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

CRIMINAL APPLICATION (APL) NO.185 OF 2025

1. Rajendra Shah s/o Ambalal Shah,
Aged about 95 Years, (Original Accused No.2)
Occupation : Solicitor and Advocate,
R/o. Panorama, Teen Batti,
Walkeshwar, Mumbai – 400001.
2. R. Ramamurthy Iyer,
Aged about 81 Years, (Original Accused No.4)
Occupation : Advocate,
R/o. D-84, First Floor,
Gulmohar Park, New Delhi,
Delhi – India 110049.
3. Lalit Bhasin s/o Tilak Raj Bhasin,
Aged about 81 years, (Original Accused No.5)
Occupation : Advocate,
R/o. At 10 Hailey Road,
10th Floor, New Delhi – 110 001. **APPLICANTS**

// VERSUS //

1. State of Maharashtra, At the (Original Complainant)
Instance of Shri. V. P. Dhawad,
Food Safety Officer,
Food and Drug Administration (M.S.). **NON-APPLICANT**

Mr. M. Anilkumar, Advocate for applicants.
Mr. A. M. Joshi, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 13.02.2026
PRONOUNCED ON : 06.03.2026

JUDGMENT :

1. Heard.
2. **Admit.**

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3. Heard finally with the consent of the learned Counsel for the applicants and learned APP for the non-applicant/State.

4. Present application is preferred by the applicants for seeking following reliefs:

(a) That this Hon'ble Court be pleased to call for the records and proceedings of Regular Criminal Case No.3034/2013 from the Court of Additional Chief Judicial Magistrate, Nagpur and quash and set aside the complaint along with the order of issuance of process dated 15.07.2013 and issuance of summons, non-bailable warrant dated 09.01.2025 and all further proceedings in connection with the same against the applicants.

(b) That pending the hearing and final disposal of this criminal application, the proceedings of Regular Criminal Case No.3034/2013 pending before the Additional Chief Judicial Magistrate, Nagpur including the non-bailable warrant dated 09.01.2025 against the applicants herein be stayed.

(c) That pending admission of this criminal application, the proceedings of Regular Criminal Case No.3034/2013 pending before the Additional Chief Judicial Magistrate, Nagpur including the non-bailable warrant dated 09.01.2025 against the applicants herein be stayed.

(d) For ad-interim relief in terms of prayer clause (b) and (c); and

(e) For such further and other relief that this Court, deems fit and proper in the facts and circumstances of the case.

5. The applicant No.1 is an Advocate and Solicitor by profession and also Managing Partner of the firm M/s. Crawford Bayley and company, Advocate and Solicitors and has been in

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practicing over 65 years. The applicant No.2 is also a Director of Godfrey Philips India Limited and the applicant No.3 is an Advocate by profession and the Managing Partner of the firm Bhasin and company and also holds a position of various legal organization and societies.

6. The Food Safety Officer Mr. V. P. Dhawad Food and Drug Administration (M.S.), Nagpur had filed a Criminal Complaint on 15.07.2013 alleging contravention of Sections 26(1), 26(2)(i), (iv) and 27(2)(c), 3(1)(zz)(v) read with Regulations 3.1.7 and punishable under Section 59 of Foods Safety and Standards Act, 2006 and Food Safety and Standards Regulations, 2011 before the Court of Additional Chief Judicial Magistrate, Nagpur bearing RCC No.3034/2013. In the said complaint it was alleged that the accused No.1 Satish Nathuram Buddharaja is a Food Business Operator and Vendor of M/s Shivam Agencies, old Bhandara Road, Itwari, Nagpur running the business of sale and selling of food articles including pan masala (Panvilas) and accused Nos.2 to 10 are Directors of accused No.11 – firm M/s. Godfrey Philips India Ltd. They supplied pan masala (Panvilas) to accused No.1 and their invoice No.C 2016/201220814 dated 18.07.2012 and the accused No.12 Mr. Sujit Mukharjee is General Manager and nominee of accused No.13 firm i.e. M/s. Godfrey Philips India Ltd. They manufactured pan masala and transferred the stock to the accused No.11 under the internal stock transfer note

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No.C1201/2011000779 dated 03.07.2012. On 25.07.2012 at about 2.30 p.m., the then Food Safety Officer, Nagpur Mr. M. C. Pawar along with the panch witnesses and officer of Food and Drug Administration, Nagpur Mr. A. G. Deshpande and Mr. S. B. Naragude Assistant Commissioner (Food) visited the above premises of M/s. Shivam Agencies, Old Bhandara Road, Itwari Nagpur. At that time the accused No.1 was present in the premises and looking after the business of stocking and selling of various types of food article including prohibited article pan masala vide Notification No.FSSA/Notification/686/2012/7, dated 20.07.2012 issued by Food Safety Commissioner, Food and Drug Administration (Maharashtra State) Mumbai under Section 30(2) (a).

