

19.02.2026
Item No.8
Ct. No. 34
nb

CRR 1881 of 2023

In the matter of: **Amal Chandra & Anr.**

..... petitioners.

Mr. Dhrubaneel Biswas,
Mr. Sandeepan Dutta,
Mr. Subhadeep Maitra,

.... For the petitioners.

Ms. Anita Gaur,
Mr. Nahid Ahmed,

..... for the State.

1. This revisional application has been filed under Section 482 read with Section 397/401 of the Code of Criminal Procedure for quashing of proceeding under Duttapukur P.S. Case No.202 of 2017 for commission of offence punishable under Sections 272/273/420 of the IPC read with Section 103/104/108 of the Trademarks Act, 1999 pending before the Learned Court of 5th Additional District & Session Judge, Barasat.

Factual Matrix

2. The fact of the case in a nutshell is that the petitioner no.1 into the business of manufacturing food items and having a registered company title as M/s. Origin Food Products and subsequently the company of petitioner no.1 got the license in manufacturing of Pickels made from vegetable or other edible plant materials including mushrooms, Chilly Sauce, Jams, Fruit Jellies and Marmalades, Pickles made from fruits Soyabean

sauce and Tomato Ketchup and Tomato sauce. Petitioner no.1 obtained such valid and necessary licence from Food Safety and Standards Authority of India vide licence no.1281701300018. The petitioner no 1 further got their Trade Mark registered from the concerned authority in the year 2008. The petitioner no 1 further applied and obtained the necessary license from Pollution Control Board, accreditation from JAS -ANZ, ISO certification etc. to operate the said business in lawful manner.

3. The problem cropped up one very afternoon when the petitioners were busy in their daily routine of business, the opposite party no.2 and 4 and the respective team along with the police force of Duttapukur P.S. conducted a raid in the factory of petitioner no.1 on the ground of strength of a complaint vide G.D.E. No.1595 alleging the petitioners are involved in manufacturing and selling sauce, Jam, Jelly, Squash etc. which are adulterated/noxious in nature for better profit. The opposite party no.3 and 4 reached the spot at 13.55 p.m. and arranged three local witnesses and conducted such raid and instructed them to remain present with the police force. After the same, the team also seized list of items on the premises and thereafter, the proceeding was initiated. The present petitioner has come before this Court for quashing of the entire proceeding.

Submission

4. Learned counsel for the petitioner contended that the respondent no.4 while filing Charge Sheet did not utter a single

word about the process of seizure of Food items nor mentioned the seized items were sent to the designated testing Lab that is the Public Analysts (Food & Water) West Bengal Public Health Laboratory. It is the specific point raised by the Learned Counsel that as per the decision of *Christy Fried Gram Industry vs State of Karnataka*, 2016 CrLJ 482 the FSS Act itself is competent to carry out such raids and prosecutions as the nature of offence is alleged in this instant matter. It is further submitted that the investigation as carried out by the I.O is beyond the jurisdiction under the law and the respondent no 4 has no power or jurisdiction to investigate the alleged offence as neither followed the provisions of section 38, 41, 42, 47 of the FSS Act depriving the petitioner to prefer appeal under section 46(4) of the said Act.

5. In this regard, relied upon the decision of ***Sushil Kr. Gupta Vs. The State of West Bengal (CRR No. 2795 of 2017)*** and ***Ali Mohammad Bhat & Ors. VS. UT of J. & K (CRM(M) No. 310 of 2024)***,

6. It is further their stand that the respondent no 3 has fabricated the story and alleged the instant petitioners for offence under section 77/78/82 of the Trade Mark Act and Merchandise Marks Act 1958 but changed the frame of allegations at the time of filing charge sheet and slapped section 103/104/108 of the Trade Mark Act 1999 without giving any opportunity of hearing to the petitioner.

7. The learned prosecution on the other hand relied upon the decision of ***Ram Nath Vs. The State of Uttar Pradesh & Ors.*** reported in ***2024 INSC 138*** and would submit that the FIR was registered alleging commission of offence under section 272 and 273 of the IPC but the view taken by PepsiCo India that from when the FSSA Act was promulgated the provision would have an overriding effect over the food related laws including section 272 and 273 of the IPC and it was held that the police has no authority or jurisdiction to investigate a case under FSSA . The Hon'ble Supreme court considered section 89 of the FSSA and observed that section clearly gives an overriding effect to the provisions of the FSSA over any other law in so far as the law applies to the aspects of food in the field covered by the FSSA .After the promulgation of the FSSA Act, it is settled that even if the offences are committed under IPC Act that should have been construed to have committed FSSAI Act and for that reasons that has not been followed in this case and therefore, the investigation suffers.

Analysis

8. Having heard both the learned counsel and going through the materials on record, it is clear that the allegation levelled against the present petitioner under Sections 272/273/420 along with Trade Mark Act 1999 along with sections 103/104/108 and the charge sheet was submitted without following the parameters as under FSSAI Act.

9. In view of the decision of Hon'ble Supreme Court in ***Ram Nath Vs. The State of Uttar Pradesh & Ors.***, it was considered that different provision of FSSAI Act was brought into force on different dates from time to time. The last date of such order was July 29, 2010 and all the provisions of FSSAI were in force as on July 29, 2010 except Section 22. It was also held that in terms of Section 29 of the Code of Criminal Procedure it provided that "it shall be lawful for the Court of mandatory jurisdiction to pass any sentence authorized under FSSAI except the sentence of imprisonment for term exceeding six months in excess of its power conferred under Section 29 of the Code of Criminal Procedure". The offence related to food and food safety are concerned there are provisions made in the FSSAI dealing with all aspect of food safety and the Section 272 is an offence adulteration of any local food or other since the act of FSSAI has come into force in terms of Section 89 having an overriding over being special statute, which has been overriding effect of this case over all other foods.

