



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO. 1069/2025

1. Runal S/o Raju Zore,
Aged about 30 years, Occ – Driver,
R/o. C/o Raju Zore, Grampanchyat Jayal
Ward No. 1, Alapalli
Tq. Aheri, Distt. Gadchiroli

... APPLICANT

...VERSUS...

1. The State Of Maharashtra,
Through Police Station Officer,
Aheri Police Station,
Tq. Aheri &, Distt. Gadchiroli.
2. Food Safety Officer, Food and Drug
Administration (M.S), Gadchiroli

...NON-APPLICANTS

Mr. Ajay S. Mohata, Advocate for applicant
Mr. Nikhil Joshi, APP for non-applicant/State

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

RESERVED ON : 17th DECEMBER, 2025.
PRONOUNCED ON : 14th JANUARY, 2026.

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

Heard. **Admit.** Heard finally with the consent of the Learned Counsel for the applicants.

2. The applicant has invoked the inherent jurisdiction of this Court by filing the present application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking quashing of Final Report/Chargesheet No. 100/2022 dated 15.12.2022 arising out of First Information Report, registered as crime no. 314/2021 dated 11.08.021, lodged with Police Station Officer Aheri, District Gadchiroli, for the offences punishable under Sections 188, 273 and 328 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"), as also, for offences punishable under Sections 26(2)(iv), 30(2)(a), 3(1)(zz)(iii) and 59 of the Food Safety and Standards Act, 2006 and Rule 2, 3, and 4 of the Food Safety and Standards Rules, 2011. The applicant has further prayed to stay the proceedings in Sessions Case No. 52/2024 pending on the files of Additional Sessions Judge, Aheri, Dist. Gadchiroli.

3. As per the First Information Report, on 05.02.2024, Non-applicant No. 2, who is a Food Safety Officer, was informed by the Police Station Officer, Aheri, that one Vaibhav Nandkishor Bodkhe, has stored flavoured and scented tobacco worth Rs. 39,200/- in his shop and the same was seized by the police after conducting a raid. Upon inquiry, Vaibhav Nandkishor Bodkhe, disclosed that the said articles were supplied to him by one Runal Zore (present applicant).
4. Upon completion of the investigation, Non-applicant No. 1/Police Station Officer, Aheri, filed a charge-sheet/final report in the matter. Being aggrieved by the registration of the First Information Report and the subsequent filing of the charge-sheet/final report, the applicant has preferred the present application challenging the averments made therein.
5. We have heard Mr. Ajay S. Mohta, learned counsel appearing for the applicant, and Mr. Nikhil Joshi, learned Additional Public Prosecutor appearing for Non-applicant No. 1/State.

6. The Learned counsel for the applicant has opposed the averments made in the First Information Report. He states that the present applicant is not involved in the alleged crime and that the accused has disclosed the name of the present applicant during police interrogation. It is also submitted that except the statement, no other incriminating material has been found against the present applicant.

7. He further states that the Food Safety and Standards Act, 2006 along with the Rules and Regulations, 2011 is a special enactment and therefore, overrides the general law i.e., IPC. It is contended that the complainant, in collusion with the police machinery, has deliberately invoked offences under IPC.

8. Learned counsel further submits that by no stretch of imagination can mere possession of flavoured/scented tobacco attract the offences punishable under Sections 273 and 328 of the Indian Penal Code. To invoke Section 328 of the IPC, the prosecution is required to establish that the substance in question was poison or any stupefying, intoxicating, or unwholesome drug,

that the accused administered or caused the same to be administered to a person, and that such act was committed with the intent or knowledge to cause hurt or to facilitate the commission of an offence. In the present case, the prosecution has failed to prove that the said articles were poison or the same was administered or caused to be administered with the intention or knowledge of hurt, thus reflecting that the said section should not have been invoked.

9. He further states that offence under Section 188 of the Indian Penal Code, 1860 could not have been registered against the present applicant as there is a specific bar for taking cognizance of matters except on a complaint made in writing by the public servant concerned or of some other public servant to whom he is administratively subordinate. However, no such complaint has been lodged by the concerned public servant, therefore invocation of Section 188 of the IPC is not tenable in the eyes of law. Furthermore, it is submitted that there exists an independent procedure for search, seizure and sampling in the Food safety and Standards Act, 2006, as also, there is a requirement of obtaining permission of the Food Commissioner before lodging of complaint

by the subordinate Food Safety Officers. Despite having complete knowledge of the statutory procedure and the applicable provisions of law, the police authorities proceeded to register offences against the present applicant, thereby abusing the process of law. He, therefore, prays for quashing of the concerned First Information Report and the consequent chargesheet.

