



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

922 CRIMINAL WRIT PETITION NO. 236 OF 2025

1. Mayur S/o. Jaykumar Vora,
Age-66 years, Occu-Business,
and Director of M/s. Mapro Foods
Pvt. Ltd. Sendurjane, Wai,
Tq. Wai, Dist. Satara
2. Rajvi Mayur Vora,
Age-66 years, Occu-Household,
and Director of M/s. Mapro Foods,
Pvt. Ltd. Sendurjane, Wai,
Tq. Wai, Dist. Satara
3. M/s. Mapro Foods Pvt. Ltd.
122, Sendurjane, Wai,
Tq. Wai, Dist. Satara

...PETITIONERS
[Ori. Accused Nos. 3 to 5]

VERSUSU

1. Dayanand S/o. Vitthalrao Patil,
Age-Major, Occu-Service as
Food Safety Officer, Food & Drugs
Administration (MS) Office of the
Assistant Commissioner,
Administrative Building, 2nd Floor,
Latur
2. Pravin S/o. Kantilal Kocheta,
Age-36 years, Occu.-Business,
M/s. Vijay Dry Fruits
Godown Plot No. F-17, Add. MIDC,
Latur 413 512
3. Smt. Sarla Kantilal Kocheta,
Age-57 years, Occu.-Business &
Proprietor of M/s. Vijay Dry Fruits,
Godown Plot No. F-17, Add. MIDC,
Latur 413 512

4. The State of Maharashtra

Mr. S. K. Sharma, Advocate for the petitioners

Mr. D. B. Bhange, APP for the respondents/State

CORAM : ABHAY J. MANTRI, J.

DATE : 16th DECEMBER, 2025

ORAL JUDGMENT :

1. Heard. Rule. **Rule** is made returnable forthwith and heard finally, with the consent of the learned Advocate for both parties.

2. The petitioner Nos. 1 & 2, being Director of petitioner No.3 company, have preferred this petition challenging the order dated 03-09-2024, passed by the learned Additional Sessions Judge, Latur in Criminal Revision Petition No. 50/2022 whereby confirmed the order dated 10-12-2014, passed by the learned Chief Judicial Magistrate, (for short, the '**learned Magistrate**') Latur in RCC No.769/2014 for issuance of process against the petitioners.

3. The crux of the argument of the learned Advocate for the petitioners is that : -

i] The learned Magistrate, as well as the learned Sessions Court, have not considered the nomination form No. 8 given by the petitioner No. 3- Company to its nominee in its proper perspective and erred in the issuance of the summons against the director of the company.

ii] The competent authority has not granted sanction in accordance with the law.

iii] The authority sent the two samples to two different laboratories; therefore, two distinct results have come in.

According to him, food falling under Regulator 2.3.19

[page 87] and Regulator 2.7.1 are different substances. However, without considering the analysis report and applying its mind, the learned Magistrate has passed the order. The order was not speaking one.

4. He further contended that there are no specific averments in the complaint about the role played by the accused persons or how they are liable for the day-to-day activities of the company, when they have given nominations of their company to one Kesarkar. Therefore, he submitted that the order of issuance of process against the petitioners is illegal. However, the learned Magistrate and the learned Additional Sessions Judge have not considered the matter in its proper perspective and erred in passing the orders.

5. During the argument, he has taken me through the averments in the complaint, Form No. V-A (page 81), relevant provision, i.e. regulation No. 2.3.19 [page 87], 2.9.4 and also drew my attention to form No. VII Rule 12 D and submitted that the petitioner No. 3 company nominated one Sandip Kesarkar, Production Manager of the company, and therefore, he is responsible for the day-to-day activities of the company. Similarly, he argued that, pursuant to the enactment of the new Act on 05-11-2011, the company must convert the nomination or other formalities within 60 months. Till such conversion within 60 months, the old license and

the documents, such as the nomination form, should be treated as valid. He also pointed out that within a period of 60 months, the petitioner No. 3 company converted the said documents and therefore, urged that the issuance of the process order is illegal.

