



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO.334 OF 2025

Sheikh Maheebub Sheikh Sadik,
aged about 34 years, Occ- business,
R/o Shastri Nagar, Arni, Tq Arni,
Distt. Yavatmal.

... APPLICANT

...VERSUS...

1. State of Maharashtra through its
Police Station Officer, Police
Station Arni, Distt. Yavatmal.
2. Food Safety Officer, Food and Drug
Administration (M.S) Yavatmal

...NON-APPLICANTS

Shri A.S. Mohta, Advocate for applicant
Shri N.H. Joshi, APP for non-applicants/State

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

RESERVED ON : 10.11.2025
PRONOUNCED ON : 10.12.2025

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

Heard. **Admit.** Heard finally with the consent of learned
Counsel for both the parties.

2. The applicant has approached this Court for quashing the First Information Report vide Crime No. 0863/2022, dated 15.09.2022, registered with Police Station Arni, District Yavatmal, for the offences punishable under Section 188, 272, 273, 328 of the Indian Penal Code along with Sections 26 (2)(i), 27(3)(e), 30(2)(a) & 59 of the Food Safety & Standards Act, 2006.

3. The applicant has further prayed for quashing the charge-sheet vide the charge-sheet No. 36/2023, as also R.C.C. No. 79/2023, pending before the Judicial Magistrate First Class, Arni, District Yavatmal.

4. As per the allegations in the First Information Report lodged by the non-applicant No. 2, there is a ban on the production and sale of Pan Masala and Gutkha. The ban was imposed by the Commissioner of Food and Safety, Food and Drinks Administration of the Government of Maharashtra, by issuing a notification dated 15.07.2021. However, in spite of the said ban, as per the allegations in the First Information Report, the applicant is engaged in such activity, thereby committing the offence as aforesaid. It is further

stated in the First Information Report that on 15.09.2022, on receiving secret information, the team of the Food Safety Department, along with Police Officers confiscated the prohibited items from one Kaif Liyakat Fanan. During the interrogation of said accused persons, the said Kaif Liyakat gave a statement to the Police that prior to one month, he had stored the prohibited goods in the shop of the applicant. He used to obtain those prohibited food items as and when required through one Mohammad Sattar. He further stated that he used to give the applicant Rs.5000/- monthly for the said storage, as there were frequent raids on his shop. On the basis of these statements, the applicant was implicated/arrayed in the First Information Report. The said First Information Report is challenged in the present application.

5. We have heard Shri S.A. Mohta, learned Counsel for the applicant, and Shri NH Joshi, learned Additional Public Prosecutor for the non-applicants/State.

6. Learned Counsel for the applicant submits that the complaint at the behest of the non-applicant No.2 is not maintainable as far as

the offence punishable under Section 188 of the Indian Penal Code is concerned. He further submits that it is only on the basis of the statements of the co-accused that the contraband articles were supplied by the present applicant, along with Sheikh Sattar Sheikh Jabbar, the applicant has been arrayed as an accused. He further submits that there is no material against the present accused for making out offences punishable under said Sections. He also submits that the Food Safety & Standards Act, 2006, and Rules and Regulations, 2011, being a special law, would override the provisions of the Indian Penal Code. He also submits that in the said special statute, an independent procedure for search, seizure, and sampling is provided, which is admittedly not followed in the present matter.

7. He, therefore, submits that the continuance of criminal proceedings as far as the present applicant is concerned would be an abuse of the process of the Court, and therefore prays for quashing the same.

8. Per Contra, the learned Additional Public Prosecutor vehemently opposes the contentions advanced by the learned

Counsel for the applicant. He submits that the applicant is equally responsible for selling of the banned material, and only because there is no independent raid conducted on his premises cannot absolve him from the offence. He further submits that the Investigating Agency has conducted a spot panchnama, recorded statements of witnesses, who have stated the role of the applicant in the present matter. He, therefore, prays for rejection of the application.