7. The Food Safety Officer Mr. M. C. Pawar discloses identity as Food Safety Officer to the accused No.1 and discloses intention of drawing samples of food articles under the said Act. After inspecting the above premises the then Food Safety Officer found that pan masala was stored for sale. Thereafter, he has drawn the sample of pan masala under the said Act, for test and analysis and demanded and purchased 110.5 grams X 16 company pack packet X (each packet contains 55 pouch of 1.7 gram each and 10 pouch of pan masala of 1.7 grams free) of said pan masala and paid the cost of Rs.2280/- of it as per market rate and obtained cash receipt for the same. The then

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Food Safety Officer, Nagpur also prepared inspection report and handed over a copy of report to the accused No.1 and obtained receipt for the same which bears signature of panch witnesses.

8. Then the Food Safety Officer issued a notice in form VA to accused No.1, informing him that the sample was taken for analysis and obtained receipt for the same. Thereafter, the notice was also issued to the accused No.1 asking thereby the source of sample of food article of pan masala and also about the fourth part and obtained receipt for same.

9. The then Food Safety Officer, Nagpur thereafter divided 110.5 grams X 16 company pack packet of said pan masala into four equal parts and tied each part with thread and then affixed a label on each of sample detailing therein about food article, place and date of sampling and paper slip number and signature of the then Food Safety Officer. He wrapped each part of sample in thick brown paper folded its end neatly inside and pasted a paper slip signed by the designated officer and Assistant Commissioner (Food), Food and Drug Administration, Nagpur bearing Code No. FSSA/NGP/DO-I Sr.No.0240 from bottom to top and obtained cross signature of accused No.1 on each part of sample in such a way that part of signature being appeared on brown paper as well as on paper slip. The Food Safety Officer tied each part of sample with twin thread horizontally and

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vertically and affixed four "lakh" seal on each part of sample in such a way that one seal will appear on kind of thread, one will on top, one will on bottom and one will on other side of sample and took possession of four parts of sample.

10. The Food Safety Officer also seized the remaining stock of the said pan masala. The sample was forwarded on 26.07.2012 for analysis to Regional Public Health Laboratory, Nagpur and also submitted the remaining parts of the sample towards designated officer as per procedure laid down in Act. Thus, as per the Food Safety Officer, the accused have contravened the provisions of Food Safety and Standards Act 2006 and Food Safety Regulations, 2011. As per the contention of the complainant that the Food Safety Officer, Nagpur received copy of analytical report of Director, Referral Food Laboratory, Ghaziabad vide memo of designated Officer, Nagpur. The then Food Safety Officer, Nagpur resubmitted application in Misc. Application No. 63/2012 to designate for necessary order. Thereafter, the proposal was sent to the designated officer for grant of permission to file a case before the Court. Accordingly, the permission was granted and therefore, complaint came to be filed. As per the allegations, the accused Nos. 2 to 11 committed an offence by stocking for sell supplying and selling of unsafe food articles pan masala and thereby they have contravened the provisions of food safety and standards Act.

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11. The learned Magistrate has taken cognizance of the said complaint and issued process against all the accused including the present applicants. As present applicants were absent, the non-bailable warrants were issued against the present applicants.

12. The present application is filed for quashing of the order of issuance of process and the complaint on the ground that the learned Magistrate has not taken into consideration whether there are any specific allegations against the present applicants and whether they have played any role in the said commission of crime. They are implicated as an accused in the said complaint merely because they are the Directors. There is no whisper in the complaint that the applicants are looking after day-to-day affairs of the company and thereby they are responsible for the contravention of the said provisions. The learned Magistrate has mechanically passed an order without assigning any reasons that summons be issued to the present applicants. The order passed by the Magistrate is not a reasoned order. No vicarious liability can be attributed to the present applicants. In view of that, the applicants prayed for quashing of the complaint as well as the quashing of the order of the issuance of process.

