

	Presented on	: 29/10/2021.
	Registered on	: 29/10/2021.
	Decided on	: 29/04/2026.
	Duration	: 04Y - 06M - 00D.
<u>Form No. XXXII</u> <u>Part 'A'</u> <u>(Title Page of Judgment)</u> <u>[Para 44(i) of Chapter VI of Criminal Manual]</u>		
<u>IN THE COURT OF SESSION JUDGE, GONDIA,</u> <u>DISTRICT GONDIA.</u> <u>(Presided Over by A. C. Khurana)</u>		
Date of Judgment: 29/04/2026.		
<u>Session Case No. 128/2021.</u>		
CNR No.:MHGO010012072021.		<u>EXH. NO. 46.</u>
<u>Crime No. 787/2020 of Gondia City Police Station)</u>		
<u>Offence: Punishable Under Sections 328, 273 and 188 of the Indian Penal Code, 1860 read with Sections 3(1)(z z)(v) and 26 (2)(i), 26(2)(iv) punishable under Section 59 of the Food Safety and Standard Act, 2006.</u>		
Prosecution	The State of Maharashtra through Police Station Officer, Police Station, Gondia City, Tq and Dist. Gondia.	
Represented by	Learned APP, Shri. P. S. Agashe, for the State.	
Accused	Vijaykumar S/o Motumal Chungwani, Aged – about 43 years, Occ. - Business, R/o – Matatoli, Mali Chowk, Gondia, Tq - & Dist – Gondia. Recently Residence – Harkashi Nagar, near	

	Sankar Convent, Gondia, Tq - & Dist – Gondia.
Represented by	Learned Advocates Shri. P. T. Tolani and Shri. Katiyare for accused.

Part -B**[Para 44(ii) of Chapter VI of Criminal Manual]**

Date of offence	:	29/12/2020.
Date of FIR	:	29/12/2020.
Date of Charge-sheet	:	12/03/2021.
Date of framing of Charge	:	24/12/2025.
Date of commencement of evidence	:	11/03/2026.
Date on which judgment is reserved	:	29/04/2026.
Date of Judgment	:	29/04/2026.
Date of sentencing order if any	:	---

Accused Details

Rank of the accused	Name of Accused	Date of Arrest	Date of release on bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of Sec. 428 of Cr. P. C.
1.	Vijaykumar Motumal Chungwani	06.02.2021.	06.02.2021.	Under Sections 328, 273 and 188 of the Indian Penal Code, 1860 read with Sections 3(1)(z z)(v) and 26 (2)(i), 26(2)(iv) punishable under Section 59 of the Food Safety and Standard Act, 2006.	Acquitted	---	---

J U D G E M E N T

(Delivered on 29th April, 2026)

The accused has been prosecuted for the offences punishable under Sections 328, 273 and 188 of the Indian Penal Code, 1860 read with Sections 3(1)(z z)(v) and 26 (2)(i), 26(2)(iv) punishable under Section 59 of the Food Safety and Standard Act, 2006 of the (hereinafter referred to as “IPC” for the sake of brevity) in connection with crime No.787/2020 registered with Police Station, Gondia City, Dist – Gondia.

Brief facts of the prosecution case are as under :-

2. On 29/12/2020 the Informant Shri. Bhaskar Nandanwar, Food Safety Officer, (PW-2) visited the ware house of the accused at Gondia along with panch witness (P.W.1). After disclosing his identity and authority he conducted an inspection of the premises. During the inspection, it was found that, accused had stored prohibited food articles, namely chewing tobacco in large qaunity i.e. 100 packets. The accused failed to produced any valid license for storing or selling such goods. He prepared an inspection report (Exh-P-21) at the spot and served the copy to the accused. Sample of the seized goods were taken, sealed, laballed and signature of the accused and panch witness were obtained. Thereafter, he issued notice Form V-A and notice regarding source of goods and analysis rights. Then out of seized stock, four packets were taken as samples for analysis and the

remaining stock was seized. Godown was also seized and the samples were sent to the food analyst, Nagpur. The food analyst report revealed presence of Nicotine and declared the sample as unsafe. Therefore, he after obtaining sanctions to prosecute against the accused, he lodged the report (Exh-P-32) against the accused.

