

HIGH COURT OF MADHYA PRADESH: JABALPUR

// M E M O //

No. B/4162/1  
III-6-3/2011

Jabalpur dated 16/08/2019

To,

The District & Sessions Judges,  
(All in the State of M.P.)

Sub: Circulation of order dated 07.08.2019 passed in M.Cr.C.  
No.12938/2018 by Hon'ble Shri Justice J.P. Gupta.

With reference to aforementioned subject, as directed, please find enclosed herewith a copy of aforesaid judgment, with a request to circulate amongst all the Judicial Officers, for guidance, as directed by Hon'ble Court.

  
(B.P. SHARMA)  
REGISTRAR (DE)

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**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT**  
**AT JABALPUR**  
**(SINGLE BENCH : HON'BLE SHRI JUSTICE J.P.GUPTA)**

**M.Cr.C. No. 12938/2018**

Sanjeev Jain

Vs.

The Food Inspector,  
Food & Drugs Administration, Bhopal

**M.Cr.C. No. 14809/2018**

Pavan Kumar Jain  
Vivek Kumar Jain  
Deepak Asher  
Sidharth Kumar Jain

Vs.

The Food Inspector,  
Food & Drugs Administration, Bhopal

**M.Cr.C. No. 14789/2018**

Haigreve Khaitan  
Amit Jatia

Vs.

The Food Inspector,  
Food & Drugs Administration, Bhopal

Solely  
JP  
13/8/19

09 AUG 2019

REGISTRAR GENERAL  
HIGH COURT OF M.P.  
JABALPUR

Reg. (DE)

Shri Surendra Singh, learned Senior Advocate with Shri Akshay Sapre, Ishaan Khanna, Rirwik Parashar, Advocates for the applicants.

Shri Arpit Tiwari, Govt. Advocate with Shri Jitendra Singh Parihar, P.L. for the Respondent.

Whether approved for reporting : (Yes/No).

Sd/-

**ORDER**  
( 07/08/2019)

1. This order shall govern the disposal of all the aforesaid petitions.
2. The petitions under Section 482 of the Cr.P.C. has been preferred by petitioners against the judgments dated 23.2.1918 passed by 19<sup>th</sup> Additional Sessions Judge, Bhopal in Cr.R. No. 9600536/2017, Cr.R. No. 10/2018 and Cr.R.No.9600586/17 confirming the order dated 27.7.2017 passed by the Judicial Magistrate First Class, Bhopal in Complaint Case No.9909508/17, whereby the Magistrate took cognizance of the offence punishable under Section 26(2)(i), Section 27(2)(c) read with Section 59 and Section 66(1)(2) of the Food Safety & Standards Act, 2006 on the basis of complaint filed by Respondent/Food Inspector.
3. The facts given rise to these petitions are that on 13.7.2016, the Respondent purchased a food item 'popcorn' (packed and sealed) from the multiplex situated at C-12 Mall, Hoshangabad Road, Bhopal which was operated by INOX Company. The food item was found adulterated.
4. On behalf of INOX company it was revealed that the food item was purchased from Nikus Foods Company. At the time of taking sample one accused Amber Saxena and Lalit Ojha were found operating the multiplex from where the sample was taken. All the petitioners are the Directors of the INOX Company and they were failed to nominate a person for ensuring the food safety rules as required under Rule 2.5 of the Food Safety and



Standards Rules,2011. For the purpose of Section 66 of the Act and Regulations made under Section 31 of the Act.

5. The complainant has filed a complaint against the aforesaid petitioners and the Directors of Nikus Food Company and the persons who were operating the multiplex for selling adulterated food item and by the impugned order learned trial Court took cognizance of the offence mentioned earlier. Without taking any statement under Section 200 of the Cr.P.C. and without any further enquiry which has been challenged here.

6. The learned counsel appearing on behalf of the petitioners submitted that on behalf of the petitioners the impugned orders has been challenged on the ground that as per the allegations the offence has been committed by the Company and the Company has not been arrayed as an accused, therefore, the Director of the Company cannot be prosecuted in the absence of the Company and in this regard reliance has been placed on the judgment of the Apex Court in the case of **Aneeta Hada vs. Godfather Travels and Tours Pvt. Ltd.** [2012(5)SCC 661], in which it is held that for the offence punishable under Section 138 of the Negotiable Instruments Act, if the offence has been committed by the Company, then without arraigning the Company as an accused, other persons responsible for the business of the company cannot be prosecuted. Further, reliance has been placed on the judgment of the Apex Court in the case of **Sharad Kumar Sanghi vs. Sangita Rane** [2015(12) SCC 781], in which it is held that though the allegations are against the company and the company has not been made a party, in the case relating to prosecution of the Managing Director of the company under Section 420 of the IPC, held that where company has not been

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arrayed as a party to the complaint, the criminal proceedings initiated against the Managing Directors are not maintainable.

7. The second ground raised in this petition is that in the complaint there is no specific averment against the present petitioners about their role in the alleged offence. There is a specific provision under Section 66 of the Food Safety and Standards Act, 2006, about the offence committed by the Companies. According to the provision, every person who at the time of offence was in charge 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. Further, if found proved that the offence is committed with the consent and connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officers 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. But in the complaint there is no averment with regard to infer their liability for alleged act of the company except that the petitioners being the directors failed to nominate a person to ensure implementation of the provision of the aforesaid act. In such case, no cognizance can be taken against the present petitioners. In this regard reliance has been placed on the judgment of the Apex Court in the case of **Anita Malhotra vs. Apparel Export Promotion Council & another** [2012(1)SCC 520] in which it is held that in the absence of specific averment about the role of the directors, all the directors cannot be held responsible for the alleged offence, committed on behalf of the company. Further reliance has been placed on the judgment of the Apex Court in the case of **Pepsico India Holdings Pvt. Ltd. vs. Food Inspector and**

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**another** [2011(1) SCC 176], in which it is held that in the absence of specific allegation regarding role of the director in the management of the company, all the directors cannot be prosecuted under the food adulteration and safety law.

