

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

**Criminal Writ Petition No.676 of 2010
With
Criminal Application No.5530 of 2017**

Suresh s/o Dulichand Surana,
Age 48 years,
Occupation : Business,
R/o Jafargate, New Monda,
Aurangabad.

.. Petitioner.

Versus

The State of Maharashtra.

.. Respondent.

Shri. Subhash P. Tilve, Advocate, for petitioner.

Shri. P.G. Borade, Additional Public Prosecutor, for
respondent.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 04 JULY 2018

JUDGMENT (Per T.V. Nalawade, J.)

1) Criminal Application No.5530/2017 is allowed.
As the learned counsel for the petitioner has taken blame
to himself, Criminal Writ Petition No.676/2010 is restored
to its file.

2) The petition is filed under Articles 226 and 227 of Constitution of India and section 482 of the Code of Criminal Procedure for relief of quashing of the proceeding of R.C.C. No.694/2005 which is pending in the Court of learned Chief Judicial Magistrate, Jalna. Both the sides are heard.

3) The incident in question took place on 21-5-2005. On that date there was secret information to the local crime branch that two persons were about to sell Gutkha packets (1000 packets) to Suresh Surana (present applicant) and packets were kept in the place of two persons like Shaikh Bashir Ahmed and Sayyed Mobin. Sayyed Mobin was manager of the godown appointed by Shaikh Bashir. When raid was effected by police all the three persons were found in the godown and there were 26 bags of plastic containing Goa Gutkha. There were 65 pouches and in each there were 1000 strips. As the Gutkha contained magnesium carbonate which is injurious to health, the articles were seized. Further there was order of the State Government banning possession and sale etc. of Gutkha at the relevant time. The crime was

registered for offences punishable under Prevention of Food Adulteration Act and also under Indian Penal Code like section 320. After making investigation, charge sheet is filed under few provisions of the Prevention of Food Adulteration Act and provision of section 320/34 of the Indian Penal Code.

4) The record shows that on 8-6-2010 charge was framed for aforesaid offences by the trial Court. Learned counsel for the petitioner submitted that an application for adjournment was given by the present petitioner as the petitioner wanted to argue for discharge but no adjournment was given and charge was framed. The learned counsel for the petitioner made other submission that Circular which was issued by the State Government in January 2005 to ban possession and sale of Gutkha containing magnesium carbonate was set aside and so the proceeding needs to be quashed.

5) In the matter like the present one there may be prosecution not only for the aforesaid offences but also for section 328 of IPC. It cannot be disputed that magnesium

carbonate is proved to be injurious to health and it causes cancer. The other contentions of the petitioner like the prosecution is not possible under the provisions of the Prevention of Food Adulteration Act can be considered by the trial Court as the charge is already framed. The case is pending before the learned Chief Judicial Magistrate and it can be said that by filing present proceeding the petitioner has successfully protracted the hearing of the case for more than 13 years. This Court holds that no relief can be granted to the petitioner. In the result, the petition stands dismissed. Rule stands discharged.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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