6. To buttress his submissions, he has relied upon the following judgments :

Sr. No.	Citation	Parties	Relevant Para
1.	2018 (2)FAC-212	A R Pratap and others Vs the State of Maharashtra and others	3,4,5,6,7
2.	2017(2) FAC-482	Gautam S Adani and Anr Vs State of Maharashtra	4,6,7,8,9,10
3.	2021(4)Crimes 10 (SC)	Ravindra Nath Bajpa Vs Mangalore Special Economic Zone Ltd.	6,7,8,9
4.	2023(1)FAC-610	M/s Kaipan Masala Pvt. Ltd Vs State of MP	3,5,6,7,15
5.	2021 (2) Crimes 169 (SC)	Ashok Bhushan S Abdul Nazeer Vs Harishankar Aggrawal	3,4,6,7,10,11
6.	2023(1)FAC 519 (AL HC)	Rampal Singh Vs State of UP	4,10,12,18
7.	2024 Manu/Mh/3282/2 024	Tata Chemicals Ltd and others Vs State of Maharashtra.	9,10,11,13,15,18,20,21,26,28
8.	1982 FAC 371	State of Mah. Vs G. S. More	7,9,10
9.	2006 (1) FAC 237 (SC)	Hindustan Lever Ltd. Vs Food Inspector and Anr	4,6,8

10.	2023 Manu/Mh/3926/2 023-3926	Kaushik Keshavlal Lakhani and others vs State of Maharashtra.	5,7,8,11,12,14, 17-21
11.	2002 DGLS 84 (SC)	Consumer Action Group Vs Cadbury India Ltd.	5
12.	2023 Manu/MH/3926/2 023-3926	Kaushik Keshavlal Lakhani and others Vs State of Maharashtra.	5,7,8,11,12,14, 17-21
13.	2021 (4) Crimes 10 (SC)	Ravindra Nath Bajpa Vs Mangalore Special Economic Zone Ltd	6-9
14.	Criminal Application (APL) No. 503 of 2024 dated 07-01-2025	Shyamkumar Tulsilal Warnawal Vs State of Maharashtra and others	-

7. He further submitted that in view of the law laid down in the above judgments, the order of issuance of process passed by the learned Magistrate and confirmed by the learned Additional Sessions Judge is illegal and liable to be set aside.

8. *On the contrary*, the learned APP strenuously opposed the application on the ground that samples were sent to the Laboratory at Pune as well as Ghaziabad. Both samples indicate that the pulpy fruit juice is unsafe for consumption under the Food Safety and Standards. He drew my attention to both the reports at page Nos. 22 and 26, and therefore, considering the same, the learned Magistrate has rightly passed the order of issuance of process against the petitioners.

9. He further submitted that the petitioners have neither converted the nomination form as per the rule within the specified time nor submitted the nomination form under the new enactment of 2011. Therefore, it cannot be said that the nomination tendered to the authorities in 2008 applies to the present case. On the contrary, he failed to submit the same within time; therefore, the nomination would not help him escape liability. On the contrary, the petitioners Nos. 1 and 2, being the Director of the company, are liable for the acts of their employees. He further submitted that both the analysis reports indicate that the yeast and mould count and colour exceed the prescribed limit of 100. Both analysis reports indicate that the samples are unsafe for consumption. Therefore, he submitted that it cannot be said that both Laboratories have distinctly analysed the same; instead, the same sample was sent to the said Laboratory at Ghaziabad.

10. *Thirdly*, he argued that the appropriate authority has accorded sanction to initiate the proceeding vide sanction letter dated 04-12-2014, and he has drawn my attention to the said sanction letter. He has also taken me through the communication dated 11-11-2014, by which the respondent authority sought approval to initiate the proceedings from the learned Joint Commissioner, Food and Drugs, and has therefore submitted that, after obtaining sanction

from the competent authority, the respondent has initiated the proceedings. He also averred the same in his affidavit-in-reply. Similarly, he has drawn my attention to para 17 and 20 of the complaint and submitted that in the complaint in para 17, it is categorically mentioned that after obtaining the necessary sanction from the competent authority, the complaint and therefore, it cannot be said that no proper sanction was granted by the authorities to initiate the proceeding against the petitioners. As such, he submitted that the passing of the orders by the learned Magistrate as well as the learned Additional Sessions Judge is just and proper. No interference is required in the writ jurisdiction.

11. Having heard the rival contentions of the learned Advocates for the parties and gone through the record at the outset, I would like to refer to the averment in the complaint above, para no.

