



Judgment

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1

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

CRIMINAL APPLICATION APL NO.1123 OF 2025

1. Sheikh Maheeb Sheikh Sadik, aged 39 years, occupation business, r/o Shastri Nagar, Arni, taluka Arni, district Yavatmal.

2. Mohammad Saleem Peer Mohammad Sayani, aged 58 years, occupation agriculturist, r/o Vai Road, Vali Sahab Nagar, Ward No.05, Ner, taluka Ner, district Yavatmal. **Applicants.**

:: VERSUS ::

1. State of Maharashtra, through Police Station Officer, Police Station Ner Pansopant, taluka Ner, district Yavatmal.

2. Food Safety Officer, Food and Drug Administration (MS) Yavatmal. **Non-applicants.**

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Shri S.A.Mohta, Counsel for the Applicants.

Shri N.B.Jawade, APP for Non-applicant Nos.1 & 2/State.

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CORAM : URMILA JOSHI-PHALKE, J.

DATE : 19/01/2026

ORAL JUDGMENT

2

1. Heard learned counsel Shri S.A.Mohta for the applicants and learned Additional Public Prosecutor Shri N.B.Jawade for the State. **Admit.** Heard finally by consent.

2. By this application, the applicants are seeking quashing and setting aside FIR in connection with Crime No.855/2023 registered under Sections 188, 272, 273, and 328 of the IPC and under Sections 26(2)(i), 27(3)(e), 30(2), (a) and 59 of the Food Safety and Standard Act, 2006 and consequent proceeding arising out of the same bearing Sessions Case No.52/2024 pending before learned Additional Sessions Judge, Yavatmal.

3. As per allegations in the FIR, PSI i.e. informant has received a secret information that in “Bolero Pick-Up Vehicle” bearing registration No.MH-29/T/6279, some persons are transporting “Banned Contraband Article” and “Scented Tobacco” near Bye-Pass of Ner and, therefore, he along with other raiding party members intercepted the said vehicle and

3

during interception of the vehicle, he found co-accused Sayeed Jahagir was driver and accused Sheikh Kadar Shaikh, was cleaner in the said vehicle. Upon inspection of the said vehicle, they were found along with contraband articles worth of Rs.7,07,760/- and, therefore, co-accused driver and cleaner were taken into custody.

4. After registration of the crime, the driver and the cleaner were interrogated. They disclosed applicant No.1 as “supplier” and applicant No.2 as “receiver” of the said contraband articles. On the basis of the said investigation, the applicants were arrayed as accused.

5. Learned counsel for the applicants submitted that except statements of the co-accused, there is absolutely no material to connect the applicants in the alleged offence. The statement of the co-accused is not admissible in evidence and as far as involvement of the applicants, either in supplying or receiving the amount, is not revealed from the entire

4

investigation papers. In view of that, the application deserves to be allowed.

6. *Per contra*, learned APP for the State has strongly opposed the said contentions and invited my attention towards the criminal antecedents of the applicants especially applicant No.1 Sheikh Maheeb Sheikh Sadik against whom in all eleven offences are registered and against the other applicant one offence is registered. He submitted that considering various offences are registered against the applicant No.1 for the similar type of offences, the application deserves to be rejected as *prima facie* involvement reveals. He submitted that considering the allegations levelled against the applicants, that one is the “supplier” and one is the “receiver” of the said contraband articles banned in the State of Maharashtra, the application deserved to be rejected.

7. On hearing both the sides and perusing the investigation papers, it reveals that on the basis of the secret

5

information, the informant conducted a raid and one vehicle was intercepted and from the possession of driver Sayeed Jahagir and cleaner Sheikh Kadar Shaikh of the said vehicle, the said contraband articles were seized.

8. Perusal of the entire chargesheet reveals that except statement of the co-accused, admittedly, there is no material collected during the investigation by the investigating officer to show involvement of the applicants either as “supplier” or “receiver”.

9. In the backdrop of these facts, chargesheet is filed on record after completion of the investigation.

10. As observed earlier, the applicants were not found in possession of any contraband articles or they were not found on the spot. Their involvement is only on the basis of statements of co-accused.

11. Section 188 of the IPC deals with disobedience to order duly promulgated by public servant.

6

12. Thus, disobedience in the present case pertains to Notification dated 18.7.2023 of the Food Safety Commissioner.

13. As far as offence under Section 328 of the IPC is concerned, it speaks about causing hurt by means of poison with intent to commit an offence.

14. Now, this issue is already pending before the Hon'ble Apex Court, which is yet to be finalized.

15. As far as offence under 26(2)(i) of the Food Safety and Standard Act, 2006 is concerned, it contemplates that no food business operator shall himself or by any person on his behalf manufacture, store, sell, or distribute any article of food.

16. Section 27(3)(e) of the Food Safety and Standard Act, 2006 states that seller shall be liable under this Act for any article of food which is received with him with knowledge of being unsafe.

7

17. In the present case, as far as ingredients of offences are concerned, admittedly, except the statements of the co-accused, there is nothing on record to disclose the same.

18. The law relating to quashing of FIRs was explained by the Hon'ble Apex Court in the case of **State of Haryana and ors vs. Bhajan Lal and ors, reported in 1992 Supplementary (1) SCC 335** wherein principles have been laid down which are required to be considered while considering applications for quashing of the FIRs, which read as under:

“(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under

8

an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) 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;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

9

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) 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 view of the above, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(1) The Criminal Application is **allowed**.

10

(2) FIR in connection with Crime No.855/2023 registered under Sections 188, 272, 273, and 328 of the IPC and under Sections 26(2)(i), 27(3)(e), 30(2),(a) and 59 of the Food Safety and Standard Act, 2006 and consequent proceeding arising out of the same bearing Sessions Case No.52/2024 pending before learned Additional Sessions Judge, Yavatmal are hereby quashed and set aside to the extent of the applicants.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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