

CRM-M-22442-2011 and other connected petitions

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of Decision: 20.07.2015

1. CRM-M-22442-2011

Neeraj Chaudhary and another

... Petitioner(s)

Versus

U.T.Administration and another

... Respondent(s)

2. CRM-M-22444-2011

Neeraj Chaudhary and another

... Petitioner(s)

Versus

U.T.Administration and another

... Respondent(s)

AND

3. CRM-M-22447-2011

Neeraj Chaudhary and another

... Petitioner(s)

Versus

U.T.Administration and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

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| 1) Whether Reporters of the local papers may be allowed to see the judgment ?. | YES |
| 2) To be referred to the Reporters or not ?. | YES |
| 3) Whether the judgment should be reported in the Digest ? | YES |

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Present: Mr. Tushar Sharma, Advocate,
for the petitioners.

Ms. Ashima Mor, Addl. P.P.
U.T.Chandigarh.

Paramjeet Singh, J.

This order shall dispose of CRM-M-22442-2011, titled 'Neeraj Chaudhary and another vs. U.T.Administration and another ', CRM-M-22444-2011, titled 'Neeraj Chaudhary and another vs. U.T.Administration and another' and CRM-M-22447-2011, titled 'Neeraj Chaudhary and another vs. U.T.Administration and another', as common questions of fact and law are involved in all these petitions.

In CRM-M-22442-2011, prayer has been made for quashing the complaint No.100/2010 dated 22.11.2010 (Annexure P-1), under Section 7(i) and Section 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954 (in short, 'P.F.A.Act, 1954') and summoning order dated 22.11.2010 (Annexure P-2) and consequent proceedings arising therefrom.

In CRM-M-22444-2011, prayer has been made for quashing the complaint No.101/2010 dated 22.11.2010 (Annexure P-1), under Section 7(i) and Section 16(1) (a) (i) of the P.F.A.Act, 1954 and summoning order dated 22.11.2010 (Annexure P-2) and consequent proceedings arising therefrom.

In CRM-M-22447-2011, prayer has been made for quashing the complaint No.97/2010 dated 18.10.2010 (Annexure P-1), under Section 7(i) and Section 16(1) (a) (i) of the P.F.A.Act, 1954 and

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summoning order dated 18.10.2010 (Annexure P-2) and consequent proceedings arising therefrom.

All these petitions have been preferred by petitioner-M/s Taj Chandigarh, a unit of Taj GVK Hotels and Resorts Ltd. (in short, 'M/s Taj Chandigarh') and petitioner-Neeraj Chaudhary being Chef/Nominee with the M/s Taj Chandigarh.

In brief, facts giving rise to CRM-M-22442-2011 are to the effect that on 08.09.2010, at about 4.30 P.M, business premises of petitioner No.2 were inspected by Sh. Surinder Pal Singh, Food Inspector, Chandigarh Administration. He found petitioner No.1 present at the said business premises dealing with the business and affairs of petitioner No.2 being the Chief and licensee thereof. Petitioner No.1 was found to be in possession of about 10 kgs of Double toned Milk Dahi for public sale which was contained in a utensil and the Food Inspector demanded a sample of the said double toned milk dahi for the purpose of analysis and examination from him. The sample was deposited with the Public Analyst, Punjab, Chandigarh by hand on 09.09.2010. All the procedure and formalities prescribed under the P.F.A.Act, 1954 were completed. On examination, the sample was found to be adulterated as contents of sample contained 7.6% milk solids, not fat against the minimum prescribed standards of 9.0%. With these allegations, complaint under Section 7(i) and 16(1) (a) (i) of the P.F.A.Act, 1954 was filed against the petitioners on 22.11.2010. On the basis of complaint, the Chief Judicial Magistrate, Chandigarh took

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cognizance and summoned the petitioners vide impugned order dated 22.11.2010 (Annexure P-2).

