



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

28 CRIMINAL APPLICATION NO.470 OF 2021

Shaikh Musa s/o Shaikh Alimoddin,
Age 43 yrs., Occ. Business,
R/o Raza Nagar, Hadgaon,
Tq. Hadgaon, Dist. Nanded.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Inspector,
Police Station, Hadgaon,
Tq. Hadgaon, Dist. Nanded.
- 2 Santosh Vitthalrao Kankawad,
Age 50 yrs., Occ. Service as
Food Safety Officer,
R/o Shrinagar, Nanded,
Tq. & Dist. Nanded.

... Respondents

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Mr. N.N. Narlawar, Advocate h/f Mr. B.N. Gadegaonkar, Advocate for
applicant

Mr. V.K. Kotecha, APP for respondent Nos.1 and 2

...

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

DATE : 07th AUGUST, 2025

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

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 initially for quashment of First Information Report vide Crime No.271/2020 dated 18.12.2020 registered with Police Station, Hadgaon, Tq. Hadgaon, Dist. Nanded for the offence punishable under Sections 188, 272, 273, 328 of the Indian Penal Code, 1860 and under Sections 26(i), 26(2)(iv), 27(3)(d)(e), 30(2)(a), 59 of the Food Safety and Standards Act, 2006 and later on by way of amendment for quashing the proceedings in Sessions Case No.154/2021 pending before learned Additional Sessions Judge, Nanded.

2 Heard learned Advocate Mr. N.N. Narlawar holding for learned Advocate Mr. B.N. Gadegaonkar for applicant and learned APP Mr. V.K. Kotecha for respondent Nos.1 and 2.

3 Learned Advocate appearing for applicant has taken us through the entire charge sheet and submits that First Information Report has been given by Food Safety Officer, however, the ingredients of the offences are not getting attracted as there is no evidence collected to prove that the place from where the seizure has been effected was ever in possession of applicant. In First Information Report as well as statements of witnesses it can be seen

that when the seizure was conducted, the house as well as godown were closed. The owner of house Shaikh Gaus who was present had then stated that he had given the said premises on rent to present applicant. However, rent agreement has not been seized. Though the copy of electricity bill has been collected, it stands in the name of one Smt. Zeenat Sajeda Shaikh Khwaja. Learned Advocate also submitted that the offence under Section 328 of the Indian Penal Code will not get attracted as the articles which were seized were only stored.

4 Learned APP strongly objects the application and submits that if the test report is seen, then it would give that there was magnesium content and in some product there was nicotine and the opinion has been given that all the 22 samples are in respect of articles prohibited as per Order No.FSSA/Notification-369/7 dated 15.07.2020 of Commissioner of Food Safety, Food and Drugs Administration, Government of Maharashtra. The statement of Shaikh Gaus in the panchnama would reflect that he had given those premises to present applicant on rent. The seized articles were worth Rs.35,49,764/-. As the charge sheet has been filed, let there be trial.

5 We would like to firstly consider the facts as to whether *prima facie* it is shown that accused had possession or was in any way having

control over the seized articles. If the answer comes in 'Yes', then only which offence can be said to have been committed is required to be gone into. Perusal of First Information Report would show that upon the secret information the informant, who is a Food Safety Officer, went with panch and officers from his office as well as Police Officers to the place. The said place is Raza Nagar, Hadgaon. The information that was received was in respect of the house. It was found to be closed. No responsible person was also found nearby, then inquiry was made in the vicinity and then it was revealed that the applicant is carrying confectionary business and has a godown in the house of one Shaikh Gaus Shaikh Khwaja. Therefore, all of them went there. It is stated that the house was broke open in presence of panch and articles worth Rs.2,10,000/- was found, which is mainly the Gutkha and in the godown when the search was made in presence of said Shaikh Gaus, articles worth Rs.33,39,764/- were found. If we consider the panchnama, it can be seen that only one person has signed it in the capacity as panch and that too there is eraser/correction in the date. It can be taken as 17 or 18 of December, 2020. Learned APP submits that the said raid was conducted by Food Safety Officer under Section 38 of the Food Safety and Standards Act, 2006. Here, important point to be noted is that though in First Information Report it is stated that even Police Officers were along with informant; yet the Police Officer has not conducted the panchnama, but it is by the Food

Safety Officer. Section 38 of the Food Safety and Standards Act, 2006 provides for the powers of Food Safety Officer. Only the relevant provisions are considered, which are -

“38. Powers of Food Safety Officer. - (1)

(2) The Food Safety Officer may enter and inspect any place where the article of food is manufactured, or stored for sale, or stored for the manufacture of any other article of food, or exposed or exhibited for sale and where any adulterant is manufactured or kept, and take samples of such articles of food or adulterant for analysis.

