



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

13 CRIMINAL APPLICATION NO.1792 OF 2024

- 1 Mohamad Irfan Mohamad Arif,
Age 27 yrs., Occ. Driver,
R/o Near MSK Mill, Jillanabad,
Gulbarga, Tq. & Dist. Gulbarga.
(Karnataka State)
- 2 Sayyad Asif Sayyad Rukmoddin,
Age 26 yrs., Occ. Business,
R/o Kadganchi, Near Gulbarga University,
Gulbarga, Tq. & Dist. Gulbarga.
(Karnataka State)
- 3 Prabhuling Mallikarjun Keralli,
Age 46 yrs., Occ. Business,
R/o House No.3-604, Near Rajesh Bekari,
Gajipur, Gulbarga, Tq. & Dist. Gulbarga.
(Karnataka State)

... Applicants

... **Versus** ...

- 1 The State of Maharashtra
Through Police Inspector,
Anand Nagar Police Station,
Osmanabad, Tq. & Dist. Osmanabad.
- 2 Dnyaneshwar Bhagwan Kagade,
Age 29 yrs., Occ. Service,
R/o Anand Nagar Police Station,
Osmanabad, Tq. & Dist. Osmanabad.

... Respondents

...

Mr. A.N. Barhate Patil, Advocate for applicants

Mr. A.R. Kale, APP for respondent Nos.1 and 2

...

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

DATE : 26th JUNE, 2025

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

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashment of Charge Sheet No.112/2023 i.e. proceedings in Sessions Case No.188/2023 pending before learned Additional Sessions Judge, Osmanabad arising out of First Information Report vide Crime No.252/2023 dated 01.07.2023 registered with Anand Nagar Police Station, Osmanabad, Tq. & Dist. Osmanabad, for the offence punishable under Sections 328, 188, 272, 273 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. A.N. Barhate Patil for applicants and learned APP Mr. A.R. Kale for respondent Nos.1 and 2.

3 Learned Advocate appearing for applicants, after showing disinclination to grant any relief in favour of applicant Nos.1 and 2, seeks

withdrawal of application as against them. There is no hurdle for allowing his prayer. In fact, he had relied on the decision 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 to submit that Section 328 of the Indian Penal Code cannot be said to be made out as it was observed in this case by Division Bench of this Court that by no stretch of imagination, manufacturing, possessing Gutkha and Pan Masala would amount to administering poison. It was held that Gutkha or Pan Masala are not subjected to food analysis. However, there is amendment in the Food Safety and Standards Act at the behest of Government of Maharashtra on 18.07.2023, wherein in the public interest stern action was proposed to be taken in respect of the items like tobacco, Pan Masala, Gutkha etc. Further, as regards present position on this point is concerned, there are different views with the Benches. In **Anand Ramdhani Chaurasia vs. The State of Maharashtra** [(2019) ALL MR (Cri.) 4402] it has been held that Section 328 of the Indian Penal Code will not get attracted. Similar view was also taken in **Nilesh Narayan Sanghvi vs. The State of Maharashtra and another** in Criminal Application No.442 of 2020 decided on 09.09.2020. However, in **Vasim Jamil Shaikh vs. The State of Maharashtra and another** [(2019) ALL MR (Cri.) 381] with companion matters, this Bench held that the contention that provisions of Section 328 of the Indian Penal Code cannot

be used in such cases, is not acceptable. The decision in **Anand Chaurasia** (supra) has been challenged before Hon'ble Apex Court vide Special Leave Petition (Criminal) No.8224 of 2020 and by order dated 31.08.2020 the Hon'ble Apex Court has stayed the operation of Judgment and order passed in **Anand Chaurasia** (supra). Learned APP submits that said matter is not yet decided. There is no stay to the Judgment and order in **Vasim Shaikh** (supra) and, therefore, at this stage we cannot conclude that Section 328 of the Indian Penal Code is not attracted in cases involving Gutkha and Pan Masala. However, this does not bar this Court from taking into consideration the material in the charge sheet if taken as it is, as to whether ingredients of Section 328 of the Indian Penal Code are made out or not.

4 As aforesaid, the matter stands dismissed as withdrawn as against applicant Nos.1 and 2. We are considering the application only in respect of applicant No.3 i.e. original accused No.3. Though he has been stated as absconding and charge sheet has been filed under Section 299 of the Code of Criminal Procedure, it can be seen that present applicant No.3 is resident of Gulbarga (Kalburgi) (Karnataka State). There is no record to show that the team had gone several times and tried to arrest the applicant.

5 If we consider the prosecution story, then it can be seen that on secret information the informant and police staff intercepted Tempo bearing

registration No.AP 23/W-2999. Applicant Nos.1 and 2 got down from the said Tempo and then the Tempo was searched, wherein Gutkha and other articles were found. Applicant No.3 was not present at the said place / he was not travelling from the said Tempo. It is then stated that upon inquiry with applicant Nos.1 and 2, they disclosed that said Gutkha has been fetched / brought from applicant No.3. The statements of witnesses have been recorded, who are only the police officers. Though it is stated that two panchas were present at the spot; yet, the said statement which has been allegedly made by applicant Nos.1 and 2 would then be inadmissible under Section 25 of the Indian Evidence Act that is made in the presence of police. Except the said statement there is nothing as against applicant No.3 and, therefore, it would be an abuse of process of law if applicant No.3 is asked to face the trial. Case is made out for exercise of powers under Section 482 of the Code of Criminal Procedure. Hence, following order.

ORDER

- i) Criminal Application stands partly allowed.
- ii) Criminal Application stands disposed of as withdrawn, after disinclination, as against applicant Nos.1) **Mohamad Irfan Mohamad Arif** and 2) **Sayyad Asif Sayyad Rukmoddin**.

iii) Charge Sheet No.112/2023 i.e. the proceedings in Sessions Case No.188/2023 pending before learned Additional Sessions Judge, Osmanabad arising out of First Information Report vide Crime No.252/2023 dated 01.07.2023 registered with Anand Nagar Police Station, Osmanabad, Tq. & Dist. Osmanabad, for the offence punishable under Sections 328, 188, 272, 273 read with Section 34 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant 3) **Prabhuling Mallikarjun Keralli.**

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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