In brief, facts giving rise to CRM-M-22444-2011 are to the effect that on 08.09.2010, at about 2.45 P.M, business premises of petitioner No.2 were inspected by Sh. Bharat Kanojia, Food Inspector, Chandigarh Administration. He found petitioner No.1 present at the said business premises dealing with the business and affairs of petitioner No.2 being the Chief and licensee thereof. Petitioner No.1 was found to be in possession of about about 5 kgs of Dhania Chutney which was contained in a steel utensil for public sale in the premises of petitioner No.2. A sample was taken from the same by the Food Inspector and was sent to the Public Analyst for the purpose of analysis and examination. The sample was deposited with the Public Analyst, Punjab, Chandigarh by hand on 09.09.2010. All the procedure and formalities prescribed under the P.F.A.Act, 1954 were completed. On examination, the sample was found to be adulterated as contents of sample contained 4.92% total solids against the minimum prescribed standard of 25.0%. With these allegations, complaint under Section 7(i) and 16(1) (a) (i) of the P.F.A.Act, 1954 was filed against the petitioners on 22.11.2010. On the basis of complaint, the Chief Judicial Magistrate, Chandigarh took cognizance and summoned the petitioners vide impugned order dated 22.11.2010 (Annexure P-2).

In brief, facts giving rise to CRM-M-22447-2011 are to the effect that on 08.09.2010, at about 2.30 P.M, business premises of

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petitioner No.2 were inspected by Sh. Surinder Pal Singh, Food Inspector, Chandigarh Administration. He found petitioner No.1 present at the said business premises dealing with the business and affairs of petitioner No.2 being the Chief and licensee thereof. Petitioner No.1 was found to be dealing in preparing, storing, selling food articles like Dahi, Kaanji, Paneer prepared, Rajmah prepared, mutton gravy prepared etc. in the utensils/containers which were imperfectly enameled, chipped and insanitary conditions. There are allegations against the petitioners that they have contravened the provisions of P.F.A.Act, 1954 and, therefore, a complaint under Section 7(v) and 16(I) (a) (ii) of the P.F.A.Act, 1954 read with Rule 49 of the P.F.A.Rules, 1955 was filed against the petitioners. Vide impugned order dated 18.10.2010, the petitioners were summoned under Section 16(1) (a) (ii) of the P.F.A.Act, 1954.

All the three petitions have been filed challenging the filing of complaints and summoning orders on the ground that provisions of P.F.A.Act, 1954 have already been repealed and in its place, new Act known as the Food Safety and Standards Act, 2006 (in short, 'F.S.S.Act, 2006') has come into being. Reference to various notifications (Annexures P3/A to P-3/G) has been made whereby various sections of F.S.S.Act, 2006 have been made applicable. It is also one of the grounds that F.S.S.Act, 2006 came into operation w.e.f 29.07.2010. It is also averred in the petitions that inspections were carried out on 08.09.2010 and proceedings have been initiated under the provisions of P.F.A.Act,

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1954 which stand repealed, therefore, the same are not sustainable in the eyes of law and are liable to be quashed.

Upon notice, the respondents appeared and filed reply with the averments that samples were found to be adulterated and complaints have been rightly filed under the provisions of P.F.A.Act, 1954. Section 97 of F.S.S.Act, 2006 was brought into force on 29.07.2010 and enactment and Orders as mentioned in Second Schedule of F.S.S.Act, 2006 stand repealed w.e.f. 05.08.2011 in view of Notification No.F-No.P-15025/41/2011-DFQC dated 04.08.2011. As such, proceedings have been rightly initiated against the petitioners under the provisions of P.F.A.Act, 1954 which was in operation on the date of inspection. The provisions of F.S.S.Act, 2006 were not applicable on the date of detection of alleged offence.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners vehemently contended that Central Government has issued various Notifications (Annexures P-3/A to 3/G) whereby various sections of F.S.S.Act, 2006 have been made applicable. Section 97 of F.S.S.Act, 2006 is with regard to repeal and savings and it has been made applicable vide Notification dated 29.07.2010. The inspection was carried out on 08.09.2010. Once Section 97 of the F.S.S.Act, 2006 has been made applicable vide Notification dated 29.07.2010, the earlier enactment stands repealed with effect from the date of said notification. Vide F.S.S.Act, 2006, all the old

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enactments regarding food items stand consolidated and Food Safety and Standards Authority of India has been authorized to lay down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. Since the P.F.A.Act, 1954 stands repealed, proceedings under this Act are void *ab initio* and are not sustainable in the eyes of law.

