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

CRIMINAL WRIT PETITION NO. 514 OF 2003

1. Rasiklal s/o Manikchand Dhariwal,
Age: 65 years, Occu: Director
M/s Dhariwal Tobacco Products Ltd.,
Gat No. 1297/1298, Bohade Mala Shirur,
Dist. Pune
 2. Prakash s/o Rasiklal Dhariwal,
Age: years, Occu: Director
M/s Dhariwal Tobacco Products Ltd.,
Gat No. 1297/1298, Borhade Mala Shirur,
Dist. Pune
- ..PETITIONERS

VERSUS

1. The State of Maharashtra
 2. Shri. R. T. Jathar,
Office of the Assistant Commissioner,
Food and Drugs Administration,
Pratishyam Building, Station Road, Dhule,
Dist. Dhule
- ..RESPONDENTS

**WITH
CRIMINAL WRIT PETITION NO. 515 OF 2003**

1. Rasiklal s/o Manikchand Dhariwal,
Age: 65 years, Occu: Director
M/s Dhariwal Tobacco Products Ltd.,
Gat No. 1297/1298, Bohade Mala Shirur,
Dist. Pune
 2. Prakash s/o Rasiklal Dhariwal,
Age: years, Occu: Director
M/s Dhariwal Tobacco Products Ltd.,
Gat No. 1297/1298, Borhade Mala Shirur,
Dist. Pune
- ..PETITIONERS

VERSUS

1. The State of Maharashtra
 2. Shri. S. B. Kodgire,
Food and Drugs Administration,
Parbhani
- ..RESPONDENTS

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**WITH
CRIMINAL WRIT PETITION NO. 516 OF 2003**

1. Rasiklal s/o Manikchand Dhariwal,
Age: 65 years, Occu: Director
M/s Dhariwal Tobbacco Products Ltd.,
Gat No. 1297/1298, Bohade Mala Shirur,
Dist. Pune
2. Prakash s/o Rasiklal Dhariwal,
Age: years, Occu: Director
M/s Dhariwal Tobbacco Products Ltd.,
Gat No. 1297/1298, Borhade Mala Shirur,
Dist. Pune

..PETITIONERS

VERSUS

1. The State of Maharashtra
2. Shri. S. F. Kakara,
Food Inspector,
Food and Drugs Administration,
M.S. Dhule

..RESPONDENTS

**WITH
CRIMINAL WRIT PETITION NO. 139 OF 2004**

1. Rasiklal s/o Manikchand Dhariwal,
Age: 65 years, Occu: Director
M/s Dhariwal Tobbacco Products Ltd.,
Gat No. 1297/1298, Bohade Mala Shirur,
Dist. Pune
2. Prakash s/o Rasiklal Dhariwal,
Age: years, Occu: Director
M/s Dhariwal Tobbacco Products Ltd.,
Gat No. 1297/1298, Borhade Mala Shirur,
Dist. Pune

..PETITIONERS

VERSUS

1. The State of Maharashtra
2. Shri. Tuljadas Chandadasrao Boralkar,
Food Inspector,
Food and Drugs Administration,
M.S. Jalna

..RESPONDENTS

WITH

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CRIMINAL WRIT PETITION NO. 140 OF 2004

1. Rasiklal s/o Manikchand Dhariwal,
Age: 65 years, Occu: Director
M/s Dhariwal Tobbacco Products Ltd.,
Gat No. 1297/1298, Bohade Mala Shirur,
Dist. Pune
2. Prakash s/o Rasiklal Dhariwal,
Age: 39 years, Occu: Director
M/s Dhariwal Tobbacco Products Ltd.,
Gat No. 1297/1298, Borhade Mala Shirur,
Dist. Pune

..PETITIONERS

VERSUS

1. The State of Maharashtra
2. S. B. Kodgire,
Food and Drugs Administration,
Parbhani

..RESPONDENTS

WITH

CRIMINAL WRIT PETITION NO. 298 OF 2004

1. Rasiklal s/o Manikchand Dhariwal,
Age: 65 years, Occu: Director
M/s Dhariwal Tobbacco Products Ltd.,
Gat No. 1297/1298, Bohade Mala Shirur,
Dist. Pune
2. Prakash s/o Rasiklal Dhariwal,
Age: 30 years, Occu: Director
M/s Dhariwal Tobbacco Products Ltd.,
Gat No. 1297/1298, Borhade Mala Shirur,
Dist. Pune

..PETITIONERS

VERSUS

1. The State of Maharashtra
2. Shri. S. B. Naik,
Food Inspector,
Food and Drugs Administration (M.S.)
Station Road, Dhule at the instance
of Govt. of Maharashtra

..RESPONDENTS

WITH

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CRIMINAL WRIT PETITION NO. 831 OF 2008

1. Rasiklal s/o Manikchand Dhariwal,
Age: years, Occu: Director of
M/s Dhariwal Tobacco Products Ltd.,
Gat No. 1297/1298, Borade Mala, Shirur,
Dist. Pune

