

Ram Nath vs The State Of Uttar Pradesh on 21 February, 2024

Author: Abhay S. Oka

Bench: Sanjay Karol, Abhay S. Oka

2024 INSC 138

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 472 OF 2012

RAM NATH

...APPELLANT

VERSUS

THE STATE OF UTTAR PRADESH
& ORS.

...RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 479 OF 2012
CRIMINAL APPEAL NO. 476-478 OF 2012
CRIMINAL APPEAL @ SLP(Crl.) No. 1379 of 2011

JUDGMENT

ABHAY S. OKA, J.

1. Leave granted in Special Leave Petition (Crl.) No. 1379 of 2011.

2. The issue involved in these appeals is about the interplay between the provisions of Chapter IX of the Food Safety and Standards Act, 2006 (for short, 'the FSSA') and Sections 272 and 273 of the Indian Penal Code (for short, 'the IPC').

FACTUAL ASPECT

3. Criminal Appeal No. 472 of 2012 takes exception to the order dated 5th October 2010 passed by a

Division Bench of Allahabad High Court. The appellant filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') seeking quashing of the prosecution for the offences punishable under Sections 272 and 273 of the IPC. On 11 th May 2010, the State of Uttar Pradesh issued an order granting power to the authorities to initiate prosecutions under Sections 272 and 273 of the IPC as well as under the Prevention of Food Adulteration Act, 1954 (for short, 'PFA'). On 28 th August 2010, a First Information Report (for short, 'FIR') was lodged by a food inspector representing the Regional Food Controller, Agra, against the petitioner alleging the commission of offences under Sections 272 and 273 of the IPC. The allegation was that, though the appellant did not possess a licence to sell the commodity of mustard oil, he continued to carry on the business of sale. Another allegation was that the petitioner had adulterated the mustard oil, edible oil and rice brine oil. The petitioner approached the High Court to quash the FIR on various grounds. The appellant relied on Allahabad High Court's decision dated 8 th September 2010, in the case of M/s. Pepsico India Holdings (Pvt) Ltd. & Anr v. State of Uttar Pradesh & Ors 1. By the impugned order, the High Court dismissed the petition filed by the appellant. Incidentally, the decision in the case of Pepsico India¹ is the subject matter of challenge by the State of Uttar Pradesh in Criminal Appeal No. 476□1 2010 SCC OnLine All 1708 478 of 2012. In this case, FIR was registered against the respondent on 11th August 2010, alleging the commission of offences under Sections 272 and 273 of the IPC. The allegation was of adulteration in the cold drinks manufactured by the respondent. The view taken in the case of Pepsico India¹ was that, from 29th July 2010, when the FSSA came into force, the provisions thereof would have an overriding effect over the food□ related laws, including Sections 272 and 273 of the IPC. Further, it was held that the police have no authority or jurisdiction to investigate a case under the FSSA.

4. Criminal Appeal No. 479 of 2012 takes an exception to the order dated 15 th September 2010, wherein the High Court declined to quash an offence punishable under Sections 272 and 273 of the IPC. In Special Leave Petition (Crl.) No. 1379 of 2011, the challenge is to the order dated 3rd August 2010 of the Allahabad High Court by which a petition under Section 482 of CrPC filed by the appellant for quashing the FIR alleging commission of offences under Section 272 and 273 of the IPC was dismissed.

5. In Short, the controversy is whether the view taken in the case of Pepsico India¹, which is the subject matter of challenge in Criminal Appeal No. 476□478 of 2012, is correct. In the said decision, it was held that after coming into force of the FSSA with effect from 29 th July 2010, it would have an overriding effect on other food□related laws, including the PFA. Therefore, the High Court held that invocation of Sections 272 and 273 of the IPC concerning food adulteration pursuant to a Government order dated 11th May 2010 was bad in law. SUBMISSIONS

6. Detailed submissions have been made on behalf of the State of Uttar Pradesh in Criminal Appeal No. 476□478 of 2012. On behalf of the State, reliance was placed on the decisions of this Court in the cases of Swami Achyutanand Tirth v. Union of India & Ors. 2 and the 2 (2014) 13 SCC 314 State of Maharashtra & Anr. v. Sayyed Hassan Sayyed Subhan & Ors.³ The submission is that there is no bar to the trial of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the same offence. The learned counsel submitted that where an act or omission constitutes an offence under two enactments, the offender may be prosecuted under either

one of the two enactments or both enactments but shall not be liable to be punished twice for the same offence. Reliance was placed upon Section 26 of the General Clauses Act, 1897 (for short, 'the GC Act'). Learned counsel for the State also relied upon another decision of this Court in the case of State of M.P. v. Kedia Leather & Liquor Ltd. and Ors.⁴ He submitted that the area of operation of the IPC and a food-related law like the FSSA are entirely different and, therefore, the same are mutually exclusive. The learned counsel urged that Section 89 gives overriding effect to 3 (2019) 18 SCC 145 4 (2003) 7 SCC 389 the provisions of the FSSA over all other food-related laws, as is evident from the title of the Section. He submitted that the IPC is not a food-related law by any stretch of the imagination. Therefore, wherever Sections 272 and 273 of the IPC are attracted even after coming into force of the FSSA, the offender can be prosecuted under the said IPC provisions.

