

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 28.04.2026

Pronounced on: 08.05.2026

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Whether the operative part or full judgment
is pronounced: Full judgment

CRMC No. 86/2011

c/w

CRMC No. 85/2011

CRMC No. 86/2011

- 1. Suresh Chand Garg**, Aged 65 years S/o Late Sh. Dau Daul Garg, Chairman-cum-Managing Director Tapan Milk Products Tapan House, 1-2, Kusam Vihar, Mauza Jaganpur Bela, Dayal Bagh Agra-282005 (Uttar Pradesh)
- 2. Tapan Milk Products**, Tapan House 1-2, Kusam Vihar, Mauza Jaganpur Bela Dayal Bagh, Agra-282005 (Uttar Pradesh)
- 3. Tapan Marketing and Sales** Sector-2, Channi Himmat, Jammu through its Depot Manager.

.....Appellant(s)/Petitioner(s)

Through: Mr. Rahul Pant, Sr. Advocate with
Mr. Dhruv Pant, Advocate

Vs

- 1. Anil Gupta** S/o Sh. Ram Lal Proprietor, United Agency Poonch Road Manda Tehsil Akhnoor District Jammu.
- 2. Abhishek Mahajan** S/o Anup Gupta C/o United Agency Poonch Road Manda Tehsil Akhnoor District Jammu.
- 3. State of Jammu and Kashmir** through Food Inspector (H.Q. Jammu Division) Sh. Pankaj Soni C/o Office of Deputy Controller Drugs and Food Control

Organization Jammu Division.

..... Respondent(s)

Through: Mr. Raman Sharma, AAG with
Ms. Saliqa Sheikh, Advocate

CRMC No. 85/2011

1. **Suresh Chand Garg**,
Aged 65 years S/o Late Sh. Dau Daul Garg,
Chairman-cum-
Managing Director
Tapan Milk Products
Tapan House, 1-2,
Kusam Vihar, Mauza
Jaganpur Bela, Dayal
Bagh Agra-282005
(Uttar Pradesh) ...Appellant(s)/Petitioner(s)
2. **Tapan Milk Products**,
Tapan House 1-2,
Kusam Vihar, Mauza
Jaganpur Bela Dayal
Bagh, Agra-282005
(Uttar Pradesh)
3. **Tapan Marketing and Sales** Sector-2, Channi
Himmat, Jammu
through its Depot
Manager.

Through: Mr. Rahul Pant, Sr. Advocate with
Mr. Dhruv Pant, Advocate

Vs

1. **Raj Kumar Gupta** S/o
Late Sh. Dev Raj Gupta
R/o 64/2, Sanjay Nagar, Jammu. Respondent(s)
2. **Sonu Gupta** S/o Late Sh.
Janak Raj Gupta R/o 64/2,
Sanjay Nagar, Jammu.
3. **State of Jammu and Kashmir** through Food
Inspector Block
SohanjanaAt Present
Manzoor Ahmed C/o
Office of Block Medical
Officer, Sohanjana,
Jammu.

Through: Mr. Raman Sharma, AAG with

Ms. Saliqa Sheikh, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

CRMC No. 86/2011

1. This petition has been filed for quashing the proceedings of the complaint titled, '*State Through Food Inspector vs. Tapan Milk Products and ors.*', pending before the court of learned Special Judicial Mobile Magistrate (Excise), Jammu (*for short 'the trial court'*), filed by respondent No. 3 against the petitioners and respondent Nos. 1 and 2 for commission of offences under Section 7(i), 7(ii) and 7(v) of Prevention of Food Adulteration Act, 1954 (*for short 'the Act of 1954'*) and also order dated 29.01.2011 passed by the learned trial court, whereby the learned trial court after taking cognizance of the offences, has issued process against petitioners and respondent Nos. 1 and 2 for commission of offences under Section 7(i), 7(ii) and 7(v) of Act of 1954.
2. It is contended by the petitioners that the learned trial court has not realised that the Act of 1954 stood repealed and replaced by a new Act i.e. Food Safety and Standards Act (FSSA), 2006 (*for short 'the Act of 2006'*) when the offence was allegedly committed on 01.12.2010. It is stated that the Government of India from time to time issued different notifications for enforcing the different provisions of the Act and finally the complete Act of 2006 was brought in force by the Government of India vide notification dated 29.07.2010.