10. Per contra, the learned Additional Public Prosecutor, has vehemently opposed the submissions of the Learned Counsel for the applicant. He states that the investigation Officer has carried out panchanamas and seized the aforementioned banned articles and the same has been sent to the Food and Drugs Department and accordingly the Food Analysis Report was received by the agency. The analysis report shows the test for nicotine is positive.

11. The Learned Additional Public Prosecutor further states that during investigation, the accused, namely Vaibhav Nandkishor Bodkhe, has disclosed the name of the present applicant as the supplier of the aforesaid products even after having full knowledge that the said tobacco products are banned in the State of

Maharashtra.

12. Lastly, The Learned Additional Public Prosecutor submits that the Hon'ble Apex Court has observed that if *mensrea* is proved by the material collected by the Investigation Officer, Section 328 of IPC is squarely applicable. Additionally, the present applicant has failed to make out any case under the seven exceptions carved out by the Hon'ble Apex Court in the judgment of State of Haryana Vs. Bhajanlal, reported in AIR 1992 SC 604, and thus the application is liable to be rejected.

13. In the background of these facts, we have perused the material placed on record. Section 188 of IPC speaks about disobedience of order duly promulgated by public servant; Section 273 of IPC speaks about sale of noxious food/drink, Section 328 of IPC speaks about causing hurt by means of poison, etc., with intent to commit an offence. Similarly, Section 3(1)(zz)(iii) of The Food Safety And Standards Act, 2006, defines the categorization of 'unsafe food', Section 26(2)(iv) speaks about Responsibilities of the Food business operator, Section 30(2)(a) speaks about the functions

of the food commissioner of the State, and, Section 59 speaks about the Punishment for unsafe food.

14. As far as offence under Section 188 of the IPC is concerned, Section 195 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.PC') restrains the Court from taking cognizance of any offence punishable under that Section except on a complaint in writing by the public servant concerned or of some other public servant to whom he is administratively subordinate. Admittedly, the complaint in the present case is made by Suresh Torem, Food Safety Officer, who without acquiring the requisite permission of the Food Commissioner of the State registered the said offence with the Police Station. Thus, the statutory requirement under Section 195 of the Cr.P.C. is not satisfied. We are, therefore, of the considered opinion that offence under Section 188 of IPC is not made out.

15. As far as sections 273 and 328 of the IPC are concerned, the specific sections are overridden by section 89 of the Food Safety and Standards Authority Act, 2006. A beneficial reference can be drawn from the judgment of the Hon'ble Supreme Court in the case of

Ram Nath Vs. State of Uttar Pradesh and Others, reported in (2024) 3 SCC 50, wherein it is held that –

“27.The title of the Section indeed indicates that the intention is to give an overriding effect to 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 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.”

In view thereof, the provisions of Sections 328 and 273 of the IPC stand eclipsed and cannot be invoked in respect of matters governed by the special statute.

16. 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. Furthermore, Section 27(2)(e) states that the wholesaler or distributor shall be liable under this Act for any article of food, which is stored or handled or kept in violation of the provisions of this Act, the rules

and regulations made thereunder. However, in the present case, admittedly, the applicant herein is only named by the accused and no material shows that the applicant is the supplier or the distributor of the prohibited products. In such circumstances, we are of the view that an offence under Section 27(2)(e) is not made out.

17. 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 for 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 one Vaibhav Nandkishor Bodkhe, which cannot be solely relied upon for continuance of criminal proceedings as far as the applicant is concerned. Furthermore, it is pertinent to note that the name of the applicant is only orally disclosed by him, and this oral evidence cannot be solely relied upon to continue criminal proceedings against the present applicant.

18. In that view of the matter, we are of the considered opinion that a situation at hand 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 :

(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 complaint 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.”

(4) ...

(5) ...

(6) ...

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

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

ORDER

- (i) The application is allowed.
- (ii) The Final Report/Chargesheet no. 100/2022 dated 15.12.2022 arising out of First Information Report, registered as crime no. 314/2021 dated 11.08.2021, lodged with Police Station Officer Aheri, District Gadchiroli, for the offences punishable under Sections 188, 273 and 328 read with section 34 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”), as also, for offences punishable under Sections 26(2)(iv), 30(2)(a), 3(1)(zz)(iii) and 59 of the Food Safety and Standards Act, 2006 and Rule 2, 3, and 4 of the Food Safety and Standard Rules, 2011, are quashed and set aside to the extent of the applicant – Raju s/o Raju Zore.
- (iii) The application is disposed of accordingly.

(NANDESH S. DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

Shubham