

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL REVISIONAL JURISDICTION  
APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.R. 615 of 2014  
With  
CRAN 6 of 2015 (Old No. CRAN 1759 of 2015)**

**Surendra Kumar Kapur & Ors.  
-Vs-  
Pradip Kumar Chakraborty**

|                     |                                                                    |
|---------------------|--------------------------------------------------------------------|
| For the Petitioners | : Mr. Y.J. Dastoor<br>Mr. Sabyasachi Banerjee<br>Mr. Anirban Dutta |
| For the KMC         | : Mr. Raj Dip Ray<br>Mr. Anindya Sundar Chatterjee                 |
| Heard on            | : 29.08.2023, 14.12.2023                                           |
| Judgment on         | : 12.03.2024                                                       |

**Ananya Bandyopadhyay, J.:-**

1. The instant revisional application is preferred against the order dated 12<sup>th</sup> February, 2014 passed by the Learned 1<sup>st</sup> Court of Metropolitan and Municipal Magistrate, Calcutta in Case No. 2D of 2010 and for quashing the complaint dated 22<sup>nd</sup> November, 2010 filed under Section 16(1)(a)(i) read with Sections 6 and 7 of the Prevention of Food Adulteration Act, 1954 being Case No. 2D of 2010 pending before the Learned First Court of the Metropolitan & Municipal Magistrate, Kolkata.

2. The petitioners were brothers each above 65 years of age.
3. Petitioners were three of the sons of Late Shri Krishan Lal Kapur who during his lifetime was a well known businessman and a permanent resident of Calcutta. The petitioners' father died on 5 January 1955. The petitioners also had an elder brother whose name was Rajendra Kumar Kapur, who died on 27 November 2013.
4. The petitioners' father left several businesses one of which was a hotel by the name of Hotel Minerva situated at 11, Ganesh Chandra Avenue, Kolkata-700019. After the demise of their father, through inheritance the businesses were operated for over 50 years by co-partnership between the late Rajendra Kumar Kapur, the eldest brother and the three petitioners under the name and style of R.K. Kapoor & Brothers.
5. As professionals in regular practice for decades neither the petitioner No. 1 nor the petitioner No. 3 had been involved in day-to-day basis or otherwise with the conduct of the business or the affairs or the management the hotel business.
6. In or about the year 2000 there were disputes and differences between the brothers regarding the joint businesses and the same were referred to arbitration before the late Dipankar Ghosh, Barrister-at-law & Senior Advocate who was nominated as the Sole Arbitrator.
7. Petitioners stated that by the award dated 29<sup>th</sup> June, 2001 the Arbitrator adjudicated and declared that the entire business of Hotel Minerva would henceforth be run, operated, and controlled by the eldest brother, the late

Rajendra Kumar Kapur. In fact, clause 10.12 of the said award inter alia provides :-

*“However, Rajendra Kumar Kapur shall continue to run and operate the business of Hotel Minerva and perform all executive functions relating thereto including operation of bank accounts”.*

8. Petitioners’ stated that it will thus be evident and it was the incontrovertible and admitted position on the basis of the aforesaid unassailable and conclusive records that the entire operations of Hotel Minerva thus came to be exclusively vested in, and were by the award directed to be run, operated, controlled and managed solely by their eldest brother, Late Rajendra Kumar Kapur and such was the actual position from the date of the Award which continued until his death in the month of November, 2013 as aforesaid.
9. Prior to his death the said Rajendra Kumar Kapur was seriously ill and suffering principally from renal failure and other serious medical complications so the actual charge and responsibility for the conduct of the day-to-day affairs and business of the said hotel was principally with employees nominated by him.
10. In or about November, 2010 the petitioners were served with a copy of a purported summons issued by the Learned First Court of the Metropolitan and Municipal Magistrate Calcutta. On inquiries, the petitioners were informed that a purported inspection was carried out by the opposite party, namely, Sri Pradip Chakroborty, Food Inspector, of the Kolkata Municipal Corporation, purportedly designated and appointed under the said 1954 Act, at the premises of Hotel Minerva on 30<sup>th</sup> September, 2010. In the course of the said purported inspection

the opposite party seized a quantity of raw paneer from the kitchen and purchased the same which was sent to the Public Analyst who submitted a report. Thereafter, pursuant to such alleged inspection, a complaint was filed under “The Prevention Food Adulteration Act”, 1954, (hereinafter referred to as the “said Act”).

11. In the said complaint it was categorically admitted and averred by the opposite party-complainant inter alia that :-

*“On inquiry it is learnt that the said food belonged to the accused No. 1 (meaning thereby, Messrs. Hotel Minerva of No. 11, Ganesh Chandra Avenue, Kol -700013) and that was stored/exposed in the hotel for sale and accused No. 3 Bimal Chandra Bhattacharyya (meaning thereby, the Manager) was the person-in-charge of the local affairs and was looking after the business of the accused No. 1. So both the firm and the person-in-charge of the business are liable for the offence under Section 16(1)(a)(i) read with Section 7 of the PFA Act 1954.”*

The petitioners’ stated on the very face of the complaint there was no charge whatsoever alleged therein against any of them at all. Even otherwise, there was neither any offence shown to have been committed by the petitioners or any of them nor alleged therein as committed by them within the meaning of the said Act, and all the statutory provisions both substantive and procedural were totally disregarded violated and ignored altogether by the opposite party. The said purported complaint was without and/or in excess of jurisdiction, bad, illegal, and void ab initio.

