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**Sessions Case No.08/2020**

**CNR No.- MHRG010002912020**

**Exh.No. 52 /**

**Part 'A'**

	<p><b><u>IN THE COURT OF ADDITIONAL SESSIONS JUDGE, ALIBAG, AT-ALIBAG, DISTRICT- RAIGAD.</u></b></p> <p>Present : S.D.Bhagat, Additional Sessions Judge. ( 30/09/2025 ) <b>(Sessions Case No.08/2020)</b></p>
	(FIR No.09/2019, U/s. 328, 272, 273, 188 of the Indian Penal Code, Police Station, Alibag)
COMPLAINANT	<b>STATE OF MAHARASHTRA,</b> Through Police Station Alibag, Tal-Alibag, Dist-Raigad.
PRESENTED BY	Smt.Dhumal/Smt.Rathod Learned A.P.P. for the State.
ACCUSED	<b>Shahajad Sarvar Ali Shaikh</b> Age.35 years, R/o.Alfalah Apartment, Tal.Pen Dist.Raigad.
REPRESENTED BY	Advocate Shri.M.B.Desale for accused No.2

**Part 'B'**

Date of offences	12/01/2019
Date of FIR	13/01/2019
Date of Charge-sheet	20/02/2020
Date of Framing of Charges	27/09/2024
Date of commencement of evidence	24/04/2025
Date on which judgment is reserved	26/09/2025
Date of the Judgment	30/09/2025
Date of the Sentencing Order, if any	N.A.

**Accused Details**

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on bail	Offences charges with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial of purpose of Section 428, Cr.P.C
	<b>Shahajad Sarvar Shaikh</b> Ali	14-01-19	05-02-19	328, 272, 273, 188 of the Indian Penal Code.		--	22 days

**Part 'C'****A. Prosecution :**

RANK	NAME	NATURE OF EVIDENCE
PW-1	Mitesh Vilas Mhatre -Exh.28	Complainant
PW-2	Rajesh Bhanudas Gharat -Exh.34	Panch Witness
PW-3	Aabasaheb Hariba Kolekar -Exh.40	Panch witness

PW-4	Dainik Madhukar Patil -Exh.-43	Witness
PW-5	Sagar Shivaji Kawale- Exh.46	I.O

**B. Defence Witnesses, if any :**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS
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**C. Court Witnesses, if any :**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS
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**List Of Prosecution/Defence/Court Exhibits**

**A. Prosecution**

Sr.No.	Witness No.	Exhibit No.	Description
1.	P.W.1	29	FIR
2.		30	Printed FIR
3.	P.W2	35	Letter dt.15-01-2019
4.		36	Motorcycle seized panchanama
5.		37	Tempo seized panchanama
6.	P.W.3	41	Seizure panchanama
7	P.W.5	47	Muddemal receipt
8		48	Muddemal receipt

9		49	Muddemal receipt
10		50	Letter dt.21-01-2019

**B. Defence :**

Sr.No.	Exhibit Number	Description
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**C. Court Exhibits :**

Sr.No.	Exhibit Number	Description
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**D. Material Objects :**

Sr.No.	Material Object Number	Description
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**JUDGMENT**

( Delivered on 30/09/2025)

**Introduction :-**

The trial continues against Accused No.2; for Accused No.1 the case remains pending on the “file of absconding accused.”

**02.** The present judgment concerns the trial of Accused No.2, Shahajad Sarvar Ali Shaikh. Originally, both accused were jointly tried in this case for offences punishable under Sections 328, 272, 273, and 188 of the Indian Penal Code in connection with alleged possession, stocking, and supply of prohibited food

articles, namely gutkha and scented tobacco, at Govindbandar, Alibag.

**03.** During pendency of the trial, Accused No.1 Shamshad Jabbar Khan absconded. Consequently, by order of separation, the trial against him was split and the present proceedings are confined to Accused No.2 alone.

**Prosecution Case in Brief :-**

**04.** On 12.01.2019, API Kawale of Alibag Police Station received secret information that in a room on the ground floor of a building beside the Buddhist Vihara at Govindbandar, prohibited gutkha was stored. A raid was conducted in the presence of panch witnesses. Accused No.1 Shamshad was allegedly found in possession of a large quantity of Vimal pan masala and V-1 scented tobacco. On further questioning, Shamshad allegedly disclosed that additional contraband was concealed at another place, from where more boxes of gutkha and tobacco were seized.

