

# Abdul Khader vs The State Of Kerala on 28 January, 2014

**Author: K. Ramakrishnan**

**Bench: K.Ramakrishnan**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 9TH DAY OF DECEMBER 2014/18TH AGRAHAYANA, 1936

CrI.MC.No. 1266 of 2013 ( )

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CRIME NO. 732/2012 OF MUSEUM POLICE STATION, THIRUVANANDAPURAM

PETITIONERS/ACCUSED:-:

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1. ABDUL KHADER,  
S/O.MUHAMMED, FLAT NO.3A, HEAVEN,  
PUNDIT'S COLONY, KURANVANKONAM WARD, KOWDIAR,  
THIRUVANANTHAPURAM FROM KALANNOOR VEEDU,  
KALANNOORPURAM DESOM,  
BAYAR VILLAGE, KASARAGOD TALUK. (A1).
2. JALEEL,  
S/O.MUHAMMED, H.NO.A72, SASTHAMANGALAM,  
SASTHAMANGALAM VILLAGE FROM B.C.HOUSE, KUKAR DESOM  
MAGALPAD, UPPALAM VILLAGE, KASARAGOD (A2).
3. RAJKUMAR SAHU,  
S/O.MUNNAN SAHU, SANTHOSH PUR DESOM, MIRGON VILLAGE  
VIDANAPPUR DISTRICT, BANGAL. (A3).
4. JANTTU SAIT,  
S/O.PANCHANAN SAIT, RESIDENT OF MINTUGERU DESOM,  
WEST BENGAL (A4)
5. ABDULSALAM,  
S/O.ABDUL RAHMAN, VARUVILAKATHU VEEDU,  
NEAR KARUMAVARI MUSLIM JAMA ATH, UPANIYLOOR DESOM,

KALLIY00R VILLAGE, THIRUVANANTHAPURAM DISTRICT (A5) .

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR

RESPONDENTS/RESPONDENTS: - :

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1. THE STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

2. THE SUB INSPECTOR OF POLICE,  
MUSEUM POLICE STATION  
REPRESENTED BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.

ADDL.R3. FOOD SAFETY OFFICER,  
THIRUVANANDAPURAM.

ADDL.R3 IMPEADED AS PER ORDER DATED 28.1.2014 IN  
CRL.M.C.1266/13.

R1 &2 BY ADGP. TOM JOSE PADINJAREKKARA

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
23.10.2014, THE COURT ON 09-12-2014,PASSED THE FOLLOWING:

Crl.MC.No. 1266 of 2013 ( )

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#### APPENDIX

PETITIONERS' ANNEXURE:

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ANNEXURE A. CERTIFIED COPY OF THE F.I.R IN CR.732/12 PENDING ON THE  
FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, THIRUVANANTHAPURAM.

RESPONDENTS' ANNEXURE:NIL

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/TRUE COPY/

P.S TO JUDGE

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"CR"

K. RAMAKRISHNAN, J.

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Crl.M.C.No.1266 of 2013

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Dated this the 9th day of December, 2014.

O R D E R

Accused Nos.1 to 5 in Crime No.732/2012 of Museum police station, Thiruvananthapuram have filed this petition to quash the proceedings under section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that the petitioners are accused 1 to 5 in Crime No.732/2012 of Museum police station, Thiruvananthapuram alleging offences under Sections 273, 328 and 34 of the Indian Penal Code read with Section 59(iii) of the Food Safety & Standards Act. This case was registered upon a complaint No.187/DPIN/BS/12 dated 15.7.2012 and the crime was registered by the Sub Inspector of Police, Museum police station. The second respondent is a police officer, who is not a notified authority under the Food Safety and Standard Act, which came with effect from 29.7.2010. The petitioners are conducting a restaurant by name 'Salwa Cafe' at Vazhuthacaud junction, Thiruvananthapuram. The allegation was that on 10.7.2012, the second accused prepared food article by name 'Shavarma', which was injurious to health and that was sold to several persons, who developed complications and that, around 10 persons were admitted in different hospitals in Thiruvananthapuram. It is alleged that a person by name Sachin Mathew Roy, aged 21 years, also purchased and consumed 'Shavarma' from the restaurant of the petitioners on 10.7.2012 and he developed serious gastro problem, which resulted in his death at Bangalore. It is further known that with regard to the death of Sachin Mathew Roy, Crime No.UDR/No.52/12 under section 174 of the Code of Criminal Procedure was registered in Kalasipalayam police station and it is being investigated.

