

# Chandrananth Morde vs State Of Kerala on 30 October, 2024

**Author: P.V. Kunhikrishnan**

**Bench: P.V.Kunhikrishnan**

CRL.MC NO. 2185 OF 2017

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2024:KER:80585

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 30TH DAY OF OCTOBER 2024 / 8TH KARTHIKA, 1946

CRL.MC NO. 2185 OF 2017

AGAINST THE ORDER/JUDGMENT DATED IN CC NO.1560 OF 2015  
OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE ,THALASSERY  
PETITIONER/S:

CHANDRAKANTH MORDE  
MANAGING DIRECTOR, MORDE FOODS PVT. LTD, 55/1  
VICTORIA BUILDING, DR. AMBEDKAR ROAD,BYCUA,  
MUMBAI - 400027.

BY ADVS. DADASAHEB KHARMATE, SRI.RAHUL D KHARMATE,  
SRI.ASHIK K.MOHAMMED ALI  
SMT.BINCY JOSE  
SMT.SAJNA T.UMMER, SRI.MUHAMMED RIFA P.M.

RESPONDENT/S:

STATE OF KERALA  
REPRESENTED BY THE FOOD SAFETY OFFICER,  
KUNTHUPARAMBA CIRCLE,KANNUR DISTRICT (REPRESENTED  
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM).

BY ADV GRASHIOUS KURIAKOSE,ADDL.DIRECTOR GENERAL  
OF PROSECUTION

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 25.10.2024, THE COURT ON 30.10.2024 PASSED THE FOLLOWING:

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P.V. KUNHIKRISHNAN, J.

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Crl.M.C No.2185 of 2017  
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Dated this the 30th day of October, 2024

## ORDER

The petitioner is the 3rd accused in C.C. No.1560/2015 on the files of the Additional Chief Judicial Magistrate, Thalassery. It is a complaint filed by the Food Safety officer, Kuthumparamba, against the petitioner and three others, alleging offences punishable under Section 3(1) (zx), 3(1)(zz) and 3(1)(zf)(A)(i) of Food Safety and Standards Act 2006 (for short 'Act 2006').

2. On 15.12.2014 at about 12:45 pm, Food Safety Officer visited the premises of M/s Bake Syndicate, Panoor, PPI-557, D & E and drew the sample from 1 st accused of four sealed identical packets of Milk Compound (Morde) bearing label declaration as Proprietary Food, Lot No.12, 2024:KER:80585 packed on 10.05.2014, (A) Best Before 18 months package Net Wt.500 gram. Nutrition Information, FSSAI license no.10012022000152 for industrial/institutional use as raw materials, manufactured and packaged by MORDE FOODS PVT. LTD. Manchar 410 503, Pune district, Maharashtra under provisions of Act 2006 following the procedure laid down under Food Safety and Standard Rules 2011 (for short rule 2011). It is stated that one portion of the said sample along with Form VI was forwarded to the Food Analyst, Regional Analytical Laboratory, Calicut by the Food Safety Officer. Food Analyst, Regional Analytical Laboratory, Calicut after analyzing the sample delivered Form-B report to the Designated Officer Kannur. The Designated Officer, Kannur, in turn forwarded the said report of Food Analyst to the complainant. The Designated Officer, Kannur, sent the said report to the accused under Section 46 (4) of the Act 2006. The accused filed an appeal and the same was allowed. Accordingly, the second part of the sample was sent to the 2024:KER:80585 Referral Laboratory Kolkata and the result of the Director, Referral laboratory Form A was received by the Designated Officer. In the said report, the Director, Referral Laboratory certified that the sample of Milk Compound was substandard, unsafe and misbranded as per the provisions of the Act 2006. The Designated Officer, sent a request to the Commissioner Food Safety for sanction to prosecute the accused and the sanction was accorded.

4. Subsequently, the complaint was filed before the Additional Chief Judicial Magistrate, Thalassery, as evident by Annexure A1. Annexure A2 is the sanction order accorded by the Commissioner of Food Safety.