7. The learned counsel appearing for the accused invited our attention to the objects and reasons of the FSSA and its preamble. Their submission is that the FSSA is very exhaustive legislation dealing with all aspects of food, including adulteration, unsafe food, etc. Their submission is that Section 89 will have an overriding effect over the provisions of the IPC. Our attention is also invited to Section 5 and Section 41 of the IPC. The submission is that in view of Section 5, any special law will remain unaffected by the provisions of the IPC. Reliance was placed on a decision of this Court in the case of Jeewan Kumar Raut & Anr. v. Central Bureau of Investigation.⁵ The counsel for the accused also placed reliance on the decision of this Court in the case of State of Uttar Pradesh v. Aman Mittal and Anr.⁶, in support of the proposition that the FSSA, being a special law, will exclude the applicability of the IPC for the fields which are covered by the provisions of the special Act.

CONSIDERATION OF SUBMISSIONS

8. Different provisions of the FSSA were brought into force on different dates by notifications issued from time to time. The last of such notification is of 29 th July 2010. All the provisions of the FSSA were in force as on 29 th July 2010 except Section 22. The offences subject matter of these appeals were registered after 29 th July 2010. We have carefully considered the submissions made across the bar. The statement of objects and reasons of the FSSA mentions explicitly that the multiplicity of food laws creates confusion. The multiplicity of laws, standard 5 (2009) 7 SCC 526 6 (2019) 19 SCC 740 setting and various implementing/enforcement agencies are detrimental to the growth of the nascent food processing industry. It is further provided that the FSSA provides a single window to guide and regulate the persons engaged in manufacturing, marketing, processing, handling, transport, import and sale of goods. The preamble of the FSSA records that it was an enactment to consolidate the laws relating to food. It is a very comprehensive legislation on all the aspects of food.

9. Clause (zz) of Section 3 of the FSSA defines unsafe food, which reads thus:

“(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 misbranded or substandard or food containing extraneous matter; or

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

10. The word substandard has been defined under clause (zx) of Section 3, which reads thus:

“(zx) “substandard”, an article of food shall be deemed to be substandard if it does not meet the specified standards but not so as to render the article of food unsafe;” Therefore, substandard food cannot be unsafe food.

11. Another important definition is of adulterant under clause (a) of Section 3, which reads thus:

“(a) “adulterant” means any material which is or could be employed for making the food unsafe or substandard or misbranded or containing extraneous matter;”

Coming back to the definition of unsafe food, subclause

(v) of Clause (zz) of Section 3 provides that by adding a substance directly or as an ingredient which is not permitted makes an article of food unsafe food. The presence of any harmful substance in the article of food makes it unsafe food. Therefore, if any adulterant is added to an article of food, which renders the article of food injurious to health, the food article becomes unsafe food.

12. The offences and penalties are contained in Chapter IX. Subsection 1 of Section 48 lays down how any article of food can be rendered injurious to health. Subsection 1 of Section 48 reads thus:

“(1) A person may render any article of food injurious to health by means of one or more of the following operations, namely: —

(a) adding any article or substance to the food;

(b) using any article or substance as an ingredient in the preparation of the food;

(c) abstracting any constituents from the food; or

(d) subjecting the food to any other process or treatment, with the knowledge that it may be sold or offered for sale or distributed for human consumption.” Thus, if a person knows that a particular article of food is being offered for sale or distribution for human consumption and adds any adulterant (article or substance) to the food, he renders the food article injurious to health. In Chapter IX, Sections 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 deal with penalties.

Sections 59 to 64 and 66 specifically deal with offences. Section 74 of Chapter X empowers the Central Government or State Government to establish Special Courts for the trial of offences relating to grievous injury or death of the consumer for which the punishment of imprisonment is more than 3 years.

13. In subsection 3 of Section 34, it is provided that the trial of any offence under the FSSA by the Special Court shall have precedence over the prosecution of any other case against the accused in any other Court. In cases where offences are not triable by the Special Court, under Section 73 of the FSSA, there is a power vesting in the Courts of Judicial Magistrates to try the case summarily by following Sections 262 to 265 of the CrPC. Against any decision or order of the Special Court, an appeal is provided to the High Court under Section 76. The appeal lies before a bench consisting of at least two Judges. Another salutary provision is Section 77, which prohibits any Court from taking cognizance of the offence under the FSSA after the expiry of a period of one year from the date of the commission of the crime. However, the Commissioner of Food Safety, for reasons recorded, can extend the period from one year to three years. Section 79 of the FSSA overrides Section 29 of CrPC

and provides that it shall be lawful for the Court of ordinary jurisdiction to pass any sentence authorised under the FSSA except a sentence of imprisonment for a term exceeding six years in excess of its powers conferred by Section 29 of CrPC. Section 78 provides that at any time during the trial of any offence under the FSSA, when an offence has been alleged to have been committed by any person not being the importer, manufacturer, distributor or dealer, based on evidence adduced before it, the Court has the power to proceed against the importer, manufacturer, distributor or dealer. This provision explicitly gives an overriding effect over the provision of sub-Section 3 of Section 319 of CrPC. Another salutary provision is Section 80, which lists the defences that may or may not be allowed in the prosecution under the FSSA. For example, it is provided that it is no defence that the accused had a mistaken but reasonable belief as to the facts that constituted the offence.