3. On the basis of the complaint received, Museum police has registered Crime No.732/2012 alleging offences under Sections 273, 328 and 34 of the Indian Penal Code read with section 59 (iii) of the Food Safety and Standard Act, 2006. During the course of investigation, on 18.7.2012 around 4 p.m the petitioners surrendered before the Sub Inspector of Police, Museum police station and they were arrested and produced before the Judicial First Class Magistrate Court-III, Thiruvananthapuram on 19.7.2012 and they were remanded to judicial custody and after 50 days of judicial custody, the petitioners were granted bail. After the death of Sachin Mathew Roy, the Food Safety Authority has filed a complaint before the Judicial First Class Magistrate Court -III, Thiruvananthapuram and it is pending as C.C.No.231/2012 as against the first petitioner. The case of the petitioners is that after the coming into force the Food Safety and Standard Act, the general provisions in the Indian Penal Code regarding the same subject matter is impliedly repealed and they cannot be dealt with under both the enactments. Further different procedure and different punishment have been provided under the later Act namely Food Safety and Standard Act, 2006 and severe punishment has been provided for selling unsafe food causing death and this Act has repealed the existing Prevention of Food Adulteration Act and taken care of all type of offences relating to sale of food and consequences ensued on account of sale of such food. So, under the circumstances, they cannot be proceeded against under two enactments and they prayed for quashing the proceedings on that ground.

4. The Inspector of Police, Museum police station has filed a statement contending as follows:

On the strength of a complaint received from one Jijesh, a crime was registered in Museum police station as Cr.No.732/2012 under Section 328 and 34 of the Indian Penal Code against the petitioners. The allegation was that on 15.7.2012 a petition was received from one Jijesh complaining that he and two other friends consumed 'Shavarma' bought from 'Salwa Cafe', Vazhuthakad, Thiruvananthapuram on 10.7.2012 and it was infected with food poisoning. All the three persons were admitted to Medical College Hospital and were undergoing treatment there and requested to take action against the hotel owner. On the strength of the petition, a crime was registered and investigation of the above case was also revealed the commission of offence under section 273 of the Indian Penal Code and a report was submitted to add that section also. It was revealed during investigation that several persons, who consumed 'Sharvama' from the said hotel on the fateful day were infected with food poisoning and were admitted to several hospitals in and around Thiruvananthapuram City and reports have come through visual media and print media that on account of consumption of the same, several other persons also infected by food poisoning and a death was reported from Bangalore of one Sachin Mathew Roy who also consumed the 'Shavarma' bought from 'Salwa Cafe'.

Investigation revealed that A1-Abdul Khader, S/o.Muhammed, aged 50, Flat No.3A, Heaven, Pandit Colony, Kowdiar, Kuravankonam Ward from Kalanoor Veedu, Kalannoorpuram Desom, Bayar Village, Kasarcodu, A-2 Jaleel, aged 27, S/o. Muhammed, H.No.A.72, Sathamangalam, Sathamangalam Village, from B.C House, Kurar Desom, Mangalpad Uppalam Village, Kasacodu, A3- Rajkumar Sahu, aged 22, S/o. Muhhan Sahu, Santhoshpur Desom, Mirgon Village, Vidanappur District, Bangal, A4-Jenthuth Sett, aged 20, S/o. Panchanan Sett, Mijigeru Desom, Pulamon Village, Poorva Midhinapur, West Bengal, A6- Abdul Salam, aged 42, S/o. Abdul Rehman, Charuvilakathu Veedu, in front of Muslim Jama Ath, Karuvani, Upaniyoor Desom, Kalliyoor Village were responsible for the preparation and sale of the same and so they were arrested on 18.7.2012 and were remanded to judicial custody. Section 59

(iii) of Food Safety and Standard Act was added as that offence was also committed.

5. When the death of Sachin Mathew Roy was reported from Bangalore, Kalasipalayam police registered a case as UDR.No.52/2012 under section 174 of the Code and inquest was conducted and postmortem examination was conducted and it was revealed that he also died on account of the food poisoning due to consumption of 'Shavarma' sold from the shop of the accused persons and on that basis, they have added Section 304 of the Indian Penal Code also and investigation is pending. When it was revealed that a complaint was filed by the Food Safety and Standard Authority and that is pending as C.C.No.231/2012 against the first petitioner and section 59

(iii) of Food Safety and Standard Act was added in that complaint, they filed a report to delete that section from the First Information Report. The allegation that the police has no power to investigate the offence under this Act is not correct. No crime was registered under the provisions of the Food Safety and Standard Act and the petitioners were not arrested in connection with the offences under that Act. They are independent and distinct offences and it was not covered by the Special

Act. Dr. G. Samuel has filed a petition along with father of deceased Sachin Roy Mathew before Kerala State Human Rights Commission, Thiruvananthapuram and that is also pending consideration before the Commission as HRMP.No.3985/2012 and HRMP.No.4007 of 2012. So according to the respondents, the petitioners are not entitled to get the relief of quashing the proceedings and they prayed for dismissal of the petition.

