



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

CRIMINAL APPLICATION (APL) No.323 OF 2025

Pushpabai Vinaykumar Juare,
Aged about 55,
Occupation : Business,
R/o. Burdi Armori,
Tah. Armori, Distt. Gadchiroli. : APPLICANT

...VERSUS...

1. The State of Maharashtra,
through Police Station Officer,
Police Station Armori,
Tah. Armori, Distt. Gadchiroli.
2. Tikaram Shankar Thakre,
Aged about 55,
Occupation : Police Constable
(Badge no.1830), R/o. Armori,
Tah. Armori, Distt. Gadchiroli. : RESPONDENTS

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Mr. P.L. Sagdeo, Advocate for Applicant.

Mr. D.V. Chauhan, Public Prosecutor and Senior Advocate along with
Ms. S.S. Dhote, Additional Public Prosecutor for Respondent No.1.

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 10th SEPTEMBER, 2025.

PRONOUNCED ON : 17th SEPTEMBER, 2025.

JUDGMENT : (Per : Nandesh S. Deshpande)

1. Heard. Admit. Heard finally by consent of learned
counsel appearing for the parties.

2. This is an application filed by the applicant under

Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for quashing Final Report No.39/2020, dated 29.12.2020, for the offences punishable under Sections 188, 272 and 273 of the Indian Penal Code and Section 51(b) of the Disaster Management Act, 2005. As per the said charge-sheet which was filed in pursuance to First Information Report bearing No.0207/2020, dated 7.8.2020, the applicant has committed offences punishable under above sections. As per the averments in the F.I.R. the respondent No.2 informed respondent No.1 that “aromatic tobacco” or “scented tobacco” is being sold in Sadguru Sweets Mart located in Old Bus Stop Square, Armori. On receipt of the said information the Police Inspector of the respondent No.1 directed the complainant to raid the said Sweets Mart.

3. Accordingly, a raid was carried out along with two independent panchas and the items as mentioned in the F.I.R. were seized. The total monetary value of the items is Rs.6,750/-. It is further stated in the F.I.R. that there was an Order by the Collector restraining selling of tobacco in any form and, therefore, the applicant has committed an offence under Sections 188, 272 and 273 of the Indian Penal Code. Furthermore, as there were COVID-19 guidelines in force and the applicant refused to comply with the said guidelines an offence under Section 51(b) of the Disaster

Management Act, 2005 was also registered.

4. After completion of investigation the respondent No.1 filed charge-sheet in the matter. The complainant thereafter filed the present application challenging the said charge sheet and Final Report No.39/2020, dated 29.12.2020 arising out of F.I.R. No.207/2020 for commission of offences as mentioned above.

5. We have heard Mr. P.L. Sagdeo, learned counsel for the applicant, who raised various grounds in support of his prayers. He states that offence under Section 188 could not have been registered at all against the applicant since Section 195 of the Criminal Procedure Code puts a rider on the Court to take cognizance of certain offence except on complaint in writing made by the concerned public servant or his subordinate. According to the learned counsel for the applicant, as admittedly, no such complaint is ever made, therefore, offence under Section 188 of the Indian Penal Code could not have been invoked.

6 Challenging the offence punishable under Section 51(b) read with Section 60 of the Disaster Management Act, 2005 (in short, "Act of 2005") learned counsel for the applicant submits that as per Section 60 of the said Act of 2005 no Court shall take cognizance of an offence under the said Act of 2005 except on a complaint made by the National Authority, State Authority, Central

Government or State Government or any other Authority ,as the case may be. He, therefore, submits that since the rigors of Section 60 of the Act of 2005 are not followed, offence even under Section 51(b) are not attracted. He further states that offence under Sections 272 and 273 also could not have been clamped upon by the respondent No.1 since Section 155 (2) of the Criminal Procedure Code prohibit the Courts from taking cognizance of the said offences. He further submits that after coming into force of the Food Safety and Standards Act, 2006 and more particularly Section 89 thereof no offences under Sections 272 and 273 are attracted. In other words, it is the submission of the learned counsel for the applicant that Food Safety and Standards Act, 2006 being a special legislation would override the general statute, namely, I.P.C. and, therefore, entire charge-sheet is bad in law.

7. He places reliance on a judgment in the case of **Devendra Kumar vs. The State (NCT of Delhi) and another**, reported in **(2025) SCC OnLine 1753** in which the Hon'ble Supreme Court in para 59 thereof has concluded that Section 195(1)(a)(i) of the Criminal Procedure Code bars the court from taking cognizance of any offence punishable under Sections 172 to 188 respectively of the I.P.c. unless there is a written complaint by the public servant concerned or his administrative superior, for