5. In pursuance to the receipt of summons, the petitioner appeared before the trial court and was enlarged on bail. The petitioner who is the 3rd accused filed a petition for discharging under

sub-section (2) of Section 245 of the Code of Criminal Procedure (for short 'Cr.P.C.') before the trial court on the ground that the allegation made in the title 2024:KER:80585 clause and in the complaint to the effect that 3rd accused is the Managing Director of 4th accused Company is not correct. Annexure A3 is the discharging application filed by the petitioner/3rd accused.

6. During the time of hearing of Annexure A3 petition, it is submitted that the trial court called upon the complainant to find out any documents which would show that the 3rd accused was the Managing Director of 4th accused company. However, complainant could not produce any document from the annexures appended to the complaint or from entire documents produced along with the complaint. It is submitted that, subsequently, the matter was adjourned to enable the complainant to bring some evidence to substantiate the averment made in the complaint to the effect that 3rd accused was the Managing Director of 4th accused, despite the fact that it was not permissible to take on record any inadmissible evidence is the submission. On 17.08.2016, it is submitted that without the knowledge of the 2024:KER:80585 accused and without supplying the copies to the accused, complainant filed two documents before the trial court, the first document is a copy of the order dated 09.01.2015 purported to be written to the Designated Officer, Kannur on behalf of 4th accused, signed by 3rd accused in the capacity of Director of 4th accused with the request for re-analysis of a fourth sample of milk compound and the second document produced is the extract of profile of Chandrankanth Morde, 3rd accused, downloaded from an unauthenticated social networking website known as 'LinkedIn'. The trial court permitted the production of both the documents and marked those documents as C1 and C2. Annexure A4 is C1 and Annexure A5 is C2. According to the petitioner, he came to know about the production of these documents in November 2016. Hence, it is submitted that the view to assist the court in the process of decision making, an attempt was made on 16.12.2016 to file an extract of authenticated information available on the website of the Ministry of Corporate Affairs, 2024:KER:80585 Government of India which maintains updated master data about all the details of every incorporated company/LLP. It is the case of the petitioner that the trial court returned the said documents containing Company's master data. The same is produced as Annexure A6, which according to the petitioner is the copy of the details downloaded from authenticated website of the Ministry of Corporate Affairs, Government of India ([www.mca.gov.in](http://www.mca.gov.in)).

7. According to the petitioner, this document shows that 3rd accused has been continuously designated as Director of 4th accused company, since its inception and never the petitioner was Managing Director of the 4th accused Company. Hence, it is submitted that the trial court erred in not advertent to the vague and ambiguous facts averred in the complaint that "the complainant came to know that 3rd accused was Managing Director of 4th accused".

8. According to the petitioner, without considering the contentions of the petitioner, the learned 2024:KER:80585 Magistrate dismissed the discharge petition as evident by Annexure A7.

9. According to the petitioner, the allegations averred by the Food Safety Officer in the complaint is based on mere presumptions and assumptions and in the absence of any authenticated documents available on record concluded that the petitioner is a Managing Director.

10. The petitioner produced Annexure 8, Annexure 9, Annexure 10 and Annexure 11 to prove that the petitioner is not the Managing Director of the company. Therefore, it is submitted that even if the entire allegations in Annexure A1 complaint are accepted, no offence is made out against the petitioner.

11. Heard Adv.Dadasaheb T. Kharmate, learned counsel for the petitioner and Sri.Grashious Kuriakose, Addl.Director General of Prosecution.

12. The counsel for the petitioner submitted that in the complaint, no document is produced by the Food 2024:KER:80585 Safety Officer to show that the petitioner is the Managing Director of the company except a single sentence to the effect that "the complainant came to know that A3 is the Managing Director of A4 firm...." According to the petitioner, in the light of the documents produced by the petitioner in this Criminal Miscellaneous case, it is clear that the petitioner, who is arrayed as 3rd accused, never acted as the Managing Director of the company. It is also submitted that there is no averment in the complaint to the effect that the petitioner at the time when the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company as well as the company. The counsel for the petitioner relied on several decisions of the Apex Court to show that such an averment is necessary in the complaint to prosecute a director of the company. The counsel for the petitioner also submitted that the documents relied on by the learned Magistrate while dismissing the discharge petition, were produced by the prosecution behind the back of the 2024:KER:80585 accused. It is also submitted that those documents are not admissible in evidence. It is also submitted that even if those documents are accepted, it will not show that the petitioner was the Managing Director of the company. The counsel for the petitioner also submitted that, the order passed by the learned Magistrate in the discharge petition, as evident by Annexure A7 is without adverting the contentions raised by the petitioner and also without considering the authorities placed by the petitioner. It is also submitted by the counsel for the petitioner that, Annexures A6, A8 to A11 would show that the petitioner never acted as the Managing Director of the company. Therefore, it is submitted that the prosecution against the petitioner, who is the 3 rd accused is to be quashed.