12. Petitioners stated and submitted prior to the filing of the said purported complaint the “Food Safety & Standards Act” 2006 (hereinafter referred to as “the FSA”) had been promulgated and brought into effect by parliament on and from 23<sup>rd</sup> August 2006. The FSA was enacted inter alia to consolidate all the laws relating to food and to regulate their manufacture, storage, distribution, sale and import and for all matters connected therewith or incidental thereto.
13. Petitioner stated that by virtue of Section 89 of the “Food Safety and Standard Act” of 2006 which came into effect since 29.07.2010 stated 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”*
14. Petitioners stated and submitted that Chapter VII of the FSA which contained Sections 29 to 42 laid down special and specific provisions for the Enforcement of the Act, including designating the Authorities there under responsible for the enforcement of the Statute. The said Chapter also contained all the provisions for search, seizure, investigation, prosecution and procedures thereof as well as for launching prosecution there under.
15. Sections 36 to 47 of the FSA came into force on July 31, 2009 vide S.O. 1868(E) dated 31<sup>st</sup> July, 2010 vide SO. 1855(E) dated 29<sup>th</sup> July 2010. Thus the relevant sections in Chapter VII of the FSA were in force and effective long before the

purported inspection and analysis as well as before the filing of the said purported complaint by the opposite party above named.

16. It was self-evident that the acts and conduct of the opposite party in carrying out the purported inspection and sending the raw paneer for analysis and in later filing the complaint were entirely without and/or in excess of jurisdiction, unauthorized by law, illegal, without any due authority and sanction whatsoever, bad, invalid and void ab initio.
17. Furthermore, and in any event the petitioners stated that it will be ex facie evident from a bare reading of the purported complaint that the same purports to be issued under Section 16(1)(a)(i) read with Sections 6 and 7 of the said Act.
18. Section 17 of the said Act inter alia, provided as follows :-

*“17. Offences by companies – (1) Where an offence under this Act has been committed by a company –*

*(a) the person,*

*(i) if any, who has been nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereinafter in this Section referred to as the person responsible) or*

*(ii) where no person has been so nominated, every person who at the time the offence was committed was in charge of and was responsible to, the company for the conduct of the business of the company; and*

*(b) the company*

*Shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.*

*Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.*

*(2) Any company may, by order in writing, authorize any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for behind so nominated.”*

19. Petitioners stated that none of the petitioners was in charge of or was responsible for the conduct of the business of Hotel Minerva in any manner whatsoever for years. In fact, there was nothing in the complaint which would show that any of the petitioners were in charge of or were responsible for the conduct of the day-to-day business of Hotel Minerva at the relevant time.

20. As stated hereinbefore after the passing of the award dated 29<sup>th</sup> June, 2001 the entire business of Hotel Minerva including its day-to-day control and operations and responsibility for the same was in the exclusive hands of the late Rajendra Kumar Kapur and this was and continued to be the position till his death in November, 2013. Thereafter the business of Hotel Minerva and its day to day operations had been and continues to be run by the Senior Manager, RJ Williams.
21. Petitioners stated that in the purported complaint there was no case against the petitioners or any one of them that they were concerned in any manner whatsoever in the carrying on of the day-to-day business of Hotel Minerva. Save for mentioning the names of the petitioners in one place as “partners” the purported complaint reflected that the petitioners had nothing to do with the alleged offences in any manner whatsoever. No prima facie case was alleged, far less made out against any of the petitioners. The proceeding against the petitioners were illegal and amounted to abuse of process of law.
22. Petitioners stated that the discretion exercised by the Learned Magistrate in issuing process was capricious and arbitrary and based on no evidence or materials at all. For the aforesaid reasons there was nothing to show that the petitioners were in charge of or responsible for the conduct of the day to day business of the firm and process could not have been issued against them. The mandatory provision of Section 17 of the said Act have been completely overlooked and on this ground alone the purported complaint is liable to be quashed in respect of each of the petitioners.

23. The Learned Advocate for the petitioners submitted that :-

- i. The impugned order dated 12.04.2014 reflected complete non-application of judicial mind on part of the Learned Magistrate.
- ii. In view of the enactment of the Food Safety & Standards Act 2006 no proceeding could have been initiated at all by the opposite party.
- iii. In view of the enactment of the Food Safety & Standards Act 2006 the opposite party had no competence authority or jurisdiction to initiate any proceedings whatsoever and all his acts were without authority of law, without and/or in excess of jurisdiction, bad and void ab initio.
- iv. In view of the specific provision as stand in Section 89 of the Food Safety and Standards Act, 2006 the act of the opposite party was wholly without requisite jurisdiction and/or legal sanctity.
- v. In view of the enactment of the Food Safety & Standards Act 2006 whereby the Prevention of Food Adulteration Act 1954 stood repealed as stated hereinbefore all the acts committed by the opposite party who was *functus officio* were altogether without authority of law and perpetrated in abuse of process and therefore bad and void.
- vi. In view of the enactment of the Food Safety & Standards Act 2006 the Learned Magistrate had no power authority or jurisdiction to initiate any proceedings and all his acts were without jurisdiction, illegal bad and void.

