



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO. 1080/2025

1. Shaikh Shoib Shaikh Khurshid @ Lala,  
Aged 33 years, Occ – Agriculturist,  
R/o. Ward No. 5, At post Fulsawangi,  
Tq. Mahagaon, Distt. Yavatmal

... APPLICANT

...VERSUS...

1. State Of Maharashtra,  
Through Police Station Officer,  
Pusad City Police Station,  
Pusad and Distt. Yavatmal.
2. Food Safety Officer, Food and Drug  
Administration (M.S.) Yavatmal.

...NON-APPLICANTS

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Mr. Ajay S. Mohta, Advocate for applicant  
Ms. M. J. Khan, APP for non-applicant/State  
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CORAM : URMILA JOSHI-PHALKE AND  
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 18<sup>th</sup> DECEMBER, 2025.  
PRONOUNCED ON : 14<sup>th</sup> JANUARY, 2026.

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

Heard. **Admit.** Heard finally by consent of learned counsel appearing for the parties. /

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. 498 of 2025 dated 28.08.2024, arising out of First Information Report, registered as crime no. 43/2024 dated 05.02.2024, lodged with Police Station Pusad, District Yavatmal, for the offences punishable under Sections 188, 273, 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)(i), 27(2)(e), 30(2)(a) and 59 of the Food Safety and Standards Act, 2006 and Rules, 2011.

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, Pusad, that one Sheikh Javed Sheikh Habib

was found transporting prohibited food articles, namely scented tobacco, in a Mahindra Bolero vehicle. The said prohibited articles, amounting to Rs. 15,66,315/- were seized. Upon inquiry, Sheikh Javed Sheikh Habib disclosed that he was working as a driver and that he had been instructed by one Sheikh Shoaib Shaikh Khurshid Lala to deliver the said articles to one Mohammed Firoz Mohammad Saddik Punjani(present applicant).

4. Upon completion of the investigation, Non-applicant No. 1/Police Station, Pusad, 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. M. J. Khan, 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 his name has surfaced solely on the basis of an oral disclosure made by Sheikh Javed Sheikh Habib. It is also submitted that the present applicant is not arrayed as an accused in the concerned First Information Report.

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, would override 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 or transportation of 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, then there is no material to show that the said articles were poison or the same was administered or caused to be administered with an intention or knowledge of hurt.

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. But 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 the 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 First Information Report and the charge sheet.

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 collected the Government Notification from the informant dated 18<sup>th</sup> July, 2023. The Officer has arrested the driver, namely Sheikh Javed Sheikh Habib, as also, Mohammad Gulam Rasul Khan, who has informed that the stock of the prohibited articles belongs to the present applicant. It is further submitted that there exists enough material to show the involvement of the present applicant in commission of the crime. The present applicant is the owner and he has purchased the same from Telangana and is not further co-operating with the Investigation Officer by not disclosing the name from whom he has purchased the said stock.

11. Lastly, The Learned Additional Public Prosecutor submits that 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.

12. 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 speak about Causing hurt by means of poison, etc., with intent to commit an offence. Similarly, Section 26(2)(i) of The Food Safety And Standards Act, 2006 speaks about Responsibilities of the Food business operator, Section 27(2)(e) speaks about the Liability of manufacturers, packers, wholesalers, distributors and sellers, 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.

13. As far as offence under Section 188 of the IPC is concerned, Section 195 of the Cr.P.C. 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 Amitkumar Ashokkumar Uplup, 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 is not made out.

14. As far as sections 273 and 328 of the Indian Penal Code, 1860 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.

15. 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 driver and no material shows that the applicant is the wholesaler 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.

16. 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 or sells, 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 the driver, which can be relied upon for continuance of criminal proceedings as far as the applicant is concerned.

17. In that view of the matter, we are of the considered opinion that a situation would squarely fall 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.”*

18. 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. 498 of 2025 dated 28.08.2024, arising out of First Information Report, registered as crime no. 43/2024 dated 05.02.2024, lodged with Police Station Pusad, District Yavatmal, for the offences punishable under Sections 188, 273, 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)(i), 27(2)(e), 30(2)(a) and 59 of the Food Safety and Standards Act, 2006 and Rules, 2011., are quashed and set aside to the extent of the applicant – Mohammed Firoz Mohammed Saddik Punjani.

(iii) The application is disposed of accordingly.

**(NANDESH S. DESHPANDE, J.)**

**(URMILA JOSHI-PHALKE, J.)**

Shubham