

Anil Kumar Singla And Others vs State Of Punjab on 31 October, 2023

Author: Jasjit Singh Bedi

Bench: Jasjit Singh Bedi

Neutral Citation No:=2023:PHHC:13875

CRM-M-43611-2019

2023:PHHC:138750
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43611-2019
Date of Decision: 31.10.2023

ANIL KUMAR SINGLA & OTHERS

... Petitioners

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI
Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of FIR No.83 dated 16.08.2018 (Annexure P-1) registered under Sections 420, 272, 273, 274 and 120-B IPC, 1860, the final report under Section 173 Cr.P.C. (Annexure P-2) and all consequential proceedings arising therefrom.

2. The brief facts of the case as emanating from the pleadings are that the instant FIR came to be registered on the basis of a Ruqa sent by ASI Tejinder Singh wherein he claimed that secret information had been received by him that Singla Milk Chilling Center, Devigarh's owner namely, Anil Kumar Singla (petitioner No.1) made adulterated milk, edible desi ghee and cheese in his milk factory and sold the same. The translated copy of the FIR is attached as Annexure P-1 to the present petition.

3. On the basis of the aforementioned information, a raid was conducted at the Singla Milk Chilling Center, Devigarh and ASI Tejinder 1 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 Singh was accompanied by Ms. Puneet Sharma, Food Safety Officer, Health Department, Patiala and Shri Kishan Singh, DHO along with his team. The recovery of 7000 litres adulterated milk, 19 quintals of cheese, 24 quintals of desi ghee, 40 kgs butter, 367 bags dry milk, Rs.4,00,000/- cash in bags, 2 ledger books, 15 cans of refined oil, 15 bags of castic soda, 3 bags of Alum, cans of acid, 300 packets of fena (surf), 6500 fake/forged logos of Shri Guru Dham Gaushala Desi Ghee and 08 different kinds of vehicles came to be effected.

4. During the course of investigation, petitioner No.1 stated that his friend Jai Bhagwan (petitioner No.2) had been helping him in the business and during the course of police remand, 40 dry milk bags of 25 kgs each make 'Lotus' along with 5 tins of refined oil make 'Frywill' were recovered.

Therefore, Baldev Sharma (petitioner No.4) owner of Sharma Dairy Patiala, Balwinder Kumar (petitioner No.5) owner of K.D. Milk Center Patiala and Sukhwinder Singh (petitioner No.3) along with Savinder Singh (petitioner No.6) were nominated as accused in the present case.

5. The samples from the recovered substances were got examined from the office of the Food Analyst Punjab which revealed the following facts:-

Sr. Product Minimum prescribed Result of Report/ No. stands sample findings

1. Paneer Percent milk fat of dry 43.41 % Substandard matter 50 %
 2. Mixed milk Percent solid not fat 8.5 % 6.9 % Substandard
 3. Mixed milk Percent milk fat 4.5 % 3% Substandard Percent solid not fat 8.5 % 4.2% 2 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750
 4. Ghee (label Reichert Meissel value 24.26 Misbranded printed as 28.0 not labeled in and Shri accordance with the substandard Gurudham provisions of Regulation Gaushala) 2.2.2 of FSS Act.
 5. Butter Reichert Meissel value 26.3 Substandard 28.0 BRR Ext fat 40 to 43 47
 6. Ghee (loose) Reichert Meissel Value 24.9 Substandard 28.0
 7. Milk Milk fat 4.5% Milk solid 4.0 % Substandard not fat 8.5% 8.3 %
 8. Ghee (label Not labeled in accordance -- Misbanded printed as with the provisions of Dhanvi Desi Regulation 2.2.2 of FSS Ghee) Act.
6. Based on the aforementioned investigation conducted, the report under Section 173(2) Cr.P.C. (Annexure P-2) came to be presented before the concerned Court.

7. The learned counsel for the petitioner contends that the Food Safety and Standards Act, 2006 is a comprehensive and self-contained legislation. It being a special Act covering the domain of food safety and standards the provisions of the IPC would not apply and therefore, the instant FIR was not maintainable. The Investigating Agency had acted against the petitioners upon the report of the Food Safety Analyst (Annexure P-3) and the said analysis was conducted in accordance with the provisions of the Food Safety and Standards Act, 2006. Section 29 of the Act clearly shows that the police has been kept out of the ambit of the Act. The appointment of the food safety officers has been provided for under Section 37 of the Act and the powers of such officers has been provided under Section 38 of the Act.

The powers to conduct search and seizure have been prescribed in Sections 41 and 42 of the Act. The petitioner had already been penalized by the 3 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 competent authorities for the 8 samples which were either found misbranded or substandard and a fine of Rs.4,75,000/- had been imposed on petitioner No.1 on 10.06.2019 (Annexure P-5) who was convicted for contravention of Sections 26 and 27 of the Food Safety Act in accordance with the provisions of Sections 51 and 52 of the Food Safety and Standards Act, 2006. On 16.07.2019, the fine had been paid by petitioner No.1 and the report under Section 173(2) Cr.P.C. came to be presented on 02.08.2019 after the fine had been imposed and paid by petitioner No.1. For misbranding and sale of substandard food, the penalty was the imposition of a fine whereas for the sale of unsafe food, the penalty could be imprisonment as well. In the instant case, the food had been found either misbranded or substandard and not unsafe. Therefore, once the fine had already been imposed the question of the registration of the present FIR on the same cause of action would not arise.