6. The third respondent filed a statement contending as follows:

On 12.7.2012 at about 8 p.m the Joint Food Safety Commissioner, Sri.K. Anil Kumar, received a complaint over phone from Mr. Shobi Thilakan that he and his family were severely affected by food poisoning by consuming the 'Shavarma' in the evening on 10.7.2012 from the restaurant and they were undergoing treatment at PRS Hospital, Thiruvananthapuram. Based on the information, Food Safety Officer, Mobile Vigilance Squad, Thiruvananthapuram was entrusted to enquire the matter and report. By about 8 p.m on 12.7.2012 he met Sri.Shobi Thilakan and Dr. Rakesh of Gastroenterology Department at the hospital, who was treating these patients and prepared statement. It is a clear case of food poisoning and Sri. Shobi Thilakan asserted that the 'Shavarma' he consumed was the reason for the food poisoning and explained the course of events as he purchased four 'shavarma' parcel by 8 p.m on 10.7.2012, went home and he and his wife and two children ate the same by 9 p.m. By early morning, all of them started vomiting and had Diarrhea etc. He had also informed that Aravind, aged 14, Muhammed Ammar, aged 8, Krishnanthampi and three other family members were also under treatment at the PRS Hospital due to consumption of 'Shavarma'. Out of them, Anand was in the IC Unit whose condition was critical.

Food Safety Officer, Mobile Vigilance Squad, Thiruvananthapuram had conducted inspection in the premises of 'Salwa Cafe' at 9.30 p.m on 12.7.2012 and found that the hotel was running in unsanitary conditions and the proprietor failed to produce the PFA licence or Food Safety Standard Licence and medical fitness certificate of employees and hence ordered to close down the hotel under oral instruction from Commissioner of Food Safety.

7. On 13.7.2012, considering the gravity of offence, the Commissioner of Food safety himself issued emergency prohibition order under section 34 of the Food Safety & Standards Act 2006. The same was affixed on the shutter of 'Salwa Cafe' running in building bearing number 15/1989. The depositions of the injured were taken on 14.7.2012 from PRS Hospital, Thiruvananthapuram. On 15.7.2012 there was a flash news in visual media that one Sachin Mathew Roy passed away at Bangalore by consuming 'Shavarma' sold from the said restaurant. Enquiry was conducted in the matter and depositions of all concerned were taken by the Designated Officer and Food Safety Officer. These things revealed that they had also taken 'shavarma' from the said restaurant on 10.7.2012 night. So it is clear from the circumstances that the licensee of the shop had sold the unsafe 'Shavarma' and thereby committed the offence, manufacturing and selling of unsafe food and thereby caused death of one person and serious injury to several persons. Sri.A.Satheeshkumar was appointed as Food Safety Officer for the State of Kerala by the Commissioner of Food Safety under

Section 37(1) of Food Safety and Standards Act, 2006 vide order No.D- 2143/2011/CFS dated 22.8.2011 and notified in the Kerala Gazette No.1 dated 3.1.2012. As per section 42(5) of the Food Safety & Standards Act, 2006, the Food Safety Officer is empowered to launch prosecution. Before the Judicial First Class Magistrate Court-III, Thiruvananthapuram, it was originally taken as C.C.No.1403/2012, which was subsequently transferred to Chief Judicial Magistrate Court, Thiruvananthapuram where it was numbered as C.C.No.231/2012 against the first petitioner alleging offences under sections 3(1)(zz)(iii) and (x), 26(1), 26(2)(i), 59(iii) & (iv), 31(1), 65(a) & (b), 97(3) of the Food Safety & Standard Act, 2006 read with Regulations 2.1 of the Regulations 2011 as Annexure-R3(a). They prayed for dismissal of the application.