14. Therefore, as far as offences relating to food and food safety are concerned, there are very exhaustive provisions made in the FSSA dealing with all aspects of food and food security.

15. In the facts of these cases, the offence under Section 59 of the FSSA is very relevant, which reads thus:

“59. Punishment for unsafe food.— Any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable,—

(i) where such failure or contravention does not result in injury, with [imprisonment for a term which may extend to three months and also with fine which may extend to three lakh rupees];⁷

(ii) where such failure or contravention results in a non-grievous injury, with imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;

(iii) where such failure or contravention results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees;

7 Subs. for “imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees” by Act 18 of 2023, S. 2 and Sch. (w.e.f. 8-11-2023).

(iv) where such failure or contravention results in death, with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh rupees.” Any person, whether by himself or by any other person on his behalf, manufactures or, stores or, sells or imports unsafe food for human consumption, becomes guilty of an offence of dealing with unsafe food. As can be noted, there are different punishments provided, starting from imprisonment for 3 months and extending to imprisonment for life and a

fine, depending upon the extent and nature of injury caused by unsafe food. The fine is in the range of rupees three lakh to rupees ten lakh.

16. In these appeals, we are dealing only with Sections 272 and 273 of the IPC. The same read thus:

“272. 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.

273. 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.”

17. Section 272 is an offence of adulteration of any article of food or drink. The definition of food under Clause (a) of Section 3 of the FSSA also includes a liquid. If adulteration of an article of food is made which makes such articles noxious as food or drink, the person who adulterates is guilty of an offence punishable under Section 272 of the IPC. It contemplates the accused adulterating food with the intention to sell adulterated food. Thus, intention is an ingredient of the offence. When by adulterating an article of food or liquid, it becomes harmful or poisonous, it can be said that it becomes noxious. If, by adulteration, an article of food becomes noxious, it becomes unsafe food within the meaning of Section 3 (zz) of FSSA.

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.

19. Moreover, a limitation of one year is provided for the offence under Section 59, which is extendable up to three years as provided in Section 77 of the FSSA. By virtue of Section 468 of CrPC, the limitation for taking cognizance of the offence punishable under Sections 272 and 273 is one year. There is a power to extend time under Section 473 of CrPC. The power is not limited to three years. CONCLUSION

20. Thus, there are very exhaustive substantive and procedural provisions in the FSSA for dealing with offences concerning unsafe food. In this context, we must consider the effect of Section 89 of the FSSA. Section 89 reads thus:

“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 of virtue of any law other than this Act.” The title of the section indeed indicates that the intention is to give an overriding effect to the FSSA over all ‘food-related laws’. However, in the main Section, there is no such restriction confined to ‘food-related laws’, and it is provided that provisions of the FSSA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. So, the Section indicates that an overriding effect is given to the provisions of the FSSA over any other law. The settled law is that if the main Section is unambiguous, the aid of the title of the Section or its marginal note cannot be taken to interpret the same. Only if it is ambiguous, the title of the section or the marginal note can be looked into to understand the intention of the legislature. Therefore, the main Section clearly gives 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. In this case, we are concerned only with Sections 272 and 273 of the IPC. When the offences under Section 272 and 273 of the IPC are made out, even the offence under Section 59 of the FSSA will be attracted. In fact, the offence under Section 59 of the FSSA is more stringent.

21. The decision of this Court in the case of Swami Achyutanand Tirth² does not deal with this contingency at all. In the case of the State of Maharashtra³, the question of the effect of Section 97 of the FSSA did not arise for consideration of this Court. The Court dealt with simultaneous prosecutions and concluded that there could be simultaneous prosecutions, but conviction and sentence can be only in one. This proposition is based on what is incorporated in section 26 of the GC Act. We have no manner of doubt that by virtue of Section 89 of the FSSA, Section 59 will override the provisions of Sections 272 and 273 of the IPC. Therefore, there will not be any question of simultaneous prosecution under both the statutes.

22. Accordingly, Criminal Appeal No. 472 of 2012, Criminal Appeal No.479 of 2012 and Criminal Appeal arising out of SLP (Crl.) No. 1379 of 2011 succeed, and we set aside the impugned orders. The offences, subject matter of these appeals, are hereby quashed and set aside with liberty to the authorities to initiate appropriate proceedings in accordance with the law if not already initiated. Therefore, the concerned authorities are free to act in accordance with the FSSA for offences

punishable under Section 59 of the FSSA. Criminal Appeal Nos. 476□478 of 2012 are dismissed.

23. No orders as to costs.

.....J. (Abhay S. Oka)J. (Sanjay Karol) New Delhi;

February 21, 2024