

Mohammed Sahil S/O Mohammed Rafiq Memon vs The State Of Mah. Thr. Pso, Nagbhid Ps ... on 26 July, 2024

Author: Vibha Kankanwadi

Bench: Vibha Kankanwadi

2024:BHC-NAG:8188-DB

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

CRIMINAL APPLICATION (APL) NO.198 OF 2024

Mohammed Sahil S/o Mohammed Rafiq Memon,
aged about 24 years, Occ.:- business,
R/o. Dr. Mohin Khan lane,
R.D.A. Plot, Sanjay Nagar, Raipur
(Chhattisgarh) APPLICANT

...V E R S U S...

State of Maharashtra, Through
Police Station Officer Nagbhid,
Police Station Nagbhid,
Tq & Distt. Chandrapur. NON-APPLICANT

CRIMINAL APPLICATION (APL) NO.199 OF 2024

- 1] Vaibhav S/o Bhaskar Bhoyar,
aged about 24 years, Occ.:- labour,
R/o. 480, Bhagatsing Chowk, Armori,
Tq. Armori, Distt. Gadchiroli.
- 2] Sahil Matin Pathan,
aged about 20 years,
Occ.:- labour, R/o. Pragati Chowk,
Armori, Tq. Armori, Distt. Gadchiroli.

3] Sachin S/o Ramdas Salve,
aged about 40 years,
Occ.:- labour, R/o. 480, Bajar Peth,
Ward No. 5, Armori, Tq. Armori,
Distt. Gadchiroli. APPLICANTS

...V E R S U S...

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State of Maharashtra, Through
Police Station Officer Nagbhid,
Police Station Nagbhid,
Tq & Distt. Chandrapur. NON-APPLICANT

Mr. S. A. Mohta, Advocate for Applicant. [APL No.198/2024]
Mr. H. D. Futane, APP for Non-Applicant/State.
[APL No.198/2024]
Mr. S. A. Mohta, Advocate for Applicants. [APL No.199/2024]
Mr. U. R. Phasate, APP for Non-Applicant/State.
[APL No.199/2024]

CORAM: SMT. VIBHA KANKANWADI AND
MRS. VRUSHALI V. JOSHI, JJ.
DATE: 26th JULY, 2024.

COMMON JUDGMENT:

(PER SMT. VIBHA KANKANWADI, J.) Present applications have been filed invoking inherent powers of this Court under Section 482 of Criminal Procedure Code for quashing and setting aside FIR vide Crime No.99/2023 dated 13.03.2023 registered with Nagbhid Police Station, Tahsil Nagbhid, District Chandrapur for the offence punishable under Sections 188 and 273 of the Indian Penal Code and Section 59(i) of the Food Safety and Standards Act, 2006 (hereinafter referred to as 'FSSA') and the charge-sheet arising out of same bearing S.C.C. No.844/2023 pending before the learned Judicial Magistrate First Class, Nagbhid, District Chandrapur.

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2. Heard Mr. S. A. Mohta, learned Advocate for the applicants and Mr. H. D. Futane, learned Additional Public Prosecutor for non-applicant/State.

3. Learned Advocate appearing for the applicants submit that informant is working as an Assistant Sub Inspector attached to Nagbhid Police Station. He states that he along with the other police officers went to the spot after secret information was received that the four-wheeler is coming from Nagbhid via Nilaj Phata, Kanpa carrying illegal flavored tobacco. After they intercepted the vehicle,

they found that the four persons traveling with driver. Applicants were amongst them who were traveling in the said vehicle. Search of the vehicle was taken and was found that the contraband article was being transported from the vehicle. Police had seized the contravening articles. All the articles were brought to the police station and crime was registered. Police have failed to consider that the applicants were merely the passengers and had no knowledge about the fact that contraband articles were being transported from the said vehicle. Now, the statements of the witnesses have been recorded and charge-sheet is filed. Taking into consideration the FIR, statements of witnesses and other material on record, it can be seen that the facts do not 4 apl198.24+J.odt disclose commission of any offence by the applicants. The Food Safety Commissioner while exercising the power conferred under Section 30(2)(a) of the FSSA, can issue prohibitory order for a period of one year and violation of the said order would give rise to launching of the prosecution by Food Safety Officer. As per the provisions of Section 195 of the Cr.P.C., no Court can take cognizance of the offence punishable under Section 188 of the IPC and here in this case no such compliance is made when the Food Safety Officer who promulgated the order has not filed the FIR. Section 273 of IPC is non-cognizable in nature. Police have no authority or jurisdiction to investigate the matter under FSSA. Therefore, it would be unjust to ask the applicant to face the trial and therefore, he seeks quashment of the FIR and the charge-sheet.