1 and Para 20 as under:

आरोपी क्रमांक 3 व 5 यांनी या कायद्याचे उल्लंघन पुढील प्रमाणे केलेले आहे. कलम 26(1), 26(2) (1) कलम 27 (2)(c) सहवाचन कलम 3(1)(zz)(vii) सहवाचन नियमन फुड (प्रोडक्ट्स स्टॅन्डर्स अँड फुड अँड्‌टीव्हज) 2011 मधील 2.7.1 (permitted synthetic food colour up to 100 ppm) चे उल्लंघन केले आहे. त्यामुळे विषयांकीत कायद्याचे कलम 59 व 66 नुसार शिक्षेस पात्र आहेत.

12. A bare perusal of the complaint reveals that the complaint has categorically stated that the accused Nos. 3 and 5, i.e. petitioner Nos. 1 and 3, have violated the sections 26(1)(2) and

27(c) of the Food Products Standards and Food Additives Regulation 2011 (for short, 'the regulations') and therefore, are liable for prosecution under Sections 59 and 66 of the Act. It is pertinent to note that there are no specific averments against accused No. 4, i.e. petitioner No.2, in the entire complaint or the role played by her. Therefore, it seems that the passing of the order of issuance of process against the petitioner No. 2 by the learned Magistrate is illegal and contrary to the averments in the complaint. On that ground alone, the order of issuance of process against the petitioner No.2 is liable to be quashed and set aside.

13. Similarly, the learned APP failed to point out from the averment in the complaint that the complainant has made any averments against the petitioner No. 2 to attract the ingredients of the offences as stated above against her or the role played by her. However, the complaint appeared silent on that point. Therefore, in my view, the order of issuance of the process against the petitioner No. 2 is liable to be quashed and set aside.

14. Now, the next question arises whether the competent authority accorded the sanction to prosecution against the petitioner in accordance with the law or not. For that purpose, the learned APP relies on the affidavit-in-reply and para 17 of the complaint. He further submitted that in para 14 of the affidavit-in-reply as well as

para 17 in the complaint, the respondent authority has categorically stated that they have obtained the sanction as per section 30(2)(e) of the Act. Therefore, it cannot be said that there was no proper sanction accorded.

15. In response, the learned Advocate for the petitioners tried to submit that said sanction is not valid nor issued properly against the particular persons and therefore the same is invalid and cannot be considered while passing the order of issuance of process. However, on perusal of the record submitted by the learned APP, it appears that, vide communication dated 11-11-2014, the respondent has specifically sought sanction to initiate proceedings against the petitioner Nos. 1 to 3 and one Pravin Kantilal Kocheta, Proprietor of M/S Vijay Dry Fruits. In contrast, pursuant to approval or sanction, the competent authority has granted permission to initiate proceedings against the concerned person under section 42(3) of the Act. In the sanction order, a reference to a communication letter is mentioned. Therefore, it seems that pursuant to the said communication, the sanction was accorded by the learned Commissioner.

16. Apart from that disputed question, whether the sanction was proper or not or whether the competent authority has granted it after considering the material before it, or not, is a question of fact

and can be determined at the trial and not at the time of issuance of the process. What is necessary to see while passing the order of issuance of process, whether the respondent has obtained the sanction from the competent authority or not. In Para 17 of the complaint, it is expressly stated that the respondent has obtained the necessary permission from the learned Joint Commissioner of Food and Drugs. Therefore, I do not find substance in the learned Advocate for the petitioners' contention that the respondent authority has not obtained the sanction before the initiation of the proceeding.

17. *Thirdly*, during the argument, the learned Advocate for the petitioners tried to submit that two different samples were sent to two distinct laboratories. Therefore, the reports appear to be different.

18. Form No. V-A, from which samples were obtained from the Proprietor of M/s. Vijay Dry Fruit differs from the material sent to the Pune Laboratory. He argued that the sample sent to Pune Laboratory was a fruit bar selling under Regulation 2.3.19 of the Food Safety and Standards. On the other hand, the sample sent to the Ghaziabad Laboratory was '*pulpy fruit juice*'; therefore, the two samples are different, and the pulpy fruit juice falls under Regulation 2.7.1 of the Food Safety and Standards. Accordingly, its report is different from the Pune Laboratory's report. Therefore, he submitted

that the initiation of the proceeding based on two different samples and two different reports is illegal and liable to be set aside.

