



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION NO.132 OF 2025

Prasad s/o Dattatrey Rajkondawar, aged
about 46 years, Occ Business, R/o C/o
Dattatrey Rajkondawar, Azad Ward
No.2, Etapalli, Tq. Etapalli, Dist.
Gadchiroli.

... APPLICANT

VERSUS

State of Maharashtra, through Police
Station Officer, Police Station
Etapalli, Distt. Gadchiroli.

... NON-APPLICANT.

Shri Shyamsundar Mohta, Advocate for the applicant.
Mrs Mayuri Deshmukh, Additional Public Prosecutor for the State.

CORAM : NITIN B. SURYAWANSHI AND
PRAVIN S. PATIL, JJ.

CLOSED ON : 11.03.2025.

PRONOUNCED ON : 05.05.2025.

JUDGMENT : (Per : Pravin S. Patil, J.)

Heard. **ADMIT.**

2. The matter is taken up for final disposal by consent of
both the parties.

3. This application filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeks quashing of the First Information Report No.51 of 2020 registered with the Etapalli Police Station, Gadchiroli for the offence punishable under Sections 188, 272, 273 of the Indian Penal Code and Section 65(d), 83 of the Maharashtra Prohibition Act and consequential proceeding bearing S.C.C. No.378 of 2021 pending on the file of Judicial Magistrate, First Class, Aheri, District Gadchiroli.

4. It is the prosecution case that Constable Meena Zaru Mahaka lodged a complaint alleging that he received secrete information on 28.12.2020, at around 6.00 p.m., that accused no.1 Sainu Raju Joi is possessing and selling liquor and scented tobacco illegally in the area. Accordingly, trap was arranged and the informant along with trap party reached to the house of the accused no.1 and conducted house search. In the house search they seized liquor and scented tobacco worth Rs.6000/-.

5. It is revealed during the course of investigation that accused no.2 Manoj J. Mujumdar was providing liquor to accused no.1 Sainu Raju Joi and present applicant Prasad Rajkondawar

provides scented tobacco to accused no.1. As such, FIR was registered and after investigation, charge-sheet has been filed.

6. The present applicant has challenged the said proceeding by raising a ground that the provisions of Food Safety and Standards Act, 2006('the FSS Act'), is having the overriding effect to any other law in so far as the law applies to the aspect of food and covered by the FSS Act. As such, registration of offence under the provisions of the IPC is itself illegal.

7. It is further submitted that, Food Safety Commissioner by exercising powers conferred on him under Section 30(2)(e) of the FSS Act, has issued a prohibitory order for a period of one year vide Circular dated 19.07.2019. Any violation of said Circular gives right to the Food Safety Officer to launch the prosecution. However, in the present case, there is no complaint lodged by the Food Safety Officer in terms of notification dated 19.07.2019. Therefore, the entire prosecution at the behest of informant, who is the Constable, is vitiated.

8. It is stated that so far as offence registered under the Maharashtra Prohibition Act against the applicant, there is not a

single allegation against him that he has supplied or sold or stored or manufactured the liquor illegally. Hence no offence is made out against him under the Maharashtra Prohibition Act.

9. Learned Addl. Public Prosecutor appearing for non-applicant/State contended that after registration of FIR, the investigation agency recorded the statement of witnesses and prima facie material is found against the applicant. It is further stated that, in terms of the notification dated 19.07.2019 as the scented tobacco is banned, the present applicant came to be arrested. After completion of investigation, the charge-sheet is filed. According to the prosecution, the trial against the applicant and other accused has already begun, and therefore, it is not a fit case to invoke extra-ordinary jurisdiction in this matter.

10. Heard the learned Counsel for the applicant and learned Addl. Public Prosecutor and perused the record.

11. As per the notification issued by the Food Safety Commissioner dated 19.07.2019, it is made clear that in case of any violation of provisions of the FSS Act, only the Food Safety Officer is the authorized person to launch the prosecution.

However, in the present case, admittedly, the FIR is lodged by Constable of Police Station Etapalli, District Gadchiroli. Hence, the prosecution initiated against the applicant is not in accordance with the provisions of law.

12. It is further revealed from the FIR and the charge-sheet that the applicant has been arrayed as an accused on the basis of statement of accused no.1. There is no evidence available on record to show that present applicant is having a business of selling the prohibited articles like scented tobacco. As per the settled position of law, statement of co-accused is not admissible and on that count also, the applicant cannot be prosecuted in the matter.

13. It is further clear from the record that only allegation against the applicant is that as per the statement of accused no.1, present applicant used to supply him scented tobacco. There is no allegation against the applicant that he has supplied or sold or stored or manufactured the liquor illegally. In absence of any such allegation offence registered against him under the provisions of Maharashtra Prohibition Act is *prima facie* illegal.

14. Hon'ble Supreme Court while considering the provisions of FSS Act and its overriding effect, on any other provision of law in the case of ***Ram Nath vs. State of U.P ors. (2024) 3 SCC 502***, has held that when it comes to food-related matters, the FSS Act takes priority over other laws, including the IPC and the CrPC, insofar as the law applies to the aspect of food in the field covered by the FSS Act. Hon'ble Supreme Court observed as under :

“26. Thus, there are very exhaustive substantive and procedural provisions in the FSSA for dealing with offences concerning unsafe food.

27. In this context, we must consider the effect of Section 89 FSSA. Section 89 reads thus:

“89. Overriding effect of this Act over all other food related laws.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect of virtue of any law other than this Act.”

The title of the Section indeed indicates that the intention is to give an overriding effect to the FSSA over all ‘food-related laws’. However, in the main section, there is no such restriction confined to ‘food-related laws’, and it is provided that provisions of the FSSA shall have effect notwithstanding anything inconsistent therewith contained in any

other law for the time being in force. So, the section indicates that an overriding effect is given to the provisions of the FSSA over any other law.

28. The settled law is that if the main section is unambiguous, the aid of the title of the section or its marginal note cannot be taken to interpret the same. Only if it is ambiguous, the title of the section or the marginal note can be looked into to understand the intention of the legislature.

29. Therefore, the main Section clearly gives overriding effect to the provisions of the FSSA over any other law in so far as the law applies to the aspects of food in the field covered by the FSSA.”

15. It is thus crystal clear that offence cannot be registered under the provisions of the IPC in the cases, which are covered under the FSS Act. Therefore, *prima facie*, the FIR and consequential proceedings registered against the applicant are contrary to the law laid down by the Hon’ble Supreme Court.

16. It will be apt to refer to the principle of law enunciated by Hon’ble Supreme Court in the case of ***State of Haryana vs. Bhajan Lal and ors. AIR 1992 SC 604***, which read thus :

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above,

we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on

the accused and with a view to spite him due to private and personal grudge.”

17. The present case is covered under Clause 6, as there is legal bar to register offence against applicant and further for the reasons recorded above, no offence is made out against the applicant. For the aforestated reasons following order:

ORDER

- (a) The application is allowed.
 - (b) First Information Report No.51 of 2020 registered with the Etapalli Police Station, Gadchiroli for the offence punishable under Sections 188, 272, 273 of the Indian Penal Code and Section 65(d), 83 of the Maharashtra Prohibition Act and consequential proceeding bearing S.C.C. No.378 of 2021 pending on the file of Judicial Magistrate, First Class, Aheri, District Gadchiroli, is hereby quashed and set aside to the extent of applicant
18. No order as to costs.

(PRAVIN S. PATIL, J.)

(NITIN B. SURYAWANSHI, J.)

Trupti