**05.** The prosecution case further alleges that upon interrogation, Shamshad disclosed that the said goods were supplied to him by Accused No.2 Shahajad @ Guddu, resident of Pen. On this basis, Accused No.2 was arrested on 14.01.2019 and charge-sheeted along with Accused No.1.

**Charges :-**

**06.** The following charges were framed against both accused jointly, and now stand against Accused No.2:

1. That on 12.01.2019, at Govindbandar, Alibag, Accused No.1 was found in possession of prohibited food articles (gutkha and scented tobacco) and Accused No.2 had supplied the same, knowing them to be harmful and likely to cause injury to public health, thereby committing an offence punishable under Section 328 IPC.
2. That both accused adulterated an article of food so as to make it noxious, with intent to sell, thereby committing an offence under Section 272 IPC.
3. That both accused sold or offered for sale noxious food articles, thereby committing an offence under Section 273 IPC.
4. That both accused disobeyed orders duly promulgated by public authority prohibiting sale/storage/transport of gutkha, thereby committing an offence under Section 188 IPC.

Accused No.2 pleaded not guilty and claimed trial.

**Split of the Trial :-**

07. If Accused No.1 is absconding despite coercive process (NBW, proclamation u/s 82 CrPC, attachment u/s 83 CrPC), the Court should pass a separation order under Section 317 CrPC (read with inherent powers) to proceed with the available accused (No.2).

**Evidence Led :-**

**08.** To bring home the charges, the prosecution examined several witnesses, both official and panch, and also placed reliance on the documentary record of seizure, forwarding of samples, and case papers. The oral evidence, when marshalled in sequence, is as follows:

**PW-1 Mitesh Vilas Mhatre (Police Naik, B.No.2320) :-**

**09.** This witness was part of the raiding party. He deposed that on 12.01.2019, API Kawale summoned him and others, informed them of secret information, and directed them to prepare for a raid at Govindbandar. Along with other staff and panchas, he proceeded to the spot. In a room near the Buddhist Vihara, Accused No.1 Shamshad was found present. On search, several packets of Vimal pan masala and V-1 scented tobacco were recovered. The contraband was seized under panchnama, samples were drawn, and signatures of panchas were obtained. PW-1 further stated that on questioning, Shamshad revealed that he had concealed more stock at his residence. Accordingly, additional seizure was effected from his house, consisting of large quantities of Rajnigandha pan masala, RMD masala, M scented tobacco, and other brands. Importantly, PW-1 deposed that Shamshad disclosed that the goods were supplied by one Shahajad @ Guddu (Accused No.2). On that basis, FIR was registered at his instance (Exh.29).

**10.** During cross-examination, PW-1 admitted that no contraband was seized from Accused No.2, and his name

surfaced only through Shamshad's disclosure. He denied the suggestion that he falsely implicated Accused No.2.

**PW-2 Rajesh Gharat (Panch witness) :-**

11. He was summoned for drawing panchnamas of vehicles allegedly used in the crime. He testified that the brother of Accused No.1 produced a Hero Honda Splendor motorcycle (MH-06 P 2703), and the brother of Accused No.2 produced a Mahindra Maximo tempo (MH-06 AG 8141), both said to have been used for transporting contraband. The police seized these vehicles under panchnamas in his presence. In cross-examination, he admitted that he had not verified chassis numbers, registration certificates, or ownership details of these vehicles.

**PW-3 Abasaheb Kolekar (Panch witness):-**

12. He accompanied the police during the raid at Govindbandar and supported the seizure from Shamshad. He proved the seizure panchnama (Exh.41). He confirmed that samples were taken and sealed on the spot. In cross-examination, he denied the suggestion that the panchnama was prepared later at the police station.

**PW-4 Madhukar Patil (Police Constable) :-**

13. He deposed about carrying sealed samples to the Food Analyst at Konkan Bhavan on 20.01.2019. He spoke of the station diary entry, the forwarding letter, and receipt from the laboratory clerk. In cross, he was questioned about dates of

diary entries but remained firm that he personally delivered the sealed packets intact.

**PW-5 API Sagar Kawale (Investigating Officer):-**

**14.** This is the main investigating officer. He narrated that on receiving secret information, he organized the raid, found Shamshad in possession of prohibited gutkha and tobacco, seized them, and drew panchnama. He deposed about further recovery from Shamshad's residence. He stated that the FIR was registered on the complaint of PW-1. Accused No.1 was arrested and on his disclosure, Accused No.2 was also arrested the following day. He also proved the panchnamas of seizure of motorcycle and tempo, forwarding of samples for analysis, and deposit of seized property in malkhana. He identified both accused in Court.

