

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. – 2795 of 2017

With

IA No. CRAN 12 of 2022

Sushil Kr. Gupta.

Vs.

The State of West Bengal

Mr. Ayan Bhattacharjee, Adv.

Mr. Anmupam Dasadhikari, Adv.

Mr. Apalak Basu, Adv.

Ms. Snehal Seth, Adv.

Mr. Debarka Guha Adv.

...For the petitioner.

Mr. Sudip Ghosh, Adv.

Ms. Debjani Sahu Adv.

... For the State.

CRR 3039 of 2017

With

IA No. CRAN 15 of 2020 (Old No. CRAN 1287 of 2020)

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CRAN 22 of 2022

+

CRAN 23 of 2023

Somnath Sarkar

Vs.

The State of West Bengal & Ors.

With

CRR 2795 of 2017

With

IA NO. CRAN 12 of 2022

Sushil Kr. Gupta

Vs.

The State of West Bengal & Ors.

Mr. Milon Mukherjee, Sr. Adv.,

Mr. Biswajit Manna Adv

...For the petitioner (CRR 3039 of 2017)

Mr. Narayan Prasad Agarwala, Adv.

Mr. Pratick Bose Adv.

.... For the State (CRR 3039 of 2017)

Mr. Ayan Bhattacharjee, Adv.

Mr. Anmupam Dasadhikari, Adv.

Mr. Apalak Basu, Adv.
Ms. Snehal Seth, Adv.

Mr. Debarka Guha Adv.

... For the petitioner (CRR 2795 of 2017)
Mr. Sudip Ghosh, Adv.
Mr. Pratick Bose Adv.
 ...For the State (CRR 2795 of 2017)

CRR 3013 of 2018
With
CRAN 5 of 2020 (Old No. CRAN 238 of 2020)
CRAN 6 of 2020
CRAN 7 of 2022
CRAN 8 of 2022
CRAN 9 of 2023
Sushankar Biswas & Anr.
Vs.
The State of West Bengal
Mr. Subir Ganguly, Adv.
Mr. Sumanta Ganguly Adv.
 ... For the petitioners.
Mr. N. P. Agarwala, Adv.
Mr. P. Bose Adv.
 ... For the State

Judgment on : 02.08.2023

Subhendu Samanta, J.

All the three revisions are taken up for passing decision as a common question of law is involved. All the three criminal revisional applications are preferred for quashing three criminal proceeding pending before the Learned Jurisdictional Magistrate concerned. The criminal proceeding was initiated in all the three cases u/s 272/273/420/120B of IPC.

In all the three cases a huge quantity of alleged adulterated and spurious food items was seized from the possession of the petitioners. In all the three cases, the investigation is being conducted by the police.

Apart from the factual deviation of the three separate cases the law involved under challenge herein appears to me same.

Point No. -1.

Whether the police constituted under Police Act, not being a Food Safety Officer under the Special Act namely Food Safety and Standard Act 2006 is empowered to investigate into the case?

Point No. -2.

Whether a FIR can be registered u/s 272/273 of the IPC without an order of Magistrate u/s 155(2) Cr.P.C. regard being had to the fact that the offence u/s 272/273 IPC are non-cognizable in nature.

Both the points are taken up together: It is argued that on behalf of the petitioners that the impugned proceeding is gross abuse of process of court which if allowed to be continued that would be tantamount to be the harassment beyond the scope of law of the land. The Food Safety and Standard Act 2006 (hereinafter referred as a Special Act) come into effect to

consolidate the laws relating to Food and establish Food Safety Standard Authorities for laying down science based Standards for articles of Food to regulate their manufacture Storage Distribution sale and import to ensure availability safe and whole sale food and for matters connected therewith and instantly thereto. With the introduction of the Special Act, it expressly declared that any violation relating to Food shall be governed by the Special Act and not under any other Act for the time being enforced.