9. In the backdrop of these facts, we have perused the First Information Report in question and the consequent charge-sheet filed on record, after completion of the investigation. As can be seen from the First Information Report in question, it is lodged at the behest of the Food Safety Officer, who is the non-applicant No. 2. The First Information Report alleges an offence punishable under Section 188 of the Indian Penal Code, which speaks as under :

“188. Disobedience to order duly promulgated by public servant-- *Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,*

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation. - It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm."

10. Thus, disobedience in the present matter pertains to the notification of the Food Safety Commissioner. However, Section 195 of the Criminal Procedure Code expressly bars a Court from taking cognizance of an offence punishable under Section 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. In the present case, there is nothing

on record to show that the complaint is made by the said Commissioner of Food and Safety, or at least it will have to be shown that the non-applicant No. 2 is duly authorized to file the present complaint. In that view of the matter, in our considered opinion, offence under Section 188 of the Indian Penal Code is not made out. Furthermore, as far as offence under Sections 272 and 273 of the Indian Penal Code are concerned, the same speaks about adulteration of food or drink intended for sale and sale of noxious food or drink. However, both these offences are non-cognizable in nature, and therefore, in view of the provisions of Section 155 (2) of the Criminal Procedure Code, the Police Officers are not empowered to investigate the same without an order of the Magistrate, having the power to try such cases. Thus, there is an express bar under the said section.

11. Furthermore, as far as offence under Section 328 of the Indian Penal Code is concerned, it speaks about causing hurt by means of poison with intent to commit an offence, it is not even the first informant's case that the said contraband or banned substance was used or administered with intent to cause hurt to any person

or with intent to commit or to facilitate the commission of an offence under Section 328 of the Indian Penal Code is also not made out.

12. As far as offence under Section 26 (2)(i) of the Food Safety and Standards Act is concerned, it contemplates that no food business operator shall himself or by any person manufacture, store, sell or distribute any article of food which is unsafe.

13. Furthermore, Section 27(3)(e) states that the seller shall be liable under this Act for any article of food, which is received by him with knowledge of being unsafe. However, in the present case, admittedly, the applicant herein is not the seller of the article of food in question, nor he has reason to believe that it is unsafe. In that view of the matter, in our opinion, an offence under Section 27(3)(e) is not made out.

14. Furthermore, Section 30 (2)(a) speaks about the functions of the Commissioner of the Food Safety of the State and does not contemplate any offence.

15. As far as Section 59 is concerned, it speaks about punishment for unsafe food and is general in nature. It provides that any person who, whether by himself or by any other person on his behalf, manufactures or sale, or stores, or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable as provided under the said section. Here in the present case, no independent material, as far as the applicant is concerned, is placed on record, except for the statement of the co-accused, which cannot be relied upon for continuance of criminal proceedings as far as the applicant is concerned. In that view of the matter, we are of the considered opinion that a situation would squarely within the well laid down parameters of paragraph No. 102 of the judgment reported in *State of Haryana and others Vs. Bhajanlal and others, 1992 Supp (1) SCC 335*, and more particularly Clause 1, 3 and 7 thereof :

“102.....

(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) ...

(3) Where the uncontroverted allegations made in the

FIR or com-plaint 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.”

16. In that view of the matter, we proceed to pass the following order :

ORDER

- i) The application is allowed.
- ii) The First Information Report vide Crime No. 0863/2022, dated 15.09.2022, as also charge-sheet No. 36/2023, registered with Police Station Arni, District Yavatmal, for the offences punishable under Section 188, 272, 273, 328 of the Indian Penal Code, along with Sections 26 (2)(i), 27(3)(e), 30(2)(a) & 59 of the Food Safety & Standards Act, 2006, as also, R.C.C. No. 79/2023, pending on the file of JMFC, Arni, Dist Yavatmal, are quashed and set aside to the extent of the applicant - Sheikh Maheeb Sheikh Sadik, is concerned.

17. The application is disposed of accordingly.

(NANDESH S. DESHPANDE, J.)
Jayashree..

(URMILA JOSHI-PHALKE, J.)