

# Onkarnath S/O Kamalakant Shukla vs Food Safety Officer Food And Drug ... on 6 March, 2023

**Author: G. A. Sanap**

**Bench: G. A. Sanap**

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23.APL.1646.2022. Judgment.odt

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

CRIMINAL APPLICATION (APL) NO. 1646 OF 2022

APPLICANT : Onkarnath S/o. Kamalakant Shukla,  
Aged 58 years, Occ: Business, R/o.  
Laxmi Nagar, Gorakshan Road, Akola  
Tq. and Distt. Akola.

//VERSUS//

RESPONDENT : Food Safety Officer, Food and Drug  
Administration (M.S.) Akola.

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Mr. S.A. Mohta, Advocate for the Applicant.

Mr. S.A. Ashirgade, APP for the Respondent.

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CORAM : G. A. SANAP, J.

DATED : 6th MARCH, 2023.

ORAL JUDGMENT

Heard.

02] Admit. The application is heard finally by consent of the learned advocates for the parties.

03] In this application made under Section 482 of the Code of Criminal Procedure, 1973, the action of sealing of the establishment in the name and style M/s. Onkar Pan House and Daily Needs vide order dated 12th December, 2022 passed by the

-2- 23.APL.1646.2022. Judgment.odt respondent-Food Safety Officer is challenged. The main grievance of the applicant, who is the proprietor of the concern, is that at the time of the raid by the Food Safety Officer at his shop, he was present and he extended all sorts of cooperation to the Food Safety Officer. The Food Safety Officer under the guise of action sealed the shop. It is submitted that

the action of sealing of the shop by invoking the provisions of Section 38 of the Food Safety and Standards Act, 2006 is ex-facie illegal and, therefore, the same is required to be quashed and set aside.

04] The reply has been filed by the Food Safety Officer. In the reply, the action has been justified. It is contended that the offence committed is serious offence and, therefore, to prevent the commission of such offence in a repetitive manner, the action of sealing of shop was necessary. The relevant provisions of the said Act have been set out in the reply to justify the action. 05] The learned advocate for the applicant relied upon a decision of the Coordinate Bench of this Court (Coram: Rohit B. Deo, J.) in the case of Nitin s/o Kaniyalal Tharwani Vs. Food Safety Officer, Food and Drug Administration, Nagpur dated 17 th September, 2021 and submitted that the facts of this case and the facts before the Coordinate Bench are identical.

-3- 23.APL.1646.2022. Judgment.odt 06] The learned Additional Public Prosecutor for the respondent in all fairness submits that the issue involved in this application is fully covered by the decision of the Coordinate Bench dated 17th September, 2021.

07] I have gone through the application and the reply filed by the respondent. I have also perused the judgment dated 17 th September, 2021 passed by the Coordinate Bench of this Court. In my view, the issue involved in this application is fully covered by the decision of the Coordinate Bench. Therefore, this application can be disposed of in terms of the prayer made in this application. 08] On going through the record, I am satisfied that the action of the Food Safety Officer cannot be substantiated on the basis of the provisions of Rule 2.1.3(4) of the Food Safety and Standards Rules, 2011. The perusal of this Rule would show that the action of sealing of the shop was not justified by this Rule. It has to be held that this action was, therefore, a gross abuse of the administrative power. In the facts and circumstances, this application deserves to be allowed.

09] The application is allowed in terms of prayer Clause (II). The prayer Clause (II) is reproduced below:

-4- 23.APL.1646.2022. Judgment.odt "(II) Further be pleased to direct the respondent to remove the seal as the action dated 12/12/2022 putting the seal on the shop of the applicant by the respondent is bad in law and the same is colorable exercise of power, usurping the powers conferred upon the concern authority/Food Safety Officer under the provisions of section 38 of the Food Safety and Standards Act, 2006."

10] The application is disposed of.

(G. A. SANAP, J.)

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