



Judgment

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**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY, NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APL) NO.503 OF 2024

1. Mr. Shyamkumar Tulsilal Warnawal,
aged about 44 years, Food Business
Operator and DC Manager, Nestle India
Limited, c/o Logistic Hub, Shed No.2,
Near Gondkheri Toll Gate, taluka:
Kalmeshwar, district Nagpur – 440023.

2. Mr. Denzil Bosco, Lobo, aged about 44
years, nominee of Nestle India Limited,
c/o Logistic Hub, Shed No.2, near
Gondkheri Toll Gate, taluka:
Kalmeshwar, district Nagpur-440023.

3. Nestle India Limited, Logistic Hub, Shed
No.2, Near Gondkheri Toll Gate, taluka:
Kalmeshwar, district Nagpur – 440023.

4. Priyanka Virmani, nominee – Nestle India
Limited, post box No.1, village:
Maulinguem, taluka: Bicholim Goa, Goa
- 403504.

5. Nestle India Limited (Manufacturer), post
Box No.1- village “Maulinguem, taluka:
Bicholim Goa, Goa – 403504.

..... **Applicants.**

:: VERSUS ::

State of Maharashtra at the instance of Kiran

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Rangaswamy Gedam, Food Safety Officer, Food and Drug, Administration, Nagpur. **Non-applicant.**

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Shri S.V.Manohar, Senior Counsel assisted by Shri Rohan Deo, Advocate for Applicants.
Mrs.Swati Kolhe, Additional Public Prosecutor for the Non-applicant/State.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 22/01/2025
PRONOUNCED ON : 07/02/2025

JUDGMENT

1. The instant application is filed under Section 482 of the Code of Criminal Procedure for quashing of Summary Criminal Case No.5325/2016 pending before learned Additional Chief Judicial Magistrate, Nagpur.

2. The facts necessary for disposal of the application are as under:

The applicants are challenging complaint, lodged on 4.4.2016 by the Food Safety Officer, which is registered as Summary Criminal Case No.5325/2016

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wherein the applicants are charged for violation of Sections 26(2)(i), 27(2)(c) read with 3(1)(zz) and Regulation 2.12 of the Food Safety Standards (Food Product Standards and Additives) Regulations 2011, Regulation 2.1.1 of the Food Safety Standards (Contaminants, Toxins and Residues) Regulations, 2011 punishable under Sections 59 and 66 of the FSS Act. The applicants are also assailing order of issuance of process by learned Magistrate on 17.4.2017.

3. In the complaint, complainant Food Inspector alleged that on 30.4.2015, he inspected premises of “Nestle India Limited’s Logistic Hub, wherein “Maggi Instant Noodles with Tastemaker” (Product) and “Baby and Me” Nutritional Supplement were stocked. The complainant purchased 4 packets of “Maggi Instant Noodles with Tastemaker” weighing 420 grams each and 4 packets of “Baby and Me” Maternal Nutritional

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Supplement with each packet weighing 400 grams. A sample was drawn from the said packets. Since the product was purchased by the stockist from the manufacturer, notice under Rule 2.4.1(4) was served to applicant No.5-Company. Accordingly, samples were drawn and panchanama was prepared. The product i.e. “Maggi Noodles” is subject matter of criminal complaint. The Food Analyst prepared a report in Form-B on 16.5.2015 stating that sample was in a fit condition and that the product confirmed to the standards “Macarony Products” as per the Food Safety Standards (Food Product Standards and Additives) Regulations 2011. The Food Analyst prepared the report on the premise that the product would be classified under “Macarony Products” even though it was a proprietary food. The Food Analyst’s Report clearly stated that the product was in conformity with the prescribed standards. In such

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circumstances, the Designated Officer sent sample of the product to the Referral Food Laboratory, Ghaziabad in Uttar Pradesh. The Referral Food Laboratory received the sample on 3.11.2015 and analyzed between 1.12.2015 to 23.12.2015. The product in question was manufactured in March 2015 and it was in a optimal condition only for 9 months. Thus, the sample had outlived its shelf life when it was analyzed by the Referral Food Laboratory. Though the product was not fit for analysis, it was sent by the complainant. The Referral Food Laboratory analyzed the sample and prepared its report on 31.12.2015 and opined that noodle cake of the product did not confirm to Regulation 2.4.10 of the Food Safety Standards (Food Product Standards and Additives) Regulations 2011 since total dry ash content was above the prescribed limit. It was also found that content of Nitrogen was 1.56% which was below the prescribed

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limit of 1.7% and the product was sub-standard. The report was also forwarded to the Designated Officer and, thereafter, the complaint was filed.

4. Heard learned Senior Counsel Shri S.V.Manohar for the applicants learned Additional Public Prosecutor Mrs.Swati Kolhe for the State.