- vii. There was no basis whatsoever for the filing of Case No. 2D of 2010 before the Learned Court of the Metropolitan and Municipal against any of the petitioners.
- viii. The purported complaint expressly evidence that none of the petitioners were concerned in the carrying on of the day-to-day business of Hotel Minerva or responsible for any of its affairs and hence there was no case against the petitioners nor evidence to show that any of them had committed any offence whatsoever.
- ix. There was no averment whatsoever in the petition of complaint to show that any of them had committed any offence whatsoever within the meaning of the said Act or otherwise or at all.
- x. Neither PW-1 nor PW-2 in their evidence before charge have leveled any allegation whatsoever against the petitioners.
- xi. Admittedly in the impugned complaint the provisions of Section 17 of the said Act have not been satisfied which shows that the opposite party had no case against any of the petitioners nor is any case made out against the petitioners' there under.
- xii. There being no averment in the petition of complaint that the petitioners were ever in charge of and/or responsible to the firm for the management of its day to day business, the impugned proceedings as against the petitioner is liable to be liable to be summarily quashed.

24. Learned Advocate for the petitioners further submitted that :-

- i. Since the demise of the father of the petitioners, the inherited business of the hotel by the name of Hotel Minerva situated at 11, Ganesh Chandra Avenue, Kolkata- 700019 was carried on in co-partnership between the Late Rajendra Kumar Kapur, who is the eldest brother and the three petitioners under the name and style of R.K. Kapoor & Brothers. As professionals, the petitioners No. 1 & 3 did not engage in the day to day affairs of the business. In or about the year 2000, several disputes arose between the brothers regarding the joint business and the same were referred to arbitration. By an award dated 29.6.2001, it was adjudicated and declared that the entire business of Hotel Minerva would henceforth be run, operated and controlled by the eldest brother, Late Rajendra Kumar Kapur. Thus, the entire operation of Hotel Minerva was exclusively vested upon the Late Mr. Rajendra Kumar Kapur by virtue of the said award and he continued to conduct the business till his death in the month of November, 2013. In or about November, 2010, the petitioners were served with a copy of the purported summons issued by the Learned First Court of the Metropolitan and Municipal Magistrate at Calcutta. Upon making inquiries, the petitioners came to learn that on 30.09.2010, in the course of an inspection at Hotel Minerva, the opposite party had seized a quantity of raw paneer from the kitchen and the sample was sent to the Public

Analyst which led to the initiation of the proceedings under Section 16(1)(a)(i) read with Section 6 and 7 of the “Prevention of Food Adulteration Act”, 1954 being Case No. 2D of 2010.

- ii. In fact averments were contrary in as much of the said complaint categorically stated that the accused no. 3 Bimal Chandra Bhattacharya (the manager) was the person in charge of the local affairs and was looking after the business. Save for mentioning the name of the petitioners as partners, the complaint in sans of any specific averment against them.
- iii. The provision of Section 17 of the Act which provides for offences by companies clearly stated that the person “in charge of, and responsible to, the company for the conduct of the business of the company” shall be deemed guilty of the offence has been completely overlooked.

25. The Hon’ble Supreme Court in the case of **S.M.S Pharmaceuticals Limited vs. Neeta Bhalla And Another**<sup>1</sup> observed as follows :

*“4... The normal rule in the cases involving criminal liability is against vicarious liability, that is, no one is to be held criminally liable for an act of another. This normal rule is, however subject to exception on account of specific provision being made in statutes extending liability to others. Section 141 of the Act is an instance of specific provision which in case an offence under Section 138 is committed by a Company, extends criminal liability for dishonor of cheque to officers of the Company. Section 141 contains*

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<sup>1</sup> (2005) 8 SCC 89

*conditions which have to be satisfied before the liability can be extended to officers of a company. Since the provision creates criminal liability, the conditions have to be strictly complied with. The conditions are intended to ensure that a person who is sought to be made vicariously liable for an offence of which the principal accused is the Company, had a role to play in relation to the incriminating act and further that such a person should know what is attributed to him to make him liable. In other words, persons who had nothing to do with the matter need not be roped in. A company being a juristic person, all its deeds and functions are result of acts of others. Therefore, officers of a Company who are responsible for acts done in the name of the Company are sought to be made personally liable for acts which result in criminal action being taken against the Company. It makes every person who, at the time the offence was committed, was in charge of, and was responsible to the Company for the conduct of business of the Company, as well as the Company, liable for the offence...”*

26. The Hon’ble Supreme Court in the case of **National Small Industries Corporation Limited Vs. Harmeet Singh Paintal And Another**<sup>2</sup> observed as follows :-

*“ 39. From the above discussion, the following principles emerge :-  
(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction.*

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<sup>2</sup> (2010) 3 SCC 330

- (ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only on those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.*
- (iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only if the requisite statements, which are required to be averred in the complaint/petition, are made so as to make accused therein vicariously liable for offence committed by company along with averments in the petition containing that accused were in-charge of and responsible for the business of the company and by virtue of their position they are liable to be proceeded with.*
- (iv) Vicarious liability on the part of a person must be pleaded and proved and not inferred.*
- (v) If accused is Managing Director or Joint Managing Director then it is not necessary to make specific averment in the complaint and by virtue of their position they are liable to be proceeded with.*
- (vi) If accused is a Director or an Officer of a company who signed the cheques on behalf of the company then also it is not necessary to make specific averment in complaint.*
- (vii) The person sought to be make liable should be in-charge of and responsible for the conduct of the business of the company at the relevant times. This has to be averred as a fact as there is no deemed liability of a Director in such cases.”*

27. It was apparent from the arbitration award, the Late Mr. Rajendra Kumar Kapur was appointed as the sole in charge of the business of the firm. The arbitration award dated 29<sup>th</sup> June, 2001 declared that the entire business of Hotel Minerva would be run, operated and controlled by the eldest brother, the Late Mr.

