

# Jagdish Prasad And Another vs State Of U.P. And Another on 9 July, 2024

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Reserved on 30.05.2024

Delivered on 09.07.2024

Neutral Citation No. - 2024:AHC:111824

Court No. - 44

Case :- APPLICATION U/S 482 No. - 11772 of 2024

Applicant :- Jagdish Prasad And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Amit Singh

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard learned counsel for the applicants and Sri Rajeev Kr. Singh, learned A.G.A. for the State.
2. The instant application under Section 482 Cr.P.C. has been filed for quashing the summoning order dated 10.09.2021 passed by Special Judge Food Safety & Standards Act/ Additional Sessions Judge, Court No.9, Jhansi in Sessions Case No.643 of 2021, under Section 26(2)(v, i & ii)/58, 59(iii), 52(1) Food Safety & Standards Act, 2006 (hereinafter referred to as 'Act, 2006'), Police Station Orai, District Jalaun as well as Non-bailable Warrant dated 27.10.2023 issued by Additional District

Judge/FTC-IIInd, Jhansi.

3. Facts giving rise to the present case are that applicant No.2 is the proprietor of a firm, named as M/s Balaji Traders Orai while applicant No.1 is the employee of the said firm of applicant No.2. The licence in Form - C under the Act, 2006 was also issued in the name of the firm of applicant No.2. In the above licence, applicant No.2 was mentioned as a person in charge of the operation of the firm and that licence is valid till 16.7.2024. An inspection was made by the Food Security Officer on 20.2.2020 in the manufacturing unit of applicant No.2 where the applicant No.1, who is an employee of the firm of applicant No.2, was present. In the presence of applicant No.1, 370 packets of sugandhit supari (Puja Brand) were found in the stock. Thereafter, four packets of the sugandhit supari were purchased from applicant No.1 by paying its price. On the spot, the format of Form 5-ka was prepared, out of which two samples were given to applicant No.1 and one sample was sent to the concerned laboratory for examination. It is claimed by the applicants that their firm is licence holder to manufacture pan masala and supari under the Act, 2006 which is valid up to 16.7.2024. On the basis of inspection of the Food Inspector on 20.2.2020, the sample of sugandhit supari (Puja Brand) was taken from the premises of the applicants and thereafter, on the basis of the report of the food analyst, the impugned complaint was filed. In the impugned complaint, it is mentioned that the sample of sugandhit supari contained tobacco. Therefore, the same is of sub standard quality and not fit for use. It was also mentioned in the report of food analyst that the sample of packets, containing supari, did not mention net quantity/net weight, date of manufacturing, batch number, manufacturer's complete address, FSSAI licence number etc. In the complaint, it is further mentioned that the sample of sugandhit supari as well as its packets, were prepared in violation of Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restriction of Sale) Regulations, 2011 as well as regulation Nos. 2.2.2(7), 2.2.2(9), 2.2.2(8), 2.2.2(10), 2.2.2(6), 2.2.1(7) and 2.2.2(2) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. The learned Magistrate, after receiving the aforesaid complaint, summoned the applicants, which is under challenge.

4. The contention of learned counsel for the applicants is that sugandhit supari is a tobacco product, therefore, the proceeding under the Act, 2006 is absolutely erroneous. In support of his contention, learned counsel for the applicants has relied upon the judgement of coordinate Bench of this Court passed in Application u/s 482 No. 9147 of 2023 (Manish Gupta vs. State of U.P. and another) in which it is observed that the sample of a packet of baba supari is tobacco product and not a food item. It is further submitted that the tobacco product is not prohibited from selling, but it is regulated by Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter referred to as "COTPA, 2003"). It is lastly submitted that even if it is admitted that sugandhit supari is a food item, even then, applicants have a valid licence. Therefore, invoking the provision of the Act, 2006 on the ground that at the time of inspection, the applicants could not show the licence is also incorrect, hence erroneous.

5. Per contra, learned A.G.A. has submitted that sugandhit supari is a food item. Therefore, there is no illegality in the impugned proceeding. It is further submitted that at the time of inspection, the applicants could not show the licence for the production of food item, therefore, the provision of the

Act, 2006 was invoked.

