



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3626 OF 2025

Salman Alias Irfan Shabbir Tamboli
age 35 years, occu. Business,
R/o. Nawalegalli, Belapur,
Tq. Shrirampur, Dist. Ahilyanagar.

...Applicant

Versus

The State of Maharashtra
through Police Station Officer,
Shrirampur city Police Station,
Shrirampur, Tq. Shrirampur,
Dist. Ahilyanagar.

...Respondent

...

Advocate for Applicant : Mr. Shaikh Mazhar A. Jahagirdar
APP for Respondent : Mr. D.B. Bhange

...

CORAM : ABHAY J. MANTRI, J.
DATE : 12th DECEMBER, 2025

ORAL JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard finally by the consent of the learned Advocates for the respective parties at the admission stage.

2. By this application, the applicant has invoked Section 528 of the Bhartiya Nagrik Surksha Sanhita, 2023 (for short '**BNSS**') for setting aside the issuance of the process order dated 29.09.2021, passed by learned Judicial Magistrate First Class, Shrirampur (for short '**learned Magistrate**'), against the applicant.

3. Having heard the learned Advocate for the applicant and learned APP for the State and have gone through the record and charge-sheet, at the outset, it appears that on 29.09.2021, learned Magistrate after considering the material before him has passed the order for issuance of the summons against applicant for the offences punishable under Sections 328, 272, 273, 188 of the Indian Penal Code (for short '***the IPC***') and Sections 26(2)(I), 26(H)(R)(V), 27(3),(D),(E), 30(2)(A) of the Food Safety and Standards Act, 2006.

4. Learned Advocate for the applicant vehemently submitted that the offence under Section 328 of the IPC, is not made out against the applicant. Apart from that, the trial under Section 328 of the IPC, is tried by the learned Additional Sessions Judge. Therefore, he submitted that the cognizance taken by the learned Magistrate for the offence punishable under Section 328 of the IPC, is liable to be quashed and set aside. However, learned Advocate for the applicant does not press the issuance of process for remaining Sections as incorporated in the order.

5. On query, learned APP failed to satisfy this Court as to how ingredients of Section 328 of the IPC, are attracted in the present case.

6. Having considered the above facts as well as gone through the charge-sheet and record, *prima facie*, no allegations appear against the applicant that he administered or caused any poison, stupefying

substance, or intoxicant to be taken by any person; the only allegations is that he has stolen banned Hira Pan Masala, and therefore, the charge-sheet was filed against him. *Prima facie*, no ingredients of Section 328 of the IPC, are attracted against him. As such, I find no substance in the contentions of the learned Advocate for the applicant in that regard.

7. As a result, the application is partly allowed to the extent of issuance of process under Section 328 of the IPC, against the applicant is hereby quashed and set aside. It is made clear that the order of issuance of process for rest of the offences is retained as it is.

8. Accordingly, the application is disposed of. Rule is partly made absolute.

9. Needless to clarify that if the matter is committed to the learned Sessions Court, then the Sessions Judge has to take appropriate steps for sending it back to the learned Magistrate as other offences has tried by learned Magistrate.

(ABHAY J. MANTRI, J.)