

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-06-2026

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WEB COPY THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

**CRL OP Nos. 8959, 10273 AND 10782 of 2026
and
Crl.M.P.Nos.6383,7329,7392, 7638 and 7640 of 2026**

CRL OP No. 8959 of 2026

1. Ali Hemati
2. Dr. Kazim Himathi
3. Mohsin Himathi

CRL OP No. 10782 of 2026

Dr. Kazim Himathi

CRL OP No. 10273 of 2026

Ali Hemati

..Petitioner(s)

Vs

The Food Safety Officer
Code No.551,
Velachery Zone,
Chennai District,
Tamil Nadu Food Safety and Drugs
Adiministrative Department,
No.33, West Zone Road,
Saidapet,Chennai-600015.

..Respondent in all
Crl.O.Ps

**PRAYER : CRL OP No. 8959 of 2026**

Criminal Original Petition filed under Section 528 BNSS, to call for the records of the proceedings in C.C.No.1477 of 2022 pending on the file of the Learned XVIII Metropolitan Magistrate at Saidapet, Chennai and quash the same or pass such other orders as this court may deem fit in the interest of justice.

PRAYER : CRL OP No. 10273 of 2026

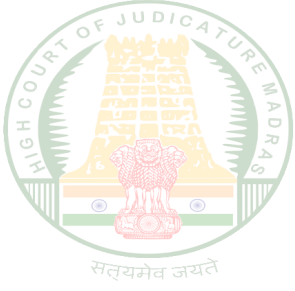
Criminal Original Petition filed under Section 528 BNSS, to set aside the returned docket order dated 07.02.2026 in unnumbered Crl.M.P. in C.C.No.1477/2020 on the file of the XVIII Metropolitan Magistrate, Saidapet and direct the Magistrate to take the petition on file.

PRAYER : CRL OP No. 10782 of 2026

Criminal Original Petition filed under Section 528 BNSS, to challenging to set aside the returned docket order dated 07.02.2026 in C.C.No.1477 of 2020 and consequently to direct the Judicial Magistrate to take this petition on file and pass orders on merits.

For Petitioner(s): Mr.K.P.Anantha Krishna, for all the Crl.O..Ps

For Respondent(s): Mr.M.Mohamed Riyaz,
Government Advocate (Crl.Side)
for all the Crl.O..Ps

**COMMON ORDER**

WEB COPY These Criminal Original Petitions arise out of the same case, hence decided by this common order.

CRL OP No. 8959 of 2026

This Criminal Original Petition is filed by three petitioners, viz., Mr.Ali Hemati, Dr. Kazim Himathi and Mohsin Himathi, the Directors of M/s. Paradise Food Court Private Ltd., (Food Business Operator), having its office at No.72/1, Dr.Muthulakshmi Salai, Thiruvanmiyur, Chennai, to call for records in C.C.No.1477 of 2020 on the file of XVIII Metropolitan Magistrate at saidapet, Chennai and to quash the same.

2. The said case is a complaint filed under Section 200 of Cr.P.C. by the Food Safety officer complaining under Section 3(1)(xx)(zz)(v), 26(2)(i)(ii) and 27(1)(c) & R/w REG.2.12.1(1) 16.0 of food category system in appendix – A of (FPS & FA) Regulation, 2011, under Section 59 (I) under Food Safety and Standards Act, 2006,(herein, further referred to as the ‘ACT’).

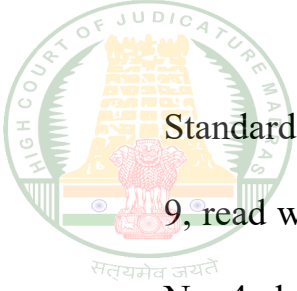
2.1 The said case is a complaint filed under Section 190(1)(a) and Section 200 of Cr.P.C. by the Food Safety Officer complaining an offence punishable under Section 59 (i) of the Food Safety and Standards Act, 2006



(hereinafter the Act) read with Section 3(1)(xx)(zz)(v), 26(2)(i)(ii) and 27(2)(c) of the Act, read with Regulation 2. 1. 2 – 1 (i), 16.0 of food category system in Appendix – A of Food Safety and Standards (Food Products Standards & Food Additives) Regulations, 2011.