5. Learned Senior Counsel for the applicants submitted that Section 3(p) of the FSS Act defines Food Laboratory is a Laboratory which is either State or Central Laboratory or any other Allied Laboratory which is accredited and recognized by The National Accreditation Board for Testing and Calibration Laboratories (NABL) and by the Food Authority under Section 43 of the Act. The Laboratory, therefore, has to pass twin test before it can be said to be recognized Laboratory (1) it has to be accredited by NABL and (2) it has also to be recognized by the Food Authority under

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Section 43 of the said Act. Sub-section (1) of Section makes it abundantly clear that only in that Laboratory recognized by the Food Authority by Notification, food can be sent for analysis by the Food Analyst. Section 43(1) mandates that the Food Analyst has to analyze the food in Laboratory accredited by the NABL and also recognized by the Food Authority and notified by it. These provisions are mandatory. Section 47 of the FSS Act states about sampling and analysis which is also not followed in the present case. Without passing any formal order as to the issuance of process, the summons is issued to the applicants. He submitted that as per Section 43 of FSS Act, the Food Authority may notify Food laboratories and research institutions accredited by the NABL or any other accreditation agency for the purpose of carrying out analysis of samples by the Food Analysts under the FSS Act. The Laboratory at Ghaziabad, whereat the

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subsequent sample was forwarded by the complainant, is the accredited laboratory and, therefore, the report of the Laboratory is not acceptable. He further submitted that Section 43 of FSS Act provides that the Food Authority may frame Regulations specifying the functions of the Food Laboratories, Referral Food Laboratory, and Local Area or areas within which such functions may be carried out. The procedure for submission to the said laboratory of samples and such other matters as may be necessary or expedient to enable the said Laboratory to carry out its functions effectively. He submitted that there is absolutely non-compliance of the said provisions.

6. In support of his contentions, learned Senior Counsel for the applicants placed reliance on following decisions:

(1) Lalankumar Singh and ors vs. State of Maharashtra, reported in 2022 SCC OnLine SC 1383, and

(2) M/s.Nestle India Limited vs. The Food Safety and Standards Authority of India, reported in 2015 SCC OnLine Bom 4713.

7. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application and submitted that complainant K.R.Gedam working as Safety Officer along with officers and panchas visited “Nestle India Limited’s Logistic Hub and carried out inspection. He purchased 4 packets each of “Maggi Instant Noodles with Tastemaker” (Product) and “Baby and Me”. He drawn the sample of instant noodles with tastemakers from the application on 30.4.2015 and the sample was analyzed by Food Analyst, State Public Health Laboratory, Pune. As per the Food Analyst, Pune, the samples confirmed to the standard of “Macarony Products” as per the Food Safety Standards (Food Product Standards and Additives) Regulations 2011. As the Designated Officer

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was not satisfied by this Analysis Report, he found it erroneous. He has sent one sample part of reanalysis to the Referral Food Laboratory, Ghaziabad in Uttar Pradesh and the report of the sample received from Ghaziabad shows that it is not of Standard quality and the product did not confirm to regulations 2.2, 1.3/2.3, and 1.5 of the FSS Act and, therefore, misbranded the product. Thus, considering the “Maggi” is a food product and, therefore, standards are to be maintained which are science based standards. It is fundamental rights of every citizen to get the safe food and, therefore, the application deserves to be rejected.

8. On the basis of the aforesaid argument, it was submitted that on the basis of the report issued by the Referral Food Laboratory, Ghaziabad in Uttar Pradesh which is not accredited Laboratory by ignoring the earlier report of the Food Analyst at Pune. The action was taken

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against the present applicants. It is submitted that even no order was passed as to the issuance of summons.

9. Admittedly, the complaint is filed under Section 200 of the Code of Criminal Procedure. The said Section deals with the examination of complainant which states that, “a magistrate taking cognizance of an offence on complaint shall, examine upon oath the complainant and witnesses present, if any and the substance of such examination shall be reduced into writing and shall be signed by the complainant and witnesses and also by the magistrate.”

Provided that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses -

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

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(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

10. Thus, in view of Section 200(a), when the complaint is lodged by a public servant i.e. Food Inspector acting or purporting to act in the discharge of his official duties, the examination of the complainant was not required.

11. In view of Section 204 of the Code, if in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be – (a) a summons case, he shall issue his summons for the attendance of the accused, or (b) a

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warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

12. Thus, issuance of process under Section 204 is a preliminary step in the stage of trial contemplated in Chapter XX of the Code. Such an order made at a preliminary stage being an interlocutory order. Section 204 does not mandate the Magistrate to explicitly state the reason for issuance of summons. But, there has to be an order of issuance of summons or issuance of process after cognizance is taken.