Rajendra Kumar Kapur. Clause 10.12 of the said award inter alia states as follows :-

“However, Rajendra Kumar Kapur shall continue to run and operate the business of Hotel Minerva and perform all executive functions relating thereto including operation of bank accounts.” Thus, it is a incontrovertible and admitted position that the entire operation and day to day business of Hotel Minerva was exclusively vested upon the Late Mr. Rajendra Kumar Kapur by virtue of the Arbitration award and he continued to conduct the business till his death in the month of November, 2013.

28. The seized sample of paneer was perishable in nature and samples seized ought to have been preserved by addition of preservatives. Rules 19 and 20 of the prevention of Food Adulteration Rules 1955 lay down the procedure to be followed by the Seizing Officer for preserving the seized samples in pristine condition not only for the purpose of listing by the public Analyst but also by Central Food Laboratory under Section 13(2) of the Act. This was not followed, rendering the safeguards to the accused to a nullity.
29. It was a fundamental principle of criminal jurisprudence and prosecution that there must not be a delay in launching prosecution or sending samples for analysis where the article of food sampled and seized is susceptible to deterioration and decay. The paneer was sampled and seized on 30.09.2010 and sent for analysis. The fact that there could have been deterioration in the sample cannot be overlook and as such the seized sample of panner being a milk

product ought to have been preserved. The bastion of the prosecution is that the sampled product was adulterated however, in the absence of a timely analysis of the same, the said contention is left unsubstantiated.

30. No opportunity was provided to the firm to get the second sample analyzed.

Section 13(2) of the Act provided a valuable right to an accused to get the sample taken to be analyzed by the Central Food Laboratory, as such report, in the event of a different finding override the report of the Public Analyst. The procedure enumerated in Section 13 of the Act was not followed to the complete prejudice of the accused. The petitioner could not avail his right to get the second sample analyzed. In the repealed Act of 1954, the Food Safety and Standards Act of 2006 as well as legislations similar to such Act, where an accused is denied their statutory right to get a sample analyzed, such denial may render prosecution of the offence futile. It is pertinent to mention that the seized samples were not preserved thereby rendering the samples unfit for retesting. Since an accredited Central Laboratory's report will have precedence over that of the Public Analyst, this is a valuable opportunity for accused to claim exoneration from criminal proceedings.

31. No prima facie case is made out against the petitioners. The proceeding against them is not maintainable, illegal and amounts to an abuse in the process of law.

The initiation of Case No. 2D of 2010 before the Learned First Court the Metropolitan and Municipal Magistrate, Calcutta and continuation of the same is without the authority of law and is liable to be quashed to prevent an abuse of the process of law and in the interest of justice.

32. The Learned Advocate for the opposite party stated that the report of the Public Analyst mentioned the sample of *paneer* to be adulterated. The Food Inspector after following the legal norms and adhering to the procedure in accordance to the Food Safety and Standards Act, 2006 filed the petition of complaint under the relevant Sections implicating the present petitioners who were in-charge of management of the hotel in question as partners and were individually responsible for committing the offence under the Prevention of Food Adulteration Act, 1954.
33. Refuting the submissions of the Learned Advocate for the petitioners that the Food Safety and Standards Act, 2006 had been effective prior to the date of filing of the complaint whereby the provisions of Prevention of Food Adulteration Act, 1954 had been repealed and such redundancy was inapplicable with regard to the institution of the complaint under the Food Safety and Standards Act, 2006. Since Section 97, 98 and Section 99 of the Food Safety and Standards Act, 2006 categorically enunciated the situations under which the enactment of orders specified under the Second Schedule stand repealed.
34. The Learned Advocate for the petitioners submitted the prosecution against the petitioners was launched under the Prevention of Food Adulteration Act, 1954. The said Act was in operation till 2006 after which it stood repealed and substituted by the Food Safety and Standards Act of 2006. The purpose of the said Act was to consolidate all the laws relating to food and to regulate their manufacture, storage, distribution, sale and import and all matters connected therewith and incidental thereto.

35. Furthermore, Section 89 of the Food Safety and Standards Act, 2006 provides that the said Act shall have an overriding effect on other food related laws. The said section states as follows :-

*“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”.*

36. Section 97 of the Act also provided that the Second Schedule which included the Prevention of Food Adulteration Act of 1954 shall stand repealed. It must also be noted that the relevant sections of Chapter VII which lays down specific provisions for the enforcement of the Act and the procedure, inspection, seizure and prosecution were in force and effective long before the purported inspection, analysis and filing of the complaint.

37. The normal effect of repealing a Statute was to obliterate it completely and the said Act provides that the provisions envisaged therein shall have an overriding effect on other food related laws. Therefore, a prosecution under the provisions of the Prevention of Food Adulteration Act, 1954 is not sustainable in the instant case where the complaint was filed after the repeal of the Act of 1954 on 22<sup>nd</sup> November, 2010 and after the Food Safety and Standards Act, 2006 came into force. The prosecution under an Act which has been repealed is not maintainable from its very inception and is bad in the eyes of law.

38. Section 98 of the Food Safety and Standards Act, 2006 mentions as follows:

***“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.”*

39. A conjoint reading of Section 97 and 98 of the Food Safety and Standards Act, 2006 denoted pending the preparation of new standards as specified under the Food Safety and Standards Act or Rules and Regulations made thereunder, the standards, safety requirements and other provisions of the Act and the Rules and Regulations made thereunder and orders listed in the Second Schedule shall continue to be in force and will operate notwithstanding the repeal of the enactment and orders specified in the Second Schedule. Moreover, 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 the said Act and shall continue in force accordingly unless and until superseded by anything done or by any action taken by this Act.