8. Heard both sides.

9. The counsel for the petitioners Sri. Sasthamangalam Ajithkumar submitted that Chapter XIV of the Indian Penal Code deals with offences affecting the public health, safety, convenience, decency and morals and section 272 deals with adulteration of food or drink intended for sale and section 278 deals with making atmosphere noxious to death. Section 273 deals with sale of noxious food or drink. Section 3(zz) of the Food Safety and Standard Act, 2006 which came into effect from 29.7.2010 defines "unsafe good" which includes all types of foods mentioned in Section 272 and 273 of the Indian Penal Code and Section 59 of the Act deals with punishment which takes in case of death due to sale of unsafe good as well. Further Section 97 of the Act deals repeal of existing laws on this subject. So, even if, it was not specifically mentioned that this Act repeals the provisions of the Indian Penal Code dealing with same subject matter, they are repealed impliedly by virtue of Section 6 of the General Clauses Act. He had relied on the decisions reported Joseph Kurian v. State of Kerala (1994 KHC 513), an unreported decision of the Allahabad High Court in Writ Petition No.8254 (MB) of 2010 M/s. Pepsico India Holdings (Pvt.) Ltd. v. State of U.P & others, C.H. Sathyanarayan v. State of Delhi High Court in Crl.R.P.No.114/2005, Akki Veeraiah v. State (Inspector, Special Police (1957 Crl.L.J.1078), The Dharangadhra Chemical Works v. Dharangadhra Municipality & another (AIR 1985 SC 1729), Zaverbhai Amaldas v. The State of Bombay (1955 (1) SCR 799), Deep Chand v. State of U.P (AIR 1959 SC 648), Hans Raj v. Rattan Chand and others (AIR 1967 SC 1780), Municipal Corporation of Delhi v. Shiv Shanker (AIR 1971 SC 815) in support of his case.

10. On the other hand, Sri. Tom Jose Padinjarekara, Additional Director General of Prosecutions submitted that the cases under the Indian Penal Code and Food Safety and Standard Act are different and distinct offences and as such there is no bar in proceeding against the person in two different enactments, if they fall under the definition of offences mentioned under each Act. Under the Food Safety Act only those who are violating the provisions of the Act will be held responsible and not other persons involved in the process. Only the licensee will be proceeded against for violation under the Act. But under the Indian Penal Code, other persons, who are involved in the manufacture, sale and otherwise connected with the act of sale and all who were responsible for the commission of the offence can be proceeded against. Further the offences under the Food Safety and Standard Act is a technical offence and if there is any flow in following the procedure, it will ends acquittal and scope of investigation is very less in that case, whereas offences under the Indian Penal Code will be investigated thoroughly by the investigating agency not only violations of the provisions

of the particular enactment but also culpable act of each person which resulted in the ultimate cause for the injury to a person or death ensued on account of such Act. The procedure and nature of evidence to be collected, burden of proof etc are also different. Further, in this case, offences were charged not only under the Food Safety and Standard Act but also offences under sections 272, 273, 328 and 304 of the Indian Penal Code and when it was revealed that the case was filed by the competent authority under the Food Safety and Standard Act, 2006, the provisions under that Act which was incorporated in the First Information Report has been deleted and they are only proceeding with the offences under the Indian Penal Code. He had relied on the decisions reported in *Om Prakash Gupta v. State of U.P.* (AIR 1957 SC 458), *State of Bihar v. Murad Ali Khan and Others* (AIR 1989 SC 1), and *State of Bombay v. S.L. Apte* (AIR 1961 SC

578) in support of his case.

11. Heard both sides. Perused the records.

12. It is an admitted fact that petitioners 1 to 5 are conducting a restaurant by name 'Salwa Cafe' at Vazhuthacaud in Thiruvananthapuram district and it is also an admitted fact that a particular food item by name 'Shavarma' was sold from that shop and several persons have purchased and ate that food article and some of them sustained severe stomach ailment and admitted in hospital and accordingly a mass complaint was received by the Circle Inspector of police, Thiruvananthapuram regarding this aspect which was forwarded to the Museum police station, Thiruvananthapuram district, within whose jurisdiction the restaurant was situated and accordingly Annexure-A First Information Report was registered as Crime No.732/2012 of Museum police station under Section 328 read with Section 34 of the Indian Penal Code against "Salwa Cafe" owner and others, Vazhuthacaud. It is also in a way admitted that sale had taken place between 10.7.2012 and 16.7.2012 and several persons who had eaten that food article suffered serious health problems. It is also in a way admitted that a person by name Sachin Mathew Roy had suffered stomach problem and he underwent treatment in Bangalore hospital and later succumbed to the same.

13. It is also an admitted fact that on the basis of the complaint given by some persons, who ate 'Shavarma' purchased from the shop conducted by the petitioners suffered severe stomach ailment, a crime was registered and while that was under investigation, they got information that one Sachin Mathew Roy, who also purchased and ate 'Shavarma' succumbed to injuries, another crime was registered and thereafter that was also clubbed with Crime No.732/2012 after adding Section 304 of the Indian Penal Code as well. It is also an admitted fact that on getting information regarding the incident, the Food Safety Officer, Mobile Vigilance Squad, Thiruvananthapuram conducted enquiry and took steps and accordingly he had conducted enquiry and filed complaint under section 42(5) of the Food Safety and Standards Act, 2006 before the Judicial First Class Magistrate Court-III, Thiruvananthapuram against the first petitioner herein alleging offences under Sections 3(1)(zz)(iii) & (x), 26 (1), 26(2)(i), 59(iii)&(iv), 31(1), 65(a)&(b), 97(3) of the Food Safety & Standards Act, 2006 read with Regulation 2.1 of the Regulations 2011 and thereafter it was transferred to Chief Judicial Magistrate Court, Thiruvananthapuram, where it is now pending as C.C.231/2012. The Prevention of Food Adulteration Act was repealed by the present Food Safety and Standards Act, 2006 and it was intended to protect the public against the selling and manufacturing of unsafe good.