3. On the basis of said report (Exh.P-32), API Pannalal Puranalal Pradhan (PW.3), of Police Station, Gondia City, Gondia has registered the crime against the accused for the offence punishable under Sections 328, 273 and 188 of the Indian Penal Code, 1860 read with Sections 3(1)(z z)(v) and 26 (2)(i), 26(2)(iv) punishable under Section 59 of the Food Safety and Standard Act, 2006 vide Crime No.787/2020.

4. Investigation was assigned to Shri. Santosh Lakshmn Sapate, ASI, (PW-4) Police Station, Gondia City, Gondia. During the course of investigation, he recorded the statement of informant and panch witnesses as per their say and drew arrest panchanama (Exh-P-52). After completion of investigation, the charge-sheet is filed against the accused for the offences punishable Sections 328, 273 and 188 of the Indian Penal Code, 1860 read with Sections 3(1) (z z)(v) and 26 (2)(i), 26(2)(iv) punishable under Section 59 of the Food Safety and Standard Act, 2006 before the Learned Chief Judicial Magistrate, Gondia.

5. Learned Chief Judicial Magistrate, Gondia complied with

the provision of section 207 of the Cr.P.C. by supplying the copy of charge-sheet to the accused. Since, the offence under section 328 of the IPC being exclusively triable by the court of session, the matter was committed by the learned Chief Judicial Magistrate, Gondia to the Court of Session by passing the committal order dated 16/10/2021.

6. Considering the allegations in the charge-sheet, I have framed charge (Exh.-6) against the accused for the offences punishable under Sections 328, 273 and 188 of the Indian Penal Code, 1860 read with Sections 3(1)(z z)(v) and 26 (2)(i), 26(2)(iv) punishable under Section 59 of the Food Safety and Standard Act, 2006. The contents of the same was read over and explained to the accused in vernacular. Accused pleaded not guilty and claimed to be tried. His plea (Exh.7) was recorded accordingly.

7. To prove it's case, prosecution examined four witnesses mentioned in part 'C' in title clause. The prosecution relied upon documents mentioned in part 'A' in title clause. Then the prosecution closed it's evidence side by filing pursis (Exh.53).

8. Incriminating circumstances were put to the accused and his statement u/s 313(1)(b) of Cr.P.C. came to be recorded at Exh.54. His defence is that of total denial and false implication. The accused has not lead any oral or documentary evidence.

9. Heard learned Public Prosecutor for the State Shri. K. R. Khandelwal who argued that the seizure of prohibited articles is duly proved through the evidence of informant (P.W.2). Further he stated that, the food analysis report (Exh-P-36) transpires that, the seized article having Nicotine which is injuries to health and contravention the order of commissioner. There is no reason to disbelieve informant (P.W.2). All the documents regarding seizure is proved. Learned APP further contends that the prosecution has been able to prove the guilt of the accused beyond all reasonable doubt. Hence, prayed to hold the accused guilty.

10. On the contrary, the learned Adv Shri. Katiryare for the accused while denying the allegation under charge submitted that prosecution has not proved that the alleged godown is belonging to or was in possession of accused. He further agrued that, none of the witnesses has deposed that the accused administered or caused to be administered the seized articles to anyone. As such, there is no corroborative evidence to prove the offence. It is pointed out that panch witness Anil Chawala (PW-1) has not supported prosecution. Investigation officer has not seized or collected any ownership document of the godown from where the food articles are allegedly seized. It is submitted that the investigating officer has not recorded statement of any neighbor of the accused and therefore, the prosecution could not prove that the alleged spot from where the muddemal is seized, belongs to accused and therefore, it is not

established with cogent evidence that the alleged articles were found in possession of the accused at the relevant time and therefore ,accused is entitled to be acquitted.