Learned Advocate for the petitioner submitted before this court that the proceeding initiated by the investigating agency and the submission of charge sheet thereof is unwarranted in the eye of law. He submitted that the police is not at all authorised to investigate any offence under the Special Act (Food Safety Standard Act 2006). It is the further opinion of the petitioner that no seizure has been affected from the premises factory of the petitioner. In absence of seizure of adulterate spurious unsafe food from a place in occupation of the accused a proceeding under the provisions of the FSS Act would not be sustainable even by taking of challans from each place. So he prayed for quashing for the entire proceeding.

Learned Advocate appearing on behalf of the state submitted before this court that the police has seized huge

amount of adulterated food items from the possession of the petitioner. Several seizure has been affected in different places. The spurious food items (ghee) were also misbranded by the petitioner. The petitioner by selling those adulterated food item to the public in large also cheated the public. The investigation of the police is ended in charge sheet with some distinct materials regarding prima facie involvement of the present petitioner in the alleged offence. Thus at this juncture the proceeding cannot be quashed.

Heard the Learned Advocate perused the materials on record also perused the proceeding initiated by the police in this case.

Before discussion about the pronouncement of laws by the different High Court and the Hon'ble Supreme Court in that matter it would be prudent to illustrate the statutory provision.

That section 272 of the Indian Penal Code states as follows:-

“Adulteration of food or drink intended for sale.--- whoever adulterates any article of food or drink, so as to make such article noxious as food or drink intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

Section 273 of the Indian Penal Code states as follows:-

Sale of noxious food or drink.—whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both”.

The Prevention of Adulteration of Food, Drugs and Cosmetics (West Bengal Amendment) Act, 1973

That the Government of West Bengal by the West Bengal Act 42 of 1973 published in the Calcutta Gazette Extraordinary of 29th April, 1974 amended the Indian Penal Code, the Code of Criminal Procedure, 1898, The Drugs & Cosmetics Act, 1940 and the prevention of Food & Adulteration Act, 1954 in their application within the State of West Bengal.

By the said Act in the Indian Penal Code

- (i) ***In Section 272 for the words “ of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both”, the words “for life with or without fine; Provided that the court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life” shall be substituted.***
- (ii) ***In Section 273 for the words “of either description for a term which may extend to six month, or with fine which may extend to one thousand rupees, or with both” the words “for life with or without fine; Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment which is less than imprisonment for life” shall be substituted.***
Similarly amendments were made in Schedule II of the Code of Criminal Procedure, 1898, thereby declaring the offence as cognizable, not bailable,

not compoundable and triable by a Court of Sessions.

Apart from the above the applicability of Section 16 of the Prevention of Food Adulteration Act in West Bengal was also amended in the following manner:-

(ii) In Section 16,-

(a) In sub- section (1) for the words “term which shall not be less than six months but which may extend to six years, and with fine which shall not be less than one thousand rupees” the words “life and shall also be liable to fine” shall be substituted.

a. In proviso to Sub- section (1), for words “the court may for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or fine of less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees”, the following words shall be substituted, namely-

“(ii) if the Court thinks that for any adequate and special reasons to be mentioned in the judgment a lesser sentence would serve the ends of justice, The Court may impose a sentence which is less than a sentence of imprisonment for life.”;

Food Safety & Standards Act, 2006

Inspite of the fact that the aforesaid laws were prevailing in the country, the Legislature enacted the Food Safety & Standards Act, 2006 as the Legislature was of the opinion that-“An Act 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.”

After coming into effect the FSS Act, the same has expressly and impliedly repealed all other laws relating to food in India.

Section 89 of the Act gives it an overriding effect over all other food related laws which states as follows-

Section— 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.”

The Legislature in its wisdom has used the word ‘all food related laws’ to avoid ambiguity and to declare that the Special Statute would prevail when it is in conflict with any other laws relating to food. In such circumstance, although the legislature did not amend Sections 272 and 273 of the Indian Penal Code, but by virtue of the overriding effect of this Act the said provision can be considered as impliedly repealed.