Per contra, learned Addl. P.P., U.T.Chandigarh vehemently opposed the contentions of learned counsel for the petitioners and submitted that many provisions of the F.S.S.Act, 2006 came into force with effect from various dates as mentioned in Notifications (Annexures P-3/A to P-3/G, for example, Sections 36 to 47 of F.S.S.Act, 2006, mentioned in Notification (Annexure P-3/F), came into force w.e.f 31.07.2009, Sections 19 to 21, 23 to 29, 31 to 35, 48 to 80, 89, 94 to 98 and 100, mentioned in Notification (Annexure P-3/G) came into force w.e.f 29.07.2010. She further contended that enactment and Orders specified in Second Schedule shall stand repealed from such date as the Central Government may appoint in this behalf. She further contended that notification for repealing the enactment and Orders has been issued on 04.08.2011 and enactment and Orders stood repealed w.e.f 05.08.2011. She further contended that the Food Safety and Standards Rules, 2011 has been published in the Gazette of India vide G.S.R. 362 (E) dated 5th May, 2011 and the same came into force on 05.08.2011.

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The entire proceedings have been rightly initiated as per the provisions of P.F.A.Act, 1954 and rules made thereunder. The proceedings under the P.F.A.Act, 1954 have been saved by Section 97 of the F.S.S.Act, 2006.

I have considered the rival contentions of learned counsel for the parties.

In view of arguments advanced by learned counsel for the parties, following point arises for consideration by this Court:

Whether prosecution under the provisions of P.F.A.Act and Rules framed thereunder is sustainable against the petitioners in respect of offences detected on 08.09.2010 and complaints filed under the provisions of the P.F.A.Act, 1954 and Rules framed thereunder upon which cognizance taken by the Chief Judicial Magistrate are liable to be set aside and resultantly complaints and summoning orders deserve to be quashed?

Before I deal with the point raised in these petitions, it would be appropriate to reproduce the relevant provisions of the F.S.S.Act, 2006 and notification. Sections 1(3), 89, 97 and 98 read as under:

“Section 1. Short title, extent and commencement

(1) xxxx

(2) xxxx

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be

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construed as a reference to the coming into force of that provision.

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.*

97. Repeal and savings. - *(1) With effect from such date as the Central Government may appoint in this behalf, the enactment and Orders specified in the Second Schedule shall stand repealed:*

Provided that such repeal shall not affect:—

(i) the previous operations of the enactment and Orders under repeal or anything duly done or suffered there under; or

(ii) any right, privilege, obligation or liability acquired, accrued or incurred under any of the enactment or Orders under repeal; or

(ii) any penalty, forfeiture or punishment incurred in respect of any offences committed against the enactment and Orders under repeal; or

(iv) any investigation or remedy in respect of any such penalty, forfeiture or punishment,

and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed:

(2) If there is any other law for the time being in force in any State, corresponding to this Act, the same shall upon the commencement of this Act, stand repealed and in such case, the provisions of section 6 of the General Clauses

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Act, 1897(10 of 1897) shall apply as if such provisions of the State law had been repealed.

(3) Notwithstanding the repeal of the aforesaid enactment and Orders, the licences issued under any such enactment or Order, which are in force on the date of commencement of this Act, shall continue to be in force till the date of their expiry for all purposes, as if they had been issued under the provisions of this Act or the rules or regulations made thereunder.

(4) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act or Orders after the expiry of a period of three years from the date of the commencement of this Act.

98. Transitory provisions for food standards.-

Notwithstanding the repeal of the enactment and Orders specified in the Second Schedule, the standards, safety requirements and other provisions of the Act and the rules and regulations made thereunder and Orders listed in that Schedule shall continue to be in force and operate till new standards are specified under this Act or rules and regulations made thereunder:

Provided that anything done or any action taken under the enactment and Orders under repeal shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force accordingly unless and until superseded by anything done or by any action taken under this Act.”