11. Upon hearing the rival submissions and on perusal of the evidence and other material on record, following points arise for my determination. I have recorded my findings on those points for the reasons recorded as under :

<u>Sr. No.</u>	<u>POINTS.</u>	<u>FINDINGS.</u>
1]	Does the prosecution prove that on 29/12/2020 at Gautam nagar, Gondia, Dist. Gondia, the accused administered to or caused to be taken by any person any poison or any stupefying, intoxicating or unwholesome drugs, or administered poisonous substance to the victim through things namely, 411 chewing tobacco (scented tobacco) products or knowing it to be likely to cause hurt to the public at large and thereby committed an offence punishable under Section 328 of the Indian Penal Code, 1860 ?	In the Negative.
2]	Does the prosecution further prove that, on the aforesaid date, time and place, accused knowing that by order	In the Negative.

	<p>promulgated by food safety commissioner, a public servants lawfully empowered to promulgated such order, he was directed to abstain for possessing and storing different flavored or scented tobcco, disobeyed such directions, which tend to cause danger to human life, health or safety and thereby committed an offence punishable under Section 188 of Indian Penal Code, 1860 ?</p>	
3]	<p>Does the prosecution further prove that on the aforesaid date, time and place, the accused, sold or offered for sale or exposed for sale as food an article, namely 411 chewing tobacco (scented tobacco) which had become noxious as food or was in a state of unfit for food, knowing or having reason to believe that the same is noxious as food and thereby committed an offence punishable under Section 273 of Indian Penal Code, 1860 ?</p>	<p>In the Negative.</p>
4]	<p>Does the prosecution further prove that on the aforesaid date, time and place, the accused possessed article, namely chewing tobacco with intent to sale or distribute which is for the time being prohibited by the food authority of State Government in the interest of public heath and thereby committed an offence punishable under Section 26 (2) (i), 26</p>	<p>In the Negative.</p>

	(2) (iv) of Food Safety and Standard Act punishable under Section 59 of the food and Drug safety and Standard Act, 2006 ?	
5]	Does the prosecution further prove that on the aforesaid date, time and place, the accused stored/kept for sale a chewing tobacco namely, scented tobacco and betel nut worth of Rs. 1,00,000/- to sell that chewing tobacco in public market, with the knowledge that the consumption of said chewing tobacco is injuries to the health of human being and thereby committed an offence punishable under Section 3 (1) (zz) (v) of the Food Safety and Standard Act ?	In the Negative.
6]	What is order?	Accused is acquitted as per final order.

REASONS

AS TO POINT NOS. 1 TO 5 :-

12. As the points are interlinked with each other, they are being taken together in view of the nature of evidence and for sake of brevity.

13. Section 328 of Indian Penal Code 1860 is reads as under;
"Section 328 of IPC : Causing hurt by means of poison etc.

with intent to commit an offence.

“Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”.

14. In order to prove offence punishable u/s. 328 of IPC prosecution has to prove that, accused has administered or caused to be taken by any person any poison or stupefying substance, intoxicating or unwholesome drug.

15. Mr. Baskar Nandanwar (PW-2) deposed that he was posted at Bhandara since 05.09.2018, as food safety officer and had jurisdiction over Bhandara and Gondia. He stated that, on 29.12.2020, he visited the ware house of the accused along with panch. During inspection he found 1000 packet of the chewing tobacco. Accused failed to produce any license therefore he has prepared inspection report (Exh-P-21), and copy was given to accused. He has also stated Form V-A was prepared and thereafter four packets out of seized articles was purchased and cash memo (Exh-P-23) was prepared. He also deposed the notice (Exh-P-24) was issued to the accused regarding the source and right to sent sample

to food analyst which the accused denied. Thereafter, samples were sealed and levelled and signatures of the accused and P.W.1 were obtained. He further deposed Panchanama (Exh-P-37) and godown sealing notice (Exh-P-28) were prepared. He also stated regarding dispatch of samples to food analyst, Nagpur through Form VI – A (Exh-P-29). Notice regarding Absence of license was issued by designated officer. He received a food analyst report (Exh-P-36) which is confirmed presence of Nicotine and unsafe articles.

