

Sushil Kumar Gupta vs State Of West Bengal on 22 March, 2024

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1798 OF 2024
(Arising out of SLP(Crl.) No. 15495 of 2023)

SUSHIL KUMAR GUPTA

Appellant

VERSUS

STATE OF WEST BENGAL

Respondent

O R D E R

Leave granted.

2. This appeal is at the instance of an original accused, charged with the offences punishable under Sections 272, 273, 420 read with Section 120B of the I.P.C. and is directed against the judgment and order dated 2.8.2023 passed by the High Court at Calcutta in C.R.R. No. 2795 of 2017 by which the High Court declined to quash the proceedings arising from the First Information Report (FIR) No. 58/2017 registered at Section B Jorabagan Police Station, Calcutta.

3. It appears that although the jurisdiction of the High Court under section 482 of the CrPC was invoked for the purposes of quashing of the criminal proceedings, yet the same came to be registered as Criminal Revision Application. Learned counsel appearing for the Appellant pointed out that this is the practice prevailing in the High Court at Calcutta. Be that as it may.

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Reason:

are only concerned with the legality and validity of the impugned order passed by the High Court.

4. Two questions fell for the consideration of the High Court while deciding the Criminal Revision Application filed by the Appellant herein:-

i) Whether the police constituted under the Police Act, not being a Food Safety Officer under the said Act, namely, the Food Safety and Standard Act, 2006 is empowered to investigate into the case; and

ii) Whether a First Information Report can be registered under Sections 272 and 273 of the I.P.C. respectively without an order of Magistrate under Section 155(2) CrPC regard being had to the fact that the offence under Sections 272 and 273 of the I.P.C. respectively are non-cognizable in nature.

5. The High Court answered the first question in the affirmative. The High Court took the view that the Food Safety and Standard Act, 2006 (for short, 'the Act, 2006') would not take away the statutory power of the police to investigate into the offences enumerated above.

6. The second question also came to be answered in the affirmative. The High Court took the view that since Section 420 of the I.P.C. has also been invoked and the same being a cognizable offence, the police can investigate the FIR, even if some of the offences are non-cognizable offences.

7. The High Court ultimately rejected the revision application and thereby declined to quash the FIR.

8. Having heard learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order.

9. The issues raised in the present appeal are no longer *res integra* after the decision of this Court in the case of "Ram Nath vs. The State of Uttar Pradesh & Ors.", Criminal Appeal No. 472 of 2012 dated 21.2.2024. This Court took the view that very exhaustive, substantive and procedural provisions in the 2006 Act have been provided for dealing with the offences concerning unsafe food. The Court looked into Section 89 of the Act, 2006 which provides for an overriding effect of the Act, 2006 over all other food related laws. The Court also looked into Section 59 of the Act, 2006.

10. The final conclusion drawn in Ram Nath (*supra*) is as under:-

"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 Achyutanan Tirth v. Union of India & Ors.* (2014) 13 SCC 314 does not deal with this contingency at all. In the case of *the State of Maharashtra & Anr. v. Sayyed Hassan Sayyed Subham & Ors.* (2003), 7 SCC 389 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”

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 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.

13. In the result, this appeal succeeds and is hereby allowed. The impugned judgment and order passed by the High Court is set aside. The proceedings of criminal case no. 2795/2017 arising from the FIR No. 58/2017 are hereby quashed. However, we clarify that it shall be open for the State to initiate appropriate proceedings in accordance with the provisions of the Act, 2006.

14. Pending application(s), if any, stands disposed of.

.....,J.

(J.B. PARDIWALA)J.

(MANOJ MISRA) NEW DELHI;

MARCH 22, 2024.

ITEM NO.30

COURT NO.6

SECTION II-B

S U P R E M E C O U R T O F
RECORD OF PROCEEDINGS

I N D I A

Petition(s) for Special Leave to Appeal (Crl.)

No(s). 15495/2023

(Arising out of impugned final judgment and order dated 02-08-2023 in CRR No. 2795/2017 passed by the High Court At Calcutta) SUSHIL KUMAR GUPTA Petitioner(s) VERSUS STATE OF WEST BENGAL Respondent(s) No. 249143/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ ANNEXURES) Date : 22-03-2024 This petition was called on for hearing today. CORAM : HON'BLE MR. JUSTICE J.B. PARDIWALA HON'BLE MR. JUSTICE MANOJ MISRA For Petitioner(s) Mr. Anupam Dasadhikari, Adv.

Mr. Debmalya Ganguli, Adv.

Mr. Krishnendu Paul Chowdhury, Adv.

Mr. Vikram Hegde, AOR Mr. Abhinav Hansaraman, Adv.

For Respondent(s) Mr. Srisatya Mohanty, Adv.

Ms. Astha Sharma, AOR Ms. Muskan Surana, Adv.

Ms. Anvita Dwivedi, Adv.

UPON hearing the counsel the Court made the following O R D E R Leave granted.

Appeal is allowed in terms of the signed order, placed on the file.

Pending application(s), if any, stands disposed of.

(DR. NAVEEN RAWAL)
DY. REGISTRAR

(RAM SUBHAG SINGH)
COURT MASTER (NSH)