

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

CRM-M-5160 of 2011 (O&M)

Date of decision: 13.01.2025

M/s Pepsico India Holding Pvt Ltd and Anr

.....Petitioners

Versus

State of Haryana and Anr

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. R.S. Cheema, Sr. Advocate with
Mr. Rajesh Batra, Advocate and
Mr. Ishan Khetarpal, Advocate for the petitioners.

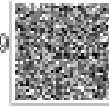
Mr. Chetan Sharma, DAG, Haryana.

Mr. Dheeraj Jain, Sr. Advocate for respondent No.3.

Mr. Sandeep Singh Ghangas, Advocate for respondent No.4.

SANDEEP MOUDGIL, J (ORAL)

Having invoked the jurisdiction of this Court under Section 482 Cr.P.C, the petitioners have approached this Court challenging impugned order dated 16.07.2004 (Annexure P-1), issuing process and order dated 03.02.2011 (Annexure P-8) passed by the Chief Judicial Magistrate, Yamuna Nagar at Jagadhri vide which bail has been cancelled apart from quashing of complaint No.406/2 of 2004 dated 16.07.2004 titled “State Vs. Shri Manjeet Singh and Anr” and consequential proceedings under Section 7/16 of PFA Act, 1954 read with Rule 32 of PFA Rules, 1955.



Mr. Cheema, learned senior counsel drew the attention of this Court to order dated 29.04.2024 passed by this Court in CRM-M-11797-2010 whereby following direction was issued:

“29. After enactment of this new Food Safety Act, 2006, a letter dated 2nd August 2016, was issued by the Food Safety and Standards Authority of India, constituted under 2006 Act, which is extracted as under:

*“F. No. P. 15017/84/2015-FSSAI/Legal
Food Safety and Standards Authority of India
A Statutory Authority established under Food Safety and Standards Act, 2006
FDA Bhawan, Kotla Road, New Delhi – 100002-*

Dated, the 2nd August

2016

To

*The Commissioners of Food Safety,
All States/UTs Governments.*

Subject: Cases pending under PFA Act and other orders repealed by FSS Act, 2006 (Schedule 2)-reg.

Sir,

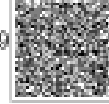
It is understood that a large number of cases under the Prevention of Food Adulteration Act & other orders specified in Schedule 2 of the Food Safety and Standards Act, 2006, are still pending in various courts and tribunals across the country. In a sizable number of such cases, the offences alleged to have been committed may not be very serious in nature and the penalties/punishments prescribed for such offences are also not substantial. The pendency of such cases for a long time not only burdens the judicial system, but also diverts the scarce resources of the government in pursuing these matters rather than deploying them in effective implementation of the provisions of the FSS Act to ensure safe and wholesome food for the consumers.

2. In the view of the above, Commissioners of Food Safety of all States/ UTs may like to examine all pending cases against Food Business Operators under provisions of various enactments & orders repealed on enactment of Food Safety and Standards Act, 2006 and take a view on withdrawal of the same, if considered appropriate. The results of this exercise may please be shared with FSSAI from time to time.

Yours faithfully,

Sd/- (Raj Singh)

Head (Legal)”

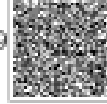


30. As per the above letter, the subject of which pertains to the cases under the PFA Act, 1954 and FSS Act, 2006, i.e., the old as well as the new Act, the concerned Commissioners were required to consider all cases, in which the offences, alleged to have been committed, may not be very serious in nature and the penalties/punishments prescribed for such offences are also not substantial, so as to withdraw such cases. The letter has been issued to reduce the burden on the judicial system. No action appears to have been taken by the State of Haryana on this letter, despite the fact that the same issued by the Central Government on 2nd August 2016 (*supra*), specifically asked the Commissioners of Food Safety of all States/UTs to examine all pending cases against food business operators and take a view on withdrawal of the same.

31. Present case is of misbranding only and not of adulteration. As per Section 16A of the PFA Act, 1954, offence is in question is triable summarily. Section 52 of FSS Act, 2006 provides only for penalty to be imposed, if any person manufactures for sale or stores or sells or distributes or imports any article of food for human consumption, which is misbranded. Basically, misbranding has been considered as a civil wrong in the new Act.