6. Learned A.G.A. had filed counter affidavit which was formal in nature, therefore, learned counsel for the applicants did not file rejoinder affidavit on the ground that the same was formal in nature.

7. After hearing the rival submissions of learned counsel for the parties, a sole question arises whether the product in question i.e. sugandhit supari (betel nut) is a tobacco product or it comes within the definition of food.

8. Learned counsel for the applicants has submitted that as the supari is a tobacco product, its sale and manufacturing will be covered by the COTPA, 2003. Therefore, proceeding against him, under the Act, 2006, is illegal. For the determination of this question, it is necessary to discuss the object of the Act, 2006 as well as COTPA, 2003.

9. The object of the Act, 2006, is to lay down science-based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of the same and wholesome food for human consumption.

10. The object of COTPA, 2003 is to provide effective measures for protecting citizens from involuntary exposure to cigarettes and other tobacco products and also to impose progressive restrictions on direct and indirect advertisement, promotion and sponsorship, concerning tobacco. To achieve the aforesaid object, the COTPA, 2003 not only provides regulation of trade and commerce, production, supply and distribution of cigarettes and other tobacco products but also prohibits its advertisement and provides for displaying the warning on the packets of cigarette and other tobacco products.

11. From the objects of the above two Acts, it is clear that COTPA, 2003 provides regulation, production and supply of cigarettes and other tobacco products, whereas the Act, 2006 not only provides manufacturing, storage and sale of food but also provides a science-based standard for articles of food which are safe for human consumption. Therefore, if any article of food used for human consumption, is found sub standard, then the same is punishable. However, under the COTPA, 2003 any substandard tobacco product, even if used for human consumption, is not punishable under the COTPA, 2003. The COTPA, 2003 apart from regulating the production and providing specified warning on the package of cigarettes and other tobacco products, also provides a maximum permissible limit of nicotine and tar in tobacco products.

12. Section 14 of the COTPA, 2003 provides confiscation of package of cigarettes and other tobacco products, if same violates any of the provisions of the COTPA, 2003. Section 20 of the COTPA, 2003 also provides punishment on failure to give a specified warning of nicotine and tar contents. Therefore, if cigarette or any other tobacco product contains the ingredients of nicotine and tar beyond the prescribed limit, then same is punishable under Section 20 of COTPA, 2003. However, there is no provision in the COTPA, 2003, providing punishment for having ingredients in tobacco products other than nicotine and tar, even though same may be injurious to health of any person. Sections 7, 10, 11, 14, 20 of the COTPA, 2003 are being quoted as under:-

"7. Restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products.-

(1) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him bears thereon, or on its label 1[such specified warning including a pictorial warning as may be prescribed.] (2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.

(3) No person shall import cigarettes or any other tobacco products for distribution or supply for a valuable consideration or for sale in India unless every package of cigarettes or any other tobacco products so imported by him bears thereon, or on its label, the specified warning.

(4) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration.

(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum permissible limits thereof:

Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act.

10. Size of letters and figures.- No specified warning or indication of nicotine and tar contents in cigarettes and any other tobacco products shall be deemed to be in accordance with the provisions of this Act if the height of each letter or figure, or both the used on such warning and indication is less than the height as may be prescribed by rules made under this Act. 11. Testing laboratory for nicotine and tar contents.-For purposes of testing the nicotine and tar contents in cigarettes and any other tobacco products the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory as that Government may deem necessary.

11. Testing laboratory for nicotine and tar contents.- For purposes of testing the nicotine and tar contents in cigarettes and any other tobacco products the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory as that Government may deem necessary.

14. Confiscation of package.- Any package of cigarettes or any other tobacco products or any advertisement material of cigarettes or any other tobacco products, in respect of which any provision of this Act has been or is being contravened, shall be liable to be confiscated: Provided that, where it is established to the satisfaction of the court adjudging the confiscation that the person in whose possession, power or control any such package of cigarettes or any other tobacco products is found is not responsible for the contravention of the provisions of this Act, the Court may, instead of making an order for the confiscation of such package, make such other order authorised by this Act against the person guilty of the breach of the provisions of this Act as it may think fit.