8. The third ground raised in this petition is that all the petitioners are residents of Mumbai, Delhi and Vadodara. In other words out of the territorial jurisdiction of the learned Judicial Magistrate First Class, Bhopal. In such circumstances, learned Magistrate cannot take cognizance against the petitioners on the complaint filed by the Respondent without following the procedure of Section 202 of the Cr.P.C. If without following the aforesaid procedure, cognizance has been taken, it would be deemed to be illegal as the learned Magistrate had no jurisdiction to issue process or summons without following the provisions of Section 202 of the Cr.P.C. as it is held by the Apex Court in the case of **Aroon Poorie vs Jaikumar Hiremath** [2017 (7) SCC 767]. Therefore, the impugned order passed by the Magistrate and the order of the Sessions Judge be quashed.

9. Learned Govt. Advocate objected the prayer of the petitioners and contended that there is specific averment in the complaint that on behalf of the INOX Company, no nomination was made as required under Rule 2.5 of Food Safety and Standards Rules, 2011. Apart from it, the company can be arrayed later on and merely on this ground the prosecution against the petitioners cannot be quashed. The learned Magistrate also has jurisdiction to array the company as accused. If the complainant failed to array the company as accused, in the interest of justice, if the directors are liable, they should not be left Scot-free, on account of such technical error as the Magistrate has ample power to summon any person

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who appears to commit the offence and the provisions of Section 202(1) of the Cr.P.C. is not attracted in this case. As the complaint was filed by the Food Inspector in the capacity of public servant and cognizance can be taken on the complaint filed by the public servant, only on the basis of the complaint and material submitted before the Magistrate, without recording the statement of any witness or further enquiry. Hence, this petition may be dismissed.

10. In these petitions, first of all it shall be considered that whether the cognizance has been taken without following the provisions of Section 202(1) of the Cr.P.C. and compliance of the provision is mandatory in the present case, despite of the complaint filed by the public servant in the official capacity. It is not disputed that all the petitioners resides out side the territorial jurisdiction of the Judicial Magistrate First Class, Bhopal and as per the provisions and Section 202(1) of the Cr.P.C., if the accused persons resides out of the jurisdiction of the Magistrate, it is mandatory that either enquiry be made or Police be directed to investigate the matter and without following this procedure no summons or warrant can be issued. In other words, no cognizance can be taken on the basis of the complaint. In the present petitions, no such procedure has been followed and Hon. The Apex Court in the judgment of **Aroon Poorie** (Supra) has held thus :-

"2. The above apart, from the materials on record it appears that the appellant-accused in the present appeals have and maintain residence beyond the local jurisdiction of the learned trial Court. Under the provisions of Section 202(1) Cr.P.C., it was, therefore, mandatory for the learned Magistrate to hold an inquiry either by

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himself or direct an investigation by the police prior to the issuance of process. Admittedly, the same had not been done. If the aforesaid mandatory provisions of Section 202(1) Cr.P.C had not been followed, the learned trial court would not have the jurisdiction to issue process/summons as has been done."

11. So far as the contention of the learned Govt. Advocate that the provisions of Section 202(1) of the Cr.P.C., is not attracted in this case is as much as the complaint was filed by the public servant in the official capacity is concerned, the contention has no merit. The public servant has been exempted from taking statement under Section 200 of the Cr.P.C. which means that at the time of initial cognizance of the complaint, considering the complaint for further action, no statement of public servant is required, if the complaint has been filed in the official capacity. Thereafter, in further proceedings the Magistrate is bound to follow the procedure of Section 202(1) of the Cr.P.C. If the public servant has filed a complaint in the official capacity and no statement has been recorded under Section 202 of the Cr.P.C. then, provisions of Section 202 of the Cr.P.C. may be exempted for taking statement, in case the accused persons are residing in the territorial jurisdiction of the Magistrate but if the accused persons are residing out of the territorial jurisdiction of the Magistrate, the Magistrate shall postpone the issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a Police officer or by such other person as he think fit for the purpose of deciding whether or not there is sufficient ground for proceedings. In view of the aforesaid reasons, the contention of the Govt. Advocate has no substance and the

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impugned orders deserves to be set aside merely on account of not following the procedure prescribed under Section 202(1) of the Cr.P.C. and no further grounds are required to be considered at this stage as if the order is quashed with the direction that order is passed after the aforesaid compliance then the Magistrate may also consider the legal provision of Section 66 of the Food Safety & Standards Act, 2006 with regard to offence also committed by the Company as well as the directors.

12. Hence, the impugned orders are set aside and the learned Magistrate is directed to pass a fresh order after following the provisions of Section 202(1) of the Cr.P.C. keeping in mind the law relating to offence committed by the Company and liability of the Directors without being influenced by the observations made in these petitions.

13. A copy of this order be also sent to Registrar General with a request to send the same to all the Judges of the subordinate Courts and the Director of JOTRI for guidance.

  
(J.P. Gupta)  
JUDGE