

MHLA010005382025



ORDER BELOW EXH.8 IN SESSIONS CASE No.41/2025

State Vs. Shrirang

This is an application preferred by the accused praying to discharge him from offences punishable under Sections 123, 274, 275, 223 of the Bharatiya Nyaya Sanhita, 2023 alongwith Section 59 of the Food Safety and Standards Act.

2. The brief case of the accused that he has been prosecuted for the offence punishable under Sections 123, 274, 275, 223 of the Bharatiya Nyaya Sanhita, 2023 on the accusation that he was caught hold by the Police inspector of Local Crime Branch, Latur, while he was travelling through his scooty. The prosecution levelled false allegations that he was transporting the contraband food articles that Vimal Pan Masala and Tobacco worth Rs.7,200/-.

3. The accused has challenged the prosecution of the alleged offence, contending that, firstly, the entire investigation was carried out by police officials who are not the competent authority under the Food Safety and Standards Act; therefore, the prosecution is nothing but an abuse of the process of law. Secondly, the accused contends that the prosecution for offences under Sections 123, 274, 275, and 223 of the BNS is not sustainable because merely possessing contraband articles does not amount to the administration of a poisonous substance, and contravention of an order promulgated by a public servant cannot be prosecuted without a complaint by the said public servant. Accordingly, the accused prayed to discharge him from all the offences.

4. The prosecution contested the application by filing its say below Exh.9. It is the case of the prosecution that the allegations levelled against the accused are completely supported by the evidence collected by the investigating officer. The facts and evidence brought on record prima facie revealed the commission of the alleged offence and therefore, there is no reasonable ground to doubt the prosecution. Accordingly, prosecution prayed to reject the application.

5. Considering the application and say, the following points arise for my consideration. The points, my findings, and reasons are given below.

<u>SR.No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the accused has proved that the allegations made against him could not be proved from the material placed on record by the prosecution ?	Partly Affirmative.
2	What order ?	As per final order

REASONS

6. Heard the learned advocate of the accused. The learned advocate drawn attention over the final report submitted by the investigating officer and supported the statement of witnesses relied by the prosecution. The learned advocate, in his arguments, compared the ingredients of Sections 328, 188, 272, and 273 of the Indian Penal Code, which are *pari materia* with

Sections 123, 223, 274, and 275 of the B.N.S. It is submitted by the learned advocate that from the case of the prosecution, it can be said that the accused was found possessing alleged articles which are declared as contraband articles but there is no supportive evidence to show that whatever articles were alleged to be found with the accused are tested and declared as contraband. Further he submitted that to prove the offence under Section 123 of the B.N.S. the prosecution ought to have placed on record material evidence to show that there was intention of knowledge on the part of the accused to administer the alleged contraband material to a third person. Mere material showing possession of contraband articles would not prove *ipso facto*. The intention or knowledge required to be proved for the offence under Section 328 of the Indian Penal Code corresponding to Section 123 of the Bharatiya Nyaya Sanhita. Further, he submitted that if the material placed on record by the prosecution is taken into consideration then it fails to show at prima facie state that an order was promulgated by public servant which was alleged to be disobeyed by the accused and the said public servant or his higher officer to whom his subordinate has filed written complaint. Therefore, on all above grounds the learned advocate prayed to discharge the accused.

7. Per contra, the learned APP argued that as per the final report submitted by the investigating officer, there is sufficient material to prima facie show the commission of the alleged offence. Therefore, it would be premature to set the accused free

without facing trial. The learned APP further argued that the accused has failed to show that subjecting him to the trial would amount to an abuse of process of law, meaning thereby that there is no absolute material placed on record to show the alleged offence being committed by the accused. Therefore, the learned APP prayed to reject the application.

As to Point Nos.1 and 2:-

8. Having heard the arguments of both the sides and taking into consideration the provision of law regarding the discharge of the accused. Basically, this Court is required to consider whether the alleged grounds are baseless and there is no prima facie substance in the case of prosecution. It is trite law that while considering the application of discharge the scope of evaluation is limited. The Court is required to scrutinize the material placed on record only with a view to consider whether the accusation is completely baseless.