Reliance is placed on the judgments in Inderpal & another Versus State of Haryana, CRM-M-11688-2011, decided on 18.12.2013, Rakesh Kumar Versus State of Haryana, CRM-M-36005-2009, decided on 26.04.2011, Raj Kumar Raheja Versus State of Punjab, CRM-M-10221-2010, decided on 10.07.2012, Shiv Kumar Versus State of Punjab, CRM-M-5675-2008, decided on 12.09.2008 and Pepsico India Holdings (Pvt.) Ltd. & another Versus State of U.P. & others, CWP Nos.8254, 8255 and 8256 (MB) of 2010, decided on 08.09.2010.

8. On the other hand, the learned State counsel while referring to the replies dated 28.11.2019 by way of affidavit of Mandeep Singh Sidhu, PPS, Senior Superintendent of Police, District Patiala and 06.05.2023 of Gurdev Singh Dhaliwal, PPS, Deputy Superintendent of Police Rural, 4 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 District Patiala contends that once the food recovered has been found to be either of substandard quality or misbranded, it is deemed to be unsafe and therefore, the offences under the provisions of the IPC were made out and the FIR could not be quashed. Reliance is placed on the judgments in M.V. Joshi Versus State of M.U. Shimpi & another, 1961 AIR 1494, Municipal Corporation of Delhi Versus Laxmi Narain Tandon etc. Criminal Appeal Nos.101-104 of 1971, decided on 17.12.1975 and Rajiv Kumar Gupta Versus State of Maharashtra, 2005(16) R.C.R. (Criminal) 180.

9. I have heard the learned counsel for the parties.

10. Before proceeding further in the matter, it would be apposite to refer to the relevant provisions of the Food Safety and Standards Act, 2006 which are reproduced hereinbelow:-

(zf) "misbranded food" means an article of food- (A) if it is purported, or is represented to be, or is being-

(i) offered or promoted for sale with false, misleading or deceptive claims either;

(a) upon the label of the package, or

(b) through advertisement, or

(ii) sold by a name which belongs to another article of food; or

(iii) offered or promoted for sale under the name of a fictitious individual or company as the manufacturer or producer of the article as borne on the package or containing the article or the label on such package; or (B) if the article is sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer bearing his name and address but-

(i) the article is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly 5 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 and conspicuously labelled so as to indicate its true character; or

(ii) the package containing the article or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular, or if the package is otherwise deceptive with respect to its contents;

or

(iii) the article is offered for sale as the product of any place or country which is false; or (C) if the article contained in the package-

(i) contains any artificial flavouring, colouring or chemical preservative and the package is without a declaratory label stating that fact or is not labelled in accordance with the requirements of this Act or regulations made thereunder or is in contravention thereof; or

(ii) is offered for sale for special dietary uses, unless its label bears such information as may be specified by regulation, concerning its vitamins, minerals or other dietary properties in order sufficiently to inform its purchaser as to its value for such use; or

(iii) is not conspicuously or correctly stated on the outside thereof within the limits of variability laid down under this Act.

(zx) "sub-standard" - an article of food shall be deemed to be sub-standard if it does not meet the specified standards but not so as to render the article of food unsafe; (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 6 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750

(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 mis-branded or sub-standard or food containing extraneous matter; or

(xii) by virtue of containing pesticides and other contaminants in excess of quantities specified by regulations.

29. Authorities responsible for enforcement of Act.-

(1) The Food Authority and the State Food Safety Authorities shall be responsible for the enforcement of this Act.

(2) The Food Authority and the State Food Safety Authorities shall monitor and verify that the relevant requirements of law are fulfilled by food business operators at all stages of food business.

7 of 30 Neutral Citation No: 2023:PHHC:138750 2023:PHHC:138750 (3) The authorities shall maintain a system of control and other activities as appropriate to the circumstances, including public communication on food safety and risk, food safety surveillance and other monitoring activities covering all stages of food business.

(4) The Food Safety Officers shall enforce and execute within their area the provisions of this Act with respect to which the duty is not imposed expressly or by necessary implication on some other authority.

(5) The regulations under this Act shall specify which of the Food Safety Officers are to enforce and execute them, either generally or in relation to cases of a particular description or a particular area, and any such regulations or orders may provide for the giving of assistance and information, by any authority concerned in the administration of the regulations or orders, or of any provisions of this Act, to any other authority so concerned, for the purposes of their respective duties under them.

