



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

24 CRIMINAL APPLICATION NO.2290 OF 2023

Hemant Subhash Teke,
Age 52 yrs., Occ. Business,
R/o Tekewada, Akluj,
Tq. Malshiras, Dist. Solapur.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Inspector,
Police Station, Shrigonda,
Tq. Shrigonda, Dist. Ahmednagar.
- 2 Food Safety & Standards Authority
of India,
Through Food Safety Officer,
Ahmednagar.

... Respondents

...

Mr. Sohail Subhedar, Advocate h/f Mr. N.S. Ghanekar, Advocate for applicant

Mrs. R.P. Gour, APP for respondent Nos.1 and 2

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

DATE : 25th 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 the proceedings in Regular Criminal Case No.193/2023 pending before learned Judicial Magistrate First Class, Shrigonda, Tq. Shrigonda, Dist. Ahmednagar, arising out of First Information Report vide Crime No.303/2023 dated 17.03.2023 registered with Police Station, Shrigonda, for the offence punishable under Sections 272, 273, 328, 420, 201 read with Section 34 of the Indian Penal Code, 1860 and under Sections 26, 26(2)(i) and 59 of the Food Safety and Standards Act, 2006.

2 Heard learned Advocate Mr. Sohail Subhedar holding for learned Advocate Mr. N.S. Ghanekar for applicant and learned APP Mrs. R.P. Gour for respondent Nos.1 and 2. Perused the documents in the charge sheet.

3 First Information Report has been lodged by Mr. Umesh Rajendra Suryawanshi, who is the Food Safety Officer, Ahmednagar. He states that he had received secret information and, therefore, conducted raid on 16.03.2023 with the panchas on the house of one Balasaheb Baburao Pachpute. He found 21 kg. Whey Permeate Powder in a bag having capacity of 25 kg. and plastic can of 40 litre, in which 35 litres of Light Liquid Paraffin was stored. He also found a Mahindra Pickup vehicle bearing registration No.MH 16/AY-1434 outside the house of Balasaheb Pachpute, in which 15 plastic drum/can of 40 litres, in which milk like substance was there. All the

material was seized and it is stated that with the help of Whey Permeate Powder and Light Liquid Paraffin artificial milk was prepared which was then adulterated in cows milk and it was for sale to general public. When inquiry was made with Balasaheb Pachpute as to from whom the material was purchased, he told that he used to bring the material from one Sandip Makhre. It is then stated that by taking requisite samples the rest of the material was destroyed at the spot and then he says that accused Balasaheb Baburao Pachpute has committed offence under Sections 26(1), 26(2)(i) punishable under Section 59 of the Food Safety and Standards Act, 2006 and under Sections 272, 273, 328, 420 of the Indian Penal Code, 1860. Learned Advocate for applicant submits that present applicant has been arrayed as an accused No.16 and the allegations in respect of applicant are that he has sold Whey Permeate Powder to accused Nos.2 and 11 when accused Nos.2 and 11 were not holding any kind of licence and that the applicant was knowing that those two persons were preparing adulterated milk. There is nothing in the charge sheet to show that present applicant was aware about the fact that accused Nos.2 and 11 were selling adulterated milk. At the most, the allegations against him are in respect of violation of Sections of Food Safety and Standards Act, for which there should be a complaint by the Food Safety Officer and there cannot be a First Information Report. Present applicant cannot be tried along with main accused who was allegedly found with

adulterated milk. Accused No.2 is Sandip Sambhaji Makhre and accused No.11 is Kailas Babaji Lalge. These two persons were not present when the raid was conducted. Now, certain receipts have been produced along with charge sheet to show the transaction, however, if the applicant intended to commit an offence, he would not have given the receipt. In fact, even the CGST as well as SGST has also then recovered/charged in those bills. There is no recovery of any article from applicant. Section 328 of the Indian Penal Code has been unnecessarily invoked to amplify the gravity of the offence and, therefore, with this material the applicant cannot be asked to face the trial.

4 Per contra, learned APP strongly opposed the application and submits that adulteration of milk is a serious offence and there are statements of witnesses who have stated that they suffered illness due to consumption of adulterated milk. The raid that was conducted on the house of Balasaheb Baburao Pachpute cannot be denied by present applicant, but the chain that has been tried to be established by prosecution is required to be considered. Original accused No.1 was purchasing said raw material for preparation of adulterated milk from original accused No.2 and original accused No.2 has stated that he purchased Whey Permeate Powder from present applicant. Same is the case with accused No.11. Huge amount of

Whey Permeate Powder has been sold by present applicant to accused Nos.2 and 11, who were not holding appropriate licence and, therefore, all the accused are liable to be tried together.

5 As it appears from First Information Report that police had not taken part in the raid. Of course, the informant has power in law to conduct raid and make seizures. The raid was conducted on the house of Balasaheb Baburao Pachpute. First Information Report is also against him alone. Now, it is to be noted that said accused No.1 had taken the name of accused No.2 i.e. the person from whom he is purchasing the Whey Permeate Powder and Light Liquid Paraffin. We do not want to make a comment regarding the role and the evidence that is there as against original accused No.2, but the fact remains is that Investigating Officer appears to have tried to reach and establish the chain. However, the fact is now then required to be considered is that the present applicant runs the business under the licenced name Hemant Corporation bearing registration No.11521041000710. The said licence was issued on 05.07.2021 and is valid up to 04.07.2026. The said licence is in respect of Whey Permeate Powder. The applicant says that he is not dealing with Light Liquid Paraffin and, therefore, there is no question of invoking Section 328 of the Indian Penal Code against him. It is stated that the licence of dairy products and analogues excluding products of food

category 2.0 has been mentioned in the licence. The receipts produced show that even GST has been recovered. That means, even accused No.2 has also registered himself for GST. Now, as regards the excess or transaction without licence is concerned, there is no evidence. It should be seen that GST is in respect of which products. No clarification has been given in the charge sheet. Licence number i.e. FSSAI of the company of accused No.2 i.e. 'Siddhant Milk and Milk Products' has been given in the receipt.

6 If there is violation of provisions of Food Safety and Standards Act, then there can be only a complaint, that too, of the concerned officer. There is no scope for First Information Report under Section 154 of the Code of Criminal Procedure there. Here, in the present case, prosecution has not placed on record any such document that food relate to the stock which was seized from original accused No.1 was purchased from original accused No.2, who had purchased it from present applicant – original accused No.16. That chain is not established to cover the offences under the Indian Penal Code. Therefore, it would be an abuse of process of law if the applicant is asked to face the trial along with other accused persons. Hence, following order.

ORDER

- i) Criminal Application stands allowed.

ii) The proceedings in Regular Criminal Case No.193/2023 pending before learned Judicial Magistrate First Class, Shrigonda, Tq. Shrigonda, Dist. Ahmednagar arising out of First Information Report vide Crime No.303/2023 dated 17.03.2023 registered with Police Station, Shrigonda, for the offence punishable under Sections 272, 273, 328, 420, 201 read with Section 34 of the Indian Penal Code, 1860 and under Sections 26, 26(2)(i) and 59 of the Food Safety and Standards Act, 2006, stands quashed and set aside as against applicant **Hemant Subhash Teke**.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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