16. Prosecution has examined Anil (P.W.1) who has not supported the prosecution. He denied that, any food articles were seized by informant (P.W.2) in his presence and also denied the preparation of panchanama.

17. In order to prove an offence under section 328 of the IPC, the prosecution is required to establish, that the substance in question was poisonous, stupefying, intoxicating, or otherwise unwholesome and the accused administered such substance to any person or caused it to be taken and that such administration was done with intent to cause hurt, or to commit or facilitate the commission of an offence, or with knowledge that hurt was likely to be caused. In the present case, investigating officer (P.W.4) has admitted that, he has not inquired about the ownership or possession of the alleged place where the substance in question was found. It is settled law that, police witnesses can not be discarded merely

because of their official status. However, when independent witnesses are available and failed to support the prosecution, the evidence of the police witnesses must be scrutinized with greatest caution and requires independent corroboration. In the present case, such corroboration is absent. In this case, Anil (P.W.1) who is cited as pancha witness, who has not supported to the prosecution. Though, he admitted his signatures on seizure panchanama and other memorandum, he specifically denied seizure at the hands of the accused in his presence. In the absence of substantive support from panch witness, the seizure becomes doubtful.

18. In addition to above deficiencies, none of the prosecution witnesses have deposed that the accused was found administering, selling or causing any person to consume to alleged substance. No customer or victim has been examined. Mere alleged possession, even if, assumed does not amount to “administering” or “causing to be taken” as required under section 328 of the IPC. Intention or knowledge under Section 328 of the IPC can not be presumed merely from the alleged possession of the goods. No proof of sale, administration or commercial transaction has been brought on record and in the absence of proof regarding the exact nature of the substance or its administration, the question of intention to caused hurt or knowledge does not arise.

19. Prosecution had relied on food analyst (Exh-P-36), which

shows that, the samples contravenes order No. FSSA/Notification-369/7, dated 15.07.2020 of commissioner of Food Safety and food and drugs administration of Government of Maharashtra issued under section 30(2)(a) in the interest of public health. However, the sample dispatch report and procedural compliance are not duly proved.

20. Learned APP Shri. K. R. Khandelwal argued that there is presumption regarding the correctness of the such report under Section 292 of the CrPC., but said presumption is neither absolute or mandatory. The Court has discretion to accept or reject such report, depending upon the facts and circumstances of each case. In the present case, independent panch witnesses has not supported the prosecution. Further the sampling procedural is not followed. Therefore, the statutory presumption attached to the test report (Exh-P-36/PW.2), can not be applied mechanically or blindly. There may be a rebuttable presumption in favour of the prosecution, with regard to the report, there simultaneously exists a foundational presumptions of innocence.

21. Though, tobacco and its product are allegedly injuries to health, mere possession there of does not fall within the scope of section 328 of the IPC. The crucial link between possession and consumption is absent. The prosecution case rests on the assertion that the seized articles where Chewing Tobacco containing harmful

substances. However, none of the seized Muddemal is produced before the Court. Consequently, I hold that the prosecution has failed to prove beyond reasonable doubt punishable under Section 328 of the IPC. Accordingly, **I answered Point No.1 in the negative.**

AS TO POINT NOS. 2 TO 6 :-

22. Upon careful appreciation of the evidence of (PW-2) Food Safety Officer, it emerges that he has proved the fact of inspection and seizure of certain chewing tobacco from the godown of the accused. However, for attracting offences under Sections 273 of the Indian Penal Code, the prosecution is required to establish that the seized articles were adulterated or noxious and were likely to cause harm to human life or health. In the present case sampling is doubtful and has not duly proved. Mere possession or sale of such articles, without proof of adulteration or that they were injurious to health in the manner contemplated under Sections 273 of the IPC, is not sufficient to bring home the said offences. Hence, the essential ingredients of Sections 273 of the IPC are not proved beyond reasonable doubt.