(6) The Commissioner of Food Safety and Designated Officer shall exercise the same powers as are conferred on the Food Safety Officer and follow the same procedure specified in this Act.

37. Food Safety Officer.-(1) The Commissioner of Food Safety shall, by notification, appoint such persons as he thinks fit, having the qualifications prescribed by the Central Government, as Food Safety Officers for such local areas as he may assign to them for the purpose of performing functions under this Act and the rules and regulations made thereunder.

(2) The State Government may authorise any officer of the State Government having the qualifications prescribed under sub-section (1) to perform the functions of a Food Safety Officer within a specified jurisdiction.

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38. Powers of Food Safety Officer.-(1) The Food Safety Officer may- (a) take a sample-

(i) of any food, or any substance, which appears to him to be intended for sale, or to have been sold for human consumption; or

(ii) of any article of food or substance which is found by him on or in any such premises; which he has reason to believe that it may be required as evidence in proceedings under any of the provisions of this Act or of the regulations or orders made thereunder; or

(b) seize any article of food which appears to the Food Safety Officer to be in contravention of this Act or the regulations made thereunder; and

(c) keep it in the safe custody of the food business operator such article of food after taking a sample; and in both cases send the same for analysis to a Food Analyst for the local area within which such sample has been taken:

Provided that where the Food Safety Officer keeps such article in the safe custody of the food business operator, he may require the food business operator to execute a bond for a sum of money equal to the value of such article with one or more sureties as the Food Safety Officer deems fit and the food business operator shall execute the bond accordingly.

(2) The Food Safety Officer may enter and inspect any place where the article of food is manufactured, or stored for sale, or stored for the manufacture of any other article of food, or exposed or exhibited for sale and where any adulterant is manufactured or kept, and take samples of such articles of food or adulterant for analysis.

(3) Where any sample is taken, its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

9 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 (4) Where any article of food seized under clause (b) of sub-section (1) is of a perishable nature and the Food Safety Officer is satisfied that such article of food is so deteriorated that it is unfit for human consumption, the Food Safety Officer may, after giving notice in writing to the food business operator, cause the same to be destroyed. (5) The Food Safety Officer shall, in exercising the powers of entry upon, and inspection of any place under this section, follow, as far as may be, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to the search or inspection of a place by a police officer executing a search warrant issued under that Code.

(6) Any adulterant found in the possession of a manufacturer or distributor of, or dealer in, any article of food or in any of the premises occupied by him as such and for the possession of which he is unable to account to the satisfaction of the Food Safety Officer and any books of account or other documents found in his possession or control and which would be useful for, or relevant to, any investigation or proceeding under this Act, may be seized by the Food Safety Officer and a sample of such adulterant submitted for analysis to a Food Analyst:

Provided that no such books of account or other documents shall be seized by the Food Safety Officer except with the previous approval of the authority to which he is subordinate.

(7) Where the Food Safety Officer takes any action under clause (a) of sub-section (1), or sub-section (2), or sub-

section (4) or sub-section (6), he shall, call one or more persons to be present at the time when such action is taken and take his or their signatures.

(8) Where any books of account or other documents are seized under sub-section (6), the Food Safety Officer shall, within a period not exceeding thirty days from the date of seizure, return the same to the person from whom they were 10 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 seized after copies thereof or extracts therefrom as certified by that person in such manner as may be prescribed by the Central Government have been taken:

Provided that where such person refuses to so certify and a prosecution has been instituted against him under this Act, such books of account or other documents shall be returned to him only after copies thereof and extracts therefrom as certified by the court have been taken. (9) When any adulterant is seized under sub-section (6), the burden of proving that such adulterant is not meant for purposes of adulteration shall be on the person from whose possession such adulterant was seized. (10) The Commissioner of Food Safety may from time to time issue guidelines with regard to exercise of powers of the Food Safety Officer, which shall be binding:

Provided that the powers of such Food Safety Officer may also be revoked for a specified period by the Commissioner of Food Safety.

41. Power of search, seizure, investigation, prosecution and procedure thereof.-(1) Notwithstanding anything contained in sub-section (2) of section 31, the Food Safety Officer may search any place, seize any article of food or adulterant, if there is a reasonable doubt about them being involved in commission of any offence relating to food and shall thereafter inform the Designated Officer of the actions taken by him in writing:

Provided that no search shall be deemed to be irregular by reason only of the fact that witnesses for the search are not inhabitants of the locality in which the place searched is situated.

(2) Save as in this Act otherwise expressly provided, provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search, seizure, summon, investigation and prosecution, shall apply, as far as may be, to all action taken by the Food Safety Officer under this Act.

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42. Procedure for launching prosecution.-(1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen

days to Designated Officer with a copy to Commissioner of Food Safety.

(3) The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution. (4) The Commissioner of Food Safety shall, if he so deems fit decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,-

(a) a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or

(b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a Court of ordinary jurisdiction.

(5) The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer who shall launch prosecution before courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under section 40.

