

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.95 of 2017

1. Vivek Rajput, S/o Shri Komal Singh Rajput, aged about 35 years,
Firm In & Out, Patel Chowk, Tahsil & District Durg (C.G.)
2. Navin Sabarwal, S/o Late Shri H.L. Sabarwal, aged about 56 years,
Firm In & Out, Patel Chowk, Tahsil & District Durg (C.G.)
(Revisioners)
---- Petitioners

Versus

1. Dr. Ajay Shankar Kannoje, the Food Security Officer,
Administration of Food & Drug, District Raipur (C.G.)
2. The State of Chhattisgarh, through the District Magistrate, Durg,
District Durg (C.G.)
---- Respondents

For Petitioners: Mr. Ashish Surana, Advocate.
For Respondent No.2: Mr. Gary Mukhopadhyay, Deputy Govt. Adv.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

04/05/2017

1. Invoking jurisdiction of this Court under Section 482 of the CrPC,
the petitioners herein call in question the revisional order dated 30-
11-2016 passed by the Additional Sessions Judge, Durg, in
Criminal Revision No.241/2014, whereby the revisional Court has
declined to set aside the order registering offence against them
under Sections 7 (i) and 16 (1) (a) (i) of the Prevention of Food
Adulteration Act, 1954 (for short, 'the PFA Act').
2. Essential facts necessary to consider the plea raised at the Bar are
as under: -

- 2.1) Petitioner No.2 is Proprietor / Owner of the shop situate at a retail outlet named as In & Out at Patel Square, Durg. Petitioner No.1 is Manager of that shop. They are running the general stores in the premises. The Food Inspector visited the shop of the petitioners and carried inspection and took a sample of Gram Flour of 1.5 Kgs. and sent it to the Public Analyst for chemical analysis. As per the report dated 6-11-2008, the sample was found adulterated. The Food Inspector filed complaint against both the aforesaid petitioners on 11-8-2014 before the jurisdictional Magistrate seeking cognizance of offence under Sections 7 (i) and 16 (1) (a) (i) of the PFA Act after obtaining sanction on 6-8-2014. On the same day i.e. 11-8-2014, cognizance was taken against the petitioners and against which the petitioners raised revision which remained unsuccessful.
- 2.2) Now, this petition under Section 482 of the CrPC has been filed mainly on the sole ground that the complaint filed by the Food Inspector was barred by Section 97 (4) of the Food Safety and Standards Act, 2006 (for short, 'the FSS Act').
- 2.3) The State/respondent No.2 has filed reply stating inter alia that since the sanction was granted by the competent authority only on 6-8-2014, promptly, the complaint was filed on 11-8-2014.
3. Mr. Ashish Surana, learned counsel appearing for the petitioners, would submit that complaint was filed under the PFA Act only on 11-8-2014. Section 97 of the FSS Act, which provides for repeal of the enactment and orders specified in the Second Schedule, came

into force on 29-7-2010 and the PFA Act is a scheduled enactment specified in Section 97 (1) of the FSS Act, therefore, under Section 97 (4) of the FSS Act, offence alleged to have been committed under the repealed Act, 1954, complaint for alleged offences could not have been filed after the expiry of a period of three years from the date of the commencement of the FSS Act i.e. 29-7-2010. Therefore, the complaint was hopelessly barred by Section 97 (4) of the FSS Act and therefore it is liable to be quashed.

4. Mr. Gary Mukhopadhyay, learned Deputy Govt. Advocate appearing for the State/respondent No.2, would reiterate the submissions made in the return and submit that on account of valid sanction received by the Food Inspector, the complaint was filed on 11-8-2014.
5. I have heard learned counsel for the parties and considered their rival submissions and also gone through the record with utmost circumspection.
6. It is not in dispute that complaint was filed by the respondent Food Officer only on 11-8-2014 under the provisions of Sections 7 (i) and 16 (1) (a) (i) of the PFA Act and cognizance was taken on the same day by the learned Magistrate. At this stage, it would be appropriate and advantageous to notice the relevant provisions of the FSS Act and the notification issued under Section 97 of the FSS Act which read as under: -

“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 thereunder; or

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

(iii) 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 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.

7. The Government of India, Ministry of Health and Family Welfare on 4-8-2011 issued a notification 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 enactment and

orders in the Second Schedule of the Food Safety and Standards Act, 2006 and the Milk and Milk Products Regulation, 1992 with effect from 5th August, 2011.”

8. Second Schedule of the FSS Act, 2006 is as under: -

“THE SECOND SCHEDULE

(See section 97)

1. The Prevention of Food Adulteration Act, 1954 (37 of 1954).
2. The Fruit Products Order, 1955.
3. The Meat Food Products Order, 1973.
4. The Vegetable Oil Products (Control) Order, 1947.
5. The Edible Oils Packaging (Regulation) Order, 1998.
6. The Solvent Extracted Oil, De oiled Meal, and Edible Flour (Control) Order, 1967.
7. The Milk and Milk Products Order, 1992.
8. Any other order issued under the Essential Commodities Act, 1955 (10 of 1955) relating to food.”