40. The Learned Advocate emphasized emphatically on the repeal of the Act or the statute, however, did not cite the existence of new standards specified under the Food Safety and Standards Act, 2006 and Rules and Regulations categorizing the standards, safety requirements and other provisions of the Act.

41. In the absence of any such new standards and safety requirements the action taken by the complainant under the Prevention of Food Adulteration Act, 1954 cannot be nullified or considered to be *void ab initio*.

42. Section 97 of the Food Safety And Standards Act states as follows:-

**“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*

*(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.”*

43. The argument of the Learned Advocate for the petitioner concerning the arbitration awarded whereby Mr. R. K. Kapoor since deceased has been appointed as the sole and absolute person in charge of the business of the firm is not considered since the arbitration award emphatically stressed upon has been challenged in an appeal pending determination.
44. From the context of the petition of complaint as well as the deposition of the complainant as delineated above, the day to day conduct of the business of the hotel was entrusted to one Bimal Chandra Bhattacharya.
45. The complainant, i.e. the Food Inspector, in his petition of complaint, mentioned that he found accused no. 3 at the spot to whom he disclosed his identity and purpose of visit and on his enquiry, the accused no. 3 disclosed that the said food articles belonged to accused no. 1 which was used for preparing food for sale for human consumption. In the petition of complaint the accused no. 3 had been named as V. K. Kapoor. The complainant deposed as PW-1 before the Trial Court on 04<sup>th</sup> of October, 2012 stating that during his inspection, one Bimal Chandra Bhattacharya was present in the aforesaid hotel who had disclosed himself to be the vendor cum person-in-charge of hotel Minarva and had produced a certificate of enlistment. On his further demand, a valid certificate of enlistment of the said hotel could not be produced and he collected a photocopy of the original

certificate of enlistment valid till 31.3.08 issued in the name of R. K. Kapoor, S. K. Kapoor, V. K. Kapoor and P. K. Kapoor. Mr. Bimal Chandra Bhattacharya vendor cum person-in-charge who had attested the said photocopy of the trade licence/certificate of enlistment writing his own name on it which was marked as Exhibit 1 in the Court. He further deposed to have asked Bimal Chandra Bhattacharya the vendor cum person-in-charge of the said hotel about the prepared food and its storage thereof who replied that the prepared food was stored in the said hotel to be sold to the customers for human consumption. The complainant suspected the paneer to be a sub-standard food and he thought that he should collect the sample of the said paneer. On being asked, Bimal Chandra Bhattacharya replied that paneer was used to prepare food to be sold to the customer for human consumption. The deponent's version in the petition of complaint and his evidence before the Court had been absolutely contrary to each other. The accused petitioner no. 3 was not present at the spot on the date of the inspection. The complainant himself affirmed before the Court that Bimal Chandra Bhattacharya vendor cum person-in-charge of the hotel Minarva. The accused petitioners being the partners of the hotel should have been functioning in the capacity of its management and could not be explicitly involved with day to day preparation of food in the kitchen including the purchase of the ingredients with which the food was to be prepared in the hotel for human consumption. It is a matter of general practice in prevalence that such act of production of food in the kitchen of a hotel is conducted through employment of staff with appropriate designation and such supervision and act on the part of such staff could not be

attributed to the partners of a firm. The complainant himself was aware of the fact that the vendor cum person-in-charge of the hotel had been acquainted with the process in which the food was prepared in the kitchen with its constituents.

46. At the inception it is pivotal to assess the petition of complaint for decisive conclusion. Therefore, the petition of complaint filed before the Learned 1<sup>st</sup> Court Metropolitan and Municipal Magistrate, Calcutta which has been marked as Exhibit 11 by the Trial Court is replicated as follows:

*“Complainant-*

*Pradip Chakraborty*

*F.I. K.M.C.*

*THE CALCUTTA MPL. CORPORATOIN*

*5, Surendra Nath Banerjee Road,*

*Calcutta – 13*

*Accused with address-*

*1. Firm/Proprietor*

*M/ S. Hotel Minerva*

*11 Ganesh Chandra Avenue*

*Kolkata - 13*

*Partners:*

*I. R. K. Kapoor*

*II. S. K. Kapoor*

*III. P. K. Kapoor*

*Witnesses with address:-*

*1. Food Inspector*

*2. Public Analyst who analysed sample  
of Paneer dated 30.09.2010  
bearing Sl. No. CH/B-VI/PC/08/2010*

*3. Local Health Authority,  
The Calcutta Mpl. Corporation  
5, S. N. Banerjee Road, Kol-13*

*4. Licence Officer,  
The Calcutta Mpl. Corporation  
5, S. N. Road, Kol-13*

*2. Person in-charge of the  
local affairs of the  
Company/Firm/Business*

*.....*

*3. Seller cum P.I.C.  
Bimal Ch. Bhattacharyay  
S/o- Late Subodh Ch.  
Bhattacharyay  
11, Ganesh Chandra Avenue  
Kolkata – 13*

5. Sample witness Ratnakar Rana  
S/o- Sankar Rana  
South Rania, 24-Parganas South

6. Other Witnesses NIL

4. Nominated person on  
behalf of Company/ Firm  
under Sub-Section (2) of  
Section 17 of the P.F.A. Act  
.....NIL.....