32. Dealing with a similar matter, Hon'ble Supreme Court in *Nemi Chand Vs State of Rajasthan* 2016 SCC OnLine SC 1715, held as follows:-

“[3] It is not in dispute that the charge against the appellant was only of substandardization of goods. Mr. Sushil Kumar Jain, learned senior counsel appearing for the appellant, submits that though the appellant has some *prima facie* case even on merits, he would be giving up the plea on merits and his only submission is about the sentence which has been imposed by the courts below. He has, in this behalf, argued that there has been an amendment in the Act by the Central Amendment Act 34 of 1976, whereby Section 16A was added and under the said section, only a fine is leviable. He has drawn our attention to the judgment of this Court in '*T. Barai v. Henry Ah Hoe and Another*, 1983 1 SCC 177' wherein this Court held that since the amendment was beneficial to the accused persons, it can be applied even with respect to earlier cases as well which are



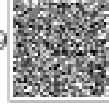
pending in the Court. In the said judgment, the Court held as under:

"22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense."

Allowing the appeal partly, Hon'ble Supreme Court modified the sentence imposed upon the appellant by imposing fine of Rs. 50,000/- to be deposited within two months with the trial court.

33. Same view has been taken by the High Court of Gujarat in PepsiCo India Holdings Pvt. Ltd. Vs UOI, R/Special Criminal Application No.2281 of 2008, by High Court of Rajasthan in Ramkishan Agarwal Versus State of Rajasthan through PP, S.B. Criminal Miscellaneous (Petition) No.2223 of 2013 and connected matters and by Himachal High Court in M/s Pepsico India Holdings Pvt Ltd. vs. State of Himachal Pradesh & Others, CMP (Main)) No.225 of 2019 decided on 30.09.2021.

34. On account of the entire discussion as above, though this court does not find any legal ground so as to quash the complains or the impugned summoning orders in any of the case, but at the same time, in view of the enactment of FSS Act, 2006, state respondents/state would be at liberty to consider withdrawal of the cases, if approached by the petitioners within two months from today, having regard to the letter dated 02.08.2016 of the Food Safety and Standard Authority of India, after imposing penalty as per the provisions of FSS, 2006. However, it is made clear that in case the respondent-State is not inclined to consider the matter accordingly, it has to pass a reasoned order and then the petitioners



will have to face prosecution before the court in accordance with law.

35. Disposed of accordingly.

Pending application(s), if any, also stand disposed of.

A photocopy of this order be placed on the file of other connected case.

When confronted, Mr. Chetan Sharma, learned State counsel is also in consonance with the facts and circumstances involved to be identical questions of law as raised in the instant petition.

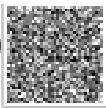
Learned senior counsel representing the petitioners pointed out that a representation stands made on 06.01.2025 to the Commissioner of Food Safety and Standards Authority through its authorized signatory with copy to the Chief Executive Officer, Food Safety & Standards Authority of India, FDA Bhawan, Kotla Road, New Delhi – 100002.

Learned State counsel undertakes before this Court that in case the said representation has been received in the office as stated on behalf of the petitioners, necessary steps will be taken to pass a fresh order within a period of two months from today, adhering with letter dated 02.08.2016 issued by the Food Safety and Standards Authority of India as per the provisions of FSS Act, 2006.

In view of the aforesaid, Mr. Cheema, learned senior counsel representing the petitioners seeks withdrawal of the instant petition, in the light of statement made by learned State counsel.

In case, the necessary orders after reconsideration as observed hereinabove are not passed within the stipulated period, the petitioners would be at liberty to move appropriate application for revival of the present petition.

In the meantime, looking into peculiar facts and circumstances emerging in the light of order dated 29.04.2024 passed by this Court in CRM-11797-2010, proceedings before the learned trial Court shall remain stayed till the



necessary fresh orders are passed by the respondent-State and the parties would be at liberty to move necessary application accordingly before the trial Court after the decision of the State in the matter.

Petition is dismissed as withdrawn.

(SANDEEP MOUDGIL)
JUDGE

13.01.2025
manoj