

Court No. - 12

Case :- CRIMINAL MISC. WRIT PETITION No. - 1007817 of 2011

Petitioner :- Mohd. Farhad Moid And Anr

Respondent :- State Of U.P. Thru. Prin. Secy. Home And Ors.

Counsel for Petitioner :- Aftab Ahmad

Counsel for Respondent :- Govt. Advocate, Jayant Singh Tomar

And

Case :- CRIMINAL MISC. WRIT PETITION No. - 7519 of 2016

Petitioner :- Lalla Ram

Respondent :- State Of U.P And Anr

Counsel for Petitioner :- Brijesh Kumar Singh

Counsel for Respondent :- G.A

And

Case :- APPLICATION U/S 482 No. - 4652 of 2012

Applicant :- Tarun Wadhwani

Opposite Party :- The State Of U.P And Anr.

Counsel for Applicant :- K.S Pawar, Sameer Jain

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Saurabh Lavania, J.

1. Heard Shri Aftab Ahmad, learned counsel for the petitioner (in Crl. Misc. Writ Petition No.1007817 of 2011), Shri Brijesh Kumar Singh, learned counsel for the petitioner (in Crl. Misc. Writ Petition No.7519 of 2016) and learned A.G.A. for the State.

2. Criminal Misc. Writ Petition No.1007817 of 2011 (Mohd. Farhad Moid And Anr. Vs.State of U.P. & Ors.) was instituted seeking the following main relief(s):-

"(i) issue a writ, order or direction in the nature of Certiorari quashing the orders of summoning dated 30.08.2010 and 22.11.2011 passed by the opposite parties no.3 and 2 respectively, contained in Annexure No.1 and 2 respectively to this writ petition.

"(ii) issue a writ, order or direction in the nature of Certiorari quashing the proceedings in Case Crime No.2499 of 2010 in the name of State Versus Farhad Moid and Another pending in the Court of the opposite party no.3."

3. Criminal Misc. Writ Petition No.7519 of 2016 (Lalla Ram Vs. State of U.P. & Another) was instituted seeking the following main relief(s):-

"(i) Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 18.02.2011 passed by Additional Chief Judicial Magistrate, Room No.17,

Barabanki in Case No.456/2011 under Sections 7/16 of Prevention of Food Adulteration Act, 1954 and impugned judgment dated 24.09.2013 passed by Additional Sessions Judge, Court No.1, Barabanki in Criminal Revision No.45/2013 as well as contained as Annexure No.1 & 2 to this writ petition and further be pleased to quash the proceedings of Case No.456/2011 under Sections 7/16 of Prevention of Food Adulteration Act, 1954 pending in the Court of A.C.J.M. Room No.17 Barabanki."

4. Application u/s 482 Cr.P.C. No.4652 of 2012 (Tarun Wadhwani Vs. State of U.P. & another) was instituted seeking the following prayer(s):-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application and quash the proceedings of Case No.436 of 2011, State Vs. Tarun Wadhwani, under Section 7/16 of P.F.A. Act pending in the Court of Additional Chief Judicial Magistrate, Court No.17, Barabanki.

It is further prayed that during the pendency of this application before this Hon'ble Court further proceedings of Case No.436 of 2011, State Vs. Tarun Wadhwani under Section 7/16 P.F.A. Act pending in the court of Additional Chief Judicial Magistrate, Court No.17, Barabanki may remain stayed."

5(i). In Criminal Misc. Writ Petition No.1007817 of 2011, vide order dated 30.08.2010 the Additional Chief Judicial Magistrate, Court No.17, District Barabanki (in short, 'ACJM'), summoned the petitioners - Mohd. Farhad Moid and Mohd. Abdul Moid to face the proceedings registered as Case No.2499 of 2019 (State Vs. Mohd. Farhad Moid & others), under Sections 7/16 of Prevention of Food Adulteration Act, 1954 (in short 'Act 1954') related to P.S. Kotwali Barabanki.

5(ii). Vide order dated 22.11.2011, passed in Criminal Revision No.270 of 2010 (Mohd. Farhad Moin & Another Vs. K.K. Tripathi & another), the Additional Sessions Judge, Court No.1, Barabanki (in short 'Revisional Court') affirmed the order of the Magistrate dated 30.08.2010.

6(i). In Criminal Misc. Writ Petition No.7519 of 2016, vide order dated 18.02.2011 the ACJM Court No.1, Barabanki, summoned the petitioner - Lalla Ram to face the proceedings registered as Case No. 456 of 2011 (State Vs. Lalla Ram), under Section 7/16 of Act 1954, P.S. Dewa, Barabanki.

