

CNR No.MHJN010006892025

CNR No.MHJN010006892025 	Presented on : 06.03.2025 Registered on : 10.03.2025 Decided on : 25.06.2026 Duration : Y M D <u>01 03 19</u>
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Exh. No.27

Part “A”
IN THE COURT OF DISTRICT JUDGE-8 AND ADDITIONAL SESSIONS
JUDGE, JALNA.

(Presided over by G.R. Dhepe)

[Date of Judgement : 25-06-2026]

Sessions Case No. 40 of 2025

(Cr. No. 115/2023, Police Station – Sadar Bajar, Jalna, Dist. Jalna)

Prosecution : The State of Maharashtra

Represented by : Mr.B.K. Khandekar, APP for the State.

VERSUS

ACCUSED : Atul Laxminarayan Choundiye
Age – 21 years, Occ. Business,
R/o. Shola Chowk, Naya Bajar,
Jalna, Tq. & Dist. Jalna.

Represented by : Mr. S. Sharekh, Advocate for accused.

Part-B

Date of Offence	13.02.2022
Date of FIR	14.02.2022
Date of Framing of Charges	07.08.2025
Date of commencement of evidence	16.10.2025
Date on which judgement is reserved	Nil

CNR No.MHJN010006892025

Date of the Judgement	25.06.2026
Date of the Sentencing Order, if any	Nil.

Accused Details

Name & Rank of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Benefit of Section 428, Cr.P.C.
1) Atul Laxminarayan Choundiye	14.02.23	16.02.23	Sec. 328, 273, 188 of I.P.C. and under Sec. 59 of Foods Safety Act	Acquitted.	Nil.	Nil.

Part 'C'

(List of Prosecution/Defence/Court Witnesses)

A. Prosecution :

Rank	Name	Nature of Evidence
PW-1	Anil Prabhu Chavhan	Panch Witness of Spot inspection
PW-2	Prashant Suresh Ajinthekar	Food Safety officer / informant
PW-3	Rajendra Chaganrao Wagh	Police officer / witness
PW-4	Subhash Tukaram Pawar	Police officer / witness
PW-5	Imran Khan Jabidlakhan	Panch witness of Seizure inspection
PW-6	Udhav Vitthalrao Chavhan	Investigation officer

B. Defence Witnesses, if any :

Rank	Name	Nature of Evidence
Nil	Nil	Nil

C. Court witnesses, if any :

Rank	Name	Nature of Evidence
Nil	Nil	Nil

CNR No.MHJN010006892025

List of Prosecution/Defence/Court Exhibits

A. Prosecution :

Sr.No.	Exhibit Number	Description
1.	P-1/PW-1	Spot Panchanama
2.	P-1/PW-2	Complaint
3.	Article A	Letter to C.A.
4.	P-2/PW-2	C.A. report
5.	P-1/PW-3	Seizure Panchnama
6.	P-2/PW-3	Letter to food safety officer
7.	P-1/PW-6	Arrest panchanama

B. Defence :

Sr.No.	Exhibit Number	Description
Nil	Nil	Nil

C. Court Exhibits :

Sr.No.	Exhibit Number	Description
Nil	Nil	Nil

D. Material Objects :

Sr.No.	Exhibit Number	Description
Nil	Nil	Nil

J U D G M E N T

(Delivered on 25th day of June, 2026)

The accused is facing trial for the offences punishable under Sec.

CNR No.MHJN010006892025

328, 273, 188 of I.P.C. and under Sec. 59 of Foods Safety Act.

2] The case of the prosecution can be summarized as under :

The informant namely Prashant Suresh Ajintheekar, Food Safety Officer working in Food and Drugs department, Dist. Jalna received an information from R.C. Wagh, PSI, Sadar Bajar Police Station that, on Dt. 13/02/2023 police officials had effected raid on M/s. Choundiye, Dana Bajar, Jalna and apprehended accused namely Atul Laxminarayan Choundiye with prohibited articles i.e. Goa 1000 Red, Goa 1000 purple, Raj Niwas, XL 01, Wani Tobacco, Gold 1000 Gutkha, Miraj Tobacco, Hira Gutkha, Baba 160 Tobacco, Pan Parag Pan Mhasala, Baba Black Tobacco, Rajnigandha, RMD, M Tobacco, Baba 120 Tobacco and Ratna 300 Tobacco. Therefore, informant on Dt. 14/02/2023 went to the police station. There police shown him spot and seizuire panchanama and asked accused about the seizure of prohibited articles from his custody, to which accused accepted the fact. The informant verified the seized muddemal and it was worth of Rs. 95,387/-. Thereafter informant reserved one packate of each prohibited muddemal for analysis. He lodged FIR against accused for offences under Sec. 328, 273, 188 of I.P.C. and under Sec. 59 of Foods Safety Act. Upon which Sadar Bajar police station, Jalna registered crime No. 115/2023 against accused for the aforesaid offences.