(3)

(4)

(5) The Food Safety Officer shall, in exercising the powers of entry upon, and inspection of any place under this section, follow, as far as may be, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to the search or inspection of a place by a police officer executing a search warrant issued under that Code.

(10)”

5.1 He also points Section 41 of the Food Safety and Standards Act, which runs thus -

“41. Power of search, seizure, investigation, prosecution and procedure thereof. - (1) Notwithstanding anything contained in sub-

section (2) of section 31, the Food Safety Officer may search any place, seize any article of food or adulterant, if there is a reasonable doubt about them being involved in commission of any offence relating to food, and shall thereafter inform the Designated Officer of the actions taken by him in writing :

Provided that no search shall be deemed to be irregular by reason only of the fact that witnesses for the search are not inhabitants of the locality in which the place searched is situated.

(2) Save as in this Act otherwise expressly provided, provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search, seizure, summon, investigation and prosecution, shall apply, as far as may be, to all action taken by the Food Safety Officer under this Act.”

6 The conjoint reading would basically give that when the case is filed for the offences or violation of the Food Safety and Standards Act, any irregularity in the panchnama while conducting search and seizure by Food Safety Officer cannot be questioned. However, here, it is a First Information Report that has been lodged and offences under Section 188, 272, 273, 328 of the Indian Penal Code are also invoked and, therefore, Sections 38(5) and Section 41(2) of the Food Safety and Standards Act should be followed. Section 42 of the Food Safety and Standards Act, 2006 deals with procedure for launching prosecution. We rely upon the decision in **Ram Nath vs. The State of Uttar Pradesh and others** [(2024) AIR SC 1652].

7 As aforesaid, in view of conjoint reading the panchnama ought to have been within the parameters of Section 100 of the Code of Criminal Procedure. There ought to have been two panchas of the inhabitant, but here there was only one panch, that too, from a different place, that is, not even from the same town.

8 After the registration of offence, statement of said Shaikh Gaus has not been taken under Section 161 of the Code of Criminal Procedure nor the rent agreement has been collected. Therefore, except the alleged statement in the panchnama, First Information Report and statements of witnesses there is nothing to show that, that godown was taken on rent. Said Gaus had no connection with the house of applicant, which was allegedly broke open and contraband of Rs.2,10,000/- were seized. There are no documents seized by police which would show that any such house stands in the name of applicant. When he was admittedly not present, he cannot be said to be possessing or having control over the alleged articles seized.

9 Even if we take that the seized articles were in violation of the prohibitory order dated 15.07.2020; yet when the possession or control has not been proved, the offences will not get attracted. The case cannot even stand for the sections under Food Safety and Standards Act as First

Information Report has been lodged and in **Ramnath** (supra) it is held that when there is a specific offence that is made out the prosecution for the offences under Sections 272, 273 of the Indian Penal Code will not stand and for the offences under the Food Safety and standards Act there has to be a complaint by the concerned officer, as defined under Section 2(d) of the Code of Criminal Procedure.

10 Though the learned Judicial Magistrate First Class before whom the proceedings is pending will have a jurisdiction to pass order in respect of disposal of property, many times such orders are not passed and, therefore, we direct learned Judicial Magistrate First Class / Additional Sessions Judge to pass the order in respect of disposal of property upon receipt of writ.

11 In view of all these facts, it would be an abuse of process of law if the applicant is asked to face the trial. This is a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceedings in Sessions Case No.154/2021 pending before

learned Additional Sessions Judge, Nanded arising out of First Information Report vide Crime No.271/2020 dated 18.12.2020 registered with Police Station, Hadgaon, Tq. Hadgaon, Dist. Nanded, for the offence punishable under Sections 188, 272, 273, 328 of the Indian Penal Code, 1860 and under Sections 26(i), 26(2)(iv), 27(3)(d)(e), 30(2)(a), 59 of the Food Safety and Standards Act, 2006, stands quashed and set aside as against applicant viz. **Shaikh Musa s/o Shaikh Alimoddin.**

iii) Learned Judicial Magistrate First Class / Additional Sessions Judge to pass the order in respect of disposal of property, upon receipt of writ.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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