13. The Additional Director General of Prosecution (for short 'ADGP'), Adv. Grashious Kuriakose submitted that the Act 2006 is enacted with an intention to see that the citizens are getting unadulterated food. ADGP also 2024:KER:80585 submitted that, the application under Section 482 Cr.P.C. to quash the complaints filed under Act, 2006 should be considered very seriously. ADGP submitted that from the information of the Food Safety Officer, the petitioner is the Managing Director of the company. The ADGP submitted that, when an application was filed for sending the sample to the referral laboratory, the petitioner represented the company. It is also submitted that in the vakalath also, the petitioner filed the vakalath as the Managing Director of the company. It is further submitted that in the application submitted for exemption from personal appearance before the trial court, the petitioner admitted that he is the Managing Director of the company. In the light of the above facts, it is clear that the petitioner was acting as the Managing Director of the company and this Court may not quash the proceedings against the petitioner. The ADGP also submitted that the petitioner refused to disclose the person, who is in charge of the day to day affairs of the company. When the petitioner 2024:KER:80585 refuses to disclose the same, the contention of the

petitioner is to be raised before the trial court at the appropriate stage.

14. This Court considered the contentions of the petitioner and the ADGP. The short point raised by the petitioner, who is the 3rd accused in the company is that he is not the person in charge of and was responsible to the company for the conduct of the business of the company and therefore, the petitioner cannot be prosecuted, in the light of Section 66 of the Act, 2006. It will be better to extract Section 66 of the Act, 2006:

Section 66 :- "Offences by companies (1) Where an offence under this Act which has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that where a company has different establishments or branches or different units in any establishment or branch, the concerned Head or the person in-charge of such establishment, branch, unit nominated by the company as 2024:KER:80585 responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit: Provided further that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.- For the purpose of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm."

15. Section 66 is pari materia with Section 141 of the Negotiable Instruments Act. The Apex Court in S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla [2005 KHC 1468] considered the question in detail. The Apex Court observed 2024:KER:80585 that the basic ingredients of the Section should be averred specifically in the complaint to show that a person is in charge of and responsible for a Company, Firm, etc.. The following points were framed for decision by the Apex Court in S.M.S. Pharmaceuticals' case (supra):

"1. x x x x x x

(a) whether for purposes of S.141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfill the requirements of the said section and it is not necessary to specifically state in the complaint that the persons accused was in charge of, or responsible for, the conduct of the business of the company.

(b) whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

(c) even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Directors or Joint Managing Director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against."

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16. The above points were decided by the Apex Court in S.M.S. Pharmaceuticals' case in the following manner:

"10. x x x x x x

(a) It is necessary to specifically aver in a complaint under S.141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of S.141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of S.141 cannot be said to be satisfied.

(b) The answer to question posed in sub para (b) has to be in negative. Merely being a director of a company is not sufficient to make the person liable under S.141 of the Act.

A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of S.141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases.

(c) The answer to question (c) has to be in affirmative. The question notes that the Managing Director or Joint Managing Director would be admittedly in charge of the company and responsible to the company for conduct of its 2024:KER:80585 business. When that is so, holders of such positions in a company become liable under S.141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the company. Therefore, they get covered under S.141. So far as signatory of a cheque which is dishonoured is concerned, he is clearly responsible for the incriminating act

and will be covered under sub-s.(2) of S.141."

17. From the above, it is clear that, it is necessary to specifically aver in the complaint that at the time the offence was committed, the person accused was in charge of and responsible for the conduct of the business of the Company. This averment is an essential requirement that has to be made in a complaint. Without this averment being made in a complaint, the requirement under Section 66 of the Act, 2006 cannot be said to be satisfied.