9. In the present case the accused is facing charges regarding commission of offence under Sections 123, 274, 275, 223 of B.N.S. along-with offence under Section 59 of the Food Safety and Standards Act. Admittedly, the scheme of prosecution under the offence provided in the Food Safety and Standards Act, The Food Inspector appointed under the act has to initiate the prosecution after availing the report of Food analyzer. While to initiate the prosecution under the I.P.C. or B.N.S. the Police officials has to consider the First Information Report and conduct the investigation. Admittedly, in the present case the prosecution is

initiated by the police officials. Here, if the FIR dated 24/09/2024 filed by informant Police Head Constable Mohan Surwase is considered then it shows that the accused was apprehended when he was transporting the contraband articles and after seizure of those contraband articles. The informant was informed by the Food Safety Officer that the further action and investigation could carry out by the police officials. Therefore, prima facie this circumstance show that the concern Food Safety Officer was aware about his authority to take action but the said authority seems to be delegated to the Police officials. Hence, taking into consideration this aspect and without considering the evidence about delegation, it could not be straightly said that the concerned police officials was not having authority to take the action and investigate the offence. Undoubtedly, as per the scheme of the B.N.S.S., police officials are authorized to take action and investigate offences provided under the BNS or the IPC. Therefore, I find that the ground raised by the accused about unauthorized prosecution is devoid of merit.

10. To buttress his submissions the learned advocate relied on the decision of Hon'ble Kerala High Court in the case of *Sajith Vs. State of Kerala, Cri.Rev. Pet.No.879/2024*. The learned advocate submitted that as per this decision the Court while considering the application for discharge has to consider whether there are sufficient grounds to proceed further or not. I do agree with the submissions and therefore, to decide the present application this Court has to consider whether there are sufficient

grounds to proceed against the accused. Prima facie material placed on record shows that the accused was apprehended while possessing the contraband articles. Whether those articles and act of possessing the articles would come under the purview of alleged offence under Section 123 of B.N.S. It is necessary to consider the entire evidence which would come before the Court during the trial. Therefore, relying upon this decision of Hon'ble Kerala High Court (cited supra) it can be said that while considering the application for discharge the Court has to consider the material and if the Court comes to the conclusion that prima facie there is no sufficient ground for proceeding against the accused then and then only the Court can discharge the accused.

11. The learned advocate of accused relied upon the decision of the Hon'ble Supreme Court of India in the case of *Ramnath Vs. The State of Uttar Pradesh & Ors. Cri.Appeal No.472/2012*. In this decision the consideration before the Hon'ble Supreme Court was about the interplay between the provisions of Chapter IX of the Food Safety and Standards Act and Section 272 and 273 of the I.P.C. The Hon'ble Apex Court while deciding this issue has taken into consideration the Sections incorporated in Chapter IX of the Food Safety and Standards Act and Sections 272 and 273 of the IPC and also considered the scheme of the Food Safety and Standards Act and held that the offences under the Food Safety and Standards Act will have precedents over the similar offences relating to food in other laws. Here, it is pertinent to note that the Hon'ble Apex Court took into consideration the

Section 89 of the Food Safety and Standards Act, which provides overriding effect of the act over all other food related laws and it is further observed that when the offence under section 272, 273 of IPC are made out even though offence under Section 59 of the Food Safety and Standards Act, will be attracted and the offence under Section 59 of the Food Safety and Standards Act, is more stringent. Finally, the Hon'ble Apex Court held that "we have no manner of doubt that by virtue of Section 89 of the Food Safety and Standards Act, Section 59 will override the provisions of Sections 272 and 273 of IPC. Therefore, there is no any question of simultaneous prosecution under both the statute."

12. Accordingly, in the case on hand, the corresponding Sections in BNS have been invoked i.e. Section 274 and 275 of BNS. Therefore, in view of this decision, when Section 59 of the Food Safety and Standards Act is invoked, at that time the simultaneous prosecution under Section 272 and 273 of the IPC corresponding to Section 274 and 275 of the BNS, will not lie. Hence, in view of this decision the claim of accused that the prosecution under Section 59 of the Food Safety and Standards Act, will not simultaneously lie with sections 274 and 275 of the BNS is acceptable.