voluntarily obstructing the public servant from discharge of his public functions. Without a complaint from the said persons, the court would lack competence to take cognizance in certain types of offences enumerated therein. The Hon'ble Apex Court has further stated that severance of distinct offences is not permissible when it would effectively circumvent the protection afforded by Section 195(1) of the Cr.P.C. He further relied upon the Judgment of this Court in the case of **HLA Shwe and others Vs. State of Maharashtra through Police Station**, reported in **2020 SCC OnLine Bom 959** to buttress his contention that offence under Section 51(b) of the Disaster Management Act, 2005 is also not attracted without any complaint filed by the said public servant or his subordinate Officer. He has also relied upon the case of **Pankaj Vs. State of Maharashtra, through Police Station Officer**, reported in **2021 SCC OnLine Bom 5669** and judgment in the case of **Sagar D. Meghe Vs. State of Maharashtra, through Police Station Incharge**, reported in **2024 SCC OnLine Bom 553** in support of his contentions. He further relied upon the case of the Hon'ble Apex Court **Ram Nath Vs. State of Uttar Pradesh and others**, reported in **(2024) 3 SCC 502** in which in para 26 the Hon'ble Apex Court has held that there are very exhaustive substantive and procedural provisions in FSSA for dealing with offences concerning unsafe food. It further holds that

the main Section clearly gives an overriding effect to the provisions of FSSA over any other law in so far as the law applies to the aspects of food in the field covered by FSSA. It, therefore, went on to conclude that by virtue of Section 89 of the FSSA, Section 59 will override the provisions of Sections 272 and 273 of the I.P.C. Therefore, there will not be any question of simultaneous prosecution under both the statutes. In the said case the accused was prosecuted under Sections 272 and 273 of the I.P.C.

8. In sum and substance, it is the contention of the learned counsel for the applicant that the offences with which he is charged are not made out and, therefore, he prays for quashing of the Charge-sheet.

9. Per contra, learned Public Prosecutor and Senior Advocate Mr. Devendra V. Chauhan along with Ms. S.S. Dhote, learned Additional Public Prosecutor have vehemently opposed the contentions made in the application. As per them, the judgment of the *Ram Nath* (supra) cannot be said to be laying down a precedent that due to Section 89 of the FSSA the provisions of FSSA would override the provisions of I.P.C. as far as adulteration of food is concerned. Learned Public Prosecutor has placed before us a copy of the judgment in **Criminal Appeal No.1195/2018** of the Hon'ble Supreme Court of India in the matter of **the State of Maharashtra**

and another Vs. Sayyed Hassan Sayyed Subhan and others and stated that in the said matter what was under consideration that can their could be simultaneous prosecutions under both the Acts and concluded that there could be simultaneous prosecutions but conviction and sentence could be only in one.

10. In the backdrop of these arguments and the case laws, we have perused the material on record. Section 182 speaks about disobedience of order promulgated by public servant; Section 272 speaks about adulteration of food/drink intended for sale, while Section 273 speaks about sale of noxious food/drink. Section 51(b) of the Disaster Management Act, 2005 speaks about refusal without reasonable cause to comply with any direction given by or on behalf of the Central Government or other authorities mentioned therein. Section 60 of the Disaster Management Act, 2005 clearly speaks about bar of taking cognizable without a complaint made by the authorities mentioned in clause (a) of the said Section. In view of this, we are of the opinion that the offence under Section 51(b) of the Disaster Management Act, 2005 is not made out, as there is a express bar for taking cognizance of the offence except on a complaint as provided under Section 60.

11. As far as offence under Section 188 of the I.P.C. is concerned, Section 195 of the Cr.P.C. restrains the Court from

taking cognizance of any offence punishable under that Section except on a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Admittedly, the complaint in the present case is made by Tikaram Shankar Thakre, Police Constable and cannot be said to be subordinate to the Collector, who had issued an order banning sale of scented or aromatic tobacco. We are, therefore, of the considered opinion that even offence under Section 188 is not made out.

12. As far as offences under Sections 272 and 273 are concerned, the ground for challenge by the applicant is based on Section 155(2) of the Cr.P.C. which prohibits the Court from investigating a non-cognizable offence without the order of the Magistrate having power to try such case or commit the case for trial. Admittedly, both these offences Sections 272 and 273 of the I.P.C. are non-cognizable offences and, therefore, bar under Section 155(2) would come into play. The situation would thus squarely fall within clause 6 of the contingencies mentioned in the judgment of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, reported in **AIR 1992 SC 604** as there is a legal bar for taking cognizance of the said offences.

13. In view of these facts, we have no hesitation in holding

that the prosecution initiated by the respondents against the applicant suffers from legal infirmity and there is a bar for taking cognizance of the said offences.

14. We, therefore, quash and set aside Final Report No.39/2020, dated 29.12.2020, filed before Civil Judge, Junior Division and Judicial Magistrate, First Class, Armori arising out of First Information Report No.207/2020 for commission of offences punishable under Sections 188, 272 and 273 of the Indian Penal Code read with Section 51(b) of the Disaster Management Act, 2005.

ORDER

1. The application is allowed.
2. Final Report No.39/2020, dated 29.12.2020, filed before Civil Judge, Junior Division and Judicial Magistrate, First Class, Armori arising out of First Information Report No.207/2020 for commission of offences punishable under Sections 188, 272 and 273 of the Indian Penal Code read with Section 51(b) of the Disaster Management Act, 2005 is quashed and set aside.

(Nandesh S. Deshpande, J.)

(Urmila Joshi-Phalke, J.)