4. Per contra, learned APP submits that since the investigation is complete and the charge-sheet is filed, there is evidence against the present applicants as they were traveling from the same vehicle in which the contraband articles were found. Let the applicants face the trial.

5. Learned Advocate appearing for the applicants is relying on Ram Nath v. The State of Uttar Pradesh & Ors. decided 5 apl198.24+J.odt by Hon'ble Apex Court on 21.02.2024. After evaluating various decisions, it has been held that Section 89 of the FSSA indicates the intention to give overriding effect over all the food related laws. The main section clearly gives overriding effect when the offences under Sections 272 and 273 of IPC are made out. Even the offence under Section 59 of the FSSA will be attracted which is more stringent and therefore, by virtue of Section 89 of the FSSA, the Section 59 of the said Act which is overriding the provisions of Sections 272 and 273 of IPC, there will not be any question of simultaneous prosecution under both statutes.

6. Herein in this case, the police have invoked Section 59(1) of the FSSA as well as Section 273 of IPC. In view of clear pronouncement by Hon'ble Apex Court in Ram Nath (supra) both the sections cannot stand together. The prosecution for Section 273 of IPC cannot be allowed to be proceeded further in the present case.

7. As regards Section 59(1) of the FSSA is concerned, it contemplates filing of complaint by the Competent Authority under the said Act and not by police. Sections 41 and 42 of the FSSA makes it mandatory to follow the procedure required for the prosecution that too by the officers mentioned in the Act.

6 apl198.24+J.odt Therefore, the prosecution for the said offence under Section 59 of FSSA also cannot be allowed to proceed in the present case, as it is by a police officer.

8. Now, as regards Section 188 of IPC is concerned; Section 195 Cr.P.C. puts some embargo on the powers of the Court to take cognizance of the offence punishable under Section 188 of IPC, except upon the complaint by the Competent Authority. Here the said Assistant Sub Inspector attached to Nagbhid Police Station cannot be said to be the Competent Authority. However, distinction can be made as regards the filing of complaint and taking of cognizance. Filing of complaint is not prohibited, but taking cognizance of the said complaint which is filed by any other person than the Competent Authority is prohibited. We are not aware as to whether the learned Magistrate has taken cognizance of the said offence or not. For that purpose we would like to consider the facts of the case. From the contents of the FIR and the statements of witnesses, we could gather that the present applicants were the passengers in the said vehicle. The spot panchnama would clearly disclose that seven gunny bags were found in the dickey of the Wagon R. The investigation papers further do not show that there was investigation in respect of 7 apl198.24+J.odt owner of the vehicle and it appears that the said Wagon R was standing in the name of one Anis Fatemohammad Kasmani. It is not the case of the prosecution that any one of the applicants was driving the said vehicle. If they were merely passengers then it cannot be said that they were having knowledge of the articles kept in dickey. The concept of conscious possession is missing and therefore, it cannot be said that the facts enumerated are attracted to the offence under Section 188 of IPC. Thus, taking into consideration all the above reasons stated, now it would be unjust to ask the applicants to face the trial with such evidence. Hence, case is made out to allow the applications.

9. Accordingly, both the applications stand allowed. The FIR vide Crime No.99/2023 dated 13.03.2023 registered with Nagbhid Police Station, Tahsil Nagbhid, District Chandrapur and the proceedings in S.C.C. No.844/2023 pending before learned Judicial Magistrate First Class, Nagbhid, District Chandrapur stands quashed and set aside as against the present applicants - Mohammed Sahil Mohammed Rafiq Memon, Vaibhav Bhaskar Bhoyar, Sahil Matin Pathan and Sachin Ramdas Salve. (MRS. VRUSHALI V. JOSHI, J.) (SMT. VIBHA KANKANWADI, J.) NSN Signed by: Mr. N.S. Nikhare Designation: PA To Honourable Judge Date: 31/07/2024 19:06:05