*Under Section 16 (1) a (i) of the Prevention of Food Adulteration Act, 1954 as amended by the Prevention of Food Adulteration Amendment Act, 1964 as further amended by Act No. 34 of 1976 (hereinafter mentioned as the Act) read with Sections 6 and 7 respectively of the said Act and Rules made thereunder.*

*The humble petition of Pradip Chakraborty Food Inspector, appointed by the State Government under Section 9 of the P.F.A. Act for the whole of Calcutta, complainant above named most respectfully sheweth:-*

*On 30.9.10 at 12:50 P.M., Pradip Chakraborty Food Inspector of the above named complainant inspected the Hotel Minerva the above named accused Firm situated at 11, Ganesh Ch. Avenue, Kol-13 and found and article of food namely Paneer stored/exposed for sale for human consumption and/or for sale and/or using the same for preparing other foods for human, consumption. The Food Inspector found Accused No. 3 thereto whom he disclosed his identity and the purpose of his visit. On being asked by the Food Inspector the accused No. 3 disclosed that the said food articles belonged to accused no. 1 and for preparing other food for sale for human consumption.*

*The sample of the said food weighing 750 grams being F.I. Serial No. X with code and Serial No. of the local Health Authority with signature CH/B-VI/PC/08/2010 was purchased from accused no. 3 under the supervision of complainant F.I. in presence of the accused no. 3 and the witness no. 5 after due observance of all the legal formalities as prescribed in the said Act and Rules made thereunder.*

*One part of the said sample was sent to the Public Analyst for analysis and the sample was duly received by Dy. Assistant Analyst and was numbered with 207 dated 30.09.2010 the remaining two parts of the said sample were packed into one packet and sealed and sent to the Local Health Authority (Chief Municipal Health*

Officer) and was duly received at that office on 30.09.2010 by person duly authorized on his behalf.

The Public Analyst's Report, being no. JP/58/10 dated 26.10.10, received on the said sample from the Local (Health) Authority inter alia read that the said food is adulterated and a true copy of which is attached herewith.

The Food Inspector duly submitted the records of the said inspection along with the report of the Public Analyst to the Chief Municipal Health Officer of the Calcutta Municipal Corporation, the Local (Health) Authority and after applying his mind gave a written consent to file prosecution before the respective Court.

On enquiry, it is learnt that the said food belonged to the accused no. 1 and that was stored/exposed in the Hotel for sale and accused no. 3 was the person in-charge of the local affairs and was looking after the day to day business of accused no. 1.

So, both the seller, Firm/Proprietor and the person in-charge of business are liable for the offence under section 16(1)a(i) read with Section 7 of the P.F.A. Act, 1954.

In the circumstances, the complainant prays that Your Honour may be pleased to issue summons against the accused person/persons above-named for offence committed under Section 16(1)a(i) of the P.F.A. Act, 1954 read with Section 7 of the aforesaid Act and try the said accused and pass such order or orders as Your Honour may deem fit and proper.

The complainant submits that various formalities are to be observed in accordance with law before filing the petition of complaint and as such the delay caused in filing the case is unavoidable and unmotivated.

And for this act of kindness, the complainant as in duty bound shall ever pray."

47. The deposition of the complainant before the Learned Trial Court as PW-1 stated as follows:-

*“At present I am posted as Food Safety Officer appointed by the Government of West Bengal for the whole area of K.M.C. At the relevant point of time, I was posted as Food Inspector appointed by the Government of West Bengal for the whole area of K.M.C. on 30.09.10 I visited M/S. Hotel Minarva at 11 Ganesh Chandra Avenue, Kolkata-13. During my inspection one Bimal Chandra Bhattacharya was present in the aforesaid Hotel Minarva. Bimal Chandra Bhattacharya is not present in the court room today at this moment.*

*I explained/disclosed my identity and purpose of my visit before Bimal Ch. Bhattacharya. I could identify him if he was present in the Court this day. Bimal Chandra Bhattacharya disclosed himself to be the vendor cum person in-charge of Hotel Minerva. He produced a certificate of enlistment (photocopy) of 2007-2008 in the name of R. K. Kapoor and Others. S.K. Kapoor, V. K. Kapoor and P.K. Kapoor are partners of said Hotel. I saw the original certificate of enlistment.*

*Bimal Chandra Bhattacharya vendor-cum-person in-charge handed over the photocopy of certificate of enlistment in the name of M/S. Hotel Minarva to me. I demanded valid certificate of enlistment of M/S Hotel Minarva but they could not produce the valid certificate of enlistment. The certificate of enlistment of said hotel was valid upto 30.03.08. The certificate of enlistment was issued in the name of R. K. Kapoor, S. K. Kapoor, V. K. Kapoor and P. K. Kapoor. I have seen the original certificate of enlistment/trade licence of said hotel. I collected photocopy of said original certificate. Bimal Chandra Bhattacharya vendor-cum-person in-charge attested the said photocopy of said trade/licence/certificate of enlistment by writing his own name. This is the said document. It is marked as Ext. 1. I disclosed the purpose of my visit before vendor-person in-charge. I inspected the kitchen and store room of M/S Hotel Minarva and found that there were food grains, mustard oil, soyabin oil, tomato sauce, chilli sauce, paneer and some prepared food in the said kitchen. I asked vendor-cum- person in-charge of said hotel about the prepared food stored there. He told me that said prepared food was stored in the said hotel to sell to the customers for human consumption. I suspected the paneer as sub-standard food. I thought that I should collect the sample of said paneer. On being asked Bimal*

*Chandra Bhattacharya told me that they used to prepare food by said paneer to sell the same to the customer for human consumption.*