19. On the other hand, the learned APP submitted that the sample was sent to the respondent No. 2 /original accused No.1, which was the second part of the sample sent for re-analysis to the Laboratory Ghaziabad. Therefore, it cannot be said that the samples sent to Pune and Ghaziabad were different; both were identical. Similarly, he argued that the reports of both samples indicate that they were unsafe under Section 3(1) zz (iii) and (x) of the FSSA Act; therefore, it would help the petitioners in issuing the process. Perused both the reports. Prima facie, the Pune Laboratory report indicates that it found the sample to be a “*fruit bar*” falling under Regulation 2.3.19. Similarly, the analysis report of the Ghaziabad Laboratory denotes that the samples were “*pulpy fruit juice*” and fall under Regulation No. 2.7.1 of the Food Safety and Standards Regulations, 2011. The prima facie sample described in both reports is distinct. However, both reports denote that both samples were unsafe under the provisions of the FSSI Act. Similarly, the same sample was forwarded to both laboratories or different ones. It is a question of fact. For that purpose, a detailed enquiry and trial are required. Based on the report alone, it cannot be concluded which sample was sent to the laboratories. However, it is mentioned in the sample. Even

assuming that both samples were sent differently. However, both samples report indicates that both were unsafe. It is not the case that one report is in favour of the petitioners. So that they would benefit from the said report, but both reports indicate that it is unsafe to consume. It is also not in dispute that both samples were seized from M/S Vijay Dry Fruits; therefore, in my view, to determine whether different samples were sent to the laboratories or the same sample was sent, a detailed enquiry and evidence are required. While considering the complaint, the learned Magistrate has to look into the reports submitted by the respondent authorities. If the case in hand undisputedly reports submitted by the authority, both the reports show that the sample was unsafe and therefore, in my view, passing of the order of issuance of process by the learned Magistrate against the petitioner Nos. 1 and 3 is not illegal or it cannot be said that learned Magistrate without applying its mind has passed the said order.

20. It is to be noted that petitioner No. 3 has submitted the nomination of Mr. Kesarkar to the authority in 2008, and on 05-08-2011, the new Act came into force. However, after the enactment of the new Act and until the occurrence of the offence, the petitioner No. 3 company failed to produce a fresh nomination before the authority or to convert the nomination or documents before the

incident. Although the Rules set a 60-month time limit, it was incumbent upon the petitioners to file fresh nominations and documents with the authorities after the enactment of the new Act. But until the occurrence of the incident in 2014, the petitioners failed to produce the nomination or the conversion of the earlier nomination, or to take steps for its conversion, nor to produce the same before the authority. Therefore, in my view, at this stage, the conversion of the said nomination after the incident, i.e., on 4th October, 2014, is not helpful to the petitioners in escaping the company's liability. In the absence of proper nomination, it would not be appropriate to say that the Director is not liable for the acts of their employees or the day-to-day activities of the company. Therefore, I do not find any substance in his contention in that regard.

21. Perused the impugned judgment and order passed by the learned Additional Sessions Judge, Latur. It appears that the learned Judge has dealt with the judgment relied upon by the learned Advocate for the petitioners in detail and, after considering the same, has held that the petitioners/accused Nos. 3 to 5 are the Directors of the accused No. 5- M/s Macro Foods Pvt. Ltd. company, who are responsible for the manufacturing of the sample and, therefore, liable for initiation of the proceeding, and dismissed the petition. However,

on perusal of the complaint, it appears that the respondent authority nowhere averred that the petitioner No. 2, i.e., accused No. 4, has also violated the provisions of the Act and, therefore, is liable for the initiation of the proceeding against her. However, the averments in the complaint, paragraphs 1 and 20, categorically indicate that the respondent has made an averment against the accused Nos. 3 and 5 only i.e. petitioner No. 1 and 3 and not against petitioner No.2. Therefore, findings recorded by the learned Additional Sessions Judge to that extent is liable to be partly set aside as there is no averment against the petitioner No.2 in the complaint, and she is also liable for violation of provision of the Act and therefore, interference is required to that extent.