14. Section 3(zz) of the Act defines "unsafe food" which reads as follows:

Section 3(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
- (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".

15. Section 59 of the Act deals with punishment for unsafe food, which reads as follows:

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;

(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.

16. Section 89 of the Act giving overriding effect of this Act over all other food related laws which reads as follows:

Section 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 by virtue of any law other than this Act.

17. Section 97 deals with Repeal and savings which reads as follows:

97. Repeal and savings:- (1) With effect from such date as the Central Government may appoint in this behalf, the enactment and orders specified in the Second Schedule shall stand repealed:

Provided that such repeal shall not affect:-

(i) the previous operations of the enactment and orders under repeal or anything duly done or suffered thereunder; or

(ii) any right, privilege, obligation or liability acquired, accrued or incurred under any of the enactment or Orders under repeal; or

(iii) any penalty, forfeiture or punishment incurred in respect of any offences committed against the enactment and Orders under repeal; or

(iv) any investigation or remedy in respect of any such penalty, forfeiture or punishment, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may

be imposed, as if this Act had not been passed:

(2) If there is any other law for the time being in force in any State, corresponding to this Act, the same shall upon the commencement of this Act, stand repealed and in such case, the provisions of section 6 of the General Clauses Act, 1897 (10 of 1897) shall apply as if such provisions of the State law had been repealed.

(3) Notwithstanding the repeal of the aforesaid enactment and Orders, the licences issued under any such enactment or Order, which are in force on the date of commencement of this Act, shall continue to be in force till the date of their expiry for all purposes, as if they had been issued under the provisions of this act or the rules or regulations made thereunder.

(4) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of any offence under the repealed Act or Orders after the expiry of a period of three years from the date of the commencement of this Act."

18. The second schedule to the Act shows the enactments which were repealed after coming into force of this Act which do not include any of the provisions of the Indian Penal Code which deals with the acts covered under these provisions.

19. Chapter XIV of Indian Penal Code deals with offences affecting the public health, safety convenience, decency and morals and sections 272 and 273 deal with sale of adulterated food or drink and noxious food or drink which read as follows:

Section 272:- Adulteration of food or drink intended for sale:- Whoever adulterates any article of food or 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.

Section 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.

20. Chapter XVI of the Indian Penal Code deals with offences affecting the human body and Section 304 deals with punishment for culpable homicide not amounting to murder, which reads as follows:

304. Punishment for culpable homicide not amounting to murder:- Whoever commits culpable homicide not amounting to murder shall be punished with

[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

21. Section 6 of the General Clauses Act deals with the effect of repeal of Act making textual amendment in Act or Regulation which reads as follows:

6.Effect of repeal:- Where this Act, or any [Central Act} or Regulation made after the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or (c ) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed"

22. Section 26 of the General Clauses Act deals with provisions as to offences punishable under Section of two or more enactments, which reads as follows:

26. Provision 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 those enactments, but shall not be liable to be punished twice for the same offence.

It is clear from the above that though certain provisions of the Indian Penal Code and Food Safety and Standards Act overlap on the same subject, it will have to be considered as to whether a person committed the offence can be proceeded against, if the act complained of may be an offence under two enactments, independently will depend upon as to whether the offences alleged are distinct and different or the same and by virtue of the special Act being enacted on the subject matter whether

general provisions will be impliedly repealed etc and those things have to be considered on facts of each case.

23. It is true that if there is any provision made covering a particular offence in respect of which there is a general law and a special law was enacted subsequent to the general law, then normally the special law will prevail over the same and even if there no specific exclusion, if from the circumstances, it can be revealed that it is impliedly repealed, then the provisions in the special law will prevail over that subject matter.

24. In the unreported decision in Writ Petition No.8254 (MB) of 2010 M/s PepsiCo India Holdings (Pvt) Limited and another v. State of U.P and others, the High Court of Judicature at Allahabad, Lucknow Bench considered the question as to whether the provisions of the Food Safety Act has impliedly repealed the offences under sections 272 and 273 of the Indian Penal Code which deals with sale of adulterated food or drink or noxious food or drink and held in the affirmative and held that a person cannot be prosecuted under both enactments separately or only under the latter Act namely Food Safety and Standards Act.