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45. Food Analysts.-The Commissioner of Food Safety may, by notification, appoint such persons as he thinks fit, having the qualifications prescribed by the Central Government, to be Food Analysts for such local areas as may be assigned to them by the Commissioner of Food Safety:

Provided that no person, who has any financial interest in the manufacture or sale of any article of food shall be appointed to be a Food Analyst under this section:

Provided further that different Food Analysts may be appointed for different articles of food.

46. Functions of Food Analyst.-(1) On receipt of a package containing a sample for analysis from a Food Safety Officer or any other person, the Food Analyst shall compare the seal on the container and the outer cover with specimen impression received separately and shall note the conditions of the seal thereon:

Provided that in case a sample container received by the Food Analyst is found to be in broken condition or unfit for analysis, he shall within a period of seven days from the date of receipt of such sample inform the Designated Officer about the same and send requisition to him for sending second part of the sample.

(2) The Food Analyst shall cause to be analysed such samples of article of food as may be sent to him by Food Safety Officer or by any other person authorised under this Act.

(3) The Food Analyst shall, within a period of fourteen days from the date of receipt of any sample for analysis, send--

(i) where such sample is received under section 38 or section 47, to the Designated Officer, four copies of the report indicating the method of sampling and analysis; and

(ii) where such sample is received under section 40, a copy of the report indicating the method of sampling and 13 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 analysis to the person who had purchased such article of food with a copy to the Designated Officer:

Provided that in case the sample cannot be analysed within fourteen days of its receipt, the Food Analyst shall inform the Designated Officer and the Commissioner of Food Safety giving reasons and specifying the time to be taken for analysis.

(4) An appeal against the report of Food Analyst shall lie before the Designated Officer who shall, if he so decides, refer the matter to the referral food laboratory as notified by the Food Authority for opinion.

51. Penalty for sub-standard 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 sub-standard, shall be liable to a penalty which may extend to five lakh rupees.

52. Penalty for misbranded food.-(1) 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 misbranded, shall be liable to a penalty which may extend to three lakh rupees.

(2) The Adjudicating Officer may issue a direction to the person found guilty of an offence under this section, for taking corrective action to rectify the mistake or such article of food shall be destroyed.

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 six months and also with fine which may extend to one lakh rupees;

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(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.

11. The relevant judgments referred to by the learned counsel for the petitioners are as under:-

In Inderpal & another Versus State of Haryana, CRM-M-

11688-2011, decided on 18.12.2013, this Court held as under:-

"This petition under Section 482 Cr.P.C. has been filed for quashing of FIR No.132 dated 20.6.2010 registered under Sections 272, 420, 34 IPC at Police Station, Kalanaur, District Rohtak and all subsequent proceedings arising out of the said FIR.

Heard learned counsel for the parties.

Apart from the aforesaid FIR, criminal complaint No.336 dated 30.7.2010 under Sections 7 and 16 of The Prevention of Food Adulteration Act, 1954 has been filed (Annexure P-3). The Food Inspector had taken in his possession eight plastic drums containing about 150 litres of mixed milk. After making necessary samples, sample was sent to the Public Analyst for analysis, who annexed his report that the sample contains 4.0% of Milk Fat and 5.88% of Milk solids not fat against the minimum prescribed limit of 4.5% and 8.5% respectively. The sample was found to be adulterated. The allegations in the FIR are identical but after getting the public analyst's report, challan was presented and charges have been framed under Sections 15 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 272/273 and 420 IPC and the petitioner is facing trial in the FIR as well as the criminal complaint. The issue whether police can register an FIR for offence punishable under Sections 420/269/270/271 IPC had come up for consideration before this Court in the case of Shiv Kumar Vs. State of Punjab 2009(1) FAC 238. In that case, ASI Bhagwan Dass on a secret information went to the shop of the accused and purchased Paneer and the Paneer was sent for public analysis and it was found to be adulterated. FIR was registered under Sections 420/269/270/271 IPC and merely a complaint No.59 dated 3.5.2008 under Section 16 of Prevention of Food and Adulteration Act was filed by the Food Inspector. While quashing the FIR, the Court has observed that it was not a case that the Paneer was fake or there was any intention on the part of the accused for cheating public. The Paneer was found to be adulterated and therefore, complaint under Section 16 of Prevention of Food Adulteration Act could be filed and FIR

cannot be lodged. In paragraph 8 the Court observed as under: "So far as the fact that Paneer is fake one, there is no report to this effect on the file. The Patna High Court in the authority in case Satish Mishra Versus State of Bihar and others, 2007(1) FAC 393 has held that when there is a special statute under the Prevention ;of Food Adulteration Act, 1954 then by adding sections of IPC, FIR cannot be launched. Keeping in view the fact that Paneer was not found to be fake but was found to be not conforming to the prescribed standard, the proceedings under the Criminal Act cannot continue. So, FIR No.305 dated 6.11.2007 under Sections 420/269/270/271 IPC, Police Station, City Samana and further proceedings arising therefrom stand quashed."