2. Prakash s/o Rasiklal Dhariwal,
Age: years, Occu: Director
M/s Dhariwal Tobacco Products Ltd.,
Gat No. 1297/1298, Borade Mala, Shirur,
Dist. Pune

..PETITIONERS

VERSUS

1. The State of Maharashtra

2. Shri. A. R. Deshmukh,
Age: 35 years, Occu: Food & Drug
Inspector, Food and Drugs Administration,
Jalna

..RESPONDENTS

Mr D. S. Bharuka, Advocate for petitioners;
Mr A. R. Kale, Addl. Public Prosecutor for respondents

CORAM : N.W. SAMBRE, J.

DATE : 5th May, 2016

ORAL JUDGMENT :

The following bunch of writ petitions are arising out of the similar issue and as such, were tagged together for deciding finally. The matters are on final hearing board. Heard Mr. Bharuka, learned Counsel for the petitioners and learned A.P.P. for respondent/State. In all these petitions, the order of issuance of process against the petitioners for violating the provisions of Prevention of Food Adulteration Act, 1954 is questioned.

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2. In all the petitions, the petitioners are same, who are claiming to be Directors of M/s Dhariwal Tobacco Products Ltd., who are manufacturing, packaging, distributing and selling Gutkha (tobacco product).

3. The details of the petitions in which various proceedings pending on the file of learned Judicial Magistrate are questioned, are as under :-

Sr. No.	Writ Petition No.	R.C.C. No.	Pending before the learned J.M.F.C.	Date of sale of adulterated product	Adulteration noticed	Contravention noticed
1.	514/2003	60/1998	Sindkheda	27/08/1997	Magnesium carbonate	Rule 62 of Prevention of Food Adulteration Rules, 1955
2.	515/2003	64/1998	Parbhani	26/08/1997	Calcium and Magnesium Carbonate	Rule 62 of Prevention of Food Adulteration Rules, 1955
3.	516/2003	46/1998	Shahada-Dhule	28/08/1997	Magnesium Carbonate	Rule 62 of Prevention of Food Adulteration Rules, 1955
4.	139/2004	125/1998	Jalna	28/07/1997	Calcium and Magnesium	Rule 62 of Preventio

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					Carbonate	n of Food Adulteration Rules, 1955
5.	140/2004	116/1998	Hingoli	23/07/1997	Calcium and Magnesium Carbonate	Rule 62 of Prevention of Food Adulteration Rules, 1955
6.	298/2004	58/1997	Dhule	16/08/1997	Magnesium Carbonate	Rule 62 of Prevention of Food Adulteration Rules, 1955
7.	831/2008	764/2000	Jalna	29/08/2000	Magnesium Carbonate	Rule 62 of Prevention of Food Adulteration Rules, 1955

4. The Food Inspector, appointed under the provisions of Section 9 of the Prevention of Food Adulteration Act, 1954 (hereinafter shall be referred to as 'Act of 1954' for sake of brevity) visited the respective places and after following due process, collected samples of Manikchand Ghutka. Same was sent for analysis and report of the analysis i.e. State Public Health Laboratory depicts adulteration of either magnesium carbonate or calcium carbonate, degree of which found in the product is dangerous for human consumption. As a consequence, the complaints came to be initiated in the Courts of respective Judicial Magistrate, First Class, pointing out that the accused have contravened the

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provisions of Section 7(i) read with Section 2 (ia)(a), 2(ia) (b) and 2 (ia) (h) and also Section 7(v) read with Rule 62 of the Prevention of Food Adulteration Rules 1955. It is also noticed that the accused have stored for sale and sold adulterated food items.

5. So far as the present petitioners are concerned, there are specific allegation in all the complaints that they are either partner or director of M/s Dhariwal Tobacco Products Ltd., engaged in manufacturing for sale and selling food articles. The specific allegation is also made that they have contravened the above referred provisions of Prevention of Food Adulteration Act and rules framed thereunder, which has prompted learned Magistrate to issue process against them.

6. Mr. Bharuka, learned Counsel for the petitioners in all the petitions would strenuously urge that pursuant to the provisions of Rule 12(b) of the rules, one Amarsing Thakur, Joint Manager (Production) was nominated by M/s Dhariwal Tobacco Products Ltd., to be a person responsible for defaults if any under the Act. The said nomination was also accepted by Amarsing Thakur pursuant to the provisions of sub section (2) of Section 17 of the Act of 1954 and Rule 128 of the Rules, which was further counter signed by the Local Health Authority i.e. Assistant Commissioner, as is apparent from the nomination dated 9th July, 1992. He would then submit that one Mr. Ramnath P. Dayma replaced Amarsing Thakur and as such, present petitioners cannot be held responsible for the alleged act. Apart from above, he would urge that neither there is any

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criminal motive on the part of petitioners nor there is specific attribution against the petitioners as to how they are responsible and involved in the commission of alleged crime in question. As such, according to him, the prosecution against them is not maintainable.