20. Punishment for failure to give specified warning and nicotine and tar contents.-

(1) Any person who produces or manufactures cigarettes or tobacco products, which do not contain, either on the package or on their label, the specified warning and the nicotine and tar contents, shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

(2) Any person who sells or distributes cigarettes or tobacco products which do not contain either on the package or on their label, the specified warning and the nicotine and tar contents shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to three thousand rupees."

13. Section 16 of the COTPA, 2003 further provides that confiscation of any tobacco product will not prevent the infliction of any punishment under any other law, which means if the production or sale of any substandard tobacco product is also prohibited in any other law, then prosecution under that law would not be barred despite the confiscation of tobacco product for violation of the COTPA, 2003. Section 16 of the COTPA, 2003 is quoted is under:-

"16. Confiscation not to interfere with other punishments.- No confiscation made, costs ordered to be paid under this Act shall prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of this Act or under any other law."

14. From the perusal of Section 16, it is also clear that even though any product is a tobacco product but if it contains any ingredient other than nicotine and tar, which is injurious or dangerous for human consumption, then even if the same is not punishable under the COTPA, 2003, but the same could be punishable in any other law including the Act, 2006. In the present case, the question

arises of whether the supari or betel nut is a tobacco product under the COTPA, 2003, or food under the Act, 2006.

15. Betel nut is a fruit of the areca palm (Areca Catechu) that grows in much of the tropical Pacific, South Asia, South-east Asia, and parts of East Africa. It is not to be confused with betel leaves that are often used to wrap it. The practice of betel nut chewing, often together with other herbs as a stimulant drug, dates back thousands of years, and continues to the present day in many other Asian countries. When chewed with additional tobacco in its preparation, there is even higher risk especially for oral and oropharyngeal cancers. In India, betel nut is used in pan along with other ingredients like lime and kattha and there is a large scale use of betel nut for human consumption in India, as the betel nut is a primary product of the tree, namely, Areca palm.

16. The definition of 'food' has been given in Section 3(1)(j) of the Act, 2006 which provides any substance, whether processed or unprocessed, entitled for the human consumption and which includes primary food to the extent defined in Section 3(1)(zk). The definition of 'primary food' has also been given in Section 3(1)(zk) which provides any article of food which is produced from agriculture or horticulture, resulting from growing, raising, cultivation, picking and harvesting. For reference Sections 3(1)(j) and 3(1)(zk) of the Act, 2006 are being quoted as under:-

"3(1)(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;

(zk) "primary food" means an article of food, being a produce of agriculture or horticulture or animal husbandry and dairying or aquaculture in its natural form, resulting from the growing, raising, cultivation, picking, harvesting, collection or catching in the hands of a person other than a farmer or fisherman."

17. Section 92 of the Act, 2006 gives power to the Food Safety and Standards Authority to make regulations with prior approval of the Central Government, providing standards and guidelines in relation to the articles of food meant for human consumption as well as providing limits of additive under Section 19 of the Act, 2006. In pursuance of the power under Section 92 of the Act, 2006, the Food Safety and Standards Authority of India, with prior approval of the Central Government, made the regulation named as the Food Safety and Standards (Food Products Standards and Food

Additives) Regulations, 2011. This regulation has provided standards for food products. Regulation 2.3.55 provides standard of areca nuts or betel nuts (supari). This regulation also provides the food additives permissible in betel nut or supari as per Appendix-A. In Appendix A any seed or nut is not permitted to have any food additive. Regulation 2.3.55 is quoted as under:-

"2.3.55 ARECANUTS OR BETELNUTS OR SUPARI

1. Description: (a) "Arecanuts" or "Betelnuts" or "Supari" means nuts obtained from Areca Palm (*Areca catechu* L.).

(b) The product shall be dry, well matured, sound, clean, whole or cut, fully dehusked, uniform in colour, i.e., bright shining to dull red colour.

(c) It shall be free from synthetic colouring matter and shall be free from insect infestation, visible moulds, fissures and shrinkage and shall not be hollow.

(d) The product shall not have any off flavour, odour or other undesirable characteristics and shall also conform to the following standards, namely:

S.No. Characteristics Requirements

1.

