



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

CRIMINAL APPLICATION (APL) NO. 878 OF 2024

APPLICANT :- Virendrasing s/o Vijaysing Sisodiya,
(Thakur), Aged about 34 years,
Occu: Labourer, R/o At Post
Chandur, Tq. and District Akola.

..VERSUS..

RESPONDENTS :- 1) State of Maharashtra, through
Police Station Officer Barshitakli,
Police Station Barshitakli, Dist.
Akola.
2) Food Safety Officer, Food and Drug
Administration (MS), Akola.

Mr Shyamsundar A Mohta, counsel for applicant.
Mr M.J. Khan, APP for respondents.

CORAM : PRAVIN S. PATIL, J.
DATE OF RESERVE : 29/01/2026
DATE OF DECISION : 16/02/2026

JUDGMENT :

1. Heard. **Rule.** Rule made returnable forthwith. By consent of learned counsel Mr. Shyamsundar A. Mohta for the applicant and Mr. M.J.Khan, learned APP for respondents/ State, the application is taken up for final hearing at the stage of admission.

2. The applicant herein challenges the registration of the proceedings against him vide 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'), registered at Police Station Barshitakli, District Akola.

3. In the present matter, admittedly, the Food Safety Officer on 10/06/2015 lodged police complaint, alleging that on 06/06/2015 he had received secrete information that the applicant was carrying contraband articles, and accordingly, the same was seized from him.

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. 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.

5. 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 offence 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, the other provisions cannot be split upon alleged offence arising out of same transaction. 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.

6. Learned APP has strongly opposed the contentions of the applicant and submission that 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 him, 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.

7. In the light of the 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 the fact that the FSSA being a special statute and having an overriding effect over any another provisions of law, particularly considering 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 then the provisions of IPC, hence there will be no question of simultaneous prosecution under both

the statutes.

8. It will be relevant to refer the observations made by Hon'ble Supreme Court of India in the case of *Ram Nath referred (supra)*, particularly paragraph Nos.27, 29 and 30, which is reproduced as under:-

“27. In this context, we must consider the effect of Section 89 of the 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 ‘foodrelated 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 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 insofar as the law applies to the aspects of food in the field covered by the FSSA. In this case, we are concerned only with Sections 272 and 273 IPC. When the offences under Sections 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 Tirth² does not deal with this contingency at all. In State of Maharashtra³, the question of the effect of

Section 97 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 IPC. Therefore, there will not be any question of simultaneous prosecution under both the statutes.”

9. In the circumstances, in view of the law laid down by the Hon’ble Supreme Court of India in the case of ***Ram Nath*** referred (supra), which is a binding precedent, the legal position is crystal clear that the offence under the provisions of FSSA, can only be registered against the applicant in the matter.

10. One other aspect which is required to be considered in the present matter is that, the entire allegations against the present applicant is of violation of the notification issued by Commissioner of Food Safety dated 20/07/2018. As such, even if it considered that the offence is rightly registered under the provisions of IPC under Sections 188 and 273 of IPC, it will be relevant to note that under Section 195 of Cr.P.C., there is a clear prohibition for the Court to take cognizance punishable under Section 188 unless the complaint in writing is by public servant by obtaining the requisite permission of Food Commissioner of State, who has issued the notification. But admittedly there is no such permission has been obtained before registering the offence as well as for filing the charge-sheet. Thus, statutory requirement under Section 195 of Cr.P.C. is not satisfied. Furthermore, the offence under Section 273 of IPC is arising out of same incident, and therefore, the same cannot be split up as per the settled principal of law. Therefore, on this count also, the offence under the provisions of IPC is not made out against the present

applicant.

11. In respect of 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. It says if the designated officer reach to the conclusion that any contravention of the provisions of law is punishable with a fine or imprisonment, he is required to obtain the permission from the Commissioner of Food Safety before sanctioning the prosecution.

12. In the present matter, there is nothing on record to demonstrate Sections 41 and 42 is strictly followed while registering the offence against the present applicant in the matter. In view of this, in my opinion in absence of sanction of prosecution from competent authority, the offence under Section FSS Act 2006 are also not made out against the present applicant.

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

14. In the present matter, considering the 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.

15. 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.

C] Respondent No.2 is at liberty to initiate appropriate proceedings in accordance with law, if so advised in the facts and circumstances of the case.

16. Rule is made absolute in the aforesaid terms. No order as to costs.

(PRAVIN S. PATIL, J)