Use the word **‘over all other related laws’** is not superfluous. The Legislature in its wisdom has used the word and use of such describes the intent of the Legislature to avoid conflict of laws by consolidating of food related laws into a single law having jurisdiction over the whole of India. However, the said law grants power to the State Government to make appropriate rules as per their requirement. Such overriding effect of a law enacted by the Central Government can only be superseded of by the State Government with necessary amendments being assented by the President of India. Till the time such amendments are not adopted by the State Government, they are duty bound to act in accordance with law enacted by the Central Government.

Section 97 (2) of the Food Safety and Standards Act provides that- **“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”.**

This provision further provides an impediment for operation of the amended provisions of Sections 272 and 273 of the Indian Penal Code as amended for application in the State of West Bengal as the State Government is yet to cause necessary amendments in the rules by exercising its power under Section 94 of the FSS Act.

From the aforesaid provisions of the Act, it can safely be derived that the said Act by using the words 'all other food related laws' and 'any other law' in Section 89, has expressly and impliedly repealed all laws and provisions relating to food as defined under Section 2 (j) of the Food Safety and Standards Act.

1. *The legal implication of such State amendment fell for consideration before this Hon'ble Court, when this Hon'ble Court in **Bhaskar Tea & Industries Ltd. Calcutta v. The State, (2008) 1 E Cr N 328 [Para 15]** has ruled as follows:*

"..... On the same analogy it can be said that the West Bengal Amendment Act, 42 of 1973 by which Section 272 was amended to increase the penalty in the form of life imprisonment, stood overruled. Now, if the West Bengal Amendment of Section 272 of the IPC is kept aside, then that would remain, is the original Central enactment of Section 272 of the IPC which, if compared with Section 16(1A) of the PFA. Act, would not reveal any repugnancy or inconsistency. Section 26 of the General Clauses Act provides that where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be punished under either of any of those enactments; but shall not be liable to be punished twice for the same offence. Article 20(2) of the Constitution directs that no person shall be prosecuted and punished for the same offence more than once. Both these provisions apply only when the two offences which form the subject of prosecution or prosecutions are the same, i.e., the ingredients which constitute the two offences are the same. Thus, it can be said that the West Bengal Amendment Act, 42 of 1973 enhancing the punishment under Section 272 of the IPC can be

said to have been impliedly repealed on the strength of the decision in *T. Baroi (supra)*”

At **Para 20** of the said Report had come to the following conclusions :

- “a. The West Bengal Act No. 42 1973 enhancing the punishment to life imprisonment with a proviso thereto has stood impliedly repealed in view of the decision of the Hon’ble Supreme Court in AIR 1983 SC 150.
- b.
- c.
- d.
- e.
- f.”

II. It was ruled by this Hon’ble Court in **Bhaskar Tea & Industries (supra)**, that since the West Bengal Act No. 42 1973 enhancing the punishment provided in Sections 272/273 of the IPC to life imprisonment stood repealed, the offence punishable under Sections 272/273 of the IPC will be punishable with imprisonment for six months or fine of one thousand rupees or both.

III. The ratio of **Bhaskar Tea & Industries (supra)** was subsequently followed by this Hon’ble Court in **Nestle India Ltd. & Ors. V. State of West Bengal (MANU/ WB/1864/2022)** when this Hon’ble Court has, in a similar relying on the ratio of **M/s Bhaskar Tea & Industries (supra)** had ruled that :-

- “23. It has become settled principle of law that special law will prevail over and above the general legislation. The PFS Act has extended certain rights to the accused person under Sections 11 and 13 of the P.F.A Act Launching of a prosecution under sections 272 and 273 of the IPC without following the procedure prescribed under this Special Act would amount to depriving an accused of his statutory right. Sections 272 and 273 of the IPC are offences non-cognizable in nature. Therefore, police is not empowered to hold investigation without obtaining permission from the jurisdictional Magistrate. In this case provision of Section 155 (2) Cr.P.C. since has not

been complied with it gives a fatal blow to the prosecution case and it is yet another point to justify an order of quashment.”