13. Heard learned counsel Mr. Anilkumar for the applicants, who submitted that except the averment in the complaint that

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the present applicants are Directors, there is no averment that they are responsible for day-to-day activities of the said company and thereby they are liable for the action. He submitted that in view of Section 66 of the Food Safety and Standards Act, 2006 where an offence under this Act which has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

The proviso to the section shows that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch, unit nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit:

The second proviso of the said section shows that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence. Thus, he submitted that the vicarious liability cannot be

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fasten on the applicants as they are not person in-charge and responsible of the day-to-day conduct of the business of the company. Merely because they are Directors of the company does not *ipso facto* establish that they were in fact responsible for the day-to-day business of the company. Except the statement of the complainant that they were the Directors, there is nothing on record to show that the applicant was in-charge and was responsible for day-to-day activities of the company and therefore, the prosecution against them is unwarranted and prays for quashing of the proceeding.

14. Per contra, learned APP strongly opposed the said contentions and submitted that by following the due process that by obtaining the samples and by issuing the notices the entire action was taken by the Food Safety Officer, and therefore, there is no merit in the contention that no offence is committed by the present applicants. He submitted that being Directors of the company, they are liable for the action and therefore, the application deserves to be rejected.

15. After hearing both sides and on perusal of the documents on record, there is no dispute that the applicant No.1 is the Managing partner of the firm Crawford Bayley and company and Advocates and Solicitors. The applicant No.2 was a whole time Director of Godfrey Phillips India Ltd. and applicant No.3 is also a

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Director. There is no dispute that applicant No.1 Rajendra Ambalal Shah, who is the accused No.2 in the complaint shown to be a Director of Godfrey Philips India Ltd. The applicant No.2 R. Ramamurthy Iyer, who is the original accused No.4 is also shown to be a Director of the said Godfrey Philips India Ltd. and the applicant No.3 Lalit Bhasin is original accused No.5 is also the Director of the same company. On perusal of the complaint, it reveals that in Para No.2 of the said complaint it is mentioned that accused Nos.2 to 10 are Directors of accused No.11 i.e. the firm, who has supplied pan masala to the accused No.1 i.e. Satish Nathuram Buddharaja who is the Proprietor and Vendor of M/s. Shivam Agencies, who allegedly purchased the said pan masala from the said Godfrey Philips India Ltd. which is a firm. As per the allegation, accused No.12 Sujit Sudhindranath Mukharjee is the General Manager and nominee of accused No.13 firm. As per the allegation, the said pan masala was manufactured by the said firm and it was seized from the possession of the accused No.1, who is the Proprietor of Shivam Agencies. Thus, as far as the present applicants are concerned, only allegation is that they are the Directors of the said Godfrey Philips India Ltd.

16. In the complaint, complainant Food Inspector alleged that on 25.07.2012 at about 2.30 p.m., he inspected the premises of

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Shivam Agencies, wherein the alleged stock of pan masala was found stocked and therefore, he has collected the four samples from the same stock and forwarded for the analysis.

17. Section 3(p) of the Food Safety and Standards Act, defines "Food Laboratory" is a Laboratory which is either State or Central Laboratory or any other allied Laboratory which is accredited and recognized by the National Accreditation Board for Testing and Calibration Laboratories (NABL) and by the Food Authority under Section 43 of the Act. The Laboratory, therefore, has to pass twin test before it can be said to be a recognized Laboratory (1) it has to be accredited by NABL and (2) it has to be recognized by the Food Authority under Section 43 of the said Act. Sub-section (1) of Section 43 makes it abundantly clear that only in that Laboratory recognized by the Food Authority by Notification, food can be sent for analysis by the Food Analyst. Section 43(1) mandates that the Food Analyst has to analyze the food in Laboratory accredited by NABL and also recognized by the Food Authority and notified by it. These provisions are mandatory. Section 47 of the Food Safety and Standards Act states about sampling and analysis which is also not followed in the present case.

18. The submission of the learned counsel for the applicant is that the only allegation against the present applicants is that

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they are Directors, however it is nowhere alleged that they are looking after the day-to-day activities of the said firm and thereby they are responsible for the criminal action. Admittedly, the complaint is filed under Section 200 of the Code of Criminal procedure. The said section deals with the examination of the complainant which states that "A Magistrate taking cognizance of an offence on complaint shall, examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced into writing and shall be signed by the complainant and the witnesses, and also by the Magistrate."

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses—

- (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or
- (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

19. Thus, in view of Section 200(a), when the complaint is lodged by the public servant i.e. Food Inspector acting or

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purporting to act in the discharge of his official duties, the examination of the complainant is not required.