2.2 The case of the prosecution is that on 21.02.2019, an inspection was conducted by the respondent Food Safety Officer at the petitioner's premises, and a sample of mint chutney prepared there was taken, as it was suspected to contain artificial colouring agents, and the sample was sent for analysis. The details of the procedure, etc., are mentioned in the complaint. Ultimately, the lab report confirmed that the sample contained added chemical colourants, viz., Tartrazine and Brilliant Blue. After due completion of the inquiry, the complaint is filed and taken on file, and the same is pending. The present application is filed by Accused No.1 to 3.

3. The learned counsel for the petitioners would primarily seek the quashing of this case on the ground that under Section 66(1) of the Food Safety and Standards Act, 2006, when a company has different establishments, branches, or units within any establishment or branch, the Head or person-in-charge of such establishment, branch, or unit, nominated by the company as responsible for food safety, shall be liable for any contravention in respect of such establishment, branch, or unit. Further, Rule 2.5.1 of the Food Safety and

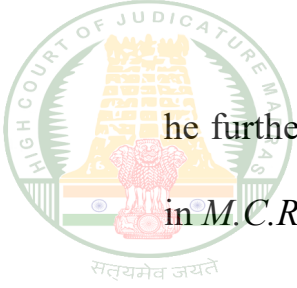


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Standards Rules, 2011, prescribes Form 9 for such nomination. In view of Form 9, read with Rule 2.5.1 of the proviso to Section 66(1) of the Act, it is Accused No. 4 alone who will be liable for prosecution. In support of his submission, he relied upon the judgment of the Honourable Supreme Court in *R. Banerjee and Ors. vs. H.D. Dubey and Ors.*, (1992 2 SCC 552), more specifically paragraph 6 of the said judgment.

4. The learned counsel for the petitioners would further rely upon the judgement of this Court in *K.T. Venkates Raja and Ors. Vs. State*(Crl.OP. No. 23692 of 2023)dated 06.07.2023, particularly paragraph 7 of the said judgment. He further submitted that, on an earlier occasion, a quash application was filed and was dismissed *vide* order dated 24.02.2023, and subsequently an SLP was filed against the same, which was also dismissed on 07.01.2025. However, the plea raised in the present quash application, relying on Section 66(1) of the Act, was neither raised nor answered in the earlier proceedings and hence the present petition.

5. Per contra, the learned Government Advocate (Crl.Side) for R1 submitted that the earlier petition filed by the petitioners to quash the application was dealt with exhaustively by this Court and dismissed on merits. The appeal was also dismissed by the Honourable Supreme Court. The petitioners cannot maintain a second application. In support of his contention,



he further relied upon the judgment of the Honourable Supreme Court of India in *M.C.Ravikumar vs. D.S.Velmurugan & Ors* (2025 INSC 888).

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6. I have considered the rival submissions made on either side and perused the materials on record. The following question arises for consideration in the instant case:

i. Whether the second quash application filed by the petitioners to quash the very same case maintainable?

ii. Whether the petitioners, being Directors, cannot be prosecuted in view of Section 66(1) of the Act, inasmuch as the fourth accused alone is nominated by the company?

Question No. (i) :

7. It can be seen from the records that the very same petitioners had earlier filed Crl.O.P.No.31363 of 2022 for the identical prayer. Detailed arguments were advanced, raising grounds such as the food sample not being analysed immediately, the delay in obtaining the report, and the absence of any specific allegation against the Company's Directors. Violations of other mandatory provisions were also alleged. Reliance was placed on several judgements. This Court considered each and every issue and dismissed the quash application on merits *vide* order dated 24.02.2023. Subsequently, the petitioners also filed an SLP (Crl.) No.7909 of 2023 against the said order. The



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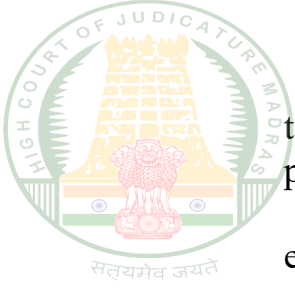
Supreme Court, after recording that it had heard the learned Senior Counsel for the petitioner and for the State, and that it was not inclined to interfere with the findings recorded by the High Court, dismissed the SLP. It further directed that the observations made by the Supreme Court of India or the High Court would not come in the way of the Trial Court in deciding the case on the merits, and that all contentions are left open to be raised during the trial.

8. In view thereof, merely because any ground not specifically raised in the earlier round cannot justify filing a successive application under Section 482 of the CrPC. The contentions were readily available at that time. The extraordinary jurisdiction cannot be invoked to override the bar of review under Section 362. On the aforesaid principles, the Honourable Supreme Court of India, in *M.C. Ravikumar's case* (cited *supra*), held that second or successive quash applications are not maintainable. Reference shall be made to paragraphs 13 to 17 of the Judgment. Accordingly, this question is answered.