6(ii). Vide order dated 24.09.2013, passed in Criminal Revision No.45 of 20013 (Lalla Ram Vs. State of UP.), under Section 7/16 of Act 1954, the Revisional Court affirmed the order of the Magistrate dated 18.02.2011.

7. In petition/Application u/s 482 Cr.P.C. No.4652 of 2012 (Tarun Wadhvani Vs. State of U.P. & another), vide order dated 18.02.2011 the A.C.J.M. Court No.17, Barabanki took cognizance and summoned the applicant-Tarun Wadhvani to face the proceedings in Case No.436 of 2011, under Section 7/6 of Act, 1954.

8. In Crl. Misc. Writ Petition No.1007817 of 2011 the relief(s) have been sought on the ground that Section 36 to 47 came into force vide notification dated 31.07.2009 of Food Safety and Standards Act, 2006 (in short, 'FSSA') and as such the proceedings initiated in terms of the Act 1954 are liable to be interfered with.

9. In Crl. Misc. Writ Petition No.7519 of 2016 and Application u/s 482 Cr.P.C. No.4652 of 2012 the relief(s) have been sought on the ground that on 29.07.2010 Section 89 of FSSA came into effect and as such proceedings initiated in terms of the Act 1954 are liable to be interfered with.

10. The Revisional Court in both the above indicated writ petition(s) took note of the notification dated 05.08.2011, which reads as under :-

"F.No.P-15025/41/2011-DFQC-In exercise of powers conferred by sub-section (1) of section 97 of the Food Safety and Standards Act, 2006 (34 of 2006), the Central Government hereby repeals the enactments and orders in the Second Schedule of the Food Safety and Standards Act, 2006 and the Milk and Milk Products Regulations, 1992, with effect from 5th August, 2011"

11. The Revisional Court also took note of the judgment passed by the Full Bench of this Court in Misc. Bench No.4252 of 2010 (Shyam Narain Pandey Vs. State of U.P.), which reads as under :-

"We have heard learned counsel for parties and perused the reference order as well as affidavits placed on record.

Vide the order dated 18.02.2011, on the plea of repeal of PFA Act and the Rules, 1976, the following question of law was referred for determination by a Larger Bench.

"Whether the notification issued on 29.07.2010 under Section 1, sub section (3) of the Act, 2006 has the effect of repealing the Prevention of Food Adulteration Act, 1954 and the U.P. Prevention of Food Adulteration Rules, 1976 or the aforesaid notification is only a notification regarding commencement of the said provision of the Act i.e. the date of its enforceability, which cannot be treated to be a notification under section 97(1) of the Act, 2006 issued by the Central Government?"

During the course of hearing of the reference, Dr. Ashok Nigam, learned Additional Solicitor General of India brought to our notice a notification issued by the Ministry of Health, Family Welfare on 4th August, 2011. The said notification is reproduced as below:

"F.No.P-15025/41/2011-DFQC-In exercise of powers conferred by sub-section (1) of

section 97 of the Food Safety and Standards Act, 2006 (34 of 2006), the Central Government hereby repeals the enactments and orders in the Second Schedule of the Food Safety and Standards Act, 2006 and the Milk and Milk Products Regulations, 1992, with effect from 5th August, 2011"

In view of aforesaid development, as there is a consensus between learned counsel for parties that the writ petitions which impugn the points being the subject matter of reference, would now be rendered infructuous with issuance of notification as above, we hold accordingly. And for the same reason, and also since the notification which covers the subject matter has been issued, the instant reference may not require any determination and it would only be an academic exercise to answer after hearing the parties. Accordingly, this reference stands disposed of.

At this stage, learned counsel for petitioner Sri Anurag Narain states that the subject matter of writ petition No.4252(M/B) of 2010 is since squarely covered by the notification, the petition may be dismissed as infructuous.

Hence, it is dismissed as such.

Other connected writ petitions are directed to be listed before appropriate Bench (s) for consideration and orders."

12. The Revisional Court upon due consideration of the aforesaid rejected the revision(s) by the impugned order(s) dated 22.11.2011 and 24.09.2013, in writ petition(s) detailed hereinabove.

13. In the aforesaid background of the case, petition(s), which are being decided by the order, have been filed.

14. Shri Aftab Ahmed, learned counsel for petitioners (in Crl. Misc. Writ Petition No. 1007817 of 2011) placed before this Court the judgment of Hon'ble Apex Court in the case of **Manik Hiru Jhangiani Vs. State of M.P.** reported in **2023 SCC Online SC 1678** and based upon the same stated that the issue in the present petition(s) is squarely covered by this judgment. Relevant paras are extracted hereinunder.