13. To support his claim that the prosecution under section 328 of the IPC corresponding Section 123 of the BNS is not attracted, the learned advocate of accused relied upon the decision of Hon'ble Bombay High Court in the case of *Anand Ramdhani Chaurasia Vs. The State of Maharashtra & Ors, Cri. Writ Petition*

No. 3607/2019, Mohammed Sahil Vs. State of Maharashtra, Cri. App. No.198/2024 and HLA SHWE Vs. State of Maharashtra, Cri.Appl.No.453/2020. The Hon'ble Bombay High Court has not dealt with the provisions under Food Safety and Standards Act but has dealt with the offences punishable under Foreigners Act, Epidemic Disease Act and Disaster Management Act. The Basic grievance of the accused in the present case is non attractions of offences under Section 123 of the BNS and therefore, this decision of Hon'ble High Court is not applicable to the case on hand.

14. In the case of Mohammed Sahil and Anand Ramdhani Chaurasia (cited supra), the Hon'ble High Court in the case of HLA SHAW (cited supra) dealt with the applicability of Sections 188, 273 and 328 of the IPC, in the backdrop of offences of transportation or possession of contraband food articles like Guthka Pan Masala when the offences under Section 59 of the Food Safety and Standards Act, came into play. As already considered, in view of decision of Hon'ble Supreme Court in the case of Ramnath (cites supra), Section 89 of the Food Safety and Standards Act, gives overriding effect over the other laws, wherein the said laws are related with food.

15. Therefore, when the prosecution is charging the accused under Section 59 of the Food Safety and Standards Act, the provisions of Section 274 and 275 of the BNS will get attracted but no simultaneous prosecution would lie. Therefore, in view of decision of Hon'ble Apex Court the findings of the Hon'ble High

Court with respect to non applicability of simultaneous prosecution are applicable.

16. In the case of Anand Ramdhani Chaurasia (cited supra) the division Bench of the Hon'ble Bombay High Court has held that the act of mere storage, without any further action, and on contemplation that it would be sold in the market brought by the person from the market and consumed by him is too far fetched consequences of an act of 'administering' or 'causing to be taken' contemplated under section 328 would not attracted. Therefore, the Hon'ble High Court further held that the provision of Section 328 and 188 of the IPC, could not be attracted and therefore, the Hon'ble High Court discharge the accused. In the present case, the same situation has arisen as the prosecution has alleged the commission of offences under Sections 123 and 223 of the BNS, which are corresponding to Sections 328 and 188 of the IPC. But in the appeal preferred by the State of Maharashtra against the order of Division Bench before the Supreme Court of India in Spl. Leave Petition (Cri.) No.4101/2020, the Hon'ble Apex Court has stayed the operation of the judgment passed by the Hon'ble Division Bench of the Bombay High Court and therefore, the finding of the Hon'ble High Court is sub-judice before the Apex Court. The ratio laid down in the case of Anand Ramdhani Chaurasia is not applicable. Hence, I find that except the offences under Section 123 of the BNS the other offences i.e. offences under Section 223, 274 and 275 of the BNS, cannot be simultaneously prosecuted alongwith section 59 of the Food

Safety and Standards Act. Admittedly, the offence under Section 223 of the BNS is also not applicable because the compliance of Section 195 of Cr.P.C. corresponding to section 215 of BNSS is not complied.

17. Considering all above discussion, I find that after scrutiny of material placed on record except offences under Section 123 of BNS and Section 59 of the Food Safety and Standards Act, no other offences would get attracted and therefore, this application is required to be partly allowed. Accordingly, I answer Point No.1 in the affirmative and in answer to Point No.2 I proceed to pass following order.

ORDER

1. The application is partly allowed.
2. The accused Shrirang Madhukar Niture is hereby discharged from offences under Section 223, 274, 275 of the Bharatiya Nyaya Sanhita, 2023.
3. The accused shall make himself available on next date for framing of charge under section 123 of the Bharatiya Nyaya Sanhita, 2023 and Section 59 of the Food Safety and Standards Act.

Date-01/04/2026

(P. P. Kestikar)
Additional Sessions Judge,
Latur.