

Anshul Bansal vs State Of Nct Of Delhi & Anr on 1 August, 2024

Author: Subramonium Prasad

Bench: Subramonium Prasad

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 2388/2024 & CRL.M.A. 9162/2024
ANSHUL BANSAL

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STATE OF NCT OF DELHI & ANR.

Through: Mr. Tarang Srivas
State.

Mr. Rakesh Tiwar
Kumar Yadav, Adv
SI Raj Kumar, 41
Kumar (D-6491),
Outer District.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

OR

% 01.08.2024

1. The Petitioner has approached this Court for quashing FIR No.585/2022 dated 08.04.2022, registered at Police Station Mangolpuri, Delhi for offences punishable under Sections 420/272/273/120B/34 IPC and Section 16 of the Prevention of Food Adulteration Act, 1954.

2. The facts, in brief, are that on 08.04.2024, a raid was conducted at Puneet Retail Store situated at A-2, Pushpanjali Enclave, Near Hemraj Jain Hospital, Delhi and the present FIR, quashing of which is being sought, was registered against the Petitioner on the complaint of Respondent No.2. The Petitioner, who was running the retail store, was arrested and was granted bail on 02.05.2022 by the Trial Court. Material on record indicates that the Food Safety Officer has already filed a private complaint bearing Criminal This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 02:24:39 Case No.2754/2023 tiled as "Food Safety Officer vs. Ghanshyam Garg and Others". The Accused Nos.1 and 2 in the said case have admitted to the crime and have been convicted by the Ld. ACMM-01, Patiala House Court, New Delhi. The Petitioner herein has pleaded not guilty and the trial is going on. In the present FIR, the chargesheet has been filed.

3. Learned Counsel appearing for the Petitioner contends that once the proceedings have been initiated under the Food Safety and Standards Act (FSSA), 2006, parallel proceedings under Sections 272/273/420 IPC cannot be permitted to be continued. He places reliance upon a Judgment passed by the Apex Court in Ram Nath vs. State of Uttar Pradesh and Other, (2024) 3 SCC 502 wherein the Apex Court has dealt with an FIR which was registered for offences punishable under Sections 272/273 IPC. The Apex Court in the said Judgment came to a conclusion that there are very exhaustive substantive and procedural provisions in FSSA for dealing with offences concerning unsafe food. The relevant portion of the said Judgment reads as under:

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

21. In the facts of these cases, the offence under Section 59 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--

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(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]; [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, Section 2 and Sch. (w.e.f. 8-11-2023).]

(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;

(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."

(emphasis supplied) 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.

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

"272. Adulteration of food or drink intended for sale.--Whoever adulterates any article of food or This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 02:24:40 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."

23. Section 272 is an offence of adulteration of any article of food or drink. The definition of food under clause (a) of Section 3 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 272IPC. 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) FSSA.

25. 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 FSSA. By virtue of Section 468CrPC, the limitation for taking cognizance of the offence punishable under Sections 272 and 273 is one year. There is a power to extend This is a digitally signed order.

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Conclusion

26. Thus, there are very exhaustive substantive and procedural provisions in FSSA for dealing with offences concerning unsafe food.

27. In this context, we must consider the effect of Section 89 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 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 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 FSSA over any other law.

28. 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.

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29. Therefore, the main Section clearly gives overriding effect to the provisions of FSSA over any other law insofar as the law applies to the aspects of food in the field covered by FSSA. In this case, we are concerned only with Sections 272 and 273IPC. When the offences under Sections 272 and 273IPC are made out, even the offence under Section 59 FSSA will be attracted. In fact, the offence under Section 59 FSSA is more stringent."

4. A perusal of the aforesaid Judgment indicates that in view of Section 89 of the FSSA which gives an overriding effect to FSSA over all food- related laws, offences under Sections 272/273 IPC cannot be proceeded ahead in the FIR filed under the said Sections.

5. Learned Counsel appearing for the Petitioner also draws attention of this Court to an Order passed by the Apex Court in "Sushil Kumar Gupta vs. State of West Bengal" in Criminal Appeal No.1798/2024 dated 22.03.2024 wherein the accused therein was charged with the offences punishable under Sections 272/273/420 IPC. The said appeal arose because the High Court in the said case had declined to quash the proceedings arising out of the FIR No.58/2017, registered at Section B Jorabagan Police Station, Calcutta. The Apex Court, after placing reliance upon the Judgment Ram Nath (supra) in the said Order, has observed as under:

"11. Thus, the dictum as laid in Ram Nath (supra) is that if an accused is charged for the offences under Sections 272 and 273 respectively of the I.P.C., Section 59 of the Act, 2006 would also be attracted. In fact, the offence under Section 59 of the Act, 2006 is more stringent compared to Sections 272 and 273 of the I.P.C. respectively. The final conclusion drawn by this Court in Ram Nath (supra) is that by virtue of Section 89 of the Act, 2006, Section 59 will override the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 06/08/2024 at 02:24:40 provisions of Sections 272 and 273 respectively of the I.P.C.. This Court ultimately held that there cannot be simultaneous prosecution under both the statutes.

12. The sum and substance of the ratio in Ram Nath (supra) appears to be that after the enactment of the Act, 2006, more particularly, keeping in mind the offence under Section 59 of the Act, 2006, there cannot be prosecution for the offences under Sections 272 and 273 respectively of the I.P.C."

6. Though in the aforesaid Order there is no discussion regarding the offence punishable under Section 420 IPC, the Apex Court has quashed the FIR, including the offence under Section 420 IPC. The said Order is binding on this Court under Article 141 of the Constitution of India.

7. In view of the above, the proceedings emanating out of the present FIR No.585/2022, wherein a Criminal Case No.2754/2023 is also pending before the Ld. ACMM for the very same offence, cannot be permitted to be proceeded ahead. Resultantly, the present FIR No.585/2022 dated 08.04.2022, registered at Police Station Mangolpuri, Delhi for offences punishable under Sections 420/272/273/120B/34 IPC and Section 16 of the Prevention of Food Adulteration Act, 1954 stands quashed.

8. With these observations, the present petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J AUGUST 1, 2024 S. Zakir This is a digitally signed order.

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