18. It is also clear that, merely being a Director of a Company, is not sufficient to make a person liable under the Act, 2006. A Director in a Company cannot be deemed to be in charge of and responsible to the Company for the 2024:KER:80585 conduct of its business. In the light of the above decision, the requirement of Section 66 of the Act, 2006 is that the person sought to be made liable should be in charge and responsible for the conduct of the business of the Company at the relevant time and this has to be averred as a fact as there is no deemed liability of a Director in such case. But, in the light of the above decision of the Apex Court, the Managing Director or Joint Managing Director would be admittedly in charge of the Company and responsible to the Company for conduct of its business. When that is so, holders of such position in a Company became liable under Section 66 of the Act, 2006 in the light of the decision of the Apex Court.

19. In the light of the Apex Court decision, by virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in charge of and responsible for the conduct of business of the Company. Therefore, they got covered under Section 66 of the Act, 2024:KER:80585 2006, if they are the Managing Director of the Company.

20. Annexure A5 is an extract of the profile of Chandrakant Morde downloaded from an unauthenticated social networking website. Annexure A5 is downloaded from LinkedIn, which is a social networking website. I am of the considered opinion that, such a document cannot be accepted as an authoritative document to show that the petitioner is the Managing Director of the 4th accused company. The learned Magistrate in Annexure A7 order relied on the vakalath filed by the petitioner before the trial court. This Court obtained a copy of the same. A perusal of the same would not show that the petitioner signed the vakalath in the capacity of Managing Director of the 4th accused company. But, in the cause title of the vakalath, the petitioner is mentioned as Managing Director. But, the cause title mentioned in vakalath is the cause title in the complaint filed by the complainant. The petitioner cannot change his name different from the cause title in the complaint by filing 2024:KER:80585 vakalath. Therefore, the entry in the vakalath cannot be taken as a ground to treat the petitioner as the Managing Director of the company. Moreover, this is against the dictum laid down by the Apex Court in S.M.S. Pharmaceuticals's case (supra), in which, it is stated that the averment to that effect should be there in the complaint itself. The learned Magistrate also observed that, in the petition submitted by the petitioner before the Court for permanent exemption under Section 205 r/w 317 Cr.P.C, it is stated that the petitioner is the Managing Director. This Court summoned the same also. The statement of facts in the petition would not show that the petitioner himself admitted that he is the Managing Director of the company. Moreover, the averment in such a petition cannot be accepted to conclude that the petitioner is the Managing Director of the company. A perusal of the above exemption petition

would show that the petitioner signed the petition as Mr. Chandrakant Morde (accused no.3). In such circumstances, I 2024:KER:80585 am of the considered opinion that, there is nothing in that petition also to show that the petitioner is the Managing Director of the company.

21. The petitioner produced certain documents to show that he is not the Managing Director of the company. The first document produced is Annexure A6 which is the true copy of the details downloaded from the website of the Ministry of Corporate Affairs, in which the petitioner is shown only as the Director of the company and there is nothing to show that he is shown as Managing Director. Similarly, Annexure A8, which is the Form No. 32 particulars of the appointment of Directors and Managers before the authority concerned. In that document also, the petitioner is only shown as the Director of the company. Again the petitioner produced Annexure A9 which is Form No.DIR-12. The Companies Act 1956 had been reformed and the new Companies Act 2013 came into effect. Under the rules of new enactment, Form No.DIR-12 is prescribed for filing online the 2024:KER:80585 particulars of appointments of Directors and the Key Managerial Personnel and changes among them is the submission. Annexure A10 would not show that the petitioner is the Managing Director of the company. Annexure A11 is also produced by the petitioner, which is the certificate of the statutory company Secretary certifying the names, date of appointment and designation of the Directors. In that document also, it would not show that the petitioner is the Managing Director of the company.