This proposition of law could not be disputed by the learned State counsel, however, he informs the Court that the petitioner has been appearing regularly before the trial Court in FIR No.132 dated 20.6.2010 registered under Sections 272, 420, 34 16 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 IPC but in the complaint case he has been declared proclaimed offender on 30.11.2012.

Keeping in view the fact that for selling substandard milk, the petitioner was not required to face two criminal proceedings, therefore, FIR No.132 dated 20.6.2010 registered under Sections 272, 420, 34 IPC at Police Station, Kalanaur, District Rohtak is being quashed qua the petitioners. The petitioner shall be at liberty to appear before the trial Court within one month and he shall be released on bail on furnishing bail bonds to the satisfaction of trial court."

(emphasis supplied) In Rakesh Kumar Versus State of Haryana, CRM-M-36005- 2009, decided on 26.04.2011, this Court held as under:-

"11. Coming to the present case, the allegation in the FIR was that the petitioner had stored artificial ghee for selling in the market. Thus, it is evident from the above that allegations in the complaint are similar and there are specific provisions in Prevention of Food Adulteration Act, 1954 to deal with the said allegation. The said Act is self contained and competent to deal with it. It is, therefore, not appropriate to proceed with FIR under Section 420 Indian Penal Code.

12. Even otherwise, in terms of Section 415 Indian Penal Code, the ingredients required to constitute an offence of cheating are that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat."

13. No such intention or inducement is made out from the perusal of the FIR.

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17. Similarly, Sections 16 and 20 of the Prevention of Food Adulteration Act, 1954 takes care of an offence, in case of selling of adulterated, misbranded food articles which is injurious to health. Thus, it would be un-reasonable to add Section 420 Indian Penal Code when the said allegation stand covered by the Sections under the Prevention of Food Adulteration Act, 1954 as also held in various judicial pronouncements discussed above. Moreover, the offence under Section 272 Indian Penal Code is admittedly not a cognizable offence. Such offences cannot be investigated by the police.

18. Moreover, in the present case, the complaint under the Prevention of Food Adulteration Act, 1954 (Annexure P-2) has already been filed.

19. As such, the present petition is allowed and FIR No. 204 dated 18.07.2009 registered under Sections 420 and 272 Indian Penal Code at Police Station Sector 10-A, Gurgaon, District Gurgaon and all subsequent proceedings arising out of the same are hereby quashed being totally unjustified. Petition allowed."

(emphasis supplied) In Raj Kumar Raheja Versus State of Punjab, CRM-M-10221- 2010, decided on 10.07.2012, this Court held as under:-

"Learned counsel for the petitioner has submitted that the FIR in question was not maintainable as the food articles alleged to be adulterated did not fall under Section 7 of Essential Commodities Act, 1955. No offence punishable under Section 420 IPC was made out in this case. So far as the offences under Section 272, 273 IPC were concerned, the same were non-cognizable and no FIR could be registered qua the said offences. If any offence was made out in the present case, the said could be under the Prevention of Food Adulteration Act, 1954 ('Act' for short). As per the said Act, the complaint 18 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 could be filed by the official for initiating criminal proceedings against the petitioner.

Learned State counsel, on the other hand, has opposed the petition.

After hearing the learned counsel for the petitioner and the learned State counsel, I am of the opinion that the instant petition deserves to be allowed.

As per the FIR a raid was organized on the premises of the petitioner on the basis of information given by Dr. Y.S.Banga, Health Officer. In the store, on the backside of the house of the petitioner, adulterated cheese and khoya were recovered. FIR in question was registered before proceeding for the raid.

The opinion of the Public Analyst qua sample of Paneer is as under:-

"From examination of the sample herein referred to and the result obtained by analysis I am of the opinion that the Milk fat % of the dry matter of the contents of the samples marked here P-73-Sept. 09 to P-74-Sept. 09 is 43.23 & 42.59 against the minimum prescribed standard of 50%. Hence the contents of the samples are therefore adulterated."

The opinion of the Public Analyst qua sample of Khoya is as under:-

"From examination of the sample herein referred to and the result obtained by analysis I am of the opinion that the Butyro-Refractometer reading of the extract fat at 40oC of the contents of the samples marked here P-75- Sept. 09 to P-76- Sept. 09 is 47.1 and 50.2 respectively indicating the presence of foreign fat in the contents of the samples. The contents of the samples are therefore adulterated."

The offence of food adulteration is to be dealt with by the special statute i.e. under the Act. Registration of FIR without following the procedure under the Act is not permissible in law. The competent authority was required to follow the procedure prescribed under the Act. The provisions of the Act are self 19 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 contained and sufficient to punish a person committing offence under the Act. Punishment has been provided qua violation of provisions of the Act under Section 16.