The Notification dated 04.08.2011 reads as under:

“In exercise of powers conferred by sub-section (1) of Section 97 of the Food Safety and Standards Act, 2006 (34

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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”.

The main purpose of the F.S.S.Act, 2006 is to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. The intention of the legislature can never be to create a situation when no law will remain in operation so as to prosecute a person for committing violation of the provisions of the P.F.A.Act, 1954.

It is pertinent to mention that F.S.S.Act, 2006 was made applicable w.e.f 28.05.2008. As per the provisions of the F.S.S.Act, 2006, Rules have to be framed and standards have to be prescribed and so many actions have to be taken under the said Act. Section 1(3) of the F.S.S.Act, 2006 makes it clear that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of the said Act and on the basis of notifications, only those provisions mentioned therein will come into force with effect from the dates specified therein, meaning thereby that if the F.S.S.Act, 2006 came into force on a date prior to the dates of detection of the offences, the same

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will not affect the power of the Food Inspectors to detect offence though the P.F.A.Act,1954 stood repealed on the strength of the notification issued under Section 97(1) of the F.S.S.Act, 2006. (emphasis supplied)

The effect of repealing a statute is to remove or destroy its all signs from the statute book completely as if it had never been in existence. Section 97 of the F.S.S.Act, 2006 is *pari materia* to Section 6-A of the General Clauses Act, 1897. When an old Act is repealed by new Act, period of change over is provided and this is specifically mentioned in the repeal and savings clauses of the new Act. The perusal of Section 97(1) of the F.S.S.Act, 2006 reveals that it will come into force w.e.f such date as the Central Government may appoint in this behalf. The Notification dated 29.07.2010 (Annexure P-3/G) is with regard to bring into force Section 97 of the F.S.S.Act, 2006 and Notification dated 04.08.2011 has been issued vide which enactments and Orders in Second Schedule of F.S.S.Act, 2006 stand repealed. It means that till 05.08.2011, as mentioned in the Notification dated 04.08.2011, P.F.A.Act, 1954 and Rules framed thereunder remained in force.

Furthermore, Section 98 of the F.S.S.Act, 2006 refers to transitory provisions contained in it. The marginal note of Section 98 of the F.S.S.Act, 2006 contains a *non obstante* clause which reads thus :
“notwithstanding the repeal of the enactment and Orders specified in the Second Schedule, the standards, safety requirements and other provisions of the Act and the rules and regulations made thereunder and

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Orders listed in the Schedule shall continue to be in force and operate till new standards are specified under this Act or the rules and regulations made thereunder. (Emphasis supplied)

In this case, the rules known as Food Safety and Standards Rules, 2011 have been published on 05.05.2011 and thereafter under Section 97(1) of the F.S.S.Act 2006, notification dated 04.08.2011 repealing enactment and Orders as mentioned in Second Schedule of the F.S.S.Act, 2006, has been issued and the F.S.S.Act, 2006 came into force w.e.f. 05.08.2011. The standards and safety requirements prescribed and actions to be taken under other provisions of the Act, Rules, Regulations and Orders enlisted in the Second Schedule shall continue to operate and shall have force till rules are framed and standards are prescribed under the F.S.S.Act, 2006. It is made clear that by virtue of notification issued under Section 1(3) of the F.S.S.Act, 2006, the provisions of P.F.A.Act, 1954 and Rules, 1955, framed thereunder, were not repealed and proceedings taken till 04.08.2011 under the provisions of the P.F.A.Act, 1954 are not affected by the provisions of the F.S.S.Act, 2006. In the present case, inspections were carried out on 08.09.2010, therefore, proceedings have been rightly initiated under the provisions of the P.F.A.Act, 1954 and Rules, 1955 made thereunder.

In view of above, I do not find any merit in these petitions.

Dismissed.

20.07.2015
parveen kumar

(Paramjeet Singh)
Judge