13. The other ground raised by the applicants is as to whether the Laboratory from where the food samples were sent for testing was accredited by the The National Accreditation Board for Testing and Calibration

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Laboratories. Admittedly, the Referral Food Laboratory, Ghaziabad in Uttar Pradesh is not one of Laboratories which was accredited by NABL and therefore, it cannot be said to be the Laboratory recognized by the Food Authority under Section 43(1) of the FSS Act. The communication filed by learned Additional Public Prosecutor for the State dated 20.1.2025 shows that the Referral Food Laboratory, Ghaziabad in Uttar Pradesh was granted NABL Accreditation on 15.12.2016 vide Certificate No.TC-5351. Thus, at the time of analyzing the samples on 31.12.2015, the said Laboratory was not accredited Laboratory.

14. As such, the report of the Food Analyst dated 31.12.2015 loses its significance as the samples were not analyzed by the Accredited Laboratory under Section 43 of the FSS Act and, therefore, the report which is the foundation for launching the prosecution against the

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applicants cannot be relied upon. This aspect is also considered by the Division Bench of this Court in the case of **M/s.Nestle India Limited** *supra* wherein by referring Section 43 of the FSS Act and the definition the Food Laboratory given under Section 3(p) this court held that upon conjoint reading of both these sections quoted hereinabove, it is clear that under Section 3(p), "food laboratory" is a laboratory which is either State or Central laboratory or any other allied laboratory which is accredited and recognized by NABL and by the Food Authority under Section 43 of the Act. The laboratory, therefore, has to pass twin test before it can be said to be a recognized laboratory viz (i) it has to be accredited by NABL and over and above that (ii) it has also to be recognized by the Food Authority under Section 43 of the Act. Sub-section (1) of Section 43 makes it abundantly clear that only in that laboratory which is

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recognized by the Food Authority by Notification, food can be sent for analysis by the Food Analyst. Upon conjoint reading of the said two provisions, it is clear that Section 43(1) mandates that the Food Analyst has to analyze the food in a laboratory accredited by NABL and also recognized by the Food Authority and notified by it. It is apparent that, therefore, if there is non-compliance of the said provisions and if the food is tested in a laboratory which does not fall within the definition of Section 3(p) and not recognized by the Food Authority, the analysis made in such laboratory cannot be relied upon.

15. Section 3(p) of the FSS Act, defines food laboratory" means any food laboratory or institute established by the Central or a State Government or any other agency and accredited by National Accreditation Board for Testing and Calibration Laboratories or an

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equivalent accreditation agency and recognised by the Food Authority under Section 43.

16. Section 43 of the FSS Act states as under:

“43. Recognition and accreditation of laboratories, research institutions and referral food laboratory.-

(1) The Food Authority may notify food laboratories and research institutions accredited by National Accreditation Board for Testing and Calibration Laboratories or any other accreditation agency for the purposes of carrying out analysis of samples by the Food Analysts under this Act.

(2) The Food Authority shall, establish or recognise by notification, one or more referral food laboratory or laboratories to carry out the functions entrusted to the referral food laboratory by this Act or any rules and regulations made thereunder.

(3) The Food Authority may frame regulations specifying-

(a) the functions of food laboratory and referral food laboratory and the

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local area or areas within which such functions may be carried out;

(b) the procedure for submission to the said laboratory of samples of articles of food for analysis or tests, the forms of the laboratory's reports thereon and the fees payable in respect of such reports;

(c) such other matters as may be necessary or expedient to enable the said laboratory to carry out its functions effectively.

17. The Hon'ble Apex court in the case of **Pepsico India Holdings Pvt.Ltd vs. Food Inspector & anr**, reported in **AIR 2011 SC (SUPP) 562** held that provisions are mandatory.

18. If the provisions of Sections 43 and 47 of the FSS Act are considered, it can be seen that notified laboratories referred to Section 47(5) for analyzing imported food are laboratories which are separately

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notified for testing imported food articles as can be seen from the Food Safety Standards (Food Product Standards and Additives) Regulations 2011.

19. Thus, it is not in dispute that the Laboratories in which these food samples were tested were either not accredited by the NABL or not recognized by the Food Authority under Section 43(1) of the FSS Act or even if they are accredited or notified, they are not accredited to make analysis in respect of analysis of the samples. There is no material on record to show that whether procedure of testing samples which is mentioned under the Act and Rules and Regulations framed thereunder has been followed.

20. Section 43 of the FSS Act requires that all food testing under the Act will be done in NABL or any other FSSAI approved accredited laboratory.

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21. In the present case, the report of the Food Analyst prepared by the Food Analyst, State Public Health Laboratory, Pune shows the product was in conformity with the prescribed standards. The food inspector has not assigned any reason as to his dissatisfaction about the said analysis and forwarded the said samples to the Referral Food Laboratory, Ghaziabad in Uttar Pradesh and relied upon the report which is not accredited and recognized laboratory as provided under the Act and, therefore, no reliance can be placed on the said results.

22. In view of the aforesaid discussion, Summary Criminal Case No.5325/2016 which is foundation for launching the prosecution against the applicants is hereby quashed.

Accordingly, the application stands **allowed** and **disposed**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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