Learned Advocate for the petitioners argued that-

*In **Nestle India Ltd. & Ors. (Supra)**, this Hon’ble Court has quashed the proceedings on the ground that the registration of an FIR under Sections 272/273 of the IPC was clearly in the teeth of the parameters laid down by the Hon’ble Supreme Court of India in **State of Haryana & Ors. v. Ch. Bhajan Lal & Ors., AIR 1992 SC 604 [Para 108 Clauses 2 and 4]** which are as follows:*

“1.

2. Where the allegations in the First Information Report and other materials, if any accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

3.

4.

Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under section 155 (2) of the code.”

*In view of the ratio of **M/s Bhaskar Tea & Industries (supra)** and **Nestle India Ltd. & Ors. (Supra)**, the issue as raised in the quash petition is no more res integra as the same stands concluded. Therefore, we cannot traverse beyond the ratios of aforesaid Judgments.*

*It may be added that from the texture of the FIR, it is evident that the charge under Section 420 of the IPC is a non sequitur. The said charge was added randomly by the Investigating Officer in order to assume jurisdiction. Such colourable exercise of investigational power is not acknowledged in our judicial pantheon. In **Ch.***

Bhajanlal & Ors. (Supra), the Hon'ble supreme Court of India has heralded that the power of investigation of the police has to be exercised "..... in strict compliance with the provisions falling under chapter XII of the Code....." Police therefore, cannot incorporate random charges in order to derive competency.

It is equally settled that what cannot be done directly cannot be done indirectly as well and the game extends as well applies to statutory authorities. If there is a statutory provision inhibiting the authority from doing an act, such provision cannot be allowed to be defeated by adoption of any subterfuge. That would clearly be a fraud on the statute. In the present case, the investigating agency has added the charge under Section 420 of the IPC which is intrinsically hollow. Such adoption of charge was necessitated by the police authority in order to obviate the bar under Section 155 (2) of the Cr.P.C. This cannot be countenanced as the same is a fraud on legislation. An investigational proceeding is directly interlinked with the personal liberty of a citizen which is as important for a citizen as his life and limb. Liberty of a citizen cannot be curtailed without due process of law. such action of the investigating agency eventually causes fraud on Constitution as held in **Dr. D.C. Wadha & Ors. Vs. State of Bihar & Ors. [AIR 1987 SC 579 (Para 7)]**

The charge under Section 420 of the IPC has, therefore, no legs to stand on in the facts and circumstances of the present case. Since there is no material qualifying an offence under Section 420 of the IPC in similar case charge under Section 420 of IPC was frowned upon by the **Guwahati High Court in Silver Drop Food and Beverages (P) Ltd. & Anr. V. State of Assam & Anr. (2020) 4 Guwahati Law Reported 738 [Para 25/27]**

An authority created by a statute is bound by its restrictions. Statute can never be overridden or ignored in the exercise of statutory power by an

authority upon which it is conferred. The power to investigate is not illusory; it is a power which emerges from the written law. no inference can be drawn with regard to power to investigate. Net result is there is no authority to investigate and consequently no authority to interfere with the liberty and the life of a citizen in purported exercise of investigation. To be empowered in law to investigate means that law empowers a Police Officer to take cognizance of the case meaning thereby the facts alleged constitution the commission of cognizable offences. The empowerment clothes the police officer with the wearing apparel of an investigating officer. If the apparel is distorted or if the clothes are not to be fit on the investigational body, the investigation will be a mockery and a clear abuse of the process of law. To disregard law and to act in defiance of law is an anathema to the principle of "procedure established by law". "procedure establish by law" is not only a procedure to be followed by an authority who puts the procedure into operation but it also serves as a safeguard for the person against whom it is used to claim that the procedure must be strictly within the ambit of law and the words of the statute must be followed in their letters and spirit.