9. Sub-section (1) of Section 97 of the FSS Act provides that the Central Government may appoint a date and with effect from that date, the enactments and orders specified in the Second Schedule stand repealed. In exercise of this power, the Central Government by the aforesaid notification dated 4-8-2011 repealed the enactment and orders specified in the Second Schedule. The PFA Act is in the Second Schedule, therefore, this Act has been repealed with effect from 5-8-2011.

10. Sub-section (2) of Section 97 of the FSS Act provides that if there is any other law, which is not included in the Second Schedule, for

the time being in force in any State, the same shall upon the commencement of this Act (FSS Act) stand repealed. For the disposal of this petition, this provision is not relevant.

11. Sub-sections (3) and (4) of Section 97 of the FSS Act are saving clauses. Sub-section (3) saved the license issued under repealed enactments and orders till date of expiry whereas, sub-section (4) provides that no Court shall take cognizance of offence under the Repealed Act or orders after expiry of a period of three years from the date of commencement of this Act (FSS Act). It means, even after commencement of this Act (FSS Act), the Court can take cognizance of an offence under the Repealed Act within a period of three years from the date of commencement of the Act (FSS Act).
12. Sub-section (3) of Section 1 of the FSS Act provides that 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 construed as a reference to the coming into force of that provision.
13. The Central Government issued the notification S.O.1855(E) dated 29-7-2010, which reads as under: -

“In exercise of the powers conferred by sub-section (3) of Section 1 of the Food Safety and Standards Act, 2006 (34 of 2006), the Central Government hereby appoints the 29th day of July, 2010 as the day on which the provisions of Sections 19 to 21 (both inclusive), Section 23 to 29 (both inclusive), Sections 31 to 35 (both inclusive), Section 48 to 80 (both inclusive), Section 89, Section 94 to 98 (both inclusive) and Section 100 of the said Act, shall come into force.”

14. As noticed herein-above, the provisions under Sections 97 (1) and 97 (4) of the FSS Act came into force with effect from 29th of July, 2010. As provided under sub-section (4) of Section 97 of the FSS Act, no court shall take cognizance of an offence under the repealed Act after the expiry of a period of three years from the date of the commencement of that Act. The PFA Act is an enactment scheduled in the Second Schedule of the FSS Act with effect from 5-8-2011. As per the provisions contained in Section 97 of the FSS Act, the Court is empowered to take cognizance under the Repealed Act i.e. the PFA Act, within three years i.e. up to 28-7-2013. Thus, there is a specific provision in Section 97 of the FSS Act for repealing the PFA Act and as per sub-section (4) of Section 97 of the FSS Act, the Court is competent to take cognizance under the Repealed Act i.e. the PFA Act till 28-7-2013 under Sections 7 (i) and 16 (1) (a) (i) of the PFA Act.
15. In the present case, the offence is alleged to have been committed on 16-10-2008 and the complaint has been filed on 11-8-2014, whereas by virtue of the provisions contained in Section 97 (4) of the FSS Act, the Court could have taken cognizance of offences punishable under the PFA Act only up to 28-7-2013. Therefore, cognizance taken for the offences under the PFA Act after 28-7-2013 is clearly hit and barred by Section 97 (4) of the FSS Act and consequently, the trial Court has committed illegality in taking cognizance for the above-stated offences.
16. Mr. Gary Mukhopadhyay, learned Deputy Govt. Advocate

appearing on behalf of the State/respondent No.2, at this stage, would submit that in exercise of power conferred by sub-section (1) of Section 97 of the FSS Act, the Central Government has repealed and substituted the FSS Act with effect from 5-8-2011, therefore, three years' period be counted from that date.

17. Section 97 (4) of the FSS Act states that no court shall take cognizance of an offence under the repealed Act after the expiry of a period of three years from the date of the commencement of **this Act**. "This Act" is clearly referable to the FSS Act. Section 97 (4) of the FSS Act came into force from 29-7-2010. Therefore, the period would be reckoned from 4-8-2011 and not from 29-7-2010. Even otherwise, reckoning three years from 5-8-2011 also, the cognizance taken on 11-8-2014 by the trial Court is also barred. Therefore, the State can derive no benefit from this provision.

18. As a fall out and consequence of aforesaid discussion, cognizance taken by the learned Magistrate for the offence under Sections 7 (i) and 16 (1) (a) (i) of the PFA Act is clearly barred by Section 97 (4) of the FSS Act. Consequently, the order dated 11-8-2014 as well as the revisional order dated 30-11-2016, both, are hereby quashed and the petitioners are discharged from the aforesaid offences.

19. The petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge