



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

CRIMINAL APPLICATION NO.129 OF 2025

Runal s/o Raju Zore, aged about 30
years, Occ. Driver, R/o C/o Raju Zore,
Grampanchayat Jayal Ward No.1,
Alapalli, Tq. Aheri, distt. Gadchiroli.

... APPLICANT

VERSUS

State of Maharashtra, through Police
Station Officer, Aheri Police Station
Tq. Aheri & Distt. Gadchiroli.

... NON-APPLICANT.

Shri S.A. Mohta, Advocate for the applicant.
Mrs Haider, Additional Public Prosecutor for the State.

CORAM : ANIL S. KILOR & PRAVIN S. PATIL, JJ.

DATE : 03.04.2025.

ORAL 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 seeking to quash and set aside the Charge-sheet bearing S.C.C. No. 591/2023 pending on the file of Judicial Magistrate first Class, Aheri arising out of the First Information Report No.525 of 2022 registered with the Aheri Police Station, District Gadchiroli for the offence punishable under Sections 188, 272, 273 read with Section 34 of the Indian Penal Code, Sections 7, 59, 30(2), 3, 27(3)(e), 26(2)(iv), 26(2)(i) of the Food Safety and Standards Act, 2006 ('the FSS Act').

4. The case of the applicant is that the Complainant who is the Police Sub Inspector of Police Station Aheri lodged complaint stating that one Vishnu Burlawar and the present applicant runs a grocery shop. The complainant on 01.12.2022 raided the shop on the secrete information that illegal sale of liquor is going on. At the time of raiding, they found that accused persons along with liquor and also selling scented tobacco, which is banned article in the State of Maharashtra. At that time, accused Vishal Burlawar gave statement that said stock of banned articles is owned by present applicant i.e. Runal Zore. As such, seizure panchanama was conducted and accordingly, the offence was

registered against the present applicant. After registration of offence, investigation was conducted and in the said investigation it is found that applicant is involved in the commission of offence and liable to be prosecuted as per the provisions of law. Accordingly, charge-sheet came to be filed and consequential proceedings bearing S.C.C. No.591/2023 is now pending on the file of Judicial Magistrate First Class, Aheri, District Gadchiroli.

5. Applicant to challenge the proceeding registered against him raised the ground that as per the Circular issued by the Food Safety Commissioner in exercise of powers conferred on him under Section 30(2)(e) of the FSS Act, has issued a prohibitory order for a period of one year. As per said Circular, only the Food Safety Officer is authorized to lodge the police complaint under the FSS Act. In the present case, there is no complaint lodged by the Food Safety Officer in terms of the Circular. Therefore, the entire prosecution at the behest of informant, who is the Police Sub Inspector, is vitiated.

6. It is further submitted that as per the provisions of the FSS Act, independent procedure for search, seizure, sampling is

provided and therefore before lodging prosecution, consent of the Commissioner is mandatory. However, in the present case no such procedure is followed as per the provisions of the FSS Act, nor consent of the Commissioner is sought by prosecution. Hence the entire investigation is contrary to the provisions of law and therefore, same is liable to be quashed and set aside.

7. He further stated that in view of the Section 195 of the Code of Criminal Procedure, the Court cannot take cognizance of an offence punishable under Section 172 to 188 (both inclusive) of the IPC except the complaint in the writing lodged by the public servant. However, in the present case offence punishable under Section 188 of the IPC is not lodged by the Public Officer and thus, entire prosecution at the behest of informant is not maintainable.

8. The learned Counsel for the applicant further relied on the judgment of the Supreme Court in the case of ***Ram Nath vs. State of U.P. ors. (2024) 3 SCC 502*** where Hon'ble Supreme Court while considering the provisions of FSS Act and its overriding effect, on any other provision of law, held that when it comes to

food-related matters, the FSS Act overrides the provisions of IPC and the CrPC, insofar as, 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.”

9. In the said judgment it is further held that Section 59 of the FSS Act is more stringent than the offence punishable under Sections 272 and 273 of the IPC. Hence, considering the entire legal position, it has been held that by virtue of Sections 59 and 89 of the FSS Act overrides the provisions of Sections 272 and 273 of the IPC.

10. Learned Additional Public Prosecutor strongly opposed the application, he submitted that concerned Police Officer raided the shop on the secrete information that accused persons are selling illegal liquor and at that time they also seized scented tobacco which according to accused no.1 belongs to the present applicant. Hence, it is submitted that they have properly conducted the investigation and the filed charge-sheet. It is stated that this is not a fit case for interference at this stage and same deserves to be rejected.

11. We have perused the record and considered the submission advanced by the Counsel for the applicant and Additional Public Prosecutor for the State.

12. It is admitted fact that in the present matter the learned Commissioner has issued notification by exercising his power under the FSS Act for prohibiting the sale of banned articles including the scented tobacco. As per the said Circular power to lodge the prosecution is given to the Food Safety Officer only. However, in the present case, admittedly, offence came to be registered at the instance of the Police Sub Inspector, Police Station Aheri, District Gadchiroli. In the circumstances, the applicant is correct in stating that registration of offence by the complainant being illegal, entire proceedings registered against him is liable to be quashed and set aside.

13. Applicant rightly relied upon the judgment of *Ram Nath (supra)* wherein Hon'ble Supreme Court has extensively explained the over-riding effect of the provisions of FSS Act. In the present case, the offence registered under Sections 188, 272, 273 and 34 of the IPC are therefore, cannot be said to be rightly

registered at the instance of the Police Station Aheri. Under the FSS Act, procedure is incorporated for registration of complaint but same is not followed nor the complainant is the Food Safety Officer in the matter. Hence, the offence registered under the provisions of the FSS Act against the applicant is contrary to the law laid down by the Hon'ble Supreme Court in the case of *Ram Nath (supra)*.

14. In view of the aforesaid reasons, we have no hesitation to hold that the criminal proceeding registered against the present applicant is liable to be quashed and set aside, and hence, we proceed to pass the following order :

ORDER

- (a) The application is allowed.
- (b) Criminal Proceedings bearing S.C.C. No.591 of 2023 pending on the file of Judicial Magistrate first Class, Aheri arising out of the First Information Report No.525 of 2022 registered with the Aheri Police Station, District Gadchiroli for the offence punishable under Sections

188, 272, 273 read with Section 34 of the Indian Penal Code, Sections 7, 59, 30(2), 3, 27(3)(e), 26(2)(iv), 26(2)(i) of the Food Safety and Standards Act, 2006, is hereby quashed and set aside.

15. No order as to costs.

(PRAVIN S. PATIL, J.)

(ANIL S. KILOR, J.)

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