Investigation has far-reaching consequences in the life of a person on whom the investigational authority is enforced or imposed. Imposition and enforcement of investigational power must therefore, be in accordance with law and even a slight deviation therefrom renders such imposition and interference an inroad to a person's constitutional right engrafted under Article 21 of the Constitution of India. If investigation is unwarranted and unauthorized and if it is brought to the notice of the Court of law, justice demands that law should be put to its rightful position and investigating authority should be mandated in no uncertain terms not to exercise its investigational power in complete violation of law and in derogation of the Constitutional protection of a citizen whose life and liberty can only be

curtailed with observance of “procedure Established by law”.

Heard the Learned Advocates for the petitioners.

The Food Safety Standards Acts 2006 was enacted by the Central Government. Chapter 7 of the said Act 2006 specify the power of Food Safety Officers including their power of storage seizure, investigation permission and procedure thereto.

The Food Safety Officers defined under the Said Act u/s 3 (t). The Section 3 (t) ‘Food Safety Officer’ means an officer appointed u/s 37. Section 37 empowers the Central Government or State Governments concerned to appoint such officers as a Food Safety Officers for the purpose of the said Act 2006.

Power of Food Safety Officer was mentioned in Section 38 of the said Act.

38. Powers of Food Safety Officer.—*(1) The Food Safety officer may—*

(a) take a sample—

(i) of any food, or any substance, which appears to him to be intended for sale, or to have been sold for human consumption; or

(ii) of any article of food or substance which is found by him on or in any such premises, Which he has reason to believe that it may be required as evidence in proceedings under any of the provisions of this Act or of the regulations or orders made thereunder; or

(b) seize any article of food which appears to the Food Safety Officer to be in contravention of this Act or the regulations made thereunder; and

(c) keep it in the safe custody of the food business operator such article of food after taking a

sample, and in both cases send the same for analysis to a Food Analyst for the local area within which such sample has been taken:

Provided that where the Food Safety Officer keeps such article in the safe custody of the food business operator, he may require the food business operator to execute a bond for a sum of money equal to the value of such article with one or more sureties as the Food Safety Officer deems fit and the food business operator shall execute the bond accordingly.

(2) The Food Safety Officer may enter and inspect any place where the article of food is manufactured, or stored for sale, or stored for the manufacture of any other article of food, or exposed or exhibited for sale and where any adulterant is manufactured or kept, and take samples of such articles of food or adulterant for analysis.

(3) Where any sample is taken its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

(4) Where any article of food seized under clause (b) of sub-section (1) is of a perishable nature and the Food Safety Officer is satisfied that such article of food is so deteriorated that it is unfit for human consumption, the Food Safety Officer may, after giving notice in writing to the food business operator, cause the same to be destroyed.

(5) The Food Safety Officer shall, in exercising the powers of entry upon, and inspection of any place under this section, follow, as far as may be, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to the search or inspection of a place by a police officer executing a search warrant issued under that Code.

(6) Any adulterant found in the possession of a manufacturer or distribution of, or dealer in, any article of food or in any of the premises occupied by him as the Food Safety Officer and any books of account or other documents found in his possession or control and which would be useful for, or relevant to, any investigation or proceeding under this Act, may be seized by the Food Safety Officer and a sample of such adulterant submitted for analysis to a Food Analyst:

Provided that no such books of account or other documents shall be seized by the Food Safety Officer except with the previous approval of the authority to which he is subordinate.

(7) Where the Food Safety Officer takes any action under clause (a) of Sub-Section (1), or Sub-section (2) or sub-section (4) or Sub-section (6), he shall, call one or more persons to be present at the time when such action is taken and take his or their signatures.

