



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

**CRIMINAL APPLICATION (APL) NO. 879 OF 2024**

**APPLICANT** :- Mohammad Asif Haji Hussain,  
Aged 39 years, Occ: Business, R/o Near  
Nayapura School, 1041/B, Shanti  
Nagar, Main Road, Nagpur City,  
Nagpur Distt. Nagpur.

**..VERSUS..**

**RESPONDENTS** :- 1) State of Maharashtra,  
Through Police Station Officer, Shanti  
Nagar Police Station, Nagpur City,  
Tq. and Distt. Nagpur.  
2) Food Safety Officer,  
Food and Drug Administration (M.S.),  
Nagpur.

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Mr. Shyamsundar Ajay Mohta, counsel for applicant.  
Ms D.I. Charlewar, APP for respondent/State.

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**CORAM** : **PRAVIN S. PATIL, J.**  
**DATE** : **05/02/2026**

**ORAL JUDGMENT :**

1. Heard. **Rule.** Rule made returnable forthwith. By consent of Mr. Shyamsundar Ajay Mohta, learned counsel for the applicant and Ms. D.I. Charlewar, learned APP for respondent/State, the application is taken up for final hearing at the stage of admission.

2. By this application, the applicant is seeking to quash and set aside the Sessions Case No. 30 of 2024 (State Vs Mohamamad Asif) pending on the file of District and Sessions Judge-2, Nagpur arising out of Crime No. 0255 of 2019 and Chargesheet No. 41 of 2020, for the offences punishable under Sections 188, 272, 273, 328 of the Indian Penal Code, read with Sections 26(2)(iv), 3 and 59 of the Food Safety and Standards Act, 2006, and the Rules of 2011.

3. It is the submission of the present applicant that, as per the law laid down by the 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***, it is held that provisions of Food Safety and Standards Act, 2006 have an overriding effect over the provisions of Indian Penal Code. Therefore, the offence registered under the provisions of Indian Penal Code is not tenable. Secondly, it is submitted that the Food Safety Officer has already field the private complaint on the basis of same incident, bearing Summary Criminal Case No. 5909 of 2022, which is pending before the Additional Chief Judicial Magistrate, Nagpur. Hence, the offences registered against the present applicant are liable to be quashed and set aside.

4. Learned APP has strongly opposed the said application. According to her, whether the offence under Section 328 of the Indian Penal Code can be set aside or not in view of the provisions of the FSSA, 2006 is presently pending consideration before the Hon'ble Supreme Court of India. Therefore, considering this aspect of the matter, it is her submission that the entire offence cannot be set aside and same can simultaneously conducted in the matter.

5. In the light of the submission, I have perused the case of prosecution and relevant documents placed on record.

6. According to the prosecution, on 10/07/2019, after receipt of an information, the Food Safety Officer visited the shop of the applicant and seized the contraband articles from his possession. It is the case of prosecution that the articles seized were in contravention of the Government Notification dated 20/07/2018, and therefore, the offence came to be registered under Sections 188, 272, 273, and 328 of the Indian Penal Code, and as well as under the provisions of the Food and Safety and Standard Act, 2006. As such, from the contents of the complaint, it is clear that, as there is a violation to the Government Notification dated 20/07/2018, the offence came to be registered against the present applicant in the matter.

7. As per the law laid down by the Hon'ble Supreme Court of India in the case of *Ram Nath Vs State of Uttar Pradesh and others reported in (2024)3 Supreme Court Cases 502*, it is held that the provisions of FSSA, 2006 is having an overriding effect, particularly under Section 89 of the Act. Furthermore, it is held that under Section 59 of the FSSA, 2006, more stringent provisions are provided as compared to Sections 272 and 273 of the Indian Penal Code. Therefore, the inquiry can be conducted by invoking the provisions of FSSA, 2006 and not under the provisions of the Indian Penal Code.

8. The applicant has relied upon the recent judgment of the Hon'ble Supreme Court of India dated 22/03/2024 in the case of *Sushil Kumar Gupta Vs State of West Bengal in Criminal Appeal No.1798 of 2024 (Arising out of SLP (Crl.) No. 15495 of 2023)* decided on 22/03/2024, wherein the Hon'ble Supreme Court of India has held in paragraphs 11 and 12 as under:-

“11. Thus, the dictum as laid in *Ram Nath* (supra) is that if an accused is charged for the offences under Sections 272 and 273 respectively of the I.P.C., Section 59 of the Act, 2006 would also be attracted. In fact, the offence under Section 59 of the Act, 2006 is more stringent compared to Sections 272 and 273 of the I.P.C.

respectively. The final conclusion drawn by this Court in **Ram Nath** (supra) is that by virtue of Section 89 of the Act, 2006, Section 59 will override the provisions of Sections 272 and 273 respectively of the I.P.C. This Court ultimately held that there cannot be simultaneous prosecution under both the statutes.

12. The sum and substance of the ratio in **Ram Nath** (supra) appears to be that after the enactment of the Act, 2006, more particularly, keeping in mind the offence under Section 59 of the Act, 2006, there cannot be prosecution for the offences under Sections 272 and 273 respectively of the I.P.C.”

9. The applicant also pointed out that, this Court in the case of **Anil s/o Bhimrao Barange and another Vs State of Maharashtra and another in Criminal Application No. 252 of 2020 decided on 03/02/2026**, relying upon the judgment of **Ram Nath (supra)**, has held that the offences under Sections 272, 273, and 328 of the Indian Penal Code are not attracted in the matter, and the prosecution can be permitted to conduct private complaint, which is lodged against the applicant therein in the matter.

10. In the light of the aforesaid legal position and the facts of the present case, wherein the applicant has specifically pointed out that, for the offence punishable under the provisions of Food Safety and Standards Act, 2006, a private complaint has already been filed by the Food Safety Officer on the basis of same incident, bearing Summary Criminal Case No. 5909/2020, I am of the considered opinion that the offence registered under the provisions of Indian Penal Code, 1860, and the Food Safety and Standards Act, 2006, in the present complaint, is liable to be set aside with liberty to Food Safety Officer to prosecute the Criminal complaint pending before the Judicial Magistrate First Class, Court No.5, Nagpur. Accordingly, I proceed to pass the following order:

**ORDER**

- a] The criminal application is **allowed**.
- b] The proceedings in Sessions Case No. 30/2024 (State Vs Mohamamad Asif) pending before the District and Sessions Judge, Nagpur arising out of Chargesheet No. 41 of 2020 along with Crime No. 0255/2019 for the offence punishable under Section 188, 272, 273 and 328 of the Indian Penal Code read with Section 26(2)(iv), 3 and 59 of the Food Safety and Standards Act, 2006 and Rules 2011, are hereby quashed and set aside.
- c] Food Safety Officer is at liberty to prosecute Summary Criminal Case No. 5909 of 2020 filed against Applicant.
- d] All pending application(s) stand disposed of.

11. Rule is made absolute in the aforesaid terms. No orders as to costs.

**(PRAVIN S. PATIL, J)**