3] The investigation was handed over to PSI/ Shri U.V. Chavhan. He arrested the accused. On next date, he visited the place of incidence and drew spot panchanama before panchas. He recorded statement of witnesses

CNR No.MHJN010006892025

and after completion of investigation, filed charge-sheet against the accused.

4] As per order below Exh. 01 in RCC No.1095/2023 dt. 17/02/2025 the Ld. C.J.M. Jalna has committed this case to this Sessions Court, Jalna. After considering material in the charge-sheet and Ld. lower Court's record, my predecessor have framed Charge for the offences punishable U/Sec. 328, 273, 188 of I.P.C. and under Sec. 59 of Foods Safety Act against the accused below Exh.8. The particulars of charge were explained to the accused in vernacular, to which the accused pleaded not guilty and claimed to be tried.

5] The defence of the accused is of total denial. The statement of accused U/Sec. 313 of Cr.P.C. is recorded below Exh. 26.

6] After considering the charge-sheet and oral and documentary evidence, following points for determination arose for my consideration and after appreciating evidence and hearing of learned advocate for accused and learned A.P.P, I have recorded my findings for those points for the reasons to follow :

Sr.No.	Points	Findings
1]	Does the prosecution prove that, on 13/02/2022 at about 19:00 p.m. at M/s. Chaundiya Traders, Danabajar, Jalna you accused adulterated an article of food namely Sitar Gutkha, RMD Gutkha, Goa Gutkha or stupefying thing, or caused the same to be taken with intent to cause hurt to	...No

CNR No.MHJN010006892025

Sr.No.	Points	Findings
	commit or facilitate the commission of the offence and thereby committed an offence punishable under section 328 of the Indian Penal Code, 1860 ?	
2]	does the prosecution further prove that, accused sold or offered for sale or exposed for sell as food an article namely Sitar Gutkha, RMD Gutkha, Goa Gutkha, which had became noxious as food or drink or was in a state unfit for food, and that knowing or having reason to believe that the same is noxious as food and that you thereby committed an offence punishable under section 273of the Indian Penal Code ?	...No.
3]	Does the prosecution further prove that, accused knowing that by an order of Central Government/promulgated by a public servant lawfully empowered to promulgate the same order where under they were directed to obey the above order or taken certain order with certain property in their possession or under their management disobeyed such direction the disobedience of which caused to tended, and thereby committed an offence punishable under section 188 of the Indian Penal Code ?	...No.
4]	Whether the prosecution further prove that, accused sold or offered for sale or exposed for sell as food or drink, and article namely Sitar Gutkha, RMD Gutkha, Goa Gutkha etc., which had became noxious as food or drink or was in a state unfit for food, and that knowing or having reason to believe that the same is noxious as food by virtue of its unhygienic processing or the presence in that article of any harmful substance, and thereby committed an offence punishable under section 59 of Foods Safety Act ?	...No.
5]	What order ?	...As per final order.

CNR No.MHJN010006892025

REASONS

As to Points No. 1 to 4 :-

7] As point No. 1 to 4 are interconnected, therefore in order to avoid repetition of facts and discussion, all points are discussed together.

8] The prosecution has examined PW-3 Rajendra Chaganrao Wagh, PSI is the witness who has effected raid at the shot of accused. He deposed that, they received information on Dt. 13/02/2023 that, there are prohibited articles of Gutkha in the Chaudiya Traders, Dana Bajar, belonging to accused. He along with the other police staff effected raid at the said shop before panchas and found prohibited articles of Gutkha i.e. Goa, Baba, Rajniwas worth of Rs. 95,387/-. He seized the articles in the panchanama before panchas vide Exh. No. P-1/PW-3. On Dt. 14/02/2023 he made correspondence to food safety officer for further action vide letter Exh. No. P-2/PW-3. Thereafter, food safety officer came to police station, verified the muddemal and lodged the FIR.