23. Hon'ble Supreme Court in the case of **Joseph Kurian Vs. State Of Kerala, reported in AIR 1995 SUPREME COURT 4**, has held that,

"In order to prove offence under Section 328 the prosecution is required to prove that the substance in question was a poison, or any

stupefying, intoxicating or unwholesome drug, etc., that the accused administered the substance to the complainant or caused the complainant to take such substance, that he did so with intent to cause hurt or knowing it to be likely that he would thereby cause hurt, or with the intention to commit or facilitate the commission of an offence. It is, therefore, essential for the prosecution to prove that the accused was directly responsible for administering poison etc. or causing it to be taken by any person, through another. In other words, the accused may accomplish the act by himself or by means of another. In either situation direct, reliable and cogent evidence is necessary".

24. The offence under Section 188 of the IPC is also not made out. To constitute the said offence, the prosecution must prove that a lawful order promulgated by a public servant was in force, that the accused had knowledge of such order, and that he intentionally disobeyed the same, resulting in obstruction, annoyance, or risk thereof. In the present case, though reliance is placed on the alleged prohibitory order (Exh-P-44/PW.2) issued by the Commissioner, the prosecution has failed to prove due promulgation of such order and, more importantly, that the accused had knowledge of the same.

25. In order to find out as to whether food is unsafe due to presence of adulterant, it must be analyzed as per chapter VII of Food Safety Act, 2006. However, no such procedural is followed.

Hence, Prosecution has not proved the offences punishable under food safety Act beyond reasonable doubt.

26. In view of the aforesaid material on record, I find that the prosecution has failed to establish its case beyond reasonable doubt. The panch witness has not supported the prosecution, thereby rendering the alleged seizure and panchnama doubtful. Despite availability, no independent witnesses have been examined, which gives rise to an adverse inference against the prosecution. Further, the mandatory procedure of sampling as prescribed under the Food Safety and Standards Act has not been duly followed, thereby vitiating the very basis of the alleged offence. In absence of such cogent and reliable evidence, the prosecution case remains unsubstantiated. Hence, the accused is entitled to benefit of doubt and deserves to be acquitted of the offences charged. **Hence, I answered points 2 to 56 in negative.**

27. **AS TO POINT NO. 6 :**

In view of my findings on point Nos.1 to 5, I hold that the prosecution has failed to prove its case and the accused as such is liable to be acquitted. **Hence, I pass following order.**

<u>ORDER</u>	
1.	Accused namely Vijaykumar S/o Motumal Chungwani, Aged – about 43 years, Occ. - Business, R/o – Matatoli,

	Mali Chowk, Gondia, Tq - & Dist – Gondia, Recently Residence – Harkashi Nagar, near Sankar Convent, Gondia, Tq - & Dist – Gondia is hereby acquitted of the offences punishable Sections 328, 273 and 188 of the Indian Penal Code, 1860 read with Sections 3(1)(z z)(v) and 26 (2)(i), 26(2)(iv) punishable under Section 59 of the Food Safety and Standard Act, 2006 vide section 235(1) of the Code of Criminal Procedure.
2.	Accused is on bail. His bail bond is canceled and surety is discharged.
3.	Seized muddemal, if any, be disposed of as per rules, after appeal period is over.
4.	Accused is directed to execute PR Bond of Rs. 15,000/- and furnish one surety in the like amount in compliance of the provision of Section 437-A of the Cr.PC which shall remain in force for a period of six months from today for his appearance in appeal, if appeal is preferred.
5.	Case is disposed of accordingly.
	(Pronounced in open Court)

Sd/-

Place : Gondia.
Date : 29/04/2026.

(A. C. Khurana)
Additional Sessions Judge,
Gondia.