22. In the light of the above discussion, I am of the considered opinion that the complainant failed to prove that the petitioner is the Managing Director of the company. Moreover, in Annexure A1 complaint, there is no specific averment to the effect that the petitioner/accused was in charge of and responsible for the conduct of the business of the company which is mandatory averment necessary in the light of the dictum laid down by the S.M.S. Pharmaceuticals's case (supra). Several other decisions 2024:KER:80585 are also relied by the learned counsel for the petitioner to support the above decision. I am not considering those decisions in detail. All those decisions only reiterate the position in S.M.S. Pharmaceuticals's case (supra) in this case. In Anita Malhotra v. Apparel Export Promotion Council and Another [(2012) 1 SCC 520] the Apex Court observed that, if on the face of the document which is beyond suspicion or doubt, placed by the accused and if it is considered that the accusation against her cannot stand, the High Court can interfere under Section 482 Cr.P.C. It will be better to extract paragraph 20 of the above judgment:

"20. As rightly stated so, though it is not proper for the High Court to consider the defence of the accused or conduct a roving enquiry in respect of merits of the accusation, but if on the face of the document which is beyond suspicion or doubt, placed by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under Section 482 of the Code".

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23. In the light of the above dictum, I am of the considered opinion that, there is nothing wrong in relying the documents produced by the petitioner which are all authenticated documents to prove that the petitioner is not the Managing Director of the company. In the light of the above dictum, I am of the considered opinion that the prosecution against the petitioner is unsustainable.

Therefore, this Criminal Miscellaneous Case is allowed. All further proceedings against the petitioner alone in C.C.No.1560/2015 on the file of the Additional Chief Judicial Magistrate, Thalassery are quashed.

SD/-

P.V.KUNHIKRISHNAN JUDGE SSG/SKS/nvj/Sbna 2024:KER:80585 PETITIONER ANNEXURES Annexure A12 TRUE COPY OF THE PROCEEDINGS IN CC NO. 1560 OF 2015 OF THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE, THALASSERY ANNEXURE A2 TRUE COPY OF THE SANCTION ORDER ACCORDED BY COMMISSIONER OF FOOD SAFETY, KERALA.

ANNEXURE A3 TRUE COPY OF THE APPLICATION FOR DISCHARGE PREFERRED BY THE PETITIONER IN CC NO. 1560 OF 2015.

ANNEXURE A4 TRUE COPY OF THE ABOVE REFERRED EXHIBIT C1 PROCURED FROM THE RECORD OF THE CASE FILE. ANNEXURE A5 TRUE COPY OF ABOVE REFERRED EXHIBIT C2 PROCURED FROM THE RECORD OF THE CASE FILE. ANNEXURE A6 TRUE COPY OF THE DETAILS DOWNLOADED FROM AUTHENTICATE WEBSITE OF MINISTRY OF CORPORATE AFFAIRS, GOVERNMENT OF INDIA(WWW.MCA.GOV.IN).

ANNEXURE A1 CERTIFIED COPY OF THE COMPLAINT IN CC NO.

1560 OF 2015 FILED IN THE COURT OF THE LEARNED ADDITIONAL CHIEF JUDICIAL MAGISTRATE, THALASSERY.

ANNEXURE A8 TRUE COPY OF FORM 32 PROCURED FROM THE OFFICE OF REGISTRAR OF COMPANIES, MAHARASHTRA FILED AT THE TIME OF INCORPORATION OF A4 ON 23-01-2006 SIGNED BY A3 IN HIS CAPACITY AS DIRECTOR.

ANNEXURE A9 TRUE COPY OF THE FORM DATED 29-12-2014 PROCURED FROM THE OFFICE OF REGISTRAR OF COMPANIES, MAHARASHTRA ABOUT THE APPOINTMENT OF FOUR NEW ADDITIONAL DIRECTORS.

ANNEXURE A10 TRUE COPY OF THE FORM DIR-12 DATED 30-12- 2015 PROCURED FROM THE OFFICE OF REGISTRAR OF COMPANIES, MAHARASHTRA ABOUT THE 2024:KER:80585 APPOINTMENT OF FOUR ADDITIONAL DIRECTORS AS DIRECTORS.

ANNEXURE A11 TRUE COPY OF THE CERTIFICATE OF STATUTORY COMPANY SECRETARY DATED 28TH FEBRUARY, 2017 CERTIFYING NAMES, DATE OF APPOINTMENT AND

DESIGNATION OF THE DIRECTORS AVAILABLE AS OF TODAY ON THE RECORD OF REGISTRAR OF COMPANIES, MUMBAI BY WAY OF COMPANY MASTER DATA.

ANNEXURE A7 TRUE COPY OF THE ORDER OF DISMISSAL OF DISCHARGE PETITION IN CC NO. 1560 OF 2015.