3. Mr. Rahul Pant, learned Senior Counsel for the petitioners has submitted that in view of Section 89 of the Act of 2006, the proceedings initiated by respondent No. 3 were misconceived, as the Act of 1954 was not in operation at the time when the offences were allegedly committed by the petitioners and other accused.
4. Mr. Raman Sharma, learned AAG has submitted that in view of Section 97 of the Act of 2006, the prosecution of the petitioners can be initiated and continued under the Act of 1954, as the Act of 1954 as mentioned in Second Schedule of Act of 2006, was repealed only on 05.08.2011 i.e. after the commission of offences by the petitioners and other accused.
5. Heard learned counsel for the parties and perused the record.
6. A perusal of the complaint depicts that the allegations have been levelled against the petitioners and respondent Nos. 1 and 2 for commission of offences under Section 7(i), 7(ii) and 7(v) punishable under Section 16 of Act of 1954 on the ground that the samples of 'Deep Classic Mild Fat' taken from the premises of respondent No. 1 were found to be 'adulterated' as after analysis it was found that it contained natural identical flavouring substances, not allowed as per PFA Rules. It was also alleged that the sample was an admixture of milk fat and hydrogenated and un-hydrogenated edible vegetable fat, which again was violation of PFA Rules. It was also alleged that the words "Mild Fat" mean low cholesterol displayed in the article of food offered for sale, was violative of PFA Rules, as such, the sample was also declared as 'misbranded'.

7. In terms of Section 89 of the Act of 2006, the provisions of the Act of 2006 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act of 2006, meaning thereby that the Act of 2006 shall prevail for any other law for the time being in force in case of any consistency between them. Section 89 of the Act of 2006 admittedly came into effect vide notification dated 29.07.2010.
8. The issue is whether the Act of 2006 includes provisions that cover the specific offences alleged against the petitioners and respondent Nos. 1 and 2.
9. The first offence for which the petitioners are being prosecuted involves adulterated food as defined by Section 7(i) of the Act of 1954. Specifically, the sample was found to be 'adulterated' because it contained natural identical flavouring substances that are impermissible under the PFA Rules. Section 2(ia) of the Act of 1954, which defines the expression “adulterated”, is reproduced as under:

“Section 2(ia) defines “adulterated” an article of food shall be deemed to be adulterated—

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(b) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof;

(c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;

- (d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof;
- (e) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health;
- (f) if the article consists wholly or in part of any filthy, putrid, 1[***], rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;
- (g) if the article is obtained from a diseased animal;
- (h) if the article contains any poisonous or other ingredient which renders it injurious to health;
- (i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;
- (j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;
- (k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;
- (l) if the quality or purity of the article falls below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, which renders it injurious to health;
- (m) If the quality or purity of the article falls below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health.

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.

Explanation.—Where two or more articles of primary food are mixed together and the resultant article of food—

(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and

(b) is not injurious to health,

then, such resultant article shall not be deemed to be adulterated within the meaning of this clause.”

10. In the present case, the allegations regarding the 'adulterated' product fall within the definition provided in Section 2(ia)(a) of the Act of 1954. In the opinion of this Court, this corresponds to a 'sub-standard' product as defined under Section 3(1)(zx) of the 2006 Act. That provision stipulates that food is deemed sub-standard, if it fails to meet specified standards, yet not to the extent of rendering the article unsafe. It is noted that the report of analyst no where provides that the product is injurious to health.
11. The second allegation against the petitioners is that the sample contains an admixture of milk fat with hydrogenated and un-hydrogenated edible vegetable fats, in violation of the PFA Rules. This act constitutes an offence under Section 7(v) of the Act of 1954 and would correspond to the 'sub-standard' classification as defined in Section 3(i)(zx) of Act of 2006.
12. The third allegation is for commission of offence under Section 7(ii) of the Act of 1954 on the ground that the sample was 'misbranded', as the words "Mild Fat" mean low cholesterol displayed in the article of food offered for sale, was violative of PFA Rules. Misbranded food in terms of Section 2(ix) of Act of 1954 corresponds to misbranded food as defined in Section 3 (i)(zf) of the Act of 2006.