25. In the decision reported in Jeevan Kumar Raut & Anr. v. Central Bureau of Investigation (AIR 2009 SC 2763) the Hon'ble Supreme Court has held that by virtue of section 22 of Transplantation of Human Organ Act where a particular procedure has been given for dealing with offences under that Act, the general provisions regarding the investigation as provided under the Code of Criminal Procedure will not be applicable as it will have a overriding effect over the general procedure provided under the Criminal Procedure Code regarding investigation. In paragraph 19 of the decision, the Hon'ble Supreme Court has observed as follows:

"19. Section 22 of TOHO prohibits taking of cognizance except on a complaint made by an appropriate authority or the person who had made a complaint earlier to it as laid down therein. Respondent, although , has all the powers of an investigating agency, it expressly has been statutorily prohibited from filing a police report. It could file a complaint petition only as an appropriate authority so as to comply with the requirements contained in Section 22 of TOHO. If by reason of the provisions of TOHO, filing of a police report by necessary implication is necessarily forbidden, the question of its submitting a report in terms of sub-section (2) of Section 173 of the Code did not and could not arise. In other words, if no police report could be filed, sub-section (2) of Section 167 of the Code was not attracted."

26. In paragraph 29 of the same judgment it has been further observed as follows:

"In this case however, the respondent has not specifically been empowered both under the 1946 Act as also under the Code to carry out investigation and file charge sheet as is precluded from doing so only by reason of section 22 of Transplantation of Human Organs Act. It is doubtful as to whether in the event of authorization of officer of the department to carry out investigation on a complaint made by the third party he would be entitled to arrest the accused and carry on investigation as if he is a

police officer he hope that parliament would take appropriate measure to suitably amend the law in the near future".

27. In the decision reported in *Jamiruddin Ansari v. Central Bureau of Investigation* (2009 (6) SCC 316), while construing the provisions of Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as MCOCA), the Hon'ble Supreme Court has held that:

"Although the special judge is entitled to take cognizance of the offences under MCOCA even on a private complaint, but after due compliance with either of a private nature or on a police report. Hence, on receipt of a private complaint, Special Judge has to forward the same to the officer indicated in section 23(1)(a) to have an inquiry conducted into the complaint by a police officer mentioned in section 23(1)(b). It is only thereafter that Special Judge can take cognizance of the offence complained of, if sanction is accorded to the special court to cognizance of such offence under section 23 (2). Special Judge cannot invoke provisions of section 156 (3) Cr.PC to order a special inquiry on such private complaint and take cognizance thereupon, without traversing the route indicated in S.23. It is also observed therein that section 9 cannot be read or invoked independent of S.23 and both these provisions must be read harmoniously.

28. In the decision reported in *State of M.P. v. Kedia Leather and Liquor Ltd. and others* (2003 (7) SCC 389), the Hon'ble Supreme Court had considered the effect of section 133 of the Code of Criminal Procedure and the provisions of Water (Prevention and Control of Pollution) Act, 1974 (Chapter 5 and sections 32 and 33) and Air (Prevention and Control of Pollution) Act, 1981 (Chapter IV and sections 18, 20 & 22 A and considered the question as to whether by virtue of the above provisions under the above said Acts, Section 133 of the Code of Criminal Procedure is impliedly repealed and the Supreme Court has held that as section 133 of the Code and the two acts were mutually exclusive and there was no impediment to their existence side by side two acts did not impliedly overrule section 133 of the Code. While considering the provisions, the Supreme Court has observed as follows:

"There is presumption against a repeal by implication; and the reason of this rule is based on the theory that the legislature while enacting a law has complete knowledge of the existing laws on the same subject-matter, and therefore, when it does not provide a repealing provision, the intention is clear not to repeal the existing legislation.

When the new Act contains a repealing section mentioning the Acts which expressly repeals, the presumption against implied repeal of other laws is further strengthened on the principle *expressio unius (personae vel rei) est exclusio alterius* (The express intention of one person or thing is the exclusion of another). The continuance of the existing legislation, in the absence of an express provision of repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act that the two cannot stand together. But, if the two can be read together and some application can be made of the words in the

earlier Act, a repeal will not be inferred.

The necessary questions to be asked are:

- (1) Whether there is direct conflict between the two provisions.
- (2). Whether the legislature intended to lay down an exhaustive Code in respect of the subject -matter replacing the earlier law.
- (3) Whether the two laws occupy the same field.