(8) Where any books of account or other documents are seized under sub-section (6), the Food Safety Officer shall, within a period not exceeding thirty days from the date of seizure, return the same to the person from whom they were seized after copies thereof or extracts therefrom as certified by that person in such manner as may be prescribed by the Central Government have been taken:

Provided that where such person refuses to so certify and a prosecution has been instituted against him under this Act, such books of account or other documents shall be returned to him only after copies thereof and extracts therefrom as certified by the Court have been taken.

(9) When any adulterant is seized under sub section (6), the burden of proving that such adulterant is not meant for purposes of adulteration shall be on the person from whose possession such adulterant was seized.

(10) The Commissioner of Food Safety Officer may also be revoked for a specified period by the Commissions of Food Safety.

Section 41 and 42 of the said Act is their destiny regarding the prosecution and procedure for launching prosecution of the Safety Officer

41. Power of Search, seizure, investigation, prosecution and procedure thereof.-- (1) Notwithstanding anything contained in Sub-section (2) of section 31, the Food Safety Officer may search any place, seize any article of food or adulterant, if there is a reasonable doubt

about them being involved in commission of any offence relating to food and shall thereafter inform the Designated Officer of the actions taken by him in writing:

Provided that no search shall be deemed to be irregular by reason only of the fact that witnesses for the search are not inhabitants of the locality in which the place searched is situated.

(2) Save as in this Act otherwise expressly provided, provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search, seizure summon, investigation and prosecution, shall apply, as far as may be, to all action taken by the Food Safety Officer under this Act.

42. Procedure for Launching prosecution.--

(1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

(2) The Food Analyst after receiving the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.

(3) The designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.

(4) The commissioner of Food Safety shall, if he so deems fit, decide, within the period prescribed by the Central government, as per the gravity of offence, whether the matter be referred to,--

(a) a Court of ordinary jurisdiction in case of offences punishable with imprisonment for a term upto three years; or

(b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a Court of ordinary jurisdiction.

(5) The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer who shall launch prosecution before Courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under section 40.

Learned Advocate for the petitioners cited a decision of Gujrat High Court in **Ashok Bhai Kalu Bhai Ravani Vs. The State of Gujrat** wherein the Hon'ble High Court has quashed the criminal proceeding on the ground that the investigation of the police u/s 272 / 273 of IPC is unwarranted.

He also cited a decision of Gauhati High Court passed in **Silver Drop Food and Beverages Private Limited Vs. The State of Assam**. Wherein the Hon'ble Gauhati High Court has held that the Special Act shall override the provisions of procedure lay down in the Cr.P.C.

25. From the aforesaid legal pronouncement as well as the legal provision as discussed above, it can be seen that on-course the issue regarding contaminated/adulterated water is a sensitive matter over which the Highest Court of the country has also shown concern, as indicated above but for the purpose of such ascertainment of adulterated article, one has to adhere to the specific provisions mandated under the specific Act and registration of a case on the part of the police, is neither mandated under the Act now warranted under the circumstances. We may take note of the fact that while registering the case, the I.O. has not adhered to examine the aforesaid article that was submitted to him but he simply registered the case under section 420/273, IPC. Such a registration of the FIR is not sustainable under the law.

Learned Advocate for the state also cited a decision of Hon'ble Supreme Court in **State of Maharashtra & Anr. Vs. Sayyed Hasan and Sayyed Subhan and Ors** reported in **(2019) 18 SCC 145**.

The State also cited a decision of **Bombay High Court passed in Daulatram Vs. State of Maharashtra & Anr.**

Which was passed by filing the judgment of Honble High Court in **Sayyed Hasan Sayyed Subhan** (supra) paragraph 7 of **Sayyed Hasan and Sayyed Subhan** is stated as follows

7. There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence. 1. The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time, an offence under any other law. 2. The High Court ought to have taken note of section 26 of the General Clauses Act, 1897 which reads as follows:

"Provisions as to offences punishable under two or more enactments- Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of 1 T.S. Baliah v. T.S. Rengachari – (1969) 3 SCR 652 State of Bihar v. Murad Ali Khan – (1988) 4 SCC 655 those enactments, but shall not be liable to be punished twice for the same offence".