**15.** In cross-examination, PW-5 conceded that apart from the statement of Shamshad, there is no independent material directly linking Accused No.2 to the seized contraband. He admitted that nothing was recovered from Accused No.2 personally, nor from his house or shop.

**16.** The oral evidence thus shows that while seizure from Shamshad is fully proved, the role of Accused No.2 emerges only from Shamshad's alleged statement. No independent corroboration exists.

**Discussion and Appreciation of Evidence :-**

**17.** Having carefully examined the entire oral and

documentary record, the Court must assess whether the prosecution has been able to prove the specific role of Accused No.2 beyond reasonable doubt.

**18.** It is undisputed that large quantities of gutkha and scented tobacco were seized from Accused No.1 Shamshad, both at the Buddhist Vihara room and at his residence. The panchnamas and oral evidence of PW-1, PW-3, and PW-5 consistently prove this seizure. The contraband has been identified, sealed, and sent for analysis. Thus, so far as Accused No.1 is concerned, possession is clearly established. However, in the present separated trial, the Court is concerned only with Accused No.2.

**19.** The entire basis for implicating Accused No.2 is the alleged disclosure by Shamshad to the police that the goods were supplied by Shahajad @ Guddu. PW-1 and PW-5 candidly admit this. However, as a matter of evidence law, such disclosure by a co-accused made to police is inadmissible, except to the limited extent permissible under Section 27 of the Evidence Act, where it leads to discovery of a fact. In the present case, no discovery has been made at the instance of Accused No.2. No recovery was effected from him. No contraband was traced through his information. Therefore, the so-called statement of Shamshad remains hearsay and cannot be relied upon to convict Accused No.2.

**20.** The prosecution attempted to connect Accused No.2 by showing seizure of a Mahindra Maximo tempo, allegedly

used for transporting contraband, produced by his brother. But PW-2, the panch witness, admitted that he did not verify ownership. The vehicle was not seized from Accused No.2's possession or control. No registration documents or RTO extracts were proved. Hence, the alleged link of the tempo with Accused No.2 remains unsubstantiated. The same is true of the Hero Honda motorcycle. Mere production by relatives does not establish involvement in the offence.

**21.** Further, no independent witness has come forward to state that Accused No.2 ever supplied gutkha to Shamshad. No call records, money trail, or surveillance evidence is adduced. The investigating officer himself conceded that except for the statement of Accused No.1, there is no material against Accused No.2. This candid admission goes to the root of the matter.

**22.** Thus, on Point No.1 (Section 328 IPC): There is no evidence that Accused No.2 supplied or administered any substance likely to cause hurt to public. The seizure was from Shamshad alone. Hence, charge fails.

**23.** On Point No.2 (Section 272 IPC): No act of adulteration or mixing by Accused No.2 is proved. He was not found with contraband. Charge fails.

**24.** On Point No.3 (Section 273 IPC): To prove sale or offer for sale, prosecution must show possession with intent to sell. Nothing was recovered from Accused No.2. Charge fails.

25. On Point No.4 (Section 188 IPC): For disobedience of prohibitory orders, physical act of selling or storing contraband is necessary. No such act is attributed to Accused No.2. Charge fails.

26. Thus, all four charges crumble due to lack of admissible, reliable evidence. The prosecution evidence, even if fully accepted, does not establish beyond reasonable doubt that Accused No.2 was in any manner concerned with the seized contraband.

27. In the result, none of the five charges stands proved beyond reasonable doubt against either accused. The benefit of doubt must, and does, go to the accused. Hence I pass following order.

### **ORDER**

1. Accused No.2 **Shahajad Sarvar Ali Shaikh** is acquitted of all offences charged against him namely Sections 328, 272, 273, 188 read with 34 of the I.P.C .

2. Bail bond of accused stands cancelled and surety is discharged.

3. The muddemal property i.e. one Mahindra company Maximo Tempo No.MH-06/AG-8141 be returned to brother of accused no.2. Order regarding seized property Hero Honda MH.06/P-2703 will be passed after concluding trial against accused No.1.

4. The existing bail bonds stand cancelled. However, in compliance with Section 437-A of the Code of Criminal Procedure, accused shall execute bonds in the sum of Rs.15,000/- with one surety to appear before the appellate court as and when required.

5. Proceedings against Accused No.1 shall continue as and when he is apprehended or appears before the Court.”

(Pronounced in open Court on this 30<sup>th</sup> day of September 2025)

Sd/-

Alibag,  
Date:- 30/09/2025.

(S.D.Bhagat)  
Additional Sessions Judge,  
Raigad-Alibag.