When the court applies the doctrine, it does no more than give effect to the intention of the legislature by examining the scope and the object of the two enactments and by a comparison of their provisions. The matter in each case is one of the construction and comparison of the two statutes. The court leans against implying a repeal. To determine whether a later statute repeals by implication an earlier statute, it is necessary to scrutinize the terms and consider the true meaning and effect of the earlier Act. Until this is done, it is impossible to ascertain whether any inconsistency exists between the two enactments."

29. The Constitution Bench of the Supreme Court in *Deep Chand v. State of U.P* (AIR 1959 SC 648) considered the question of repugnance between two statutes and how this will have to be considered as follows:

"Repugnancy between two statutes may be ascertained on the basis of the following three principles:

- (1) Whether there is direct conflict between the two provisions;
- (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature; and (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

30. The same view has been reiterated in the decision reported in *Tansukh Rai Jain v. Nilratan Prasad Shaw and others* (AIR 1966 SC 1780). Further in the decision reported in *Municipal Corporation of Delhi v. Shiv Shanker* (AIR 1971 SC 815) while considering the question as to whether the provisions of the Essential Commodities Act or Fruit Products Order made thereunder can impliedly repealed Prevention of Food Adulteration Act and observed as follows:

"The object and purpose of the Adulteration Act is to eliminate the danger to human life and health from the sale of unwholesome articles of food. The Essential Commodities Act on the other hand has for its object the control of the production, supply and distribution of, and trade and commerce in, essential commodities. In spite of this difference the two provisions may have conterminous fields of operation. The provisions of the Adulteration Act and of the Fruit Order are supplementary and

cumulative in their operation and they can stand together. If the Adulteration Act or Rules impose some restrictions on the manufacturer, dealer and seller of vinegar then they have to comply with them irrespective of the fact that the Fruit Order imposes lesser number of restrictions in respect of these matters. The Parliament did not intend by enacting the Essential Commodities Act or the Fruit Order to impliedly repeal the provisions of the Adulteration Act and the Rules in respect of the vinegar. Both the statutes can function with full vigour side by side in their own parallel channels. Even if they happen to some extent to overlap, Section 26 of the General Clauses Act fully protects the guilty parties against double jeopardy or double penalty. Both the Adulteration Act and the Essential commodities Act have been amended from time to time after their enactment. The subsequent amendments of the Adulteration Act and of the Essential Commodities Act by the Parliament and the amendment of the Adulteration rules would also tend to negative any legislative intendment of implied repeal of the Adulteration Act by the Essential Commodities Act or the Fruit Order."

31. In the decision reported in *Zaverbhai Amaldas v. The State of Bombay* (1955 SCR 799) it has been observed that if there is conflict between the Central enactment and the State enactment on the same subject, then Central enactment will prevail. The same principle has been laid down in the decision reported in *The Dharangadhra Chemical works v. Dharangadhra Municipality* and another (AIR 1985 SC 1729). In the decision reported in *State of Bihar v. Murad Ali Khan and others* (AIR 1957 SC 458 = 1957 KHC 608), the Hon'ble Supreme Court has considered the question as to whether Sections 5 and 6 of Prevention of Corruption Act has impliedly repealed, Section 405 and 409 of the Indian Penal Code dealing with misappropriation by a public servant and observed that if he two offences are distinct and separate, then one will not repeal the another. The same view has been reiterated in the decision reported in *State of Bombay v. S.L. Apte* (AIR 1961 SC 578 = 1961 KHC 537) wherein the question as to whether the provisions of Insurance Act and the offence under Section 105 of the Insurance Act and section 409 of the Indian Penal Code are similar and proceedings against a person under both the acts will amount to double jeopardy under Article 20(2) of the Constitution of India and Hon'ble Supreme Court has held that they are distinct and separate and one will not override the other and proceedings against the person under both the enactments will not amount to double jeopardy under Article 20(2) of the Constitution of India. Further in the decision reported in *State of Bihar v. Murad Ali Khan and others* (AIR 1989 SC 1= 1988 KHC 1071), the Hon'ble Supreme Court has considered the question as to whether the offences under the Wild Life (Protection) Act, 1972 dealing with section 9(1) and Section 51 regarding wild life and section 429 of the Indian Penal Code will be mutually exclusive and whether the earlier Act will override the general provisions of the Indian Penal Code deals with the same subject matter observed that they are distinct and separate and that cannot be quashed under section 482 of the Code. With this principles in mind the case in hand has to be considered.

