

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

CRIMINAL APPLICATION NO. 6798 OF 2015

PAWAN KUMAR KASHIRAM CHAUDHARY.
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER.

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Advocate for Applicant : Mr D S Bharuka
APP for Respondents: Mr P G Borade

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CORAM : V.K. JADHAV, J.
Dated: August 22, 2016
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PER COURT :-

1. With the consent of learned counsel for respective parties, heard finally.

2. Being aggrieved by the order passed by the Adjudicating Officer, Food Safety Appellate Tribunal at Aurangabad dated 3.12.2015 in appeal No.02/2015, the original appellant has preferred present criminal application.

3. Brief facts, giving rise to the present application are as under :-

Being aggrieved by the Judgment and order passed by the Adjudicating Officer and Joint

Commissioner (Food Aurangabad Division), Food and Drugs Administration, Aurangabad, the present applicant preferred appeal before the Food Safety Appellate Tribunal, Aurangabad. The applicant/original appellant has also prayed for staying the effect, execution and operation of the judgment and order under appeal passed by the Adjudicating Officer dated 21.10.2015 in Application No.58/2015 till the main appeal is finally heard and decided. The learned Presiding Officer of Food Safety Appellate Tribunal Aurangabad by impugned order dated 3.12.2015 in the aforesaid appeal, rejected the prayer of Stay. Hence, this Criminal Application.

4. The learned counsel for the applicant submits that, the learned Presiding Officer has observed in the impugned order that, the applicant/original appellant is only fined by the Trial Court and there is no substantive punishment awarded by the Trial Court. Learned counsel submits that, so far as imposition of the penalty for substandard food as provided under Section 51 of The Food and Safety Standards Act, 2006 (for short

hereinafter referred to as 'the Act of 2006) is concerned, person facing said proceedings shall be liable to pay penalty which may extend to 5.00 lacs rupees only. The learned counsel submits that, thus entire approach of the learned Presiding Officer of the Food Safety Appellate Tribunal Aurangabad to consider the prayer of applicant-original appellant for staying the effect of the order of Adjudicating Officer is incorrect, improper and illegal. Furthermore, the learned Presiding Officer has simply observed that, it is for the appellate court to consider as to which order is eligible for stay. Learned counsel submits that, there are general provisions relating to penalty as provided under Section 49 of the Food Safety and Standards Act, 2006. It is expected from the learned Presiding officer to grant or refuse to grant stay by considering the provisions of Section 49 of the Food and Safety and Standards Act, 2006. In absence of that, the impugned order does not stand and the same is thus liable to be quashed and set aside.

5. The learned APP submits that the applicant-original appellant is only fined by the Adjudicating

Officer and there is no question of suspending the imposition of fine. The learned APP submits that the order impugned is proper, correct, legal and calls for no interference.

6. It appears from the provisions of Section 51 of the Act of 2006 that, any person who whether by himself or by any person on his behalf manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is substandard, shall liable to a penalty which may extend to Rs.5.00 lacs. There is no provisions to pass an order of imprisonment. Thus, the approach of the learned Presiding Officer of Food Safety Appellate Tribunal, Aurangabad appears to be incorrect and improper. There is no question of awarding substantive punishment to the applicant-original appellant as such. It is for the Appellate Court to consider as to which order is eligible for stay, however, the Appellate Court has to consider the provisions of the Act of 2006. As per the provisions of section 49 of the Act, Adjudicating Officer of the Tribunal as the case may be while

adjudicating the quantum of the penalty shall have due regard to factors as mentioned in clause No. (a) to (e). If the applicant-original appellant has made any submissions in this regard, or with reference to some other provisions of the Act of 2006 for staying the effect of the order passed by the Adjudicating Officer, the learned Presiding Officer of the Food and Safety Appellate Tribunal, Aurangabad to consider the same and pass an appropriate order with regard to the prayer of stay. In absence of that, the order passed by the learned Presiding Officer of Food Safety Appellate Tribunal certainly calls for an interference. Hence, I proceed to pass the following order.

O R D E R

- I. Criminal Application is hereby partly allowed.
- II. The order dated 3.12.2015 passed by the learned Presiding officer, Food and Safety, Appellate Tribunal, Aurangabad in Appeal No.02/2015 is hereby quashed and set aside.

III. The matter is remitted to the learned Presiding officer, Food and Safety Appellate Tribunal, Aurangabad who shall pass appropriate order afresh with regard to the prayer of staying the effect, execution and operation of the order passed by the Adjudicating Officer, Food Safety Appellate Tribunal, Aurangabad after giving an opportunity of being heard to the applicant-original appellant and after considering the provisions of the Act of 2006.

IV. Criminal Application is accordingly disposed off.

(V.K. JADHAV, J.)

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