Question No. (ii) :

9. In any event, the plea raised by the petitioner on merits also cannot be countenanced. Section 66(1) of the Act is quoted for ready reference:

(I) Where an offence under this Act which has been committed by a company, every person who at the time of 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



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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 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.

10. The learned counsel for the petitioner relied on the first proviso to Section 66(1) of the Act, without adverting to the non-obstante clause contained in Section 66(2) of the Act. This is not a case where any food was considered unsafe due to any local issues or oversight in the particular unit, such as expiry date, uncleanliness, etc. As a company policy and practice, chemicals/artificial colours were added to the chutney to make it more appealing to customers and enhance sales.



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11. Specific allegations are contained in paragraphs 8 and 9 of the complaint. When the issue does not relate to an incident particular to the unit or establishment, so that the concerned person nominated under Form-9 of the Act will alone be responsible, the argument made by the learned counsel for the petitioner, by placing reliance on the proviso under Section 66(1) of the Act, cannot be countenanced. The purpose of the proviso is only to assign responsibility to the person in charge for the contravention in a particular branch or unit when the company operates multiple units or establishments. If the interpretation rendered by the learned counsel for the petitioners is adopted, it would only lead to a situation in which the Directors of the Company can nominate a low-grade employee for each unit to escape prosecution or punishment for deliberate acts committed by them. That would negate the purpose of the Act. The Analyst's Report attributes the presence of Tartrazine and Brilliant Blue to the mint chutney manufactured by the Company. In such circumstances, the Court is unable to accept the contention that the prosecution should be confined solely against the nominated officer. Apart from this, the penal provisions are to be read as such, without adding or subtracting anything from them. Therefore, under Section 66(2) of the Act, which contains a non-obstante clause, if the act is attributable to the Directors or any officers of the Company, such Directors or Officers are fastened with criminal liability and are liable to be prosecuted. Accordingly, the question is answered against the petitioners.



12. In the result, finding no merits, this Criminal Original Petition is dismissed.

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CRL.O.P.No.10273 of 2026

This petition has been filed praying to set aside the returned docket order dated 07.02.2026 in unnumbered Crl.M.P. in C.C.No.1477/2020 on the file of the XVIII Metropolitan Magistrate, Saidapet, and to direct the Magistrate to take the petition on file.

2. The learned counsel for the petitioner submitted that the first Accused, Mr. Ali Hemati, may be permitted to mark his presence from his current location, viz., *Hyderabad*, and to attend all further hearings, including any evidence recording or arguments, through video conferencing in accordance with Section 530 of the BNSS read with the Madras High Court Video Conferencing Rules, 2020.

3. The learned counsel for the petitioner submitted that the first petitioner, Mr. Ali Hemati, is residing at Hyderabad and, being 71 years of age and suffering from age-related ailments and physical infirmities, may be permitted to mark his presence from his present location and attend all further hearings, including the recording of evidence and arguments, through video



conferencing in accordance with Section 530 of the BNSS read with the Madras High Court Video Conferencing Rules, 2020.

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4. It is the case of the petitioner/A1 that when he filed such an application, the same was returned with an endorsement that the Madras High Court Video Conferencing Rules, 2020, do not permit questioning of the accused on the charges through video conferencing. Section 530 of the BNSS does not contemplate questioning of the accused on the charges through video conferencing.

Crl.O.P.No.10782 of 2026

This petition has been filed praying to set aside the returned docket order dated 07.02.2026 in unnumbered Crl.M.P. in C.C.No.1477/2020 on the file of the XVIII Metropolitan Magistrate, Saidapet, and to direct the Magistrate to take the petition on file.

2. Heard Mr.Ashwin Kumar, learned counsel for the petitioner.

3. The learned counsel for the petitioner would submit that Section 530 of the BNSS permits the e-Sakshya trial and, therefore, the trial Court ought to have allowed the applications filed by the petitioners.

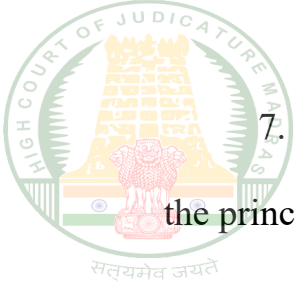


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4. The learned counsel for the petitioners would also rely on the Madras High Court Video Conferencing in Courts Rules, 2020, under which the general principles for video conferencing, contained in Rule 3, prohibit only the recording of the accused's judicial confession, the recording of settlements, and the pronouncement of awards in Lok Adalats or Jail Adalats. The appearance and questioning are not prohibited.