Section 16(1)(a)(i) and (1A) of the Act read as under:-

"16. Penalties -(1) Subject to the provisions of Subsection (1A) if any person:-

(a) whether by himself or by any other person on his behalf, imports into India or manufactures for sales or stores, sells or distributes any article of food-

(i) which is adulterated within the meaning of sub-clause

(m) of clause (ia) of section 2 or misbranded within the meaning of clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority;

(ii) x x x x x x x (b-g) x x x x x x x he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees:

Provided that:-

[(1A)] If any person whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes,-

(i) any article of food which is adulterated within the meaning of any of the sub-clauses (e) to (I) (both inclusive) of clause (ia) of section 2; or

(ii) any adulterant which is injurious to health, he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than one year but, which may extend to six years and with fine which shall not be less than two thousand rupees."

20 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 In the present case, the prosecution case is that adulterated cheese and khoya were recovered from the premises of the petitioner. The allegations in the FIR are vis- a-vis specific provisions enumerated in the Act. The said Act is self contained and competent to deal with the allegations levelled against the petitioner. Hence, proceedings initiated on the basis of the FIR in question under the Essential Commodities Act, 1955 and Indian Penal Code are liable to be quashed.

Accordingly, the present petition is allowed. FIR No. 428 dated 19.9.2009 under Section 7 of the Essential Commodities Act, 1955 and Section 420, 272, 273 IPC, registered at Police Station Kotwali Patiala and all the subsequent proceedings, arising therefrom, are quashed.

However, it is made clear that this order will not stand in the way of any proceedings under the Act.

(emphasis supplied) In Shiv Kumar Versus State of Punjab, CRM-M-5675-2008, decided on 12.09.2008, this Court held as under:-

"The petitioner filed the present petition for quashing the said FIR on the grounds that the allegations against the petitioner fall within the ambit of Food Adulteration Act, 1954. It is further pleaded that under Section 20 of the said Act, no prosecution can be launched without the written consent of the Central Government or the State Government or a person authorized by the Government in this behalf by general or special order by the Central Government or the State Government. It is further pleaded that the sample sent for analysis contained 25.32% milk fat of dry matter against minimum prescribed standard of 50%. The Paneer recovered from the accused at the most can be said to be adulterated. So, action can be taken only under the Prevention of Food Adulteration Act and FIR under Sections 21 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 420, 269, 270 and 271 IPC cannot be proceeded with. A prayer has been made for quashing the said FIR.

Regarding the same occurrence, complaint No.59 dated 3.5.2008, under Section 16 of Prevention of Food Adulteration Act, 1954 has been filed by the Food Inspector against the accused.

Another petition (Criminal Misc.No.M-13657 of 2008) has been filed for quashing the said complaint, Annexure P-1. The quashing of the said complaint has been sought on the following Criminal Misc. No. M-5675 of 2008. grounds:-

(i) That the petitioner applied for anticipatory bail, in this case, before the learned Sessions Judge, Patiala when the above-said FIR was registered against him and while allowing the same, the learned learned Additional Sessions Judge, Patiala, in its order dated 1.12.2007 has observed that milk fat was found to be less than the minimum prescribed standard and it was not a case of fake Paneer. The learned Court further observed that it is a case of Food Adulteration Act for which complaint lies at the behest of Food Inspector. The offences under IPC are not made out.

(ii) That Hon'ble Karnatka High Court in State of Karnatka Versus Shetty Ice Cream Company, Kulai, Mangalore and others has observed that time is belatedly ripe to have re-look at the standards prescribed defining as adulteration with regard to the edibles, unless the product sold is a health hazard.

Merely because it does not conform to the standards of best quality, the proprietors and manufacturers should not be subjected to unnecessary harassment of Criminal Misc. No. M- 5675 of 2008.

prosecution and punishment. There is a change in the mindset of the people to go for food items with less or no fat content. The fat content prescribed for Ice Cream under the Prevention of Food Adulteration Act is too high and may 22 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 not be desirable diet in the modern times. The second quality Ice Cream with lesser fat content would be advisable medically than an Ice Cream with rich fat content. In the present case also fat content was found to be less in the Paneer and the ratio of the above mentioned case applies in this case also. In the complaint (P-1) in Para 12, it is mentioned that the milk fat contained in the Paneer was 25.32% against the minimum prescribed standard of 50.0% and the contents of the sample are therefore adulterated. It may be mentioned here that at best the fat content was less in the Paneer. In the modern times people prefer products with lesser fat content rather than products with more fat contents. Rather in the present case no raid whatsoever was conducted by the respondent. In para No.3 of the complaint (P-1), it is alleged that respondent raided the shop of the Criminal Misc. No. M-5675 of 2008. petitioner on the complaint of the police to local health authorities. Whereas version of the FIR is that the raid was conducted by the police and the CMO had been informed about the same. It shows that the present complaint (P-1) is false one and has been instituted only when the respondent felt that it was not going to succeed in the present case. In this view of the matter, complaint (P-1) and summoning order (P-3) deserve to be quashed.

