



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

CRIMINAL APPLICATION (APL) NO. 507 OF 2024

APPLICANT :- Md. Maqsood Md. Mansoor Parekh,
Aged 43 years, Occu: Business, R/o
at Post Korpana, Tq. Korpana,
District Chandrapur.

..VERSUS..

RESPONDENT :- State of Maharashtra,
through Police Station Officer,
Korpana Police Station,
Tq. Korpana, District Chandrapur.

Mr Shamsundar A Mohta, counsel for applicant.
Ms Soniya Thakur, APP for respondent/State.

CORAM : **PRAVIN S. PATIL, J.**
DATE OF RESERVE : **22/01/2026**
DATE OF DECISION : **16/02/2026**

JUDGMENT :

1. Heard. **Rule.** Rule made returnable forthwith. By consent of learned counsel Mr. Shamsundar A. Mohta for the applicant and Ms. Soniya Thakur, learned APP for respondent/State, the application is taken up for final hearing at the stage of admission.

2. By this application, applicant seeks quashment of the

proceedings registered as Sessions Case No. 51 of 2023 (State Vs Md. Maqsood Md. Mansoor Parekh) pending on the file of Additional Sessions Judge-1, Chandrapur, arising out of Crime No. 230 of 2022, and charge-sheet No. 19 of 2023 for the offence punishable under Sections 188, 272, 273, 328 of the Indian Penal Code, 1860, read with Section 59 of Food Safety and Standard Act, 2006.

3. In short, the case of the prosecution is that Police Constable of Police Station Korpana, District Chandrapur, lodged a complaint alleging that on 05/12/2022, he received secrete information that applicant is illegally selling banned favoured tobacco at his grocery shop. Accordingly, he went to applicant shop, but as he received the information about arrival of the police, he has shifted contraband article in the cowshed of Shubhas Bobde in the village Dhoptala. The said contraband articles were accordingly seized from the cowshed of Subhash Bode of village Dhoptala, and accordingly the offence came to be registered against present applicant in the matter.

4. It is further stated as per notification dated 20/07/2018 issued by Commissioner of Food Safety, Food and Drugs Administration, Government of Maharashtra has prohibited the manufacturer, storage, distribution, transport or sale of tobacco, which is either flavored, scented or mixed with any of the additives, whether packed or unpacked and/or sold as one product or through separate packages products or distributed in such manner so as to easily facilitate mixing by the consumer for its consumption.

5. Considering this notification, the offence is made out against the present applicant, and accordingly, the Police Station Officer registered the offence under above said provisions of the Indian Penal Code as well as Food Safety and Standard Act, 2006 in the matter.

6. The applicant has invoked the jurisdiction of this Court by stating that, as per the provisions of Section 89 of the FSS Act, 2006, the Act has an overriding effect over any other law insofar as the law applies to the aspects of food in the field covered by the FSS Act 2006. So also, it is stated that, considering the fact that offence being registered under Section 188 of the Indian Penal Code, 1860, no Court can take cognizance in view of the provisions of Section 195 of Cr.P.C. So also, other offences cannot spilt up as they are arising out of same incidence. Hence, on both counts, it is his submission that the offence registered under the provisions of Indian Penal Code are liable to be quashed and set aside.

7. Learned APP has strongly opposed the contentions of the applicant and it is his submission, as per the law laid down by the Hon'ble Supreme Court of India in the case of *State Of Maharashtra vs Sayyed Hassan Sayyed Subhan reported in (2019) 18 SCC 145*, there is no bar to register the offence under the provisions of IPC as well as FSS Act 2006. Hence, according to APP, the registration of the offence and the charge-sheet which is already filed in the matter cannot be set aside, at this stage of the matter.

8. In the light of submissions of both the parties, the judgment which was delivered by Hon'ble Supreme Court of India in the case of *Ram Nath Vs State of Uttar Pradesh and others reported in (2024)3 SCC 502*, is relevant and holding the field in the present matter. In this judgment, the Hon'ble Supreme Court of India has considered the judgment relied by learned APP of *Sayyed Hassan Sayyed Subhan* referred (supra) and hold that, considering fact that the FSSA being a special statute and having an overriding effect over any another provisions of law, particularly considering the Section 89 of the Act, observed that,

the legislature has taken a care by inserting Section 59 of FSS Act , 2006 which is more stringent than the provisions of IPC, hence there will be no question of simultaneous prosecution under both the statutes. Hon'ble Supreme Court of India observed in para 27, 29 and 30 as under :-

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.

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. In this case, we are concerned only with Section 272 and 273 of the IPC. When the offences under Section 272 and 273 of the IPC are made out, even the offence under Section 59 of the FSSA will be attracted. In fact, the offence under Section 59 of the FSSA is more stringent.

30. The decision of this Court in the case of Swami Achyutanand Tirth⁵ does not deal with this contingency at all. In the case of the State of Maharashtra⁶, the question of the effect of Section 97 of the FSSA did not arise for consideration of this Court. The Court dealt with simultaneous prosecutions and concluded that there could be simultaneous prosecutions, but conviction and sentence can be only in one. This proposition is based on what is incorporated in section 26 of the GC Act. We have no manner of doubt that by virtue of Section 89 of the FSSA, Section 59 will override the provisions of Sections 272 and 273 of the IPC. Therefore, there will not be any question of simultaneous prosecution under both the statutes.

9. In the present matter, it will be pertinent to note that the offence is registered under Section 59 of the FSS Act, 2006 against the present applicant. The section 59 provides punishment for unsafe food. For the offence under Sections 26 and 27 of the FSS Act 2006, which speaks about the responsibilities of food business operators and liability of manufacturer, packers, wholesalers, distributors, a specific procedure is provided under Sections 41 and 42 of the FSS Act as to how the search, seizure, investigation, is to be done in such cases. This provision empowers designated officer to impose punishment of fine or imprisonment by obtaining the permission from the Commissioner of Food Safety. However in the present matter, there is nothing on record to demonstrate that Sections 41 and 42 was strictly followed while registering the offence against the present applicant in the matter.

10. It is well settled position of law that procedure adopted by the Investigating Officer is found to be defective on technical reasons, liberty can always be granted to the authorities to initiate appropriate proceedings in accordance with law in the matter.

11. In the present matter, considering fact that the applicant was carrying contraband articles which are prohibited for the purpose of sale, purchase or manufacture etc. and specific punishment is provided under Section 59 of FSS Act 2006, in my opinion, respondent No.2 is at liberty to take appropriate steps, if so advised in the present matter.

12. In view of the above, the criminal procedure registered against present applicant deserves to be quashed and set aside. Hence, I proceed to following order.

ORDER

- A] The criminal application is **allowed**.
- B] The offence registered under Crime No. 66 of 2015 for the offence punishable under Sections 188, 273 and 328 of the Indian Penal Code, 1860, read with Sections 26(2)(iv), 59(iii) of the Food Safety and Standards Act, 2006, (for short 'FSS Act 2006'), is hereby quashed and set aside.
13. Rule is made absolute in the aforesaid terms. No order as to costs.

(PRAVIN S. PATIL, J)