7. Learned A.P.P., while inviting my attention to the contents of the complaint, would urge that there is sufficient material available against the petitioners so as to demonstrate their prima facie involvement in the crime in question. He would then urge that Food Inspector, who is competent to collect the samples and collected the same, sent it for chemical analysis and based on the report of Public Analyst, wherein magnesium or calcium carbonate was found, which is dangerous for human consumption, complaints came to be lodged. He would then urge that so far as nomination in question is concerned, Amarsing Thakur came to be nominated on 9th July, 1992 and remained to be nominee up to 1st January, 1995. According to him, it is the case of the petitioners themselves that R.P. Dayma has appointed as Production Supervisor on 16th December, 1996 and was nominee of the Company from 25th August, 1997. It is then claimed that both Amarsing Thakur and Dayma and the petitioners are not connected with the affairs of the Company pursuant to nomination duly accepted by the Joint Commissioner, Food and Drugs Administration, Pune on 25th August, 1997 and still it is required to be noted that on the date of commission of offence since there was no nominee, the petitioners have to be held responsible for violation of the provisions of Act of 1954. According to him, the petitions lack merit and deserve to be

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dismissed.

8. Upon careful analysis of the submissions made, it is required to be noted that the complainant after due procedure prescribed under the Prevention of Food Adulteration Act and rules framed thereunder had drawn samples of food articles which were manufactured, stored for sale and sold in the market by the petitioners. The Company which is manufacturing such food items of which present petitioners are indisputedly Directors have nominated so as to absolve them of the provisions of Act of 1954, one Amarsing Thakur vide resolution passed in the meeting held on 22nd March, 1991, 26th November, 1991 and 6th July, 1992, for the conduct of business of M/s Dhariwal Tobacco Products Ltd., and was authorized to exercise all powers and to take such steps as may be necessary or to prevent commission of the offence by the said company under the provisions of Act of 1954. The said nomination was acknowledged by the competent authority on 9th July, 1992. Thereafter, it is claimed that nomination was changed and resolution was passed replacing R.P. Dayma to that of Amarsing Thakur,

9. So far as both these nominations and resolutions are concerned, the following short falls are worth referring to ; neither any copy of the resolution nor certificate to that effect is placed on record so as to infer that M/s Dhariwal Tobacco Products Ltd., passed resolution for nominating Amarsing Thakur. Even if it is presumed that Amarsing Thakur was nominated under Rule 12(b) in Form 8 and said nomination was

accepted by the authorities, however, the fact remains that pursuant to the pleadings of the petitioners, said Thakur remained to be nominee up to 1st January, 1995 as he left the job of M/s Dhariwal Tobacco Products Ltd., It is then claimed by the petitioners in their petitions that on 16th December, 1996 R.P. Dayma appointed as Production Supervisor and he came to be nominated on 12th December, 1996. Though copy of the resolution of the company certified on 12th December, 1996 is placed on record with the petition, however, it is curiously required to be noted that the date of said resolution is conspicuously absent on the said document on which company has passed such resolution. What could be inferred from these documents is that the petitioners have tried to mislead this Court so as to making it believe that there was proper nomination replaced with that of R.P. Dayma and it is R.P. Dayma, who could be held responsible. It is then to be noted that Dayma's nomination came to be accepted by the competent authority under the Act and Ruyles as is apparent from the certification dated 25th August, 1997, as such from the pleadings of the petitioners, particularly Paragraph-7 of the petition, it could be inferred that from 1st January, 1995 to 25th August, 1997 there was no nomination of a person under Rule 12(b) for M/s Dhariwal Tobacco Products Ltd., of which the petitioners were directions who were involved in purchasing, tagging for sale etc.

10. The date of purchase of the adulterated food item/its manufacturing/its date of analysis prima facie demonstrate that there was no nomination under the Prevention of Food Adulteration Act or Rules

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framed thereunder qua taking responsibility of the production of the food items under the Act so as to accept claim of the petitioners that they cannot be held responsible. It is important to note that from 1st January, 1995 till 24th August, 1997 there was no nomination under the provisions of Act and Rules and as such, prima facie, I am of the opinion that the Food Inspector was right in initiating the proceedings against the petitioners.

11. Apart from above, it is to be noted that upon perusal of the complaint initiated against the petitioners, there are sufficient pleadings attributing the role in the matter of commission of offence, the report of Public Analyst to that effect speaks voluminous. As such, in my opinion, no case for interference in extraordinary writ jurisdiction is made out. So far as Writ Petition No. 831 of 2008 is concerned, there are hardly any documents to infer nomination or otherwise so as to form an opinion that the petitioners are not responsible for the offence in question.

12. As such, all these writ petitions, which are devoid of merit, stand dismissed.

Sd/-

(N.W. SAMBRE, J.)

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