 of the paper book], which does not refer to Section 66 of the Food Safety and Standards Act, 2006 which should have been referred if sanction was sought for prosecution of the Company also. To support the submission, reliance is placed on the following Judgments :

- [i] In the case of State of Maharashtra Vs.
Shri Gimi Erich Rana & Ors.
Reported in 1991 (1) FAC 170.
- [ii] In the case of State of
A.K.Shirbhate (Food Inspector) Vs.
Ramlal @ Ramnath & Anr.
Reported in 1990 (2) FAC 257.

It is submitted that the communication sent by the Food Safety Officer on 04/03/2015 though is part of the communication dated 07/03/2015 sent

by the designated authority to the Food Safety Commissioner, the designated authority has nowhere sought sanction for prosecuting the present applicants and in this communication dated 07/03/2015 reference is only in respect of M/s Vijaykumar Mundada and Brothers. The learned Advocate has argued that the Magistrate has mechanically directed registration of the complaint without applying his mind.

05. The learned A.P.P. has supported the impugned order.

06. The contentions of the applicants that sanction for prosecution for the offences under the Food Safety and Standards Act, 2006 is mandatory, can not be disputed, however, at this stage, I have to examine whether the order directing registration of the complaint against the applicants is bad in law. The communication dated 16/03/2015 issued by the Joint Commissioner, by which sanction is granted for the prosecution refers to the communication sent by

the designated authority on 07/03/2015. This communication dated 07/03/2015 is the proposal which was sent by the designated authority to the Food Safety Commissioner seeking sanction for the prosecution. The communication sent by the Food Safety Officer on 04/03/2015 contains the details of the proposal for prosecuting the accused for the offences under the Food Safety and Standards Act, 2006. The details in this communication (page No. 60 of the paper book), which is part of the proposal show that the sanction was sought for prosecuting the applicant No. 1 also. Therefore, I am not willing to accept the submission made on behalf of the applicants that the complaint against the applicant No. 1 is untenable for want of sanction as per Section 32 (e) of the Food Safety and Standards Act, 2006.

07. In the above communication, (page No. 60 of the paper book), the name of present applicant No. 1 is found at Sr.Nos. 3 and 4. The name of the applicant No. 2 – Company is not reflected in the proposal. In view of this, it is submitted on behalf of

the applicants that even proposal to seek sanction to prosecute the applicant No. 2 – Company is not sent. *Prima facie*, on scrutiny of the proposal at page No. 60 of the paper book, I find that in column No. 2, it is referred as “manufacturer” and then in bracket the term “nominee” is used. In column No. 2 at Sr.No. 4, the entry is only about “manufacturer” and the entry “nominee” is not there. Though, only the name of the applicant No. 1 appears in both the places in column No. 3 and the name of the applicant No. 2 – Company does not appear, in my view, it will not be appropriate to quash the proceedings at this stage without granting an opportunity to the non-applicants to explain their case. The effect of non-mentioning of Section 66 of the Food Safety and Standards Act, 2006 in column No. 4 of the proposal at page No. 60 of the paper book will also have to be examined at appropriate stage during the course of trial.

08. According to me, the Judgments relied upon by the learned Advocate for the applicants are not relevant at this stage, as *prima facie*, there is

some material which shows that the Food Safety Officer prepared the proposal for seeking sanction for prosecution of the applicants and 2 others, the designated authority forwarded it to the Food Safety Commissioner and the Joint Commissioner examined the proposal and granted sanction. Whether the grant of sanction is proper or not, is neither argued nor considered by me.

09. The prayer made by the applicant in this application can not be granted. The application is dismissed. In the circumstances, parties to bear their own costs.

10. At this stage, the learned advocate for the applicants has submitted that the learned Magistrate has overlooked the fact that the applicants are residing beyond his territorial jurisdiction and the process can not be issued without following the mandate of Section 202 of the Code of Criminal Procedure. The issue is not raised in the present application. The applicants will be at liberty to agitate

this point in appropriate proceedings, if so advised.

[Z.A.HAQ, J.]

KNP/Cr.Apln. 805.2016