"9. We have given careful consideration to the submissions. The offence alleged against the appellant is under Section 2(ix)(k), read with Rule 32 of the PFA, which was made punishable under Section 16(1)(a). In short, the allegation was that the label on the food product of the appellant was not in accordance with the requirements of the PFA and the Rules framed thereunder. Therefore, the definition of 'misbranded' under Section 2 (ix) will apply. Clause (ix) of Section 2 of PFA reads thus:

"(ix) "misbranded"—an article of food shall be deemed to be misbranded—

(a) if it is an imitation of, or is a substitute for, or resembles in a (2020) 10 SCC 751 manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character;

(b) if it is falsely stated to be the product of any place or country;

(c) if it is sold by a name which belongs to another article of food;

(d) if it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the articles is made to appear better or of greater value than it really is;

(e) if false claims are made for it upon the label or otherwise;

(f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the

limits of variability prescribed under this Act;

(g) if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents;

(h) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article;

(i) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order sufficiently to inform its purchaser as to its value for such uses;

(j) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made thereunder;

(k) if it is not labelled in accordance with the requirements of this Act or rules made thereunder;"

10. The corresponding provision under the FSSA is clause (zf) of Section 3 which reads thus:

"(zf) "misbranded food" means an article of food– (A) if it is purported, or is represented to be, or is being–

(i) offered or promoted for sale with false, misleading or deceptive claims either;

(a) upon the label of the package, or

(b) through advertisement, or

(ii) sold by a name which belongs to another article of food; or

(iii) offered or promoted for sale under the name of a fictitious individual or company as the manufacturer or producer of the article as borne on the package or containing the article or the label on such package; or (B) if the article is sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer bearing his name and address but–

(i) the article is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character; or

(ii) the package containing the article or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular, or if the package is otherwise deceptive with respect to its contents; or (iii) the article is offered for sale as the product of any place or country which is false;

or (C) if the article contained in the package–

(i) contains any artificial flavouring, colouring or chemical preservative and the package is without a declaratory label stating that fact or is not labelled in accordance with the requirements of this Act or regulations made thereunder or is in contravention thereof; or

(ii) is offered for sale for special dietary uses, unless its label bears such information as may be specified by regulation, concerning its vitamins, minerals or other dietary properties in order sufficiently to inform its purchaser as to its value for such use;

or

(iii) is not conspicuously or correctly stated on the outside thereof within the limits of variability laid down under this Act." Sub-clause (A) (i) deals with food being offered or promoted for sale with false, misleading or deceptive claims upon the package's label.

11. Under Section 16 of PFA, penalties have been prescribed. Under clause 1(i) of sub-section (1) of Section 16, misbranding within the meaning of Clause (ix) of Section 2 is an offence punishable with imprisonment for a term which may not be less than six months, but it may extend to three years and with a fine of the minimum amount of Rupees one thousand. The procedure for taking cognizance is prescribed by Section 20.

12. As against this, Section 52 of FSSA provides for penalties for misbranded food. FSSA does not prescribe any punishment of imprisonment for misbranding, but the power under Section 52 is to impose a penalty, which may extend to Rupees 3 lakhs.

13. Thus, under the provisions of the PFA, for misbranding, a person can be sentenced to imprisonment of a minimum six months with a fine of Rupees one thousand and more.

However, for a similar violation under the FSSA, there is no penal provision in the sense that there is no provision for sentencing the violator to undergo imprisonment and to pay a fine. Under the FSSA, only a penalty of up to Rupees 3 lakhs can be imposed.

14. We must note here that Sections 4,5,6,7,8,9,10,87,88,91 and 101 were brought into force with effect from 15th October 2007. Section 3 of the FSSA which defines 'misbranded food' came into force on 28th May 2008. As noted earlier, Section 97 which provides for repeal of the PFA was brought into force on 5th August 2011. Thus, the penal provisions of the PFA were in force till 5th August 2011. In this case, the alleged offence was committed on 29th November 2010. Thus, on that day, Section 52 of FSSA was in force as also the provisions of the PFA and the PFA Rules."

15. From the above quoted paras of the aforesaid judgment, particularly, in para 14 and the notification dated 05.08.2011 as also the judgment of the Full Bench of this Court, which took note of the notification dated 05.08.2011, this Court finds that the relief(s) sought in the petition(s), indicated above, are not liable to be acceded and in the impugned order(s) no interference is required. Accordingly, all the petition(s) are **dismissed**.

16. The liberty is given to the petitioner(s) to place their case before the Magistrate, based upon the observations made by Hon'ble Apex Court in the judgment passed in **Manik Hiru Jhangiani (supra)** and other relevant provisions of FSSA including Section 68 of the same.

Order Date :- 17.12.2024

Anand/-