9] During the cross-examination PW-3 Rajendra admitted that, food safety officer has power to initiate action against the prohibited articles of food. The food safety officer was not present at the time of effecting raid. He stated that, no any complaint received in the police station that, accused sells the prohibited articles or anybody caused harm due to consumption of articles.

10] prosecution witness No. 4 Subhash Tukaram Pawar(Exh. 19)

CNR No.MHJN010006892025

deposed that, on Dt. 13/02/2023 he PSI Rajendra Wagh informed him about sale of prohibited articles stored in the M/s. Chaundiya Traders. Upon information, he along with police constable Shri. Range, Shri. Kawale, along with panchas and other employees went at Dana Bajar, Chaundiya Traders and effected raid at 07.00 p.m. before panchas where they found Pan Masala, 120 Jarda and other Gutkha which seized by the PSI Wagh before panchas.

11] In the cross-examination he is unable to state batch number or manufacturing date of article. He does not know the name of owner of the said place. He stated that, they have not seen permit of the M/s. Traders Shop. He denied that, no any articles seized from custody of accused and false panchanama is prepared.

12] Prosecution witness No. 2 Prashant Suresh Ajinthekar is food safety officer. He deposed that, PSI Wagh informed him about the seizure of Gutkha on Dt. 13/02/2023. On Dt. 14/02/2023, he went to the Sadar Bajar Police Station where he was shown seized articles. Accused was present there. He verified the muddemal and found articles Gutkha, Rajniwas pan masala, Hira Pan Masala, Rajnigandha, RMD pan Masala, Baba Black Tobacco and scented tobacco. He noticed seized articles are harmful to the health of human. He took one sample for analysis and lodged report Exh. No. P-1/PW-2. He sent letter for analysis and received C.A. report Exh. No. P-2/PW-2.

CNR No.MHJN010006892025

13] During the cross-examination, he admitted that, after following all procedure action is required to be taken. He admits that, he himself did not effected raid on the accused and no any samples were taken from the spot of incidence. He admitted that, after receipt of C.A. report for launching prosecution against him, sanction of the food safety commissioner is required to be taken. He denied that, without following due procedure under the provisions of Food Safety Act registered false crime.

14] prosecution witness No. 1 Anil Prabhu Chavhan (Exh.12) who is Panch Witness and he deposed that, he along with another panch Sayyad Chand went to police station and met PI Chavhan who took them at the shop of Atul Choundiya. Shri. Bhutekar prepared spot Panchanama after opening the shutter of shop. However in cross-examination he stated that, before proceeding for panchanama, no any entry was effected in the movement register of the office. He did not seized the liscence of the shop or documents of ownership of shop. Be that as it may be, the panchanama Exh. P-1/PW-1 is prepared by U.V. Chavhan. However the witness is stating that, it is prepared by Bhutekar Saheb. Shri Bhutekar is not examined in the case. Therefore it creates doubt whether panchanama is prepared before him or not.

15] prosecution witness No. 5 Imran Khan Pathan (Exh. 21) stated that, he does not know anything about the panchanama. The Ld. APP put him leading questions but he denied that, police seized articles of Gutkha from the Chaudiya Traders under panchanama before him. Thus the seizure

CNR No.MHJN010006892025

of articles is not duly proved in the evidence of panch witness.

16] Thus the police witnesses have stated that, they have effected raid at the Chaundiya traders belonging to accused at Dana Bajar and seized Gutkha articles from the said shop. However the recovery of prohibited food articles is not duly proved through the evidence of independent witnesses. It is admitted fact that, the informant who is food safety officer was not present at the time of effecting raid at the said place. The defence of the accused from the cross-examination reveals that, police authorities have no power to effect or seize the prohibited articles of Gutkha and said powers are vested with food safety officer. It is submitted that, police have initiated action against the accused without any authority.

17] In the present case, it is to be analyzed as to whether the prosecution is justified in invoking sections 328, 188 and 273 of the IPC vis-a-vis the facts involved. Moreover, it is also to be seen as to whether the prosecution succeeds in proving the guilt of the accused for the offence punishable under Section 59 of the FSSA. In this regard, the Ld. APP submits that, prosecution has led cogent and reasonable evidence to invoke the penal provisions. He also argued that the police can investigate and launch simultaneous prosecution under the IPC and FSSA. Ld. Advocate representing the accused sought to contend that, the launching of prosecution under the sections of the IPC is untenable in the eyes of law. Moreover, the invocation of the sections under the FSSA is not justified owing to the possession of the allegedly prohibited food articles being not

CNR No.MHJN010006892025

proved by evidence of independent witnesses.