5. Per contra, the learned Government Advocate (Crl.Side) would submit that this is a complaint filed on 06.01.2020 under Section 190(1)(a) and 200 of the Cr.P.C. and that, in cases filed earlier to the coming into force of the BNSS, by virtue of Section 531 of the BNSS, the proceedings have to continue as per the Code of Cr.P.C., and there is no provision for conducting trial enquiries and proceedings through video conferencing.

6. I have considered the rival submissions of the learned counsel on either side and perused the materials on record. Firstly, as rightly contended by the Government Advocate (Crl.Side), in the instant case, the provision of the BNSS is not applicable in view of Section 531 of the BNSS, which saves the application of the Cr.p.c.,1973, with reference to cases initiated immediately before the date on which the Sanhita came into force.



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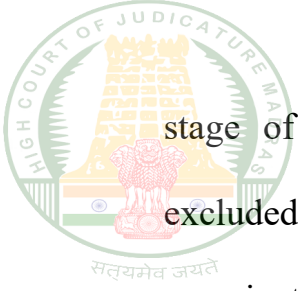
7. However, the question is, even if BNSS is not applicable, whether the principles can be extrapolated and applied to the instant case considering the progress of the case and given that the first accused is a 71-year-old senior citizen residing at Hyderabad, suffering from age-related ailments, while the second accused is residing in Texas, United States of America. Section 530 of the BNSS is extracted hereunder for ready reference:

530. Trial and proceedings to be held in electronic mode.

All trials, inquiries and proceedings under this Sanhita, including-(i) issuance, service and execution of summons and warrant;(ii) examination of complainant and witnesses;(iii) recording of evidence in inquiries and trials; and(iv) all appellate proceedings or any other proceeding, may be held in electronic mode, by use of electronic communication or use of audio-video electronic means.

8. Thus, it can be seen that all trials, inquiries and proceedings under the BNSS can be held in electronic mode.

9. Prior to the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023, there was no express provision in the Code of Criminal Procedure, 1973 either enabling the examination of an accused through video conferencing or barring the same. The field is presently governed by the Madras High Court Video Conferencing in Courts Rules, 2020. Rule 3(2) provides that, in justifiable circumstances, video conferencing may be employed at all or any



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stage of judicial proceedings, except in respect of proceedings expressly excluded by the Rules. Rule 4(4)(f) contemplates hearings involving the examination of an accused and requires the Court to specify the manner of transmission and authentication of the deposition and documents exchanged between the Court Site and the Remote Site. Rule 6(2) further permits, in exceptional circumstances, the examination of an accused under Section 164 of the Code of Criminal Procedure, 1973 (other than for recording a judicial confession) through video conferencing. The Practice Directions appended to the Rules require the appointment of a Remote Site Coordinator whenever an accused is to be examined and, where the participant is located overseas, ordinarily envisage an official of the Indian Consulate, Embassy or High Commission of India acting as the Coordinator. They further provide for verification of the identity of the accused, confirmation of the accused's location, and safeguards to ensure that the accused is not prompted, tutored, coerced or assisted by any unauthorised person during the proceedings. While the Rules do not expressly provide for the appearance of an accused through video conferencing for the purpose of answering the charge, Rule 13, being the residuary provision, stipulates that matters for which no express provision has been made shall be decided by the Court consistent with the principle of furthering the interests of justice.

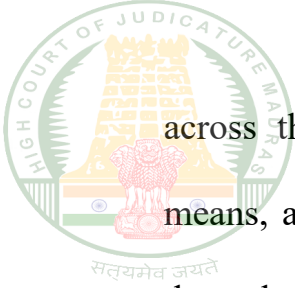


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10. The Supreme Court Model Video Conferencing Rules for Courts, 2021 also recognize the permissibility of conducting criminal proceedings through video conferencing. Rule 3(i) permits the use of video conferencing at all stages of judicial proceedings. Rule 5.3.1 specifically provides that, where the required person is residing overseas, an official of the Indian Embassy, High Commission or Consulate may function as the Coordinator at the Remote Point. Further, Rule 11.2 expressly enables the Court, in exceptional circumstances and for reasons to be recorded, to examine an accused under Section 313 of the CrPC through video conferencing, subject to appropriate safeguards. These provisions demonstrate that the use of video conferencing for securing the participation of an accused in criminal proceedings has received recognition in the Model Rules, subject to adequate procedural safeguards.

