



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

27 CRIMINAL APPLICATION NO.743 OF 2024

Shaikh Azimoddin Shaikh Khamroddin,
Age 39 yrs., Occ. Business,
R/o Dadarao Plot, Iqbalnagar,
Parbhani, Tq. & Dist. Parbhani.

... Applicant

... Versus ...

- 1 The State of Maharashtra
- 2 Santosh Vitthalrao Kanakwad,
Age 53 yrs., Occ. Service,
Food Safety Officer,
Office of Assistant Commissioner,
Food & Drugs Administration,
Maharashtra State, Workshop Road,
Shrinagar, Nanded,
Tq. & Dist. Nanded.

... Respondents

...

Mr. S.S. Jadhav, Advocate for applicant
Mr. V.K. Kotecha, APP for respondent Nos.1 and 2

...

WITH

CRIMINAL WRIT PETITION NO.198 OF 2023

Shaikh Alimoddin Shaikh Khamroddin,
Age 33 yrs., Occ. Business,
R/o Mali Galli, Near Stadium,
Parbhani, Tq. & Dist. Parbhani.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through Police Station Officer,
Vazirabad Police Station,
Nanded, Tq. & Dist. Nanded.
- 2 Santosh Vitthalrao Kanakwad,
Age 53 yrs., Occ. Service,
Food Safety Officer,
Office of Assistant Commissioner,
Food & Drugs Administration,
Maharashtra State, Workshop Road,
Shrinagar, Nanded,
Tq. & Dist. Nanded.

... **Respondents**

...

Mr. R.J. Nirmal, Advocate h/f Mr. S.S. Gangakhedkar, Advocate for applicant
Mr. V.K. Kotecha, APP for respondent Nos.1 and 2

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CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 11th AUGUST, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present Criminal Application as well as Criminal Writ Petition
have been filed under Section 482 of the Code of Criminal Procedure, 1973
for quashing the proceedings in Regular Criminal Case No.330/2023 pending
before learned Chief Judicial Magistrate, Nanded, Tq. & Dist. Nanded arising

out of First Information Report vide Crime No.386/2022 dated 03.11.2022 registered with Vazirabad Police Station, Nanded, for the offence punishable under Sections 328, 188, 272, 273 read with Section 34 of the Indian Penal Code, 1860 and under Sections 26, 27, 30(2)(a), 59 of the Food Safety and Standards Act, 2006.

2 Heard learned Advocate Mr. S.S. Jadhav for applicant in Criminal Application No.743 of 2024 as well as learned Advocate Mr. R.J. Nirmal holding for learned Advocate Mr. S.S. Gangakhedkar for petitioner in Criminal Writ Petition No.198 of 2023 and learned APP Mr. V.K. Kotecha for respondent Nos.1 and 2 in both matters.

3 The facts leading to First Information Report are that informant, who is a Food Safety Officer, had received secret information and then carried out raid with the help of police. Thereupon many bags containing Gutkha of different brand were found. It has been submitted that facts will not attract Section 328 of the Indian Penal Code. Reliance has been placed on the decision of Division Bench at Principal Seat in **Anand Ramdhani Chaurasia and another vs. State of Maharashtra and others** [2019 SCC OnLine Bom 1857], whereby it is held that when Gutkha is found, it will not attract provisions of Section 328 of the Indian Penal Code. It is also submitted that the offence under Section 188, 272, 273 of the Indian Penal Code would also

not get attracted as there was no order that was promulgated and when the offences under Food Safety and standards Act are invoked, offence under Section 272 and 273 of the Indian Penal Code cannot get attracted. It was also submitted that for offences under the Food Safety and Standards Act there has to be complaint and not First Information Report by the concerned Officer.

4 Per contra, learned APP strongly opposed the application and writ petition and submitted that since the charge sheet has been filed, all the points which have been now raised can be raised before the trial Court. When Gutkha is prohibited in Maharashtra, it is with a purpose and still huge quantity of Gutkha or Pan Masala is found or brought in Maharashtra frequently, there has to be a deterrence. Even the statements of witnesses would show that some of the witnesses had got addicted to Gutkha and it has affected their health. The offence is against the society at large and, therefore, no leniency be shown.

5 First of all, as regards the legal issue on Section 328 of the Indian Penal Code is concerned, we would like to say that the decision in **Anand Chaurasia** (supra) has been challenged before Hon'ble Supreme Court in SLP (Cri.) No.4101 of 2020 and in the said matter there is a stay. There is also stay to the order passed on similar lines by Hon'ble Division Bench in

Ganesh Pandurang Jadhao and another vs. The State of Maharashtra and others in Criminal Writ Petition No.1027 of 2015 with companion matters decided on 04.03.2016 which has been challenged before Hon'ble Supreme Court in SLP (Cri.) No.5861 of 2020. However, there is no stay to the decision in **Vasim Jamil Shaikh vs. The State of Maharashtra and another** [(2019) ALL MR (Cri.) 381] with companion matters (to which SMT. JUSTICE VIBHA KANKANWADI was party) and, therefore, as on today till the legal position gets clear from Hon'ble Supreme Court Section 328 of the Indian Penal Code would be applicable in such cases. Offence, therefore, cannot be quashed and set aside in respect of said Section. However, in case of Sections 272 and 273 of the Indian Penal Code we would like to rely on the decision in **Ram Nath vs. The State of Uttar Pradesh and others** [(2024) AIR SC 1652], wherein the law has been clear and it is held that the special enactment will prevail. Further, in the case in respect of offences under the Food Safety and Standards Act is concerned, there has to be a complaint by the concerned officer. A complaint is defined under Section 2(d) of the Code of Criminal Procedure, which cannot be equated to First Information Report under Section 154 of the Code of Criminal Procedure. Here, in this case, there is First Information Report and not complaint and, therefore, except for Section 328 of the Indian Penal Code in rest of the Sections the application and writ petition deserve to be allowed. Hence, following order.

ORDER

- i) Criminal Application and Criminal Writ Petition stand partly allowed.
- ii) The proceedings in Regular Criminal Case No.330/2023 pending before learned Chief Judicial Magistrate, Nanded, Tq. & Dist. Nanded arising out of First Information Report vide Crime No.386/2022 dated 03.11.2022 registered with Vazirabad Police Station, Nanded stands quashed and set aside to the extent of offence punishable under Sections 188, 272, 273 read with Section 34 of the Indian Penal Code, 1860 and under Sections 26, 27, 30(2)(a), 59 of the Food Safety and Standards Act, 2006 as against applicant **Shaikh Azimoddin Shaikh Khamroddin** in Criminal Application No.743 of 2024 and petitioner **Shaikh Alimoddin Shaikh Khamroddin** in Criminal Writ Petition No.198 of 2023.
- iii) Matter to proceed for the offence punishable under Section 328 of the Indian Penal Code and learned Magistrate to take note of above observations.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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