32. Further in the decision reported in *Vishal Agarwal and another v. Chhattisgarh State Electricity Board and another* (2014 (1) KHC 319), the Hon'ble Supreme Court has held that Section 151 of Electricity Act, 2003 will not cause any fetter on the right of the police to investigate a case under the Code of Criminal Procedure in respect of any cognizable offence has been committed which is an

offence under the provisions of the Indian Penal Code as well.

33. The same view has been reiterated in the decisions reported in *State (NCT of Delhi) v. Sanjay, Jaysukh Bavanji Shingalia v. State of Gujarat and another, Malabhai Shalabhai Rabari and others v. State of Gujarat and others, Kalubhai Dulabhai Khachar v. State of Gujarat and another and Sondabhai Hanubhai Bharwad v. State of Gujarat and another* (2014 (9) SCC 772), where it has been observed that provisions under the Mines and Mineral (Development and Regulation) Act, 1957 is only barring investigation of an offence under Section 4(1-A) read with section 21(1) of MMDR Act and Magistrate taking cognizance of the offence if it is an offence otherwise under the Indian Penal Code that will not be a bar for the police to investigate and file final report and Magistrate taking cognizance of the offence for that offence. It is clear from the provisions of the General Clauses Act that if the act committed is an offence under two enactments, there is nothing barring for proceeding against them under two enactments but they cannot be sentenced for the same separately. Further if they are distinct and different offence, then there is no bar for imposing separate sentence as well as it will not amount to double jeopardy as provided under Article 20(2) of the Constitution of India.

34. It is seen from the allegations in the complaint filed by the Food Safety Officer under the Food Safety and Standard Act that only the first petitioner had committed the offence under that Act, as he being the licensee and owner of the restaurant, others who are involved in the commission of the act have not been implicated. But in the case registered by the police apart from the first petitioner, others who are responsible for running the restaurant and preparation of the food and sale of the same were also implicated. The procedure to be followed, nature of evidence to be collected, points to be proved and ingredients of the offence in both are entirely different. One is a technical offence and other is an offence to be proved based on evidence to be collected by the investigating agency. Even if technical offence fails, the substantive offence investigated by the police on the basis of materials collected will prevail over the other.

35. If the intention of the Legislature is to repeal or remove the provisions under the Indian Penal Code also in respect of the offence relating to food, then they ought to have deleted those provisions also as has been done in respect of giving bribe from the Indian Penal Code when Prevention of Corruption Act was enacted dealing with those acts. That was not done in this case. Further the Legislature was very clear when a schedule was added, they only repealed certain enactments which were dealing with sale and manufacture of food earlier and not all the provisions which were dealing with the same subject matter in the other enactments like Indian Penal Code also. The above view is clear from the decision of the Supreme Court in *State of Bombay v. S.L. Apte* (AIR 1961 KHC 537), *Om Praksh Gupta v. State of U.P* (1957 KHC 608) and *State of Bihar v. Murad Ali Khan and others* (1988 KHC 1071) as well. So in view of the authoritative pronouncement of the Supreme Court, I am with great respect disagreeing with the dictum laid down by the Allahabad High Court in Writ Petition No.8254(MB)/2010 M/s. *Pepsico India Holdings (Pvt). Ltd and another v. State of U.P and others*.

36. Further it is also seen from the court before whom the case is pending, which was instituted on the basis of a complaint under the Food Safety and Standard Act though higher punishment was



provided that court has no jurisdiction to award such a punishment, whereas under the police investigation case, it will be committed to the Sessions Court and the Sessions Court has power to award severe punishment as provided under the Indian Penal Code. Further if it is proved by the prosecution that the persons who are selling the food articles were aware of the consequences of the food being sold, which is likely to cause injurious to health and even cause death, then apart from the same being falling under the provisions of the Food Safety and Standard Act, it will fall under the provisions of Section 304 of the Indian Penal Code as well, which is a distinct and separate offence, for which prosecution can be independently proceeded with by the police on the basis of a complaint given by the affected party. So only the offence under Section 59(3) of the Act alone can be proceeded with by the Food Safety Officer as an empowered officer and other offences which will not fall under that Act and persons against whom prosecution can be launched for the same offences, who are not covered by the Food Safety and Standard Act, the only remedy available to the affected person is to move the police for regular investigation under the Code of Criminal Procedure and proceed against them for the offence provided under the general law namely Indian Penal Code. So, under the circumstances, the submission made by the counsel for the petitioners that the police case initiated on the basis of the complaint is barred in view of the provisions of the Food Safety and Standard Act is not sustainable and the same is liable to be rejected and the petitioners are not entitled to get the relief quashing Crime No.732/2012 of Museum police station, Thiruvananthapuram claimed in the petition and the same is liable to be dismissed.

In the result, this petition is dismissed.

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl /true copy/ P.S to Judge