11. The proposed draft rules, “The Madras High Court Video Conferencing Rules, 2026”, with a view to avoiding delay in judicial proceedings due to non-availability of parties and to give effect to the various provisions of BNSS, can be borne in mind. Under Rule 3.2, the examination of accused persons is specifically provided for. Rule 3.3 vests in the court the discretion to adopt video conferencing if it would not prejudice the fairness of the proceedings. In view of the above, I am of the view that the following guidelines can serve as the broad contours for the exercise of discretion:

(A) Under BNSS, Section 251 (2) specifically enables the Court to put



across the charge to the accused either physically or through audio-video means, and as such, every accused who is permitted by the Court can appear through video conferencing and answer the charge and for the questioning in Summons cases and Summary Trial Cases also the same procedure can be followed in the discretion of the court, in the best interests of the progress of the case;

(B) Normally, for the accused residing in faraway places or foreign countries, permission may be granted to attend the ordinary hearings online in the best interests of the progress of the case.

(C) For the recording of evidence, it may be conducted at remote sites approved by the Court, provided that the integrity of the process is ensured, as in some cases witnesses can be tutored; they will have additional equipment and screens to answer questions and can disconnect audio/video at their convenience to avoid inconvenient questions, etc. Therefore, approval or continuation must be at the Court's complete discretion, ensuring fairness in the process.

(D) Further, while exercising discretion regarding appearance and questioning of an accused person, a distinction shall be drawn between accused persons who are employed and residing abroad for their avocation and in the normal course, and those who flee abroad and challenge the efficacy of the Indian Criminal Justice System, fugitive offenders, heinous cases, economic offenders, etc. In the latter case, permission should normally be refused.



(E) If the presence of the accused in India is necessary for further investigation, recovery, or the redressal of any other grievance of the de facto complainants/victims, permission need not be granted.

(F) Many times, persons residing abroad for their avocations also get involved in cases involving accidents, hurt, etc., with their neighbours or persons with whom they have civil disputes when they visit India, and then they go back to work. These cases stagnate without progress. In the interest of such cases, the Trial Courts shall exercise their discretion in permitting them to appear through video conferencing.

12. In light of the above discussion, the instant case does not involve any economic fraud or challenge to the Indian Justice System. The accused are residing at the places mentioned due to their avocation and not solely to evade the progress of the case. The stage is that of first appearance and questioning. Since their answers are to be recorded and signed copies are to reach the Court, they may be permitted to appear through remote sites.

13. As far as accused No.1 is concerned, it is stated that he is presently at Hyderabad and as far as accused No.2 is concerned, it is stated that he is presently in the United States of America. For the essential hearings, first hearing and questioning, both can be permitted to appear through video conferencing and their counsel can identify them. Questioning can be done, and



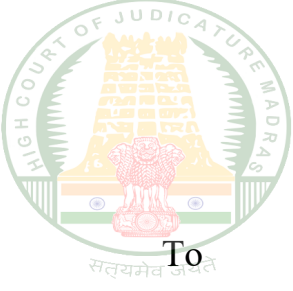
audio-video recording of the answers can be made. For the other hearings, their presence shall stand dispensed with, provided they are represented by their counsel and the trial proceeds further. Needless to mention that at the end of the trial they shall be physically present before the Court. The Criminal Original Petitions are ordered accordingly.

Connected Miscellaneous petitions are closed.

30-06-2026

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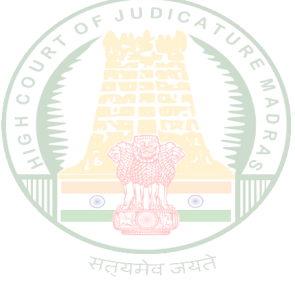
Neutral Citation : Yes/No



To

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1. The Food Safety Officer
Code No.551,
Velachery Zone,
Chennai District,
Tamil Nadu Food Safety and Drugs Administrative Department,
No.33, West Zone Road,
Saidapet, Chennai-600015.
2. The XVIII Metropolitan Magistrate,
Saidapet, Chennai.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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D.BHARATHA CHAKRAVARTHY, J.

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**CRL OP Nos. 8959, 10273 AND 10782 of 2026
AND
Crl.M.P.Nos.6383,7329,7392, 7638 and7640 of 2026**

30-06-2026