Moisture % (Maximum)

2. Damaged Nuts % (by weight) (Maximum)

a) For whole nuts or supari (Damaged nuts include blemish or cracked nuts, broken nuts, nuts not fully dehusked and those the pith of which is black)

b) For cut nuts or supari (Damaged nuts include blemish/cracked nuts, nuts not fully dehusked and those the pith of which is black)

3. Damaged by moulds and insects % (by weight) (Maximum)

2. Food additives: The product may contain food additives permitted in Appendix A.

3. Contaminants, toxins and residues: The product covered in this standard shall comply with the Food Safety and Standards (Contaminants, toxins and Residues) Regulations, 2011.

4. Food hygiene:

(a) The product shall be prepared and handled in accordance with the guidance provided in the Schedule 4 of the Food Safety and Standards (Licensing and

Registration of Food Businesses) Regulations, 2011 and any other such guidance provided from time to time under the provisions of the Food Safety and Standards Act, 2006 (34 of 2006).

(b) The product shall conform to the microbiological requirements given in Appendix B.

5. Packaging and labelling: The product covered by this standard shall be labelled in accordance with the Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

6. Method of analysis: The product shall be analysed as provided in the relevant Food Safety and Standards Authority of India Manual of Method of Analysis of Food."

18. As per Section 3(p) of the COTPA, 2003 tobacco products means products specified in the schedule whereas in the schedule of the COTPA, 2003 the following articles are mentioned as tobacco products:-

"THE SCHEDULE [See section 3(p)]

1. Cigarettes

2. Cigars

3. Cheroots

4. Beedis

5. Cigarette tobacco, pipe tobacco and hookah tobacco

6. Chewing tobacco

7. Snuff

8. Pan masala or any chewing material having tobacco as one of its ingredients (by whatever name called).

9. Gutka

10. Tooth powder containing tobacco."

19. From the perusal of the tobacco product, mentioned in item No.8, it is clear that pan masala or any chewing material having tobacco as one of its ingredients, is tobacco product. However, betel nut or supari is not the chewing material having tobacco as one of its ingredients.



20. Therefore, from the conjoint reading of Section 3(1)(j) and 3(1)(zk) of the Act, 2006 as well as Regulation 2.3.55 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011, it is clear that betel nut or supari is a primary food product, hence would come within the category of food and not the tobacco product.

21. Now, a question arises as to whether the use of tobacco in betel nuts makes them unsafe and prohibited under the Act, 2006. Section 92(1)(h) of the Act, 2006 authorises the Food Safety and Standards Authority of India, with prior approval of the Central Government, to make regulations regarding food additives in food products also. In the exercise of power under Section 92 of the Act, 2006 the Food Safety and Standards Authority of India framed Food Safety and Standards (Prohibition and Restriction of Sale) Regulations, 2011, Regulation 2.3.4 whereof is quoted as under:-

"2.3.4: Product not to contain any substance which may be injurious to health:  
Tobacco and nicotine shall not be used as ingredients in any food products."

22. Section 3(1)(zz) of the Act, 2006 provides the definition of 'unsafe food', which includes the addition of a substance directly or as an ingredient, which is not permitted. As the Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restriction of Sale) Regulations, 2011 provides prohibition of the addition of tobacco as an ingredient in food products, therefore, adding tobacco to any food product will be deemed to be unsafe food as per Section 3(1)(zz)(v) of the Act, 2006. Section 3(1)(zz)(v) of the Act, 2006 is being quoted as under:-

"3(1)(zz) 'unsafe food' means an article of food whose nature, substance or quality is so affected as to render it injurious to health:--

(v) by addition of a substance directly or as an ingredient which is not permitted; "

23. Therefore, from above analysis, it is clear that mixing of tobacco in any food item including the betel nut or supari is prohibited as per Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restriction of Sale) Regulations, 2011 and the same would be punishable under Section 59 of the Act, 2006.

24. In the judgment of the co-ordinate Bench of this Court in Manish Gupta Vs. State of U.P. (Supra), relied upon by the learned counsel of the applicants, the co-ordinate Bench, while deciding that case, overlooked Sections 3(1)(zk) and 3(1)(zz) of the Act, 2006, Regulation 2.3.55 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011, Regulation 2.3.4 of the the Food Safety and Standards (Prohibition and Restriction of Sale) Regulations, 2011 and also Section 16 of the COTPA, 2003. Therefore, being contrary to the statutory provisions, the above judgment is per incuriam, hence, can not be relied upon.

