



2026:AHC:195973

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 31382 of 2026

Mohd. Zubair

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Meraj Ahmad Khan
Counsel for Opposite Party(s)	:	G.A.

Court No. - 79

HON'BLE SAURABH SRIVASTAVA, J.

1. Heard learned counsel for the applicant and learned AGA for the State.
2. Instant application has been filed with the prayer to set aside chargesheet dated 19.10.2025 and cognizance/summoning order dated 25.03.2026 passed in Case Crime No. 49 of 2025 (State Vs. Shaukeen and others), under Section 274, 275 BNS, P.S. Aichora Kamboh, District Sambhal, pending in the court of learned Civil Judge (S.D.)/Additional Chief Judicial Magistrate, Chandausi.
3. Learned counsel for applicant submitted that as per the narration of FIR, it is the allegation against applicant that he was involved in adulteration of milk which comes under the ambit of offence under 274, 275 BNS. He further submitted that the Food Safety and Standard Act, 2006 (in short FSSA) is very exhaustive legislation dealing with all aspects of food, including adulteration, unsafe food etc. and Section 89 of FSSA will have an overriding effect over the provisions of BNS and as such, applicant cannot be prosecuted in the present case. In support of his submissions, learned counsel for applicant has placed reliance upon a judgement rendered by Hon'ble the Apex Court in the case of **Ram Nath vs. the State of U.P. and others, 2024(3) SCC 502**.
4. Per contra, learned A.G.A. vehemently opposed the prayer sought through the instant application but at the same, he time did not dispute the ratio of the judgment rendered by Hon'ble the Apex Court in the Case of **Ram Nath (supra)** as relied upon by learned counsel for applicant.
5. After having the rival contentions raised by learned counsel for parties alongwith entire material available on record, this Court finds substance in

the submission made by learned counsel for the applicant. In the present case, the allegation against applicant is essentially with regard to adulteration of milk and such offences are specifically dealt with under the FSSA and Section 89 of the FSSA provides that the provisions of the said Act shall have an overriding effect over any other law for the time being in force in case of any inconsistency.

6. The Hon'ble Apex Court in the case of **Ram Nath (supra)**, has already considered the same issue and held that where the alleged act is covered by the provisions of the FSSA, prosecution under the general penal law for the same act would not be permissible in view of the overriding effect given to the FSSA by Section 89 thereof. The relevant paragraphs of the said judgment are being quoted hereinbelow:-

"26. Thus, there are very exhaustive substantive and procedural provisions in the FSSA for dealing with offences concerning unsafe food.

27. In this context, we must consider the effect of Section 89 of the FSSA. Section 89 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 of virtue of any law other than this Act."

The title of the section indeed indicates that the intention is to give an overriding effect to the FSSA over all 'food related laws'. However, in the main Section, there is no such restriction confined to 'food related laws', and it is provided that provisions of the FSSA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. So, the Section indicates that an overriding effect is given to the provisions of the FSSA over any other law.

28. The settled law is that if the main Section is unambiguous, the aid of the title of the Section or its marginal note cannot be taken to interpret the same. Only if it is ambiguous, the title of the section or the marginal note can be looked into to understand the intention of the legislature.

29. Therefore, the main Section clearly gives overriding effect to the

provisions of the FSSA over any other law in so far as the law applies to the aspects of food in the field covered by the FSSA. In this case, we are concerned only with Sections 272 and 273 of the IPC. When the offences under Section 272 and 273 of the IPC are made out, even the offence under Section 59 of the FSSA will be attracted. In fact, the offence under Section 59 of the FSSA is more stringent.

30. The decision of this Court in the case of Swami Achyutanand Tirth v. Union of India, (2014) 13 SCC 314 does not deal with this contingency at all. In the case of the State of Maharashtra v. Sayyed Hassan Sayyed Subhan (2019) 18 SCC 145, the question of the effect of Section 97 of the FSSA did not arise for consideration of this Court. The Court dealt with simultaneous prosecutions and concluded that there could be simultaneous prosecutions, but conviction and sentence can be only in one. This proposition is based on what is incorporated in section 26 of the GC Act. We have no manner of doubt that by virtue of Section 89 of the FSSA, Section 59 will override the provisions of Sections 272 and 273 of the IPC. Therefore, there will not be any question of simultaneous prosecution under both the statutes.

31. Accordingly, Criminal Appeal No. 472 of 2012, Criminal Appeal No.479 of 2012 and Criminal Appeal arising out of SLP (Crl.) No. 1379 of 2011 succeed, and we set aside the impugned orders. The offences, subject matter of these appeals, are hereby quashed and set aside with liberty to the authorities to initiate appropriate proceedings in accordance with the law if not already initiated. Therefore, the concerned authorities are free to act in accordance with the FSSA for offences punishable under Section 59 of the FSSA. Criminal Appeal Nos. 476 478 of 2012 are dismissed. No orders as to costs".

7. In the present case also, the allegations made against the applicant relate to adulteration of milk, which is a matter specifically covered by the FSSA, therefore, in view of the law laid down by the Hon'ble Apex Court in **Ram Nath (supra)**, applicant cannot be prosecuted under Sections 274 and 275 BNS for the same alleged act.

8. In view thereof, chargesheet dated 19.10.2025 and cognizance/summoning order dated 25.03.2026 passed in Case Crime No. 49 of 2025 (State Vs. Shaukeen and others), under Section 274, 275 BNS, P.S. Aichora Kamboh, District Sambhal, pending in the court of learned Civil

Judge (S.D.)/Additional Chief Judicial Magistrate, Chandausi, are hereby quashed in respect of applicant herein.

9. Accordingly, the instant application is **allowed**.

10. However, it is made clear that this order will not preclude the competent authority to proceed against applicant under the Special Act i.e. FSSA, if required.

September 17, 2026
Vivek Kr.

(Saurabh Srivastava,J.)