*I prepared the inspection report regarding the sample taken report by my own hand. It bears my signature. This report is marked as Ext.6. Then I prepared a forwarding note and intimated the same to L(H)A and CMHO. This is the said forwarding note prepared and signed by me. The forwarding note is marked as Ext.7. Nirmal Kumar, l H.A received the forwarding report from me by putting his signature with date. The signature of Nirmal Kumar with date in Ext.7 is marked as Ext.7/ 1. In due course of tie, I received a public analyst report along with a directive of L(H)A. This is the said public analyst report being No. JP/58/10 dated 26.10.10. The public analyst report is marked as Ext.8. This is the said directive letter bearing No. H/PFA/A/55/2010 dated 02.11.10. as per said directive letter, I was directed by CMHO and L(H)A to take action against the farm/vendor/vendors as per P.F.A. Act. This document is marked as Ext.9. Then I placed all the documents with a forwarding note before CMHO and L(H)A for obtaining his consent to prosecute the farm/vendor and person-in-charge. This is the said forwarding report prepared and signed by me. It is marked as Ext.10. The C.M.H.O and L(H)A gave his written consent with signature and date in Ext.10 is marked as Ext.10/1. Thereafter, I prepared the petition of complaint. This is the said petition of complaint. It bears my signature. The petition of complaint is marked as Ext.11. It bears the signature of CMHO and L(H)A and it also bears his written consent in page three of petition of complaint. The written consent and his signature in 3<sup>rd</sup> page of written complaint in Ext.11 is marked as Ext.11/ 1. Thereafter, I filled up the petition of complaint of this case against the accused person through Learned Municipal Prosecutor. Thereafter, I informed to the office of L(H)A by sending a forwarding report stating that I filed the case against the accused person. This is the copy received the same from me with his signature and date with official seal. The signature with date and seal in Ext.123 is marked as Ext.12/1. Thereafter, a public analyst report being No. JP/58/10 of 26.10.10 along with forwarding note was given to me for causing service the accused Bimal Bhattacharya. This is the photocopy of forwarding note of L(H)A. It is*

marked as Ext.13. I served the same to the accused. Then I deposited the copy of forwarding note to the office of L(H)A.

Cross-examination before charge- At the time of sample of this case the person in-charge cum vendor, i.e. Bimal Bhattacharya, sample witness Sankar Rana, myself and my companion were present there”.

48. In view of the provisions enumerated in Section 17 of the Prevention of Food Adulteration Act, the present petitioners cannot be indicted to be liable for any lapse or non-compliance of the provisions of the aforesaid Act.

49. The complainant PW-1 did not mention of issuing notice upon the petitioners in accordance with the provisions of Section 13 of the said Act so that the Public Analyst's report could be sent to the Central Food Authority for further verification.

50. The Public Analyst's Report dated 26.10.2010 states as follows:

“Analysis Report:-

- (i) Sample Description: Paneer. Formalin added as per rule.
- (ii) Physical Appearance: Milk white piece of soft mass in a glass phial.
- (iii) Label: .....

|    | Quality Characteristics | Method of test used D.G.H.S. | Result   | Prescribed Standards as Per:-<br>(a) Item A-of Appendix 'B'<br>(b) As per label declaration of proprietary foods<br>(c) As per provisions of the Act and Rules or both above |
|----|-------------------------|------------------------------|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Test for formaldehyde   |                              | Positive |                                                                                                                                                                              |

|    |                 |  |                                |                                                 |
|----|-----------------|--|--------------------------------|-------------------------------------------------|
| 2. | Test for starch |  | Negative                       |                                                 |
| 3. | Test for sugar  |  | Negative                       |                                                 |
| 4. | Moisture        |  | 74.25%                         | Shall not contain more than 70%                 |
| 5. | Milk fat        |  | 9.078%<br>of the dry<br>matter | Shall not be less than 50% of<br>the dry matter |

*Opinion: The sample of paneer does not conform to the prescribed standard in respect of Moisture & Milk Fat content of the dry matter. Hence, it is adulterated.”*

51. Section 2(i), 13 and 17 of the Prevention of Food Adulteration Act, 1954 state as follows:

**“13. Report of Public analyst.— ...**

*(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.*

*(2A) When an application is made to the court under sub-section (2), the court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being made,*

*the said Authority shall forward the part or parts of the sample to the court within a period of five days from the date of receipt of such requisition.*

*(2B) On receipt of the part or parts of the sample from the Local (Health) Authority under sub-section (2A), the court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are intact and the signature or thumb impression, as the case may be, is not tampered with, and dispatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis.*

*(2C) Where two parts of the sample have been sent to the court and only one part of the sample has been sent by the court to the Director of the Central Food Laboratory under sub-section (2B), the court shall, as soon as practicable, return the remaining part to the Local (Health) Authority and that Authority shall destroy that part after the certificate from the Director of the Central Food Laboratory has been received by the court:*

*Provided that where the part of the sample sent by the court to the Director of the Central Food Laboratory is lost or damaged, the court shall require the Local (Health) Authority to forward the part of the sample, if any, retained by it to the court and on receipt thereof, the court shall proceed in the manner provided in sub-section (2B).*

*(2D) Until the receipt of the certificate of the result of the analysis from the Director of the Central Food Laboratory, the court shall not continue with the proceedings pending before it in relation to the prosecution.*

*(2E) If, after considering the report, if any, of the food inspector or otherwise the Local (Health) Authority is of the opinion that the report delivered by the public analyst under sub-section (1) is erroneous, the said Authority shall forward one of the parts of the sample kept by it to any other public analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the*

*article of food is adulterated, the provisions of sub-sections (2) to (2D) shall, so far as may be, apply.]*

...