25. In the case of State of U.P. and another vs. Synthetics and Chemicals Ltd. And another; (1991) 4 SCC 139, the Hon'ble Apex Court considered the issue of judgement passed in per incuriam. Paragraph Nos. 40 and 41 of Synthetics and Chemicals Ltd. (supra) is quoted as under:-

"40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd. [(1944) 1 KB 718 : (1944) 2 All ER 293] ). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey [(1962) 2 SCR 558 : AIR 1962 SC 83] this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. [(1941) 1 KB 675, 677 : (1941) 2 All ER 11] the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. [(1989) 1 SCC 101] The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry [AIR 1967 SC 1480 : (1967) 2 SCR 650 : 20 STC 215] it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

26. Similarly, the Apex Court again considered the issue of judgement in per incuriam in the case of Roger Shashoua and others vs. Mukesh Sharma and others; (2017) 14 SCC 722 and observed that a decision can be per incuriam if any provision in statute, rule or regulation was not brought to the notice of the Court. Paragraph No. 42 of the Roger Shashoua (surpa) is quoted as under:-

"42. In *Sundeeep Kumar Bafna* [*Sundeeep Kumar Bafna v. State of Maharashtra*, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558], the Court referred to the Constitution Bench decision in *Union of India v. Raghubir Singh* [*Union of India v. Raghubir Singh*, (1989) 2 SCC 754] and *Chandra Prakash v. State of U.P.* [*Chandra Prakash v. State of U.P.*, (2002) 4 SCC 234 : 2002 SCC (L&S) 496] and thereafter expressed its view thus: (*Sundeeep Kumar case* [*Sundeeep Kumar Bafna v. State of Maharashtra*, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558], SCC p. 642, para 19) "19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the *per incuriam* rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be *per incuriam* any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be *per incuriam* if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the *per incuriam* rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of *per incuriam*."

(emphasis in original)"

27. Hon'ble Apex Court again in *V. Kishan Rao vs. Nikhil Super Speciality Hospital and another*; (2010) 5 SCC 513, observed that a decision ignoring the statutory provision is *per incuriam*, therefore, will not have binding effect. Paragraph No. 54 of the *V. Kishan Rao* (supra) is quoted as under:-

"54. When a judgment is rendered by ignoring the provisions of the governing statute and earlier larger Bench decision on the point such decisions are rendered *per incuriam*. This concept of *per incuriam* has been explained in many decisions of this Court. *Sabyasachi Mukharji, J.* (as his Lordship then was) speaking for the majority in *A.R. Antulay v. R.S. Nayak* [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] explained the concept in the following words : (SCC p. 652, para 42) "42. ... '*Per incuriam*' are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

Subsequently also in the Constitution Bench judgment of this Court in *Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court* [(1990) 3 SCC 682 : 1991 SCC (L&S) 71], similar views were expressed in para 40 at p. 705 of the report."

28. In the present case, the license to the applicants of the firm was given under the Act, 2006 with the condition that they will conform to the Act, 2006 while manufacturing or producing the sugandhit supari, therefore, contention of counsel for the applicants that the provision of the Act, 2006 will not be applicable while manufacturing or producing sugandhit supari, is misconceived.

29. In the present case, a sample of supari, recovered from the manufacturing unit of the applicants, had tobacco as an additive for organoleptic purpose, which is in violation of the Act, 2006 as the betel nut or supari is a primary food as per Section 3(1)(zk) of the Act, 2006, therefore, same is offence under the Act 2006 and the proceeding under the Act, 2006 against the applicants is absolutely correct, and invocation of the COTPA, 2003 in the present case does not apply.

30. So far as the contention of learned counsel for the applicants that the applicants have valid licence for manufacturing supari (betel nut), even then, provisions of the Act, 2006 have been invoked against them, treating them as manufacturers of the product of supari without licence is concerned, same can be raised at the time of framing of charges.

31. In view of the above analysis, this Court finds that there is no illegality in the impugned proceeding. Therefore, present application fails, having no merit.

32. Accordingly, the application is dismissed.

Order Date :- 9.7.2024 Vandana