8. In Hat Sing's 3 case this Court discussed the doctrine of double jeopardy and Section 26 of the

General Clauses Act to observe that prosecution under two different Acts is permissible if the ingredients of the provisions are satisfied on the same facts. While considering a dispute about the prosecution of the Respondent therein for offences under the Mines and Minerals (Development and Regulation) Act 1957 and Indian Penal Code, this Court in State (NCT of Delhi) v. Sanjay 4 held that there is no bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offences. A perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties. We, therefore, set aside the finding of the High Court on the first point.

Heard the Learned Advocates. Peruse the petitioners and CD of respective criminal cases. In this particular matter it appears to me that the police has seized a huge amount of alleged adulterated items in all the three cases. The investigation of the police has concluded in respect two cases. The petitioners were entangled on bail in these cases. It is to be noted that the charge was levelled against the present petitioners u/s 272/273/420/120B of IPC.

The Hon'ble Supreme Court in dealing with **Sayyed Hasan Sayyed Subhan** has specifically held that when there is no specific bar in the special enactment, the trial and conviction of the offender under the provisions of IPC is not bar subject to Section 26 of General Clauses Act.

In deciding the 1st point— it is to be noted that--

The Enforcement Directorate of the police is specialised agency created for the purpose of investigation certain offence as specified in their manual. The Chapter Crime Rule 36 Laws of DEB manual has specified the enactment which does not include the FSS Act. Section 94 of the FSS Act provides the State Government to make rules. It is not been reported before this court that whether the State Government have ever framed the rule empowering the Enforcement Directorate to investigate into offence under the FSS Act.

The law of the land empowers the investigating agency to investigate an offence according to the procedure laid down in the law, deviation thereto must have deprived the valuable right of the accused.

In the present case the police have launched the prosecution according to the provisions of Cr.P.C. for the offence punishable u/s 272/273 of IPC. The argument is advanced by the petitioners that the conduct of the police is not according to the principle of law. The police cannot launch a prosecution or conduct investigation in respect of offence of food related laws. The nutshell of the argument of the Learned Advocate for the petitioners that after pronouncement of FSS Act, the provision u/s 272/273 of IPC has impliedly repealed,

thus investigation conducted by an agency (police) other than the Food Safety Officer is illegal.

The situation can be visualized in the either way. When the Food Safety Officer is not acting to nab the offender of a food related offence whether police shall enclosed himself within the P.S precincts or to act according to the law. In considering three cases before hand, in once case the Food Safety Officer has initially launched the prosecution and lodged FIR with the police. In other two cases, the police have initiated the proceeding. The provision of 272/273 of IPC has not deleted. The police is not specifically debarred to conduct investigation over the offence mentioned in Section 272/273 of IPC. It is true the police not being Food Safety Officer under FSS Act 2006 are not empowered to investigate into the offences mentioned specially in FSS Act. But nothing can debar police to investigate an offence punishable under IPC. The argument of implied repeal of Section 272/273 IPC appears to me not satisfactory or justified. Considering the same I am of a clear view that though a separate, specific, distinct procedure has been laid down in FSS Act 2006 to initiate/launch a proceeding against the offender of Food Laws that does not ipso facto debar the police to initiate/register a case u/s 272 or 273 of IPC. Thus in my view the investigation conducted by the

police according to the provisions of Cr.P.C for the offence punishable u/s 272/273 IPC is maintainable.

The safeguard and the specific protection to the accused persons has already been mentioned in several provisions of Cr.P.C. Following the decision of Hon'ble Supreme Court passed in **Sayyed Hasan Sayyed Subhan** and also by virtue of the principle u/s 26 of General Clauses Act, investigation by the police is not legally bad and petitioners shall not be put into jeopardy for continuance of the proceedings. In my view the point no. 1 is decided against the petitioners.