Part 'C'

[Para 44(iii) of Chapter Vi of Criminal Manual]

LIST OF PROSECUTION/DEFENCE/COURT WITNESS.**A- Prosecution :-**

<u>Rank</u>	<u>Name</u>	<u>Nature of Evidence</u>
PW-1	Anil S/o Dharamdas Chavala (Exh-9)	Witness.
PW-2	Bhaskar S/o Gopalrao Nandanwar (Exh-17)	Informant.
PW-3	Pannalal S/o Puranlal Pradhan (Exh-47)	Station Dairy Officer.
PW-4	Santosh S/o Lakshmn Sapate (Exh-51)	Investigating Officer.

B - Defence Witness, if any :

<u>Rank</u>	<u>Name</u>	<u>Nature of Evidence</u>
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C - Court Witness, if any :

<u>Rank</u>	<u>Name</u>	<u>Nature of Evidence</u>
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LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS.**A- Prosecution :-**

<u>Sr. No.</u>	<u>Exhibit Number.</u>	<u>Description.</u>
1.	Exh.18/PW.2	Appointment Letter of informant (PW. 2)
2.	Exh.19/PW.2	Letter of appointment as Food Inspector of informant (PW.2).
3.	Exh.20/PW.2	Transfer order of informant

		(PW.2).
4.	Exh.21/PW.2	Inspection Report of seized 411 Chewing Tabaco.
5.	Exh.22/PW.2	Form V A.
6.	Exh.23/PW.2	Cash Memo.
7.	Exh.24/PW.2	Notice.
8.	Exh.25 & 26/PW.2	Form No. II and III.
9.	Exh.27/PW.2	Memorandum Panchanama.
10.	Exh.28/PW.2	Notice of sealing of godown of accused.
11.	Exh.29/PW.2	Form No. VI.
12.	Exh.30/PW.2	Forwarding letter.
13.	Exh.31/PW.2	Acknowledgment Receipt.
14.	Exh.32/PW.2	Report.
15.	Exh.33/PW.2	FIR.
16.	Exh.34/PW.2	Notice to accused regarding doing business without legal permit.
17.	Exh.35/PW.2	Report of public analyst through designated officer.
18.	Exh.36/PW.2	Food analysis report.
19.	Exh.37/PW.2	Report under Section 47 (4) to designated officer by informant (PW.2)
20.	Exh.38/PW.2	Order of destroying seized Muddemal.
21.	Exh.39/PW.2	Permission of destroying seized Muddemal in Dubbing Yard.
22.	Exh.40/PW.2	Proposal for forwarding for permission to prosecute accused to designated officer by informant (PW2)
23.	Exh.41/PW.2	Proposal for prosecution by

		designated officer.
24.	Exh.42 & 43/P.W.2	Letter for submitting sanction order and sanction order.
25.	Exh.44/P.W.2	Notification of prohibited foods of Maharashtra Government dated 15.07.2020.

B- Defence :-

<u>Sr. No.</u>	<u>Exhibit Number.</u>	<u>Description.</u>
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C- Court Exhibits :-

<u>Sr. No.</u>	<u>Exhibit Numbers.</u>	<u>Description.</u>
1.	Exh.6	Charge
2.	Exh.7	Plea of accused
3.	Exh.54	Statement of accused u/s 313 of Cr.P.C.

B- Material Objects :-

<u>Sr. No.</u>	<u>Material Object Number.</u>	<u>Description.</u>
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Place : Gondia.

Date : 29/04/2026.

Sd/-
(A. C. Khurana)
Additional Sessions Judge,
Gondia.

CERTIFICATE

I affirm that, contents of this PDF file Judgment/order are same, word to word, as per the original Judgment /order.

Name of the Stenographer	Monika Sharad Marathe
Name of the Judge	A. C. Khuarana
Name of the Court	District Judge – 4 and Addl. Sessions Judge, Gondia.
Date of Pronouncement	29.04.2026.
Judgment typed on	29.04.2026.
Judgment/Order signed on	29.04.2026.
Judgment Order Uploaded on	29.04.2026.