10. In the case of Sushil Kumar Gupta vs The state of west Bengal the learned single Bench decided the issue 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 this case

11. It was argued that on behalf of the petitioner that the impugned proceeding is gross abuse of the 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 came to effect to consolidate the laws relating to 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 Special Act and not under any other Act. In the said case police seized huge amount of adulterated food items from the possession of the petitioner. The learned court observed that the FSSA Act 2006 was enacted where section 7 specified the power of Food safety officers including their power of storage seizure, investigation permission and procedure thereto. The learned Co-ordinate Bench took note of several decisions of the Hon'ble Supreme Court whereby it was repeatedly observed and held that the Special Act shall override the provisions of procedure lay down in the CrPC and held that though a specific, separate, distinct procedure has been laid down in FSSA Act of 2006 to initiate /launch a proceeding against the offender of laws relating to food safety that does not ipso facto debar the police to register a case u/s 272 or 273 IPC.

12. But In the decision of **Ram Nath (Supra)**, the Hon'ble Apex Court discussed the specific provision enumerated in section (zz)

of section 3 of the FSSA which defines unsafe foods, which reads as ,

“(zz) “unsafe food” means an article of food whose nature, substance or quality is so affected as to render it injurious to health:

—

(i) by the article itself, or its package thereof, which is composed, whether Wholly or in part, of poisonous or deleterious substances; or

(ii) by the article consisting, wholly or in part, of any filthy, putrid, rotten, decomposed or diseased animal substance or vegetable substance; or

(iii) by virtue of its unhygienic processing or the presence in that article of any harmful substance; or

(iv) by the substitution of any inferior or cheaper substance whether wholly or in part; or

(v) by addition of a substance directly or as an ingredient which is not permitted; or

(vi) by the abstraction, wholly or in part, of any of its constituents; or

(vii) by the article being so coloured, flavoured or coated, powdered or polished, as to damage or conceal the article or to make it appear better or of greater value than it really is; or

(viii) by the presence of any colouring matter or preservatives other than that specified in respect thereof; or

(ix) by the article having been infected or infested with worms, weevils, or insects; or

(x) by virtue of its being prepared, packed or kept under insanitary conditions; or

(xi) by virtue of its being mis-branded or sub-standard or food containing extraneous matter; or

(xii) by virtue of containing pesticides and other contaminants in excess of quantities specified by regulations.”.

13. It was observed that the concept of unsafe food is more comprehensive than the concept of adulterated food .Unsafe food means an article of food whose nature, substance or quality is so affected as to render it injurious to health. In paragraph 18 of the said decision it was held,

18. Section 273 of the IPC applies when a person sells or, offers or exposes for sale any article of food or drink which has been rendered noxious or has become unfit for food or drink. Section 273 incorporates requirements of knowledge or reasonable belief that the food or drink sold or offered for sale is noxious. Section 59 of the FSSA does not require the presence of intention as contemplated by Section 272 of the IPC. Under Section 59 of the FSSA, a person commits an offence who, whether by himself or by any person on his behalf, manufactures for sale or stores or sells or distributes any article of food for human consumption which is unsafe. So, the offence under Section 59 of the FSSA is made out even if there is an absence of intention as provided in Section 272 of the IPC. However, knowledge is an essential ingredient in sub-Section 1 of Section 48, and therefore, it will be a part of Section 59 of the FSSA. The maximum punishment for the offence under Section 272 of the IPC is imprisonment for a term which may extend to six months or with a fine. The substantive sentence for the offence punishable under Section 273 is

the same, whereas, under Section 59, the punishment is of simple imprisonment extending from three months to a life sentence with a fine of rupees three lakh up to 10 lakhs.

13. According taking note of section 89 of FSSA Act 2006 having the overriding effect distinguished the decision of Swami Achyutanand Tirth and State of Maharashtra where the question of effect of section 97 of the FSSA never arose for consideration, the concerned authority was given liberty to act in accordance with FSSAI for offence punishable under Section 59 of FSSAI but question of simultaneous prosecution under both the statute was negated.

14. In the present case, similar situation has arisen when the nature of allegation was ought to have been come under the FSSAI Act and the procedure has been followed as per the Code of Criminal Procedure as the collection procedure of sample collection were not followed as per the provision lays down in Section 38 to 47 of the FSSA Act 2006. That apart the samples were not tested within stipulated time of 14 days as per the said Act and after the aforesaid decision there remains no room left to decide that section 89 of the FSSA Act have an overriding effect being the special Statute and after enactment of the Act of 2006 the offences pertaining to food safety can only be initiated under the said act . Therefore this proceeding under Section 272/273 of

the IPC cannot continue .However so far the offence of Trade Mark is concerned this court is not inclined to allow the prayer of the petitioner .

Conclusion

15. Therefore, in view of this facts and circumstances, this Court is of the view that this proceeding pending before the learned Court is liable to be set aside so far the offence under section 272 and 273 of the IPC are concerned however 2006. Liberty is given to the authorities to initiate appropriate proceedings in accordance with law if not already initiated.

16. The criminal revision stands allowed in part with the above observation.

17. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(CHAITALI CHATTERJEE (DAS), J.)