

The State Of Maharashtra vs Sayyed Hassan Sayyed Subhan on 20 September, 2018

Equivalent citations: AIR 2018 SUPREME COURT 5348, AIR 2019 SC(CRI) 458, (2018) 4 PAT LJR 297, (2018) 4 CRILR(RAJ) 992, (2018) 72 OCR 516, (2018) 4 RECCRIR 341, (2018) 3 UC 2227, (2018) 11 SCALE 317, (2019) 195 ALLINDCAS 129 (SC), (2018) 4 CURCRIR 365, 2018 ALLMR(CRI) 5367, 2018 CRILR(SC MAH GUJ) 992, 2018 CRILR(SC&MP) 992, (2019) 1 ALLCRILR 564, (2018) 4 CRIMES 167, (2018) 4 JLJR 205, (2019) 106 ALLCRIC 1005(2), AIRONLINE 2018 SC 288

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Bench: L. Nageswara Rao, S.A. Bobde

Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1195 OF 2018
[Arising out of Special Leave Petition (Criminal) No.4475 of 2018]

THE STATE OF MAHARASHTRA & ANR. Appellant

Versus

SAYYED HASSAN SAYYED
SUBHAN & ORS. Respondents

WITH Criminal Appeal No.1196 of 2018 (Arising out of SLP (Crl.) No. 4486/2016) Criminal Appeal No.1197 of 2018 (Arising out of SLP (Crl.) No. 4491/2016) Criminal Appeal No. 1198 of 2018 (Arising out of SLP (Crl.) No. 4484/2016) Criminal Appeal No.1199 of 2018 (Arising out of SLP (Crl.) No. 4478/2016) Criminal Appeal No.1200 of 2018 (Arising out of SLP (Crl.) No. 4499/2016) Criminal Appeal No.1201 of 2018 (Arising out of SLP (Crl.) No. 4472/2016) Criminal Appeal No.1202 of 2018 (Arising out of SLP (Crl.) No. 4513/2016) Criminal Appeal No.1203 of 2018 (Arising out of SLP (Crl.) No. 4498/2016) Criminal Appeal No.1204 of 2018 (Arising out of SLP (Crl.) No. 4502/2016) Criminal Appeal No.1205 of 2018 (Arising out of SLP (Crl.) No. 4507/2016) Criminal Appeal No.1206 of 2018 (Arising out of SLP (Crl.) No. 4521/2016) Criminal Appeal No.1207 of 2018 (Arising out of SLP (Crl.) No. 4494/2016) O R D E R Leave granted.

1. First Information Reports (FIRs) were registered for transportation and sale of Gutka/Pan Masala for offences punishable under Sections 26 and 30 of the Food and Safety Standards Act, 2006 (hereinafter referred to as the 'FSS Act') and Sections 188, 272, 273 and 328 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'). The Respondents in the above appeals filed

Criminal Writ Petitions and Criminal Applications in the High Court of Bombay for quashing the FIRs. The High Court quashed the criminal proceedings against the Respondents and declared that the Food Safety Officers can proceed against the Respondents under the provisions of Chapter X of the FSS Act. Aggrieved thereby, the State of Maharashtra is before us.

2. The High Court framed two questions for consideration. They are:

- i. Whether the Food Safety Officers can lodge complaints for offences punishable under the IPC? ii. Whether the acts complained amounted to any offence punishable under the provisions of the IPC?

3. A notification was issued on 18.07.2013 by the Commissioner, Food Safety and Drugs Administration, Government of Maharashtra under Section 30 of the FSS Act prohibiting manufacture, storage, distribution or sale of tobacco, Areca nut, which is either flavored, scented or mixed with any of the said additives and whether going by the name or form of gutka, pan masala, flavored, scented tobacco, flavored/scented supari, kharra or otherwise by whatsoever name called, whether packaged or unpackaged and/or sold as one product, or though packaged as separate products, sold or distributed in such a manner so as to easily facilitate mixing by the consumer.

4. Crimes were registered pursuant to complaints filed by the Food Safety Officers for violation of the said notification dated 18.07.2013 against the Respondents who were either transporting, stocking and/or selling the prohibited goods.

