



IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 267 OF 2025.

1.Punit s/o Naresh Kusumgar,
Partner of M/s Kusumgar and
Company, Aged 61 years, Occupation
Business,

2.M/s. Kusumgar and Company
A Partnership Firm.

Both off. At 33, Rambagh Road,
Bahipura, Nagpur.

... **PETITIONERS.**

VERSUS

State of Maharashtra,
at the instance of Shri Akhilesh
D.Raut, Food Safety Officer,
Food and Drug Administration,
(MS), Nagpur.

... **RESPONDENT.**

Mr. S.S. Sitani, Advocate for Petitioners.
Ms S.N. Thakur, A.P.P. for the Respondent.

CORAM : M.M. NERLIKAR, J.

DATE : 11.09.2025.

ORAL JUDGMENT.

Heard. Issue Rule, returnable forthwith. Learned A.P.P. waives notice for the Respondent. By their consent, the matter is taken up for final disposal.

2. Prayer in this petition is to quash and set aside the complaint / proceeding bearing Criminal Complaint Case No.2347/2015, pending in the Court of Additional Chief Judicial Magistrate, Nagpur. The said proceeding arise out of an offence punishable under Sections 3[1][zz][iii] and [x] read with Sections 26[2][i], 27[1], 27[2][c] punishable under Sections 59 and 66 of the Food Safety and Standards Act, 2006.

3. It is the case of the prosecution that the Food Safety Officer along with panch witnesses visited the premises of M/s. J.K.Daily Needs on 31.01.2014, at CPWD Quarters, Opposite Nirmala Girls Hostel, Katol Road, Nagpur and purchased 16 sealed packet of Cadbury Dairy Milk Silk Chocolate of 65 gms weight each from one

Mohd Rashid. Notice was issued in Form VA and Rule 2.4.1[3] to the accused no.1 in the said offence. Samples were forwarded to Food Analyst, Food Testing Laboratory, Mumbai on 01.02.2014. Report of the Food Analyst dated 20.02.2014 was received on 10.03.2014, wherein it was opined that the sample chocolate was unsafe under Section 3[1][zz][iii] and [x] of the Act of 2006. Sanction to lodge a complaint was received from the Assistant Commissioner [Food], and accordingly a complaint was filed on 21.01.2015 in the Court of Additional Chief Judicial Magistrate, Nagpur for the aforesaid offences. In said complaint, the petitioners along with other were arrayed as accused. The petitioners are distributors of the Cadbury Dairy Milk Chocolate which was purchased by the respondent Food Safety Officer. The learned Additional Chief Judicial Magistrate issued process against the petitioners.

4. The petitioners have challenged the prosecution on multiple grounds. The most important ground pressed into service at the time of argument of this application, is denial of right of appeal, conferred under Section 46(4) read with Rule 2.4.6 of the Food

Safety and Standard Rules, 2011 (hereinafter referred to as “the Rules of 2011” for short). It is stated that the report in this case was received on 10.03.2014. Before filing the complaint, copy of the report of the Food Analyst was not provided to the petitioners, so as to enable them to exercise their right of appeal as provided under Section 46 subsection (4) of the Act of 2006 and Rule 2.4.6 of the Rules of 2011. Learned Counsel for the petitioners submitted that copy of the report is required to be provided immediately to the distributors so as to enable him to exercise the right of appeal. Learned Counsel further submitted that in any case copy of the report should be received before expiry of shelf-life of the product.

5. Learned Counsel submitted that in this case, admittedly, the product was packed in April-2013. The Best Before date for its use was twelve months from the date of packing. Learned Counsel therefore, pointed out that the shelf-life of the product expired in April 2014. It is further submitted that the summons in the complaint was served upon the petitioners in 2014. Learned Counsel submitted that on receipt of the report of the analyst, a copy of the same was required to be served upon the manufacture and

petitioners so as to enable them to exercise their right of appeal provided under Section 46, sub-section (4) of the Act of 2006. Learned Counsel submitted that the procedural mechanism for disposal of the appeal and the evidentiary value of the said report after re-analysis has been provided in Section 46(4) of the Act of 2006 and Rule 2.4.6 of the Rules of 2011. Learned Counsel submitted that this lapse committed by the respondent has denied the right of appeal to the petitioners, and as such the prosecution against them has been vitiated. Learned Counsel submitted that denial of opportunity could not be said to be mere irregularity. It has to be held as illegality causing dent to their right of fair trial. Learned Counsel pointed out that on account of inaction on the part of the Food Safety Officer, the petitioners/accused have been gravely prejudiced. Learned Counsel therefore, submitted that the proceedings against the petitioners is liable to be quashed.

6. The learned Counsel for the petitioners has relied upon the judgment of this Court in the case of **Indranath Roy and others .vrs. State of Maharashtra (Criminal Application (APL) No.211/2023 decided on 10.07.2023)**, wherein the challenge was

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made to the same proceeding which is the subject matter of challenge herein also i.e. S.C.C.No.2347/2015. That this Hon'ble Court after recording reasons has allowed the said Application and quashed and set aside the said proceedings against the applicants therein. The present case is covered by the said judgment of this Court, and therefore, for the reasons recorded therein, present Criminal Writ Petition is allowed. The complaint/proceedings bearing S.C.C. No.2347/2015 pending before the Court of Additional Chief Judicial Magistrate, Nagpur, is quashed and set aside against the present petitioners.

7. Rule is made absolute in aforesaid terms.

JUDGE

Rgd.