



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH: NAGPUR

CRIMINAL APPLICATION (APL) NO. 1776 OF 2025

1. Mohammad Bilal Moammad Yakub,
Aged about 39 years, Occ.-Property Dealer,
R/o. Habib Nagar No.1, Walgaon Road,
Amravati, Distt. Amravati.
2. Mohammad Husain Mohammad Haroon,
Aged about 35 years, Occ.- Labourer,
R/o. Habib Nagar No.1, Near Madina
Masjid, Walgaon Road, Amravati,
Distt. Amravati.

... **APPLICANTS**

...**VERSUS**...

1. State of Maharashtra,
Through Police Station Officer,
Pulgaon Police Station, Wardha,
Distt. Wardha.
2. Food Safety Officer,
Food and Drug Administration (M.S.)
Wardha.

...**NON-APPLICANTS**

Mr. S. A. Mohta, Advocate for Applicants.
Mr. N. B. Jawade, A.PP for Non-applicant/State.

CORAM: MRS. VRUSHALI V. JOSHI, J.
JUDGMENT RESERVED ON: 17.04.2026
JUDGMENT PRONOUNCED ON : 24.04.2026

JUDGMENT: -

1. Heard.
2. **ADMIT.** The matter is taken up for final disposal by consent of
learned Counsel appearing for the parties.

3. On the complaint lodged by Shri Prashant Shivraj Lohar, non-applicant No.1 had registered the Crime No.0647/2023 dated 04.08.2023 for the offences punishable under Sections 188, 269, 270, 272, 273 and 328 of the Indian Penal Code (IPC) along with Sections 26(1), 26(2)(iv), 27(3)(e), 30(2)(a), 3(1)(zz)(iv) and 59 of the Food Safety and Standards Act, 2006 (FSSA).

4. The raid was conducted on receiving information and while searching the house and the premises of accused Ahuja, they found three vehicles parked in front of the house namely, a four wheeler white colour car Maruti Suzuki Wagonor, a four wheeler gray colour car Tata Zest, two wheeler white and parrot colour moped having no registration number. Upon inspection of the said vehicles, the raiding party has found the contraband articles such as scented tobacco and pan masala, which was stored for sale. Upon inquiry, Prem Ahuja and Ramesh Ahuja have disclosed the names of the persons from whom they have procured the contraband substance. In the statement made by the co-accused, the names of the other accused persons are involved.

5. The learned Counsel for the applicants has stated that the names of these applicants are disclosed by the co-accused only on the basis of CDR that the applicants and the accused persons were in contact and that they supplied the contraband. The charge-sheet is filed against these applicants. No recovery was made from the applicants. They were

not present at the spot.

6. The applicants have stated that along with the Food Safety Act, the offences under the IPC are registered against them. According to the applicants, the FSSA is a special law governing food safety. IPC Sections cannot be invoked when the same subject matter is covered.

7. They relied on the judgment of the Hon'ble Apex Court in the case of *Sharat Babu Digumarti Vs. Govt. of NCT of Delhi*, [**AIR 2017 SC 150**], wherein, the Hon'ble Apex Court has stated that, where a special statute specifically governs an offence, the general law cannot be invoked. Once the field is occupied by a special enactment having overriding effect, the offender "gets out of the net of IPC".

8. The learned Counsel for the applicants has relied on the judgment in the case of *Ram Nath Vs. State of Uttar Pradesh and Ors.*, [**(2024) 3 SCC 502**], in which it is observed that, Section 272 IPC requires adulteration with the intention to sell, Section 273 IPC requires sale with knowledge of harmful nature, Section 59 FSSA is broader and applies even without intention, recognizes FSSA as a complete code, Section 89 FSSA as giving overriding effect over all laws, explicitly rules that simultaneous prosecution under IPC and FSSA is not permissible.

In the case of *Mohammed Sahil s/o. Mohammed Rafiq Memon Vs. State of Maharashtra* [**Criminal Application (APL) No.198/2024**] with connected matter, wherein it is held that FSSA overrides IPC, so

Section 273 IPC cannot proceed with Section 59 FSSA, prosecution under FSSA must be by the competent authority. Section 188 IPC is barred by Section 195 of the Code of Criminal Procedure (Cr.PC.) without proper complaint.