(iii) That the Hon'ble Delhi High Court in State (Delhi Admn.) Versus Naresh Chand and others, has held that faulty procedure of taking sample, loss of fat, once loss of fat takes place due to faulty procedure of taking samples, the shop- keeper cannot be convicted. In the present case, what to talk of faulty procedure of taking sample, no sample whatsoever was taken at the time of seizure of alleged fake Paneer. For this reason also, the present complaint and summoning order deserve to be quashed.

(iv) That Hon'ble Patna High Court in Satish Mishra Versus State of Bihar and others, has held that Criminal Misc. No. M- 5675 of 2008.

23 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 Prevention of Food Adulteration Act, 1954, is special statute, is code in itself, by adding sections of IPC, police cannot make out its own case. It has its own set of authorities, which are authorized to conduct investigation, search, seizure and/or launch prosecution in respect thereof including enquiry into the matter. If police alleges that the provision of Prevention of Food Adulteration Act is violated then it was the authority of the Food Inspector alone and not the police officer to inspect or seize. So far as the offences alleged under IPC are concerned, none is made out on the facts of the case. The present prosecution as initiated on the basis of the FIR aforesaid and all subsequent acts thereunder are held to be wholly without jurisdiction and are quashed.

(v) That para No.3 of the complaint (P-1) says that 150 kg. Paneer was seized from the shop of the petitioner. Whereas the Act says that the Food Inspector has to purchase the product from the person concerned and there is no question of seizing of the whole Paneer. This shows that complaint (P-1) is false." Criminal Misc. No. M-5675 of 2008.

Both the petitions have been resisted by the State of Punjab.

I have heard both sides and have gone through the record of the case.

So far as the facts of the case are concerned, the same are not in dispute. A raid was conducted at the shop of accused/revisionist. The Food Inspector visited the shop and had taken into possession Paneer. Sample of the said Paneer was sent for analysis and the same contained 25.32% milk fat of dry matter against minimum prescribed standard of 50% and, on that count, the Paneer is stated to be adulterated. So far as the fact that Paneer is fake one, there is no report to this effect on the file. The Patna High Court in the authority in case Satish Mishra Versus State of Bihar and others, 2007(1) FAC 393 has held that when there is a special statute under the Prevention of Food Adulteration Act, 1954 then by adding 24 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 sections of IPC, FIR cannot be launched. Keeping in view the fact that Paneer was not found to be fake but was found to be not conforming to the prescribed standard, the proceedings under the Criminal Act cannot continue. So, FIR No.305 dated 6.11.2007 under Sections 420/269/270/271 IPC, Police Station, Criminal Misc. No. M-5675 of 2008. City Samana and further proceedings arising therefrom stand quashed.

So far as complaint No.59 dated 3.5.2008 is concerned, the case of the revisionist himself is that the prosecution can proceed under the Prevention of Food Adulteration Act. No case for quashing the complaint under the said Act is made out. The observations made by the learned Additional Sessions Judge while deciding the bail application are also to the effect that proceedings under the Food Adulteration Act can be initiated. So, in these circumstances, the petitioner who has himself taken a stand that proceedings under the Food Adulteration Act can only be initiated could not seek quashing of proceedings under the Act. Authority in case Karnatka Versus Shetty Ice Cream Company (supra) is not helpful at this stage of trial. In that ruling, it has been observed that time is

ripe to have re-look at the standards keeping in view the requirement of people but since there is no change in the provisions of the Act and unless and until the said Act is amended, the said Act has to be implemented in letter and spirit.

Authority in case Naresh Chand (supra) is not helpful to the accused. Whether the sample was taken by the Food Inspector is a matter of evidence. Prima-facie, there is nothing on Criminal Misc. No. M-5675 of 2008.

the file that the sample was not taken in accordance with the provisions of the Act.

So far as submission made by the counsel for the petitioner to the effect that sample has to be purchased from the petitioner and, on that count, proceedings cannot continue is 25 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 concerned, the same is without any substance. The said matter can also be appreciated during the course of trial. So, keeping in view the totality of circumstances, petition for quashing complaint No.59 dated 3.5.2008 stands declined.

It is, however, made clear that anything said above shall not be taken as an expression of opinion on the merits of the case, so far as complaint under the Prevention of Food Adulteration Act is concerned.

A copy of this judgment be sent to the learned trial Court for strict compliance."

(emphasis supplied) In *Pepsico India Holdings (Pvt.) Ltd. & another Versus State of U.P. & others*, CWP Nos.8254, 8255 and 8256 (MB) of 2010, decided on 08.09.2010, it was held as under:-

"7. Draped in brevity, the facts of the case are that the petitioner- Pepsico India Holdings Private Limited, is a company registered under the provisions of the Companies Act, 1956. The company is engaged in the business of manufacturing of soft drinks inter-alia under the brand name of PEPSI, Lehar, 7UP, Slice and Miranda etc. The company is aggrieved by the issuance of the Government Order dated 11.5.2010 issued by the State Government as it gives unfettered powers to the authorities to initiate action against violators or suspected violators for food adulteration and misbranding by invoking Sections 272/273 IPC by registering FIRs. After the issuance of the aforesaid Government Order, various products of the Company were seized from the go-down and FIRs were registered against the officers/agents of the company under Sections 272/273 IPC and Section 7/16 of the Prevention of Food Adulteration Act, 1954 [hereinafter referred to as the 'PFA Act'].

