

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3432 OF 2015

Sarang s/o Sanjay Pipada, age 26 years,
Occupation Private Servicer, R/o.
Tawlenagar, Aurangabad Road, District
Ahmednagar

APPLICANT

V E R S U S

- 1 The State of Maharashtra, Through, The
Secretary, Home Deptt., Mantralaya,
Mumbai-32 AND Police Station Officer,
Police Station, Rahuri, Dist. Ahmednagar
- 2 The Food Safety Officer, Food & Drugs
(Authority), Commissioner, Ahmednagar

RESPONDENTS

Mr. R.R. Mantri, Advocate for Applicant
Mrs. A.V. Gondhalekar, A.P.P. for Respondents - State

**CORAM : A.V. NIRGUDE &
INDIRA K. JAIN, JJ.**

DATE : 20th JANUARY, 2016

PER COURT :

1. Accused No.5 Sarang s/o Sanjay Pipada of Crime No. I-345
of 2013 (Case No.100-129 of 2015), pending in the Sessions Court,

Ahmednagar, seeks quashing of the case against him. Offences punishable under Sections 328, 272, 273, 420 read with Section 34 of the Indian Penal Code and offence punishable under Section 26 of the Food Safety and Standards Act, 2006 are alleged against the accused.

2. Accused No.1 – Pramod Balasaheb Ghorpade is the main accused. It is alleged that he manufactured spurious milk utilizing certain ingredients which he procured from various shops. Accused no.1 sold such spurious milk as fresh milk and thereby committed offence punishable under Section 420 of the Indian Penal Code. Since the article which he sold was unsafe for human consumption, he also committed offence punishable under Sections 328, 272 and 273 of the Indian Penal Code. The applicant / accused no.5 allegedly sold 500 kg Whey Powder to accused no.1. This powder was being utilized for manufacturing spurious milk.

3. The question is, whether by selling 500 kg Whey Powder to accused no.1, the applicant had committed any offence ? We are assuming for the sake of deciding this application that the applicant/accused no.5 sold such Whey Powder to accused no.1. The applicant has a licence to store and sell Whey Powder. During investigation, the Whey Powder was sent for chemical analysis and it was found that it was a standard product, not harmful for human consumption. There is nothing on record to show that the applicant/accused no.5 knew that the Whey Powder would be utilized for manufacturing of harmful substance.

4. The Investigation Officer in his affidavit alleged that the applicant had committed breach of one of the conditions of the licence. He indicated that the applicant should not have sold 500 kg. Whey Powder to a person who was not a 'registered purchaser'. Indeed, the applicant ought to have used his discretion while dealing with the main accused. He ought to have examined the credentials of accused no.1. Since the quantity involved was rather big, the applicant ought to have dealt with the transaction with more caution. Apparently the applicant did not use such caution and rather negligently parted with large quantity of Whey Powder. This act on the part of the applicant did not amount to any I.P.C. offence. It did not amount to offence under Section 26 read with Section 59 of the Food Safety and Standards Act, 2006 also. As per the Investigation Officer's allegation in the affidavit that the applicant committed breach of one of the conditions of the licence and can be subjected to penal action as per Section 58 of the Food Safety and Standards Act, 2006. It must be clarified further that Section 58 of the said Act does not call for registration of the offence etc. and action is taken as per the procedure laid down in Chapter 9. We are of the view that no offence is made out against the applicant, therefore, case against the applicant stands quashed and set aside. In view of above, application stands allowed.

(INDIRA K. JAIN, J.)

(A.V. NIRGUDE, J.)