18] In the present case, prosecution has been launched by the police department under the Sections IPC and that of the FSSA. The Food Safety Officer or any authority were not present at the time of effecting raid and they were informed on the next date, after raid being conducted.

19] In view of ingredients of Section 328 of the IPC are concerned, there need to have an intent and knowledge to administer to or cause to be taken any poison or alike thing to cause hurt to such a person. It means that there must be an intent to cause hurt or to have knowledge of the fact that such administration or caused it to be taken will lead to causing a hurt. In the case in hand, the prosecution witness has testified that there is no complaint received in the Police Station against the accused with regard to he forcibly administering the stuff to anyone leading to suffer poisoning. It goes to show that the intent or knowledge part and, more particularly the administration part of poison or any stupefying, intoxicating or unwholesome drug is missing in the present case. Mere invocation of Section 328 without there being fundamentals being present of the said section would be of no avail. Even for a moment, it is assumed that the accused was found in possession of the prohibited food articles, however, its further forward movement i.e. administering the same in a manner as sought to be reckoned as an offence under Section 328 has not been proved. Not a singular act/instance has been attributed in this regard to the accused. As far as section 188 of the IPC is concerned, it speaks volume about

CNR No.MHJN010006892025

disobedience of an order promulgated by a public servant, which if causes or tends to cause obstruction, annoyance or injury, or risk of it or tends to cause danger to human life, health or safety. In the present case the prosecution has alleged the storage of prohibited food article by the accused. The said section refers the word causes or tends to cause and it doesn't refer the terminology likely to cause. It means that the prosecution has to lead a positive evidence indicating thereby the danger being caused to human life by virtue of disobedience of the promulgated order, if any.

20] In the case of ***Anand Ramdhani Chaurasia and oths. Vs. State of Maharashtra***, 2019 All MR (Cri) 4402. The Hon'ble High Court in the said judgment observed thus;

“The FIR lodged against the Petitioners alleges only storage. Undisputedly, there is a disobedience of an order which prohibits storage of tobacco, Pan Masala and Gutka. Far away Nothing in the FIR attribute any other act to the Petitioners viz. manufacture, distribution or sale. Disobedience of the promulgated order under Section 188 of the IPC is punishable if it causes or tends to cause danger to human life. The section do not use the term 'likely to cause', conveying that there has to be a positive evidence of causing or tends to cause danger to human life and in absence, Section 188 is not attracted. It is not in doubt that the tobacco and its products are dangerous to human life and safety. However, mere possession or storage cannot fall within the purview of 'Danger'

CNR No.MHJN010006892025

contemplated under the said section. The goods, as long as they remain stored, do not pose any danger. The goods will have to be moved beyond the store to be sold - ' to be purchased for consumption' and mere storing a food item would not pose the intended danger to human life. The gap between the storage and the consumption by a consumer will have to be bridged before the danger or the hurt contemplated under Sections 328 and Section 188 of the IPC get attracted and it is only when the prosecution proves that it is the Petitioners who are the one who did it, their prosecution would be a success.”

21] These observation of the Hon'ble High Court can be stretched further vis-a-vis the applicability of Sections 272, 273 of the IPC which also speak of sell, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food and drink. It means that likewise to make applicable section 328 of the IPC, section 273 also needs the further act than mere storage of the food article. The section warrants sell, or offers or exposes for sale the food article which has become noxious. Similar analogy can also be invoked with regard to section 272 of the IPC also. It also requires a further forward action or movement. As such, for want of the necessary ingredients in the form of evidence to attract sections 328, 272, 273, 188 of the IPC, the criminality attributed against the accused cannot be said to be proved.