22. In A.R. Pratap (supra), this court has held that there is no averment in the complaint that the petitioner therein was in charge and was responsible to the accused therein for the conduct of its business at the time of commission of the offence. Therefore, the proceeding against them was quashed. However, in the absence of a nomination, in my view, the Director of the company is directly responsible for the day-to-day activities of the company and the conduct of its business. Therefore, in my view, the dictum laid down in the said judgment is hardly of any assistance to the petitioners in support of their contention. In Ravindranath Bajipe (supra), there

were no specific allegations and averments that with respect to the role played by them in their capacity as Chairman, the Managing Director, Executive Director, Deputy General Manager, Planner and Executor and without any specific role attributed and role played by them in their capacity, they cannot be arrayed as an accused. Therefore, the issuance of the process order was set aside. However, prima facie, there is an averment in the complaint in para 20 that the petitioners Nos. 1 and 3 have violated the provisions of law and are therefore liable for the initiation of the proceeding. In view of the same, the law laid down in the said judgment is hardly of any assistance to the petitioners in support of their contention. Moreover, in the absence of a nomination, in my view, the Director of the company is jointly and severally liable for the company's day-to-day activities. In M/s. Kaipan Masala Pvt. Ltd. (supra), it is held that 60 months had been granted to the existing license holder for renewal of the license; therefore, as the nomination form is also part of the licensing, it is the document that needs to be enclosed for a new application according to point No. 7 of the annexures of the Regulation 2011. So that the petitioner's company had effected such a conversion within the 60-month period. Accordingly, the nomination form should be deemed valid. There is no dispute about the said proposition. However, the petitioners submitted the

nomination in 2008. After the enactment of the 2011 Act, the petitioner failed to convert the old license and documents in accordance with the new Act prior to the incident; therefore, in my view, the judgment is not of assistance to the petitioners. In Tata Chemicals Ltd and others (supra), the facts were that, after the conclusion of the trial, the court held that the Act of 2016 or the Rules of 2011 do not provide a mechanism for such a contingency in which the RFL arrives at a different opinion from that of DHL. However, in the case at hand, the trial has not yet commenced. Therefore, said judgment is not applicable in the case in hand, at this stage. In Kaushik Keshavlal Lakhani (supra), this court held that no reference to the relevant matter and material considered by the sanctioning authority that issued the sanction order. However, the facts of the case at hand are distinct from those above. As observed above, the question of whether a sanction was properly granted is determined at trial, not at the initial stage. It must be determined whether the averments in the complaint are sufficient to issue process and to initiate the proceeding against the petitioners. The question of the authenticity of the said sanction has to be determined at the time of trial, and therefore, the observations made in the said judgment are not helpful to the petitioners. In Consumer Action Group (supra), *a sanction was accorded to prosecute A-1, and no sanction was*

accorded to A-2 and A-3; therefore, the grant of a sanction was material. However, in the case at hand, the concerned authority has granted sanction for the initiation of proceedings against the concerned persons, and, on perusal of the communication mentioned in the reference clause, it appears that the concerned authority has accorded such sanction. Therefore, the observations made are not helpful for the petitioners in support of their contention. In Shamkumar Tulsilal Warnawal, the question was whether the Laboratory from which the food samples were sent for testing was accredited by the National Accreditation Board for Testing and Calibration Laboratories. Undisputedly, the Referral Food Laboratory, Ghaziabad, in Uttar Pradesh, was not one of the Laboratories accredited by NABL at the time of the incident; therefore, it cannot be said to be the Laboratory recognised by the Food Authority under Section 43(1) of the FSS Act. The communication filed by the learned Additional Public Prosecutor for the State, dated 20-01-2025, shows that the Referral Food Laboratories, Ghaziabad, in Uttar Pradesh, was granted NABL Accreditation on 15-12-2016, i.e., after the incident and the analysis of the samples. However, in the case at hand, the Pune laboratory report is also adverse to the petitioners, and the Ghaziabad laboratory report is likewise adverse to the petitioners. Moreover, the petitioners have not raised this ground in their

petition; therefore, in my view, the observations made therein are hardly of any assistance to the petitioners in support of their contentions.

23. To sum up the above discussion, it appears that the petitioners fail to point out how the order of issuance of process against the petitioners Nos. 1 and 3 is illegal or perverse. On the contrary, it appears that the order passed by the learned Magistrate against the petitioner Nos. 1 and 3 is just and proper and therefore, no interference is required. However, it appears that the order of issuance of the process against the petitioner No. 2 is illegal, as there is no averment against her regarding her role or her involvement in the company's day-to-day activities; therefore, she was not liable for the same. As a result, the petition is partly allowed to the extent of petitioner No. 2, and the petition is dismissed against the petitioners Nos. 1 and 3. The rule is partly made absolute in the above terms.

24. Needless to clarify that the learned trial court shall not be influenced by the observations made in the order and proceed with the matter on its own merits in accordance with law, as the observations made in the above order are prima facie in nature.

[ABHAY J. MANTRI, J.]