

# Mohammad Faheem vs The State Of Madhya Pradesh on 21 September, 2023

**Author: Anil Verma**

**Bench: Anil Verma**

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IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE  
HON'BLE SHRI JUSTICE ANIL VERMA  
ON THE 21<sup>st</sup> OF SEPTEMBER, 2023  
MISC. CRIMINAL CASE No. 10220 of 2021

BETWEEN: -  
MOHAMMAD FAHEEM S/O SHRI MOHAMMAD NAEEM,  
AGED ABOUT 29 YEARS, OCCUPATION: BUSINESS R/O  
21-KH RAMKUND, NARSINGHGARH, DISTRICT-  
RAJGARH (MADHYA PRADESH)

(BY SHRI RAGHVENDRA SINGH RAGHUVANSHI - ADVOCATE)

AND  
THE STATE OF MADHYA PRADESH STATION HOUSE  
OFFICER THR. P.S. NARSINGHGARH (MADHYA  
PRADESH)

(BY SHRI SUHAS PUNDLIK - GOVERNMENT ADVOCATE)

This application coming on for admission this day, the court is of the following:

ORDER

This petition under Section 482 of the Code of Criminal Procedure has been preferred by the petitioner/accused for quashment of FIR dated 19.01.2021 bearing Crime No.23/2021 registered at Police Station Narsinghgarh, District Rajgarh for offences punishable under Section 272 of the IPC, Section 51, 26(2)(ii) of Food Safety and Standards Act, 2006 and Section 3 & 7 of Essential Commodities Act, 1955 and all subsequent proceedings pursuant thereto.

2. Brief facts of the case are that petitioner is running business in the name of M/s. Super Dairy Farm at Narsinghgarh, District Rajgarh. On 31.07.2019 Food Safety Officer along with officers from local administration inspected the milk dairy of petitioner and took sample of buffalo's milk. The said milk was tested in the laboratory as per the Act, 2006 between 01.09.2020 to 18.09.2020. The Laboratory report dated 21.09.2020 shows that the sample of buffalo milk is 'sub-standard' under Section 3(i)(z)(x) of the Act, 2006 on finding that the Milk Solids Not Fat (S.N.F.) is found to be

7.8% however, its required unit ought to be minimum 9%. The S.D.O. Revenue, Narsingharh, District Rajgarh verbally directed the concerned Patwari for registration of FIR against the petitioner. Therefore, FIR has been registered against the petitioner at Police Station Narsingharh bearing Crime No.23/2021. After completion of the investigation, a complaint has been filed before the trial Court.

3. Learned counsel for the petitioner submits that no case is made out against the petitioner. The sample was taken on 31.07.2019, and after more than one month, it was put to test between 01.09.2020 to 18.09.2020 in the Food Safety Laboratory. The minimum percentage of S.N.F has been prescribed as 9% for all kinds of buffalos. It is highly unnatural, illogical and absurd that all kinds of breeds of buffalos irrespective of their diet, health, season pregnancy stage living condition, exercise, general well being etc would yield S.N.F having minimum 9% in the milk. It is further submitted that it is no body's case that the said milk sample was unsafe to be consumed. There was no toxic or foreign substance or any adulteration found in the said sample. Hence, it was absolutely safe for consumption, therefore no offence under Section 272 of the IPC is made out. Section 26 does not provide any punishment as it is not a penal provision, therefore, no prosecution can lie under Section 26(2)(ii) of the said Act. A bare perusal of the contents of FIR would reveal that based on the oral direction of S.D.O. FIR was registered against the petitioner on the very same day i.e.19.01.2021 and such haste of the Police on the directions of the Administrative Authorities is nothing but an abuse of process, which has resulted into miscarriage of justice for the petitioner, therefore, the impugned FIR deserves to be quashed.

4. Learned counsel for the petitioner further submits that as per the report of public analyst, percentage of S.N.F is marginally low it has been found 7.8% and minimum is required 9.0% but milk fat is found 6.8% which is more than the minimum prescribed 5% total of milk fat and milk solids not fat is more than 14% therefore sample of milk cannot be considered as sub-standard. He has placed reliance in the case of Administrator of the City of Nagpur vs. Laxman and another 1995 supplementary (1) SCC 247. In that case sample of cow milk S.N.F was 7.3 % as against the 8.5% but fat and solid was found to be more than prescribed standard and the Hon'ble Apex Court held that the Court justified and given the benefit of doubt to the accused.

5 . Per contra, learned counsel for the respondent/State has submitted that there is sufficient material available on record to proceed against the petitioner and it cannot be said that no offence whatsoever is made out against him, hence the petition deserve to be dismissed.

6. I have heard the learned counsel for the parties and have perused the case diary as well as the record.

7. It is a fact that Section 482 of the Cr.P.C. has given inherent power to the High Court, however, it should not be applied in random but to use sparingly. Section 482 of the Cr.P.C. has been incorporated to prevent abuse of process of law and not to encourage of offences.

8. The same principle has been laid down by the Hon'ble Apex Court in the case of State of M.P. vs. Guman and others (2009) 16 SCC 277 and Co-ordinate Bench of this Court in the case of Babu s/o

Sher Mohd. Nayta vs. State of M.P. and another 2006(4) M.P.L.J. 367. All the above cases have been decided on merits after completion of the evidence but in the instant case the trial is still going on. Administrator of the City of Nagpur (supra) case is related with the cow milk and the instant case is related to buffalos milk, therefore, the principle laid down in the aforesaid cases is not applicable in the instant case at this stage.

9. So far as the other ground is concerned, the facts are not admitted by both the parties and regarding the disputed facts the evidence are quite necessary and defence of accused to be tested after appreciating the evidence during the trial. This Court cannot analyze the documentary evidence at this stage therefore, I am of the considered view that it is not a fit case where this Court can exercise the power conferred under Section 482 of Cr.P.C.

10. The Apex Court in the case of CBI Vs. Arvind Khanna reported in (2019) 10 SCC 686 in paragraph No.17 has held as under:-

"17. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

18. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

9. In the case of Ramveer Upadhyay and Anr. Vs. State of U.P. & Anr. passed in Special Leave Petition (Crl.) No.2953 of 2022, Hon'ble the apex Court has held as under:-

".....Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. ...."

11. Thus, it is clear that although this Court cannot make roving inquiry at this stage, but if the uncontroverted allegations do not make any offence, only then this Court can quash the FIR. The allegations made against the petitioner established prima facie case punishable under Section 272 of the IPC, Section 51, 26(2)(ii) of Food Safety and Standards Act, 2006 and Section 3 & 7 of Essential Commodities Act, 1955 of the IPC. Therefore, the claim of the petitioner that there is no evidence available against him, cannot be accepted at this stage.

12. In view of the prima facie evidence available on record against the petitioner and considering the facts on merit, the citations relied by the petitioner cannot be made applicable at this stage. This Court cannot analyze the entire evidence and come to the conclusion that whether conviction is possible or not. Therefore, I am of considered view that it is not a fit case where this Court can exercise the power conferred under Section 482 of Cr.P.C.

12. Accordingly, this petition under Section 482 of Cr.P.C. is dismissed. It is made clear that this Court has not expressed any opinion on the merits of the case. The trial Court shall continue the trial against the petitioner without being influenced or prejudiced by the observations made in this petition.

Certified copy as per rules.

(ANIL VERMA) JUDGE jc