13. Section 51 of the Act of 2006 provides for the penalty for sub-standard food, whereas Section 52 of the Act of 2006 provides penalty for misbranded food. Thus, Sections 51 and 52 of the Act of 2006 were in force w.e.f. 29.07.2010 and the date of commission of alleged offences is 01.12.2010.
14. The contention of Mr. Raman Sharma, learned AAG is that in terms of Section 97 of the Act, petitioners can be prosecuted, as Section 97 of the Act of 2006 came in to effect w.e.f. 05.08.2011, which had the effect of repealing of Act of 1954 w.e.f. 05.08.2011. The contention raised by Mr. Sharma, learned AAG has already been adjudicated by the Hon'ble Supreme Court in case titled '**Manik Hiru Jhangiani vs. State of M.P.**' reported in **2023 INSC 1078**. In para Nos. 17 and 18 of the judgment, Hon'ble the Supreme Court has held as under:-

“17. In this case, on the day on which the alleged offence was committed, the offender could have been sentenced to imprisonment under [Section 16](#) of the PFA and under the FSSA, he could have been directed to pay the penalty up to Rupees 3 lakhs. The punishment under PFA and the penalty under the FSSA cannot be imposed on the violator for the same misbranding because it will amount to double jeopardy, which is prohibited under [Article 20\(2\)](#) of the Constitution of India. Thus, when the penal action can be taken under both statutes, the question is which will prevail. An answer to the said question has been provided by Section 89 of the FSSA, which reads thus:

“89. Overriding effect of this Act over all other food related laws. – The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

18. The effect of Section 89 is that if there is an inconsistency between the provisions of the PFA and the FSSA, the provisions of the FSSA will have an overriding effect over the provisions of the PFA. When it comes to the consequences of misbranding, the same has been provided under both the enactments, and there is inconsistency in the enactments as regards the penal consequences of misbranding. As pointed out earlier, one provides for imposing only a penalty in terms

of payment of money, and the other provides imprisonment for not less than six months. In view of the inconsistency, Section 89 of the FSSA will operate, and provisions of the FSSA will prevail over the provisions of the PFA to the extent to which the same are inconsistent. Thus, in a case where after coming into force of Section 52 of the FSSA, if an act of misbranding is committed by anyone, which is an offence punishable under [Section 16](#) of PFA and which attracts penalty under Section 52 of the FSSA, Section 52 of the FSSA will override the provisions of PFA. **Therefore, in such a situation, in view of the overriding effect given to the provisions of the FSSA, the violator who indulges in misbranding cannot be punished under the PFA and he will be liable to pay penalty under the FSSA in accordance with Section 52 thereof.**

(emphasis added)

15. In view of the law laid down by the Hon'ble Supreme Court, Section 89 of the 2006 Act mandates that its provisions supersede the Act of 1954 in cases of overlapping jurisdiction. Since the allegations fall within the ambit of Sections 51 and 52 of the FSSA, prosecution under the Act of 1954 is legally impermissible. The respondents' contrary contention is, therefore, found to be misconceived and rejected.
16. In view of what has been discussed hereinabove, this petition is allowed. The proceedings in the complaint titled, '*State Through Food Inspector vs. Tapan Milk Products and ors.*', pending before the court of learned Special Judicial Mobile Magistrate (Excise), Jammu as also the order passed by the learned trial court are quashed. The complaint shall stand dismissed.

CRMC No. 85/2011

17. This petition has been filed for quashing the proceedings of the complaint titled, '*State Through Food Inspector vs. Tapan Milk Products and ors.*', pending before the court of learned Special Judicial Mobile Magistrate (Excise), Jammu filed by respondent No. 3 against

the petitioners and respondent Nos. 1 and 2 for commission of offences under Section 7(ii) and 7(v) of Prevention of Food Adulteration Act, 1954 and also order dated 28.12.2010 passed by the learned trial court, whereby the learned trial court after taking cognizance of the offences, has issued process against petitioners and respondent Nos. 1 and 2 for the aforesaid offences.

18. The issues involved in the present petition are identical in nature and arise out of the same set of facts and circumstances as those considered in CRMC No. 86/2011. Therefore, for the reasons recorded therein, the present petition also deserves to be allowed. Accordingly, the proceedings in the complaint titled, “*State Through Food Inspector vs. Tapan Milk Products and others*”, pending before the Court of learned Special Judicial Mobile Magistrate (Excise), Jammu, along with all consequential orders passed therein by the learned trial Court, are quashed. Consequently, the complaint shall stand dismissed.
19. Disposed of.

(RAJNESH OSWAL)
JUDGE

Jammu
08.05.2026
Neha-II

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes