

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

905 CRIMINAL APPLICATION NO.4212 OF 2022

**VIKRAM AMBALAL VAKIL AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA**

Mr.Dhiraj R. Jethliya a/w. Mr. Atit Thakore, Advocate for the applicants.
Mrs.D.S. Jape, APP for the respondent/State.

CORAM : KISHORE C. SANT, J.
DATED : 24.02.2023

PC :-

01. Heard respective Advocates for the parties. Taken up for final disposal by consent.

02. By way of this application, the applicants have prayed for quashing of Summary Criminal Case No. 2 of 2012 pending in the Court of learned JMFC (Corporation Court), Aurangabad for the offences punishable under sections 17(b), 18(a) & 18-B with section 16(1)(a) and section 34 punishable under section 27 of the Drugs and Cosmetics Act, 1940 and section 18-B read with section 22 cca and section 34 punishable under section 28(A) of the Drugs and Cosmetics Act, 1940.

03. The main grounds on which the application is filed are that the Inspector has not followed the proper procedure before filing the complaint as he has failed to collect the sample. It is further a ground that the sample which was collected is found of the batch which is already approved of standard quality by the Central Drugs Laboratory, Calcutta, vide report dated 04.05.2012. The report of Government Analyst is faulty one. No role is attributed to the present applicants in the complaint as there is no specific averment as to in what capacity these applicants are arrayed as accused and they are responsible for the day-to-day affairs of the complainant. There is also no proper observance of the procedure under 202 of the Act. It is further contended that from looking at the order of issuance of process, it appears there is no application of mind and only reason assigned is that the complaint is filed by a Government Officer. It is submitted that this itself is not sufficient for issuing process.

04. The learned Advocate further relied upon case of **Lallankumar Singh & Ors. Vs. State of Maharashtra reported in MANU/SC/1301/2022.** This case is squarely covered by this judgment. The learned Advocate for the applicants also relied upon judgment delivered by this Court in the case of

Yusuf Khwaja Hamied & Ors. Vs. State of Maharashtra in Criminal Application No.1927 of 2021, wherein this Court considered that in the complaint there is no averment as regards the applicant is in-charge of the day-to-day affairs of the complainant. The learned Advocate also points out that in this case there is no averment as regards responsibility of the present applicants. Thus, this Court finds that this case is squarely covered by judgment in the case of **Lallankumar (supra)** decided by the Hon'ble Apex Court.

04. The learned APP fairly concedes to the position that this case is covered by **Lallankumar (supra)**.

05. Considering the above, this Court finds that continuance of the proceedings would be clearly an abuse of process of law and therefore the application deserves to be allowed.

06. The application is, therefore, allowed in terms of prayer clauses (C) and (D).

[KISHORE C. SANT, J.]