**17. Offences by companies.**—(1) *Where an offence under this Act has been committed by a company—*

*(a) (i) the person, if any, who has been nominated under sub-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (hereinafter in this section referred to as the person responsible), or*

*(ii) where no person has been so nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company; and*

*(b) the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:*

*Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.*

*(2) Any company may, by order in writing, authorise any of its directors or managers (such manager being employed mainly in a managerial or supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company or any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated.*

*Explanation.*—*Where a company has different establishments or branches or different units in any establishment or branch, different persons may be nominated under this sub-section in relation to different establishments or branches or units and the person nominated in relation to*

*any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.*

*(3) The person nominated under sub-section (2) shall, until—*

*(i) further notice cancelling such nomination is received from the company by the Local (Health) Authority; or*

*(ii) he ceases to be a director or, as the case may be, manager of the company; or*

*(iii) he makes a request in writing to the Local (Health) Authority, under intimation to the company, to cancel the nomination [which request shall be complied with by the Local (Health) Authority.] whichever is the earliest, continue to be the person responsible:*

*Provided that where such person ceases to be a director or, as the case may be, manager of the company, he shall intimate the fact of such cesser to the Local (Health) Authority:*

*Provided further that where such person makes a request under clause (iii), the Local (Health) Authority shall not cancel such nomination with effect from a date earlier than the date on which the request is made.*

*(4) Notwithstanding anything contained in the foregoing sub-sections, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary, or other officer of the company, [not being a person nominated under sub-section (2) such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*

*Explanation.—For the purposes of this section—*

*(a) “company” means any body corporate and includes a firm or other association of individuals;*

*(b) “director”, in relation to a firm, means a partner in the firm; and*

(c) “manager” in relation to a company engaged in hotel industry, includes the person in charge of the catering department of any hotel managed or run by it.]”

52. The Public Analyst’s report stated the existence of formaldehyde. The Public Analyst’s report further mentioned that formaldehyde was added to the “paneer” for preservation. According to a certain information, *“formalin, which is 40% formaldehyde, can be used as milk preservative for up to 7 days when added at a ratio of 1 in 10,000 in milk. However, adding more than 40% can increase the acidity of milk, reduce its fat and protein content and increase its viscosity.”*
53. The presence of the formaldehyde was a consequence of the addition of formalin. In the milk which is beyond the purview of an act on the part of the petitioners to adulterate the ‘paneer’. Starch and sugar was absent. Moisture was detected to the extent of 74.25% which should not have been more than 70%. ‘Paneer’ being a perishable commodity can be naturally susceptible to an addition of moisture to the extent of 4.25% in excess which again cannot be termed to be the consequence of adulteration. Milk fat was found to the extent of 9.078% which should not have been less than 50% of the dry matter. The opinion of the Public Analyst was *“sample of paneer does not conform to the prescribed standard in respect of moisture and milk fat content of the dry matter. Hence, it is adulterated.”*
54. The dictionary meaning of the word “milk fat” depicts the same to be “butter fat which is a natural fat found in milk.”
55. An evolution of the Public Analyst’s Report did not mention any other substance alien or foreign in nature to have seriously injured the nature, substance and polity thereof or to have been contaminated or injurious for human consumption.

56. According to Prevention of Food Adulteration Rules (PFA 2010), “paneer” means the product obtained from cow or buffalo milk or a combination thereof by precipitation with sour milk, lactic acid or citric acid. It was not contained more than 70% moisture and the milk fat content shall not be less than 50% of the dry matter. Milk solids may also be used in preparation of the product. Bureau of Indian Standards (BIS 1983) also specifies a minimum of 50% fat on dry matter basis but a maximum of 60% moisture in ‘paneer’.

57. In the instant case, the ‘paneer’ was not sold from the hotel but admittedly food was prepared out of the ‘paneer’ to be sold for human consumption. The proviso 2 of Section 1(a) stated:-

**“2. [(ia)]** *“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, 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;]”*

58. The date on which the sample of ‘paneer’ was subjected to test by the Analyst after a lapse of a considerable time naturally would have rendered certain

changes in the composition of the 'paneer' in its natural decay owing to its perishability. Moreover, the 'paneer' was used for the preparation of food which was not complained of to be unfit for human consumption by anybody or any agency.

59. Under such circumstances, the 'paneer' in isolation cannot be deemed to be adulterated.

60. In view of the above discussions, the order dated 12<sup>th</sup> February, 2014 passed by the Learned 1<sup>st</sup> Court of Metropolitan and Municipal Magistrate, Calcutta in Case No. 2D of 2010 thereby rejecting a prayer for time and issuing warrants of arrest against the petitioners and a purported complaint dated 22<sup>nd</sup> November, 2010 under Section 16(1)(a)(i) read with Sections 6 and 7 of the Prevention of Food Adulteration Act, 1954 being Case No. 2D of 2010 pending before the Learned First Court of the Metropolitan & Municipal Magistrate, Kolkata are set aside.

61. Accordingly, the instant criminal revisional application being no. CRR 615 of 2014 is allowed.

62. Accordingly, CRR 615 of 2014 stands disposed of. Connected application, if there be any, also stands disposed of.

63. There is no order as to costs.

64. Let the copy of this judgment be sent down to the Learned Trial Court and the concerned police station as well for necessary action.

65. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

**(Ananya Bandyopadhyay, J.)**