

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

CRIMINAL WRIT PETITION NO. 571 OF 2021

1. Yellappa S/o. Devappa Tadsad,
Age. 30 years, Occ. Driver,
R/o. Shirguppi, Tq. Hubli,
Dist. Dharwad, Karnataka.
2. Nijalingappa S/o. Kallaiya Hiremath,
Age. 62 years, Occ. Driver,
R/o. Shahpurpeth, Gadak,
Tq. And Dist. Gadak, Karnataka.
3. Rajendra S/o. Mohanlal Agrawal,
Age. Major Years, Occ. Business,
R/o. Dhanlal Complex, Gandhi Chowk,
Burhanpur, Madhya Pradesh.

.... Petitioners
[Ori. Accused]

Versus

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Osmanabad Rural,
Osmanabad.
2. Smt. Rajshree Ramkishan Sawant,
Age. 38 years, Occ. Food & Drug Officer,
The Office of Assistant Commissioner,
The Food and Drug Administration,
Osmanabad. M. 9130949991

.... Respondents
[Res. No. 2 Ori. Complainant]

Advocate for Applicant : Mr. Saeed S. Shaikh
APP for Respondents : Mr. M.M. Nerlikar

**CORAM : SMT. VIBHA KANKANWADI
& RAJESH S. PATIL, JJ.**

DATE : 25th AUGUST, 2022.

JUDGMENT [PER : RAJESH S. PATIL, J.] :-

1. The petition is filed for quashing of FIR No. 31/2019 registered with Osmanabad Rural Police Station, District Osmanabad, for the offences punishable under Section 26 (2) (i) a (iv), 27 (2), 23 of Food Safety and Standards Act, 2006 and under Sections 30 (2), 2, 3, 4, 59 (iv) of Food Adulteration (Maharashtra Amendment), Act, 1969 and under sections 328 and 188 of Indian Penal Code. By consent of both the sides, the matter was heard finally.

2. The crime is registered on the basis of report given by Food Safety Officer of Osmanabad. On 6.2.2019 police had intercepted a truck which was proceeding from Osmanabad to Yedshi road. As there was severe smell of Gutkha from the truck, inquiry was made with the driver. When the contents of the truck were examined, they noticed that packets of scented Supari having name Tiger Supari (18450 packets in number) worth Rs. 9,36,000/- (rupees nine lakh thirty six thousand) were found in the truck. The names given to different packets were noted and as the prohibited articles were being transported in the truck, the articles came to be seized. Samples were taken over for sending it to laboratory and for ascertaining the contents of the packets.

3. The FIR No. 31/2019, records name of four individuals as accused. Earlier two accused namely (I) Kiran Ramnath Mahindrakar and (ii) Rajendra Mohanlal Agrawal, had filed Criminal Writ Petition No. 289/2019, for quashing of FIR No. 31/2019. This Court vide order dated 3.7.2019 passed in Criminal Writ Petition No. 289 of 2019 has already dismissed the criminal writ petition by holding that even the transportation is prohibited under the circular dated 20.7.2018 issued by

the Foods and Drugs Department, Government of Maharashtra. The Petitioner No. 3 herein, namely Rajendra Mohanlal Agrawal, was also party petitioner No. 2 in earlier Criminal Writ Petition. However, this fact is suppressed in the present Criminal Writ Petition.

4. The learned counsel for the petitioners submitted that Rising Sun Agency is an agency carrying out business of marketing and distribution of Tiger Sweet Scented Supari all over India. He submitted that the petitioner No.3, gave an order for purchase of Tiger Sweet Scented Supari. The petitioner Nos. 1 and 2 were carrying the goods for its delivery from Hubballi (Karnataka) to Burhanpur (Madhya Pradesh). It is the contention of petitioners that the geographical limitations are such that the carrier has to go from the State of Maharashtra for transportation of goods from Hubballi in Karnataka to Burhanpur in Madhya Pradesh. So, while they were passing through Maharashtra, the FIR has been registered against them. It is the contention of the petitioners that the concerned authorities of the Government of Maharashtra have issued various directions and guidelines in respect of prohibition of Gutkha, Panmasala etc. There is no uniformity of action by the Police as well as the Food and Drugs Department of the State. It is submitted that even today every State has banned Gutkha, Panmasala, it is easily available in the market for sale due to selective and meaningful action/inaction of the Government Authorities.

5. The main contention of the petitioners is that the petitioners were only transporting the Sweet Scented Supari, which is admittedly not having any sort of tobacco or poisonous substances as its ingredient. But, the respondents i.e. police and Food and Drugs Department have

implicated the petitioners in a serious crime and even slapped Section 328 against them. It is further contended that since 2012, the Tiger Company and Rising Sun Agency are not selling and distributing said sweet scented supari in the State of Maharashtra. The petitioners were only using National Highway No.52 for the said purpose but the respondents have exceeded their jurisdiction and falsely implicated the petitioners.

6. It is next contended that the Police or the Food and Drugs Department of the State of Maharashtra are not applying Section 328 of IPC to the persons selling Gutkha, Pan Masala etc. in the State of Maharashtra, then how they can apply it to persons who are merely transporting a sweet scented supari, which does not contain tobacco or any poisonous substance.

7. The learned counsel for petitioners submitted that, hence the entire action on the part of police and Food and Drugs Department of Maharashtra in filing the impugned FIR against petitioners is illegal and improper the same needs to be quashed and set aside to prevent the abuse of process of law.

8. Per contra, the learned APP – Mr. Nerlikar submitted that the petitioners have violated the orders passed by the Food and Drugs Department and were caught red handed while carrying the prohibited articles and hence, there is no substance in the application and same deserves to be dismissed.

ANALYSIS :-

9. The issue in this petition is, whether the petitioners have

violated the prohibitory orders in respect of ban of Gutkha/Pan Masala in the State of Maharashtra. Admittedly, the trucks wherein the packets of sweet scented supari were intercepted by the Police Authorities and accordingly the impugned FIR has been filed. The said articles were then sent for examination and accordingly a report in that regard is found on record.

10. A set of compilation of documents is filed on record, which contains document titled as Result of Examination dated 22/3/2019 of Maharashtra State Public Health Services, which states that – ‘Statutory Warning : Mentioned’ and further “Above submitted samples is prohibited product as per Govt. Notification 794/2018/7 dated 20.07.2018”.

11. So also the compilation of documents contains a letter dated 8/5/2019, addressed by Asst. Commissioner's office (Foods and Drugs dept.) to Police inspector, Gramin Police Station, Osmanabad, stating therein that the seized articles will be destroyed on 9/5/2019 at the Corporation's Dumping Ground.

12. It is thus clear that the above articles were prohibited in Maharashtra as per the Govt. Notification 794/2018/7 dated 20.07.2018. This court, vide order dated 3.7.2019 passed in Criminal Writ Petition No. 289 of 2019 has already dismissed the criminal writ petition of co-accused on the ground that the petitioners therein have violated the Circular dated 20.7.2018 issued by the Government of Maharashtra. The co-accused in the matter namely, Kiran Ramnath Mahindrakar and Rajendra Agrawal had filed Criminal Writ Petition No. 289 of 2019 for quashing the FIR as against them. This court in para.

No.2 observed as under :-

“This Court had occasion to consider the order issued by Commissioner appointed under Food Safety and Standards Act and dated 20.7.2018. The order shows that from 20.7.2018 in public interest the State Government has prevented manufacture, sell, storage and even transportation of articles like Gutkha, pan Masala, scented beetle nut, scented tobacco and mixture of these articles in this State. The reason behind prohibition of these substances is that these substances are causing cancer which is killing disease. This Court considered the contention that transportation cannot be prevented in Criminal Application No. 250/2019 [Mahesh S/o. Umashankar Gaud Vs. The State of Maharashtra and Others] decided on 19.7.2019 and the relevant observations are at para Nos. 5 to 8 which are as under :

“5) The learned Additional Public Prosecutor has produced on record along with reply affidavit, the results of the examination of the samples showing that in all these samples nicotine was detected. He submitted that the point raised is already decided by this Court in the cases like Writ Petition No.9865/2012 ([M/s. Vishnu Pouch Packaging Private Limited v. The State of Maharashtra](#)) decided on 1-2-2013, Writ Petition No.1631/2012 ([M/s. Dhariwal Industries v. The State of Maharashtra](#)) decided along with other proceeding on 15-9-2012, the decision of this Court (Aurangabad Bench) in Criminal Application No.4968 of 2016 (Zahir Ibrahim Panja v. The State of Maharashtra) decided with another matter on 16-10-2018. Copies of the said decisions are on the record.

6) Those proceedings were filed by the persons who

were doing business of manufacture, supply and distribution of panmasala containing tobacco (popularly called as Gutkha) and panmasala containing other harmful substances like magnesium carbonate. This Court referred 5 Application 250 of 2019 to the decision of the Apex Court given in Criminal Appeal No.1195/2018 ([State of Maharashtra & Others v. Sayyed Hassan](#)) decided on 20-9-2018 and other decisions. In Writ Petition No.9865/2012 (cited supra) it was a case of a businessman that he was only transporting the material from Gujarat to Karnataka through Maharashtra and there was a challenge to the seizure of the goods and at that time there was notification dated 19-7-2012. No licence was obtained under the Act as such substance is treated as food article. It was held that there was contravention of the provisions of the Act in view of the Notification. Provision of [section 3\(n\)](#) of the Act was considered. Definition of "food business" contains transportation and so relief in respect of seized Gutkha was refused. In the subsequent decision viz. Writ Petition No.1631/2012 (cited supra) a Standing Order of 2012 was challenged. The contentions that such transportation also cannot be prohibited under Articles 301 and 304 of the Constitution were considered and the prayer for stay of the notification was rejected. The present notification is also on the same line. A specific word "transportation" is also there which is prohibited under the notification.

7) The learned counsel for the applicant placed reliance on some observations made by the Apex Court in Civil Appeal Nos.10373-10374 of 2010 ([State of Gujarat v. Jayeshbhai Kanjibhai Kalathiya](#)) decided on 1-3-2019. This was in respect of transportation of sand from Gujarat when there was ban on taking the sand outside of the State due to scarcity of sand. It was legally excavated sand and in

that context the provision of [Article 301](#) of the Constitution was considered by the Apex Court. The facts of the present matter are altogether different. One more point was argued that the Commissioner has no power to issue such notification. That point is dealt with in the aforesaid case by this Court. Reliance is also placed on some observations made by the Apex Court in the case reported as (1988) 2 SCC 351 ([General Officer Commanding-in-Chief v. Subhash Chandra Yadav](#)) . The observations made in that case are of no use to the applicant. Reliance is placed on some observations made by the Apex Court in the case reported as (2009) 5 SCC 162 ([Nawab Shaqafath Ali Khan v. Nawab Imdad Jah Bahadur](#)). It was submitted that present proceeding can be allowed to be converted to challenge the notification 7 Application 250 of 2019 itself. In view of the aforesaid circumstance this Court holds that nothing can be achieved by allowing to amend the proceeding and ask for such relief in this proceeding.

8) It is a fact that though there is the ban of aforesaid nature in Maharashtra, the activity of even manufacture of Gutkha and sale of tobacco is going on in Maharashtra. As per Tobacco Board, Regional Office, Mysore, tobacco is cultivated in large scale in Karnataka State and so there was no need to import tobacco from U.P. to Karnataka. In view of the extent of the production ordinarily tobacco will not be imported in Karnataka. As tobacco is used for manufacture of Gutkha by use of modus operandi like showing that tobacco is being transported only, tobacco is carried in Maharashtra and it is being used for manufacture of Gutkha and tobacco is being sold even when it is prohibited in Maharashtra. In view of this practical aspect it cannot be said that the Commissioner cannot prevent transport of tobacco under the provisions of the Act. In any case that point is already considered by this Court in the cases (cited supra) and said point again need not be

considered.”

13. Admittedly, the said circular dated 20.07.2018 is not challenged even in this petition. Therefore, on the ground of parity, we are of the view that there is no substance in the petition, as no case is made out for holding that the petitioners have not violated any circular and they were merely transporting the articles through the State of Maharashtra.

14. It is pertinent to note here that the present petitioner No.3 i.e. Rajendra s/o. Mohanlal Agrawal, was a party petitioner to the said Criminal Writ Petition No. 289 of 2019 which challenged FIR No. 31/2019. However, the petitioner has suppressed this fact, and again arrayed him as petitioner No.3 in this petition. In para. No.9 of this petition it is stated that “another accused in the same crime, namely Kiran Ramnath Mahindrakar had filed Criminal Writ Petition No.289 of 2019, but on 03.07.2019 this Honourable Court has dismissed the said writ petition.” However, the fact that present petitioner No.3 was also party to the said earlier writ petition has been suppressed. In para. No. 17 of this petition it is stated that, “This is only petition filed by the petitioners in this Hon’ble Court and no other proceedings are filed touching to the subject matter of this petition in any other Court, including Supreme Court of India.” The petition is verified by petitioner No. 1, on his behalf and on behalf of petitioner Nos.2 and 3, which states that “the contents of this Criminal Writ Petition from paragraph Nos.1 to 20, and grounds from I to XXXII, are explained to me in Vernacular (Marathi/Urdu/Hindi) and the same are true and correct to the best of my knowledge.” We are of the opinion that for the said suppression, we are constrained to impose heavy cost on the petitioner No.3.

15. Taking into consideration the above facts, we are of the view that this is not a fit case to exercise our power of quashing FIR in writ jurisdiction. In the result, the criminal writ petition is dismissed. As the petitioner No.3 has suppressed the fact that he was party to earlier petition bearing Criminal Writ Petition No. 289 of 2019, which was dismissed, we saddle a cost of Rs. 50,000/- (Rupees fifty thousand) on petitioner No. 3 to be deposited with the High Court Legal Aid Services, Sub-Committee, Aurangabad, within four weeks.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

grt/-