In deciding Point No. -2, it is true that the present law of the land made Section- 272 and Section-273 IPC as non-cognizable in nature. Obviously, according to the provisions of Section 155(2) Cr.P.C. order of Magistrate is required for conducting investigation. In perusing the FIR of all the cases it appears that huge quantity of alleged adulterated/spurious food items were seized by the police. The fact of the FIR disclosed the prima facie material of commission of offence as alleged.

Let me consider the present stage of the cases. In one case, after lodging of FIR, Criminal Revision was filed for quashing of FIR where the investigation was stalled by an order of this court. In another two cases quashing applications were

filed wherein C.S. was submitted after conclusion of investigation. In all three cases police has collected prima facie materials such as statement of witnesses, report of expert's, documentary proof etc. To justify the prayer of the petitioners, this revisionsal Court has to assess the value of the materials collected by the police during investigation. In my view, this can only be done by the trial court at appropriate stage. At this juncture, whether the material collected by the police are justifiable or not to make out a case u/s- 420 or 120B IPC cannot be answered. So, the presence of Section 420 IPC in the FIR is whether a colourable exercise of police or nor; can not be ascertained at this stage. It is true that Section- 420 IPC is non-cognizable in nature, the police may conduct investigation of non-cognizable case (u/s 272,273, IPC) with cognizable case (u/s- 420 IPC) without an order of Magistrate u/s 155 (4) Cr.P.C.

I make it clear that—

This revisional court is hearing an application for quashing u/s 482 of the Code of Criminal Procedure. The petitioners are before this court for quashing of FIR including the entire criminal proceeding pending before the Learned Magistrate. During the course of hearing of all these revisions, police has collected huge document/materials and after conclusion of

investigation submitted charge sheet. Entire CD is placed before this court by the prosecution and surprisingly stage of supply of copies u/s 207 Cr.P.C. has not reached now. Consequently the petitioners don't have any materials which were collected by the police against them in this particular case. In principle, this revision court cannot look into the merit of the materials and surprisingly petitioners also don't have the excess to the materials; mini trial at the stage of quashing by the revisional court is completely barred. Furthermore, when it is in respect of the merit of a case on the basis of materials collecting by the investigating agency this revisional court cannot act as trial court. In my view, the application for quashing of FIR of a Criminal Case is not at all maintainable when the police report has submitted charge sheet u/s 173 of the Cr.P.C. before the Magistrate after conclusion of investigation. The accused persons cannot be fundamentally deprived of their right to argue on the basis of entire merits of the case after receiving the copies u/s 207 Cr.P.C. Preferably, the accused can only be heard at the time of framing of charge u/s 239 of Cr.P.C. before the Magistrate.

The Hon'ble Supreme Court in **Kaptan Sing Vs. State of U.P. (2021) 9 SCC 35** has observed that when the petition u/s 482 Cr.P.C was at the stage of FIR in that case the allegations

in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidences is collected and charge sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the court is required to consider the material/evidences collected during the investigation. Even at this stage also the revisional court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the Appellate Jurisdiction and/or conducting the trial. Furthermore, in order to examine as to whether factual contents of FIR disclosed any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like a trial court. At such stage, this revisional court cannot appreciate evidences nor can it draw its own inference from contents of FIR and materials relied on.

Considering the view of the Hon'ble Apex Court as observed in **Kaptan Sing** (supra) regarding the role of the revisional court. I am of a view that the petitions u/s 482 Cr.P.C. filed by the petitioners cannot be entertained at the stage.

Considering the entire aspect it appears to me that the point of law involved in these three revisional applications are decided against the petitioner. All the three criminal revisions appears to me groundless and it is liable to be dismissed.

CRR is dismissed.

Pending connected CRAN applications if any are also disposed of.

The order of stay passed by this court during the pendency of the criminal revisional applications are also vacated.

The case diaries placed by the State are returned back.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)