

# Neeraj Nainwal vs State Of Uttarakhand And Another on 11 October, 2022

**Author: Sharad Kumar Sharma**

**Bench: Sharad Kumar Sharma**

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No. 2447 of 2019

Neeraj Nainwal

.....Applicant.

Versus

State of Uttarakhand and another

.... Respondents

Present :

Mr. Pulak Agarwal, Advocate, for the applicant.

Mr. Atul Kumar Shah, Deputy A.G., with Mrs. Mamta Joshi, Brief Holder, for the State of Uttarakhand.

## JUDGEMENT

Hon'ble Sharad Kumar Sharma, J.

Under the provisions of Food Safety and Standards Act, 2006, the Special Courts, which had been assigned with the powers to try the offences covered under the Act, will be the Courts as constituted under Section 73 to be read with Section 74 of the Act of 2006. The logic behind is, that the jurisdiction of the Civil Courts are ousted by virtue of the implications of Section 72 of the Act of 2006.

2. In the instant C482 Application, the present applicant had put a challenge to the order dated 29.04.2019, as it has been passed by the Chief Judicial Magistrate, Nainital, for taking cognizance of the offence under Sections 3 (1) (zz) (v) (vii), 19, 22, 22 (4), 26 (1), 26 (2) (i), 48 (1) and 59 (i) of the Act of 2006, as passed in Criminal Case No.597 of 2018, State Vs. Neeraj Nainwal.

3. The learned counsel for the applicant has argued, that the cognizance No.13-56/2016/4649 dated 23rd October, 2017, it happens to be in apparent violation of the provisions contained under the proviso to Section 77, which provides for, that the Commissioner of the Food Safety, for the purposes of taking cognizance to prosecute a person will have to assign reasons for taking cognizance, in order to approve with the prosecution within an extended period upto maximum period of three years. For the purposes of brevity, Section 77 of the Act is extracted hereunder :-

"77. Time limit for prosecution. -

Notwithstanding anything contained in this Act, no court shall take cognizance of an offence under this Act after the expiry of the period of one year from the date of commission of an offence:

Provided that the Commissioner of Food Safety may, for reasons to be recorded in writing, approve prosecution within an extended period of up to three years."

3. In the instant case, as against the order of taking cognizance by the order of 23rd October, 2017, it does not contain any expression given by the Food Safety Commissioner, to have assigned reasons at all for the purposes of extension of time period from the date of alleged commission of the offence as provided under the proviso to Section 77 of the Act.

4. Apart from it, the learned counsel for the applicant has submitted, that in the present C482 Application, the challenge, which has been given by the present applicant is also to the order dated 22nd October, 2019, as passed in Criminal Revision No. 56 of 2019, Neeraj Nainwal Vs. State and another, which stood dismissed, resulting into an affirmation of the order dated 29th April, 2019, by virtue of which, the discharge sought by the applicant has been rejected.

5. So far as the rejection of the discharge is concerned by the order of 29th April, 2019, that may at this stage might not be of much concern, when the inception of the proceedings by the cognizance order dated 23rd October, 2017, is in apparent violation of the provisions contained under the proviso to Section 77 of the Act, because no reason of any nature whatsoever has been assigned in the order for extension of the time period after assigning reasons as per the terms of the provisions contained under Section 77 of the Act and the proviso contained thereof.

6. In that eventuality, when the cognizance order itself is bad, the ultimate rejection of the discharge by the order of 29th April, 2019 by the Court of Chief Judicial Magistrate, by taking cognizance and registration of a Criminal Case No. 597 of 2018, State Vs. Neeraj Nainwal, that itself would be bad in the eyes of law, because the rejection of discharge was as a consequence of taking of cognizance by an order of 23rd October, 2017.

7. In that eventuality, since the impugned order of cognizance dated 23.10.2017 and the rejection of discharge dated 29th April, 2019, happens to be in apparent violation of the proviso contained under Section 77 of the Act, the present C482 Application would stand allowed, and as a consequence thereto, the order of discharge dated 29th April, 2019, as rendered by the Chief Judicial Magistrate, in Criminal Case No. 597 of 2018, State Vs Neeraj Nainwal, since itself was having defective genesis from the order of cognizance dated 23rd October, 2017, which was in violation of proviso to Section 77 of the Act, cannot be sustained.

8. Consequently, the C482 Application would stand allowed. As a result thereto, the order of rejection of discharge and its ultimate affirmation by the revisional court judgement dated 22nd October, 2019, and the consequential proceedings of Criminal Case No. 597 of 2018, State Vs. Neeraj Nainwal, since apparently happens to be in violation of the proviso of Section 77 of the Act, since having been instituted beyond the prescribed period of limitation provided therein, which though is extendable, but it could have been extended only after assigning reasons. In the instant case, as the cognizance order itself does not assign any reasons, the entire proceedings would be vitiated from its inception. As a consequence thereto, the proceedings pending before the Court of Chief Judicial Magistrate, Nainital, by way of Criminal Case No. 597 of 2018, State Vs. Neeraj

Nainwal, would hereby stand quashed.

(Sharad Kumar Sharma, J.) 11.10.2022 Shiv