CNR No.MHJN010006892025

22] In the case of **Ram Nath Vs. State of Uttar Pradesh, Cri.M.A> 472/2012 Dt. 21/02/2024** Hon'ble Apex Court while interpreting the overriding effect of Section 59 of the FSSA Act over the presence of Sec. 272 and 273 of IPC concluded as under-

“Thus, there are very exhaustive substantive and procedural provisions in the FSSA for dealing with offences concerning unsafe food. In this context, we must consider the effect of Section 89 of the FSSA. Section 89 reads thus: “89. Overriding effect of this Act over all other food related laws.— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect of virtue of any law other than this Act.” The title of the section indeed indicates that the intention is to give an overriding effect to the 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 the 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 the FSSA over any other law. The settled law is that if the main Section is unambiguous, the aid of the title of the Section or its marginal note cannot be taken to interpret the same. Only if it is ambiguous, the title of the section or the marginal note can be looked into to understand

CNR No.MHJN010006892025

the intention of the legislature. Therefore, the main Section clearly gives overriding effect to the provisions of the FSSA over any other law in so far as the law applies to the aspects of food in the field covered by the FSSA. In this case, we are concerned only with Sections 272 and 273 of the IPC. When the offences under Section 272 and 273 of the IPC are made out, even the offence under Section 59 of the FSSA will be attracted. In fact, the offence under Section 59 of the FSSA is more stringent.

The decision of this Court in the case of Swami Achyutanand Tirth 2 does not deal with this contingency at all. In the case of the State of Maharashtra, the question of the effect of Section 97 of the FSSA did not arise for consideration of this Court. The Court dealt with simultaneous prosecutions and concluded that there could be simultaneous prosecutions, but conviction and sentence can be only in one. This proposition is based on what is incorporated in section 26 of the GC Act. We have no manner of doubt that by virtue of Section 89 of the FSSA, Section 59 will override the provisions of Sections 272 and 273 of the IPC. Therefore, there will not be any question of simultaneous prosecution under both the statutes.”

23] In this backdrop, as Section 59 of the FSSA Act, having an overriding effect and more stringent than section 273 of the IPC, the

CNR No.MHJN010006892025

prosecution under the IPC and FSSA sections would not go simultaneous. A step further to this legal mandate, it will have to be stretched beyond to reckon section 59 of the FSSA to have overriding effect over section 328 of the IPC also.

24] As far as applicability of section 26 (2)(iv) of FSSA, the enforcement of the Act has been contemplated under Chapter VII and Section 29 deals with this aspect in particular. The authorities which are responsible for enforcement of the Act has been indicated in section 29. The food authority and the state food safety authorities are entrusted with the responsibility for the enforcement of the FSSA. As this court has held the invocation of the IPC sections to be untenable in the wake of the overriding effect of section 59 of the FSSA, the prosecution to the extent of the IPC sections needs to fail. Now the remainder section is section 59, regarding which the enforceability has been entrusted to the food authority and the State Food Safety Authorities. Since, the present prosecution has not been launched by the said authority/ies, by way filing a complaint, the prosecution under section 59 also fails.

25] Even otherwise also, the alleged storage of prohibited food articles has not been proved at the hands of an independent person, though available in the vicinity Apart from it, the seizure of the stuff has not been proved at the hands of panch witness examined by the prosecution. As such, the said seizure cannot be said to be free from doubt. In all, in the wake of the legal principles laid down in the judgments of Anand Ramdhani

CNR No.MHJN010006892025

Chaurasia (referred supra) and Ram Nath (referred supra), the invocation of the IPC sections and FSSA section becomes untenable in the eyes of law. As such, the prosecution has failed to prove the guilt of the accused vis-a-vis accusation. Hence, points no. 1 to 4 are answered in the negative.

As to Point No. 5 :-

26] In view of findings to above points, the prosecution is failed to prove guilt of the accused beyond all reasonable doubt. He deserves to be acquitted. Hence, I pass following order :

	<u>ORDER</u>
1.	The accused Atul Laxminarayan Chaundiya is hereby acquitted under Sec.235(1) of Cr.P.C. of the offences punishable under Sec. 188, 273, 328, of I.P.C. and under Sec. 59 of Foods Safety Act.
2.	The personal bond and surety bond of the accused are hereby discharged.
3.	Accused is hereby directed to furnish the surety and personal bond of Rs.50,000/- under Sec.437-A of Cr.P.C. with a direction to appear before the Higher Court in respect of any appeal or petition filed against this judgment and such bail bonds shall be enforced for six months from the date of this order.
4.	The muddemal property being worthless, if any be disposed off after appeal period is over.

(G. R. Dhepe)
District Judge -8 &
Additional Sessions Judge,
Jalna.

Dated : 25.06.2026.

CNR No.MHJN010006892025

CERTIFICATE.

I affirm that the contents of this P. D. F. file of judgment are word to word, as per original judgment.

Sd/-xxxx

(Akshay I. Deshpande)
Stenographer (Gr.III)