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42. As regard the assertion of the State Counsel that the recovered article i.e. cold drink is not a "Food" and as such the 26 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 provisions of FSSA would not be applicable, we would like first to recapitulate the definition of word "Food" and

"substance" as defined under Section 3 of the Act, which reads as under:-

"(j) "food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food, to the extent defined in clause (ZK) genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances:

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;"

"(zw) substance" includes any natural or artificial substance or other matter, whether it is in a solid state or in liquid form or in the form of gas or vapour;

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44. In view of the aforesaid crystal clear legal proposition and particular provisions under the FSSA we are in agreement with the arguments advanced by the petitioner's Counsel that for adulteration of food or misbranding, after coming into force of the provisions of FSSA vide notification dated 29th July, 2010, the authorities can take action only under the FSSA as it postulates an over riding effects over all other food related laws including the PFA Act. In view of the specific provisions under the FSSA, the offences relating to adulteration of food that are governed under the FSSA after July 29,2010 are to be treated as per the procedures to be followed for drawing and analysis of samples as have been provided for. The provisions 27 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 of penalties and prosecution have also been provided therein.

Therefore, before launching any prosecution against an alleged offence of food adulteration, it is necessary for the concerned authorities to follow the mandatory requirements as provided under Sections 41 and 42 of the FSSA and, therefore, the police have no authority or jurisdiction to investigate the matter under FSSA. Section 42 empowers the Food Safety Officer for inspection of food business, drawing samples and sending them to Food Analyst for analysis. The Designated Officer, after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations to the Commissioner of Food Safety for sanctioning prosecution. Therefore, invoking Sections 272 and 273 of the Indian Penal Code in the matter relating to adulteration of food pursuant to the impugned government order is wholly unjustified and non est. Furthermore, it appears that the impugned Government Order has been

issued without application of proper mind and examining the matter minutely and thus the State Government travelled beyond the jurisdiction."

(emphasis supplied)

12. A perusal of the judgments would show that where there is a special Act governing the field of food adulteration the provisions of the IPC are not attracted. Therefore, while proceedings under the Prevention of Food Adulteration Act and Food Safety and Standards Act were maintainable, the FIRs registered under the provisions of the IPC stood quashed.

13. In the instant case, apparently, the Food Safety and Standards Act, 2006 is a special Act covering the field of food safety and standards.

Under this Act, there is a distinction that has been drawn between misbranded and substandard food on the one hand and unsafe food on the 28 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 other. Whereas for misbranded and substandard food, the penalty that can be imposed is that of a fine, for the sale of unsafe food, the penalty imposed could be imprisonment for a term which shall not be less than 07 years but could extend to life imprisonment. The fine of Rs.4,75,000/- already stands imposed upon petitioner No.1 under Section 51 and 52 of the Food Safety and Standards Act, 2006 as is apparent from Annexure P-5.

14. The argument of the learned State counsel that once the food was found to be of substandard quality or was misbranded it would amount to it being unsafe and therefore, an FIR under the IPC being maintainable is fallacious. As has already been pointed hereinabove, a clear and categorical distinction has been drawn between the sale of misbranded/substandard food vis-a-vis the sale of unsafe food. Even otherwise, assuming that the food that was sought to be sold was unsafe for human consumption even then, the provisions of the Food Safety and Standards Act, 2006 could be resorted to prosecute the accused.

15. As regards the judgments pointed out by the learned counsel for the State and referred to in the reply, it may be pointed out that in M.V. Joshi (supra) and Municipal Corporation of Delhi (supra) the issue in hand was not about the prosecution of the accused therein under the IPC vis-a-vis the prosecution under the Prevention of Food Adulteration Act as in the present case where the controversy is the prosecution of the petitioners under the Food Safety and Standards, 2006 vis-a-vis the IPC. As regards the judgment in (Rajiv Kumar Gupta's (supra), the FIR under the IPC in the said case was not quashed as in that case, the Pan Masala sought to be sold contained a banned substance and there were newspaper advertisements and labelling on 29 of 30 Neutral Citation No:=2023:PHHC:138750 2023:PHHC:138750 the Masala packing stating that the Pan Masala did not contain the said banned substance. It was in that situation that the Bombay High Court has stated that no case for quashing of the FIR was made out.

16. In view of the aforementioned discussion, I find merit in the present petition and therefore, FIR No.83 dated 16.08.2018 (Annexure P-1) registered under Sections 420, 272, 273, 274 and 120-B IPC, 1860, the final report (Annexure P-2) and all subsequent proceedings arising therefrom stand

quashed qua the petitioners.

(JASJIT SINGH BEDI)
JUDGE

31.10.2023

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No

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