5. The High Court examined Section 55 of the FSS Act which provides for penalty for non compliance of the directions of the Food Safety Officers. As per the said provision the failure to comply with the requirements of the Act or the Rules or Regulations would result in a penalty which may extend to Rs.2 lakhs. The High Court observed that non compliance of the notification dated 18.07.2013 can be penalized only by imposing of fine mentioned in Section 55 and not otherwise. No complaint for offences under the IPC could have been preferred by the Food Safety Officer for violation of the prohibitory order issued by the Commissioner of Food Safety. The allegations against the Respondents do not have the tendency to cause breach of law and order, according to the High Court. The High Court found that the notification issued by the Commissioner dated 18.07.2013 is not an order contemplated under Chapter X of the IPC. The High Court was of the opinion that Section 55 of the FSS Act being a specific provision made in a special enactment, Section 188 of the IPC is not applicable. The High Court concluded on the first point that any violation of the prohibitory order can be dealt with only under Section 55 of the FSS Act and no other action can be initiated against the Respondents.

6. There is no dispute that Section 55 of the FSS Act provides for penalty to be imposed for non compliance of the requirements of the Act, Rules or Regulations or orders issued thereunder by the Food Safety Officer. But, we are afraid that we cannot agree with the conclusion of the High Court that non compliance of the provisions of the Act, Rules or Regulations or orders cannot be subject matter of a prosecution under IPC unless expressly or impliedly barred. The High Court is clearly wrong in holding that action can be initiated against defaulters only under Section 55 of FSS Act or

proceedings under Section 68 for adjudication have to be taken. A further error was committed by the High Court in interpreting the scope of Section 188 of the IPC. Section 188 of the IPC does not only cover breach of law and order, the disobedience of which is punishable. Section 188 is attracted even in cases where the act complained of causes or tends to cause danger to human life, health or safety as well. We do not agree with the High Court that the prohibitory order of the Commissioner, Food and Safety is not an order contemplated under Chapter X of the IPC. We are also not in a position to accept the findings of the High Court that Section 55 of the FSS Act is the only provision which can be resorted to for non compliance of orders passed under the Act as it is a special enactment.

7. There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence. 1. The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time, an offence under any other law. 2 The High Court ought to have taken note of Section 26 of the General Clauses Act, 1897 which reads as follows:

“Provisions as to offences punishable under two or more enactments – Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of 1 T.S. Baliah v. T.S.Rengachari – (1969) 3 SCR 65 2 State of Bihar v. Murad Ali Khan – (1988) 4 SCC 655 those enactments, but shall not be liable to be punished twice for the same offence.”

8. In Hat Singh’s³ case this Court discussed the doctrine of double jeopardy and Section 26 of the General Clauses Act to observe that prosecution under two different Acts is permissible if the ingredients of the provisions are satisfied on the same facts. While considering a dispute about the prosecution of the Respondent therein for offences under the Mines and Minerals (Development and Regulation) Act 1957 and Indian Penal Code, this Court in State (NCT of Delhi) v. Sanjay⁴ held that there is no bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offences. A perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties. We, therefore, set aside the finding of the High Court on the first point.

9. Regarding the second point as to whether offences under Section 188, 272, 273 and 328 have been made out against the Respondents, we have considered the 3 State of Rajasthan v. Hat Singh (2003) 2 SCC 152 4 (2014) 9 SCC 772 submissions made by the learned Additional Solicitor General for the State of Maharashtra and the learned Senior Counsel appearing for the Respondents. Without going into details of the submissions made, we find that points that were not argued before the High Court were raised by both sides. We suggested to the parties that the matters have to be considered afresh by the High Court by permitting both sides to raise all contentions which were canvassed before us. There was no serious objection by both sides to the remand of the matters back to the High Court.

The only request made by the learned Senior Counsel for the Respondents is that no coercive action should be taken against the Respondents during the pendency of Criminal Writ Petitions and the Criminal Applications before the High Court.

10. We remand the matters to the High Court to consider the Criminal Writ Petitions and Criminal Applications afresh in respect of the second point framed i.e. whether offences under Section 188, 272, 273 and 328 of the IPC are made out in the FIRs which are the subject matter of the cases. No coercive action be taken against the Respondents till the disposal of the Criminal Writ Petitions and the Criminal Applications by the High Court.

11. With the aforesaid observations, the appeals are disposed of.

.....J [S.A. BOBDE]J [L. NAGESWARA RAO] NEW DELHI;

SEPTEMBER 20, 2018.