20. In view of Section 204 of the Code, if in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be—

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or some other Magistrate having jurisdiction.

21. Thus, the issuance of process under Section 204 is a preliminary step in the stage of trial contemplated in Chapter XX of the Code. Such an order made at a preliminary stage being an interlocutory order. Section 204 does not mandate the Magistrate to explicitly state the reasons for issue of summons. But there has to be an order of issuance of summons or issuance of process after cognizance is taken.

22. The other ground raised by the applicants is as to whether the Laboratory from where the food samples were sent for testing was accredited by the National Accreditation Board for Testing and Calibration Laboratories. Admittedly, the Referral Food Laboratory, Ghaziabad in Uttar Pradesh is not one of the Laboratories which was accredited by the NABL and therefore, it

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cannot be said to be the Laboratory recognized by the Food Authority under Section 43 (1) of the Food Safety and Standards Act. The recitals of the complaint itself shows that the Referral Food Laboratory, Ghaziabad in Uttar Pradesh wherein the samples were sent for the analysis. There is no document on record that at the relevant time i.e. in the year 2012 i.e. 30.07.2012. The Referral Food Laboratory, Ghaziabad in Uttar Pradesh was granted NABL accreditation. Thus, there is no document on record to show that at the relevant time the said Referral Food Laboratory, Ghaziabad was having NABL accreditation and therefore, it is not a Laboratory recognized under Section 43(1) of the Food Safety and Standards Act. Therefore, the report of the food analyst from the said Laboratory loses its significance as the samples were not analyzed by the Accredited Laboratory under Section 43 of the Food Safety and Standards Act. Therefore, the report which is the foundation for launching the prosecution against the applicants cannot be relied upon.

23. The another issue which is raised by the applicants is that there is no specific contention in the complaint that the present applicants being the Directors were responsible for the day-to-day activities and to conduct the business. Merely it is mentioned that they are the Directors. In view of Section 66 of

the Food Safety and Standards Act which deals with the aspect of offences by companies which is reproduced as under:

66. Offences by companies. –

(1) Where an offence under this Act which has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch, unit nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit:

Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The explanation given for the purpose of this section is (a) "company" means anybody corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

24. In the case of **Lalankumar Singh and others Vs. State of Maharashtra** reported in **MANU/SC/1301/2022** wherein it is observed that simply because a person is a director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable. Conversely, without being a director a person can be in charge of and responsible to the company for the conduct of the business. From the complaint in question I, therefore, find that except a bald statement that the applicants were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in charge of the company and also responsible to the company for the conduct of its business. Merely because a person is a director of a company, it is not necessary that he is aware about the day-to-day functioning of the company. There is no universal rule that a director of a company is in charge of its everyday affairs. It was, therefore, necessary, to aver as to how the director of the company was in charge of day-to-day affairs of the company or responsible to the affairs of the company.

25. Admittedly, while issuing the summons the learned Additional Chief Judicial Magistrate has only mentioned "It be registered. Issue summons to the accused." The words used in Section 204 of Cr.P.C. 'sufficient ground for proceeding' are to be

taken into consideration which are the most important. If a *prima facie* case has been made out, the Magistrate ought to have issued process. At the same time, summoning a person is a serious act and therefore, a person ought not to be drag in the court merely because a complaint has been filed and therefore, and opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation for such an opinion is to be stated in the order itself, as observed by the Hon'ble Apex Court in **Lalankumar Singh's** case.

26. In the case of **Pepsi Foods Ltd. vs. Special Judicial Magistrate, (1998) 5 SCC 749**, wherein it is observed as under:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

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27. By applying all these principles laid down by the Hon'ble Apex Court, admittedly, in my view, the complaint cannot proceed further against the present applicants since there are no averments in the complaint that the applicants being in-charge of the company and liable for the day-to-day activities, and therefore, liable for prosecution in individual capacity. In the result, the entire complaint is required to be quashed against the present applicants. In view of that, I proceed to pass following order:

ORDER

(i) The application is **allowed**.

(ii) The Regular Criminal Case No.3034/2013 pending in the Court of Additional Chief Judicial Magistrate, Nagpur, is hereby quashed and set aside to the extent of the present applicants.

(iii) The order issuing the summons to the present applicants as well as the subsequent orders of issuance of non-bailable warrants below Exh.1 are also quashed and set aside.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)