9. According to the applicants, the FSSA overrides IPC, prosecution must follow FSSA procedure through the competent authority and liability requires conscious possession.

10. In the case of *Sushil Kumar Gupta Vs. State of West Bengal [Criminal Appeal No.1798/2024]*, wherein Section 59 FSSA is more stringent and comprehensive than IPC provisions. It reiterated that once FSSA applies, IPC provisions become redundant and cannot be simultaneously enforced.

In the case of *Mohammad Asif Haji Hussain Vs. State of Maharashtra and Anr, [Criminal Application (APL) No.879/2024]*, the Bombay High Court relied upon the case of *Ram Nath* and held that, FSSA overrides IPC and prosecution under IPC cannot continue alongside FSSA. Section 59 FSSA requires complaint by competent authority, not merely police.

In the case of *Anil Bhimrao Barange and Anr. Vs. State of Maharashtra and Anr, [Criminal Application No.252/2020]*, wherein this Court clarified ingredients of IPC offences. Section 272 requires adulteration with intention, Section 273 requires sale with knowledge,

Section 328 requires administration of harmful substance. In absence of these, IPC offences cannot stand. It further held that FSSA overrides IPC, and prosecution must proceed under FSSA only.

11. Learned A.P.P. opposed the application stating that the CDR report proves the involvement of the applicants in this case. As per CDR, the applicants were in contact with the accused persons. As the material is available on record, this is not a case to quash the First Information Report.

12. Heard the learned Counsel for the applicants and the learned A.P.P. for the State.

13. It is the case where the names of these applicants are disclosed by the co-accused. There is no material on record except CDR report, which is not sufficient to conclude that any material has been seized from the present applicants in the matter. Therefore, it is clear that, only on the basis of the statement of the co-accused, their names have been added in charge-sheet. After going through the judgments filed by the applicants in support of their argument that, the offences under Sections 272, 273, 328 of the IPC cannot be invoked when same subject matter is covered by the special law. Sections 272, 273, 328 are invoked along with FSSA. Sections 272 IPC requires adulteration along with intention to sell. Section 273 IPC requires sale with knowledge of harmful nature. Section 59 FSSA is broader and applies even without intention.

Therefore, the Sections of IPC are not applicable in this case as the applicants were not found in possession of the contraband and it is not evident from the charge-sheet that there is any material to show that, they were selling the said contraband with knowledge of harmful nature. Accused Nos.1 and 2 were in possession of the contraband and were taken in custody. Prosecution must follow FSSA procedure through the competent authority, and liability requires conscious possession whereas in the case there is no recovery or possession and only indirect evidence, making the prosecution weak and liable for quashing.

14. Considering the observations made by the Hon'ble Apex Court and our Court in above said judgments, Sections of IPC along with FSSA will not be attracted. Hence, the First Information Report, which is registered against the applicants is required to be quashed and set aside subject to costs of Rs.10,000/-. Accordingly, I proceed to pass the following order :

i] The charge-sheet arising out of First Information Report vide Crime No.0647/2023 registered for the offences punishable under Sections 188, 272, 273 and 328 of the Indian Penal Code along with Sections 26(1), 26(2)(iv), 27(3)(e), 30(2)(a), 3(1)(zz)(iv) and 59 of the Food Safety and Standards Act, 2006 (FSSA) and Sessions Case No.71/2025 pending before the Additional Sessions Judge,

Wardha are quashed and set aside against these applicants only subject to their depositing costs of Rs.10,000/- each with the Public Welfare Account maintained with Union Bank of India, High Court Branch, Civil Lines, Nagpur bearing Account No.129712010001014 and IFSC Code UBIN0812978 and producing the receipt thereof on record within two weeks.

ii] The application is allowed in the above terms and disposed of.

(MRS. VRUSHALI V. JOSHI, J.)