

Afjal Ahmad vs The State Of U.P And Anr. on 26 July, 2023

Author: Rajeev Singh

Bench: Rajeev Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2023:AHC-LK0:49210

Court No. - 12

Case :- APPLICATION U/S 482 No. - 3673 of 2014

Applicant :- Afjal Ahmad

Opposite Party :- The State Of U.P And Anr.

Counsel for Applicant :- Farooq Ayoob

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Rajeev Singh,J.

1. Heard learned counsel for the applicant, learned AGA and perused the record.
2. In pursuance of earlier order dated 19.07.2023, Sri Amresh Kumar (Chief Food Safety Officer), Head Office, is present today before this Court.
3. The present application has been filed for quashing the order dated 10.12.2010 passed by Additional Chief Judicial Magistrate (Economical Offence), Court No.17, Barabanki in Case No.3098 of 2010 U/s 7/16 of Prevention of Food Adulteration Act, 1954 as well as to stay the proceedings of Case No.3098 of 2010.
4. Learned counsel for the applicant submits that sample was taken on 08.07.2010 and complaint was filed on 07.12.2010. He further submits that prior filing the said complaint before competent court, the provisions of Prevention of Food Adulteration Act, 1954 were repealed and new provisions of Food Safety and Standards Act, 2006 were enforced vide notification dated 29.07.2010. He further submits that all these facts were not considered by trial court.

5. Learned counsel for the applicant relied on the decisions of this Court in the cases of Deepu Agrahari @ Siddharth Kumar Gupta vs. State of U.P. and another reported in 2013 (3) EFR 99, Lokesh Kumar vs. State of U.P. and another reported in 2013 (3) EFR 175 and Pankaj Kumar vs. State of U.P. and another reported in 2013 (2) EFR 40.

6. Learned counsel for the applicant further submits that, in the aforesaid cases, this Hon'ble Court held that after notification of implementation of Food Safety and Standards Act, 2006, the complaint under the provisions of old act U/s 7/16 of Prevention of Food Adulteration Act, 1954 cannot be filed, therefore, kind indulgence of this Court is necessary.

7. Learned AGA opposes the prayer of applicant and submits that the sample was taken on 08.07.2010, on the said date, the provisions of Prevention of Food Adulteration Act, 1954 were applicable and, in case, the complaint was filed after the implementation of the new act, the applicant would be tried under the provisions of old act and the complaint was rightly filed under the provisions of Prevention of Food Adulteration Act, 1954. He further submits that this fact was not considered by this court in the aforesaid judgements relied by learned counsel for the applicant. Learned counsel for the applicant also relied on the decision of High Court of Punjab and Haryana at Chandigarh in the case of Neeraj Chaudhary and others vs. U.T. Administration and others reported in MANU/PH/2128/2015 and drew attention of this court on Section 1 sub-section 3 of F.S.S. Act and Sections 89, 97, 98 of F.S.S. Act. Learned AGA also submits that there is no illegality in the order passed by trial court, therefore, present application is liable to be dismissed.

8. Considering the submissions of learned counsels for the parties and going through the contents of application as well as other relevant documents and judgments relied by learned counsels for the parties, it is evident that it is an undisputed fact that sample was taken on 08.07.2010, complaint was filed on 07.12.2010 and the provisions of Prevention of Food Adulteration Act, 1954 were applicable, therefore, in case, the complaint was filed on 07.12.2010 under the provisions of Prevention of Food Adulteration Act, 1954 then there is no illegality. All these facts were not considered by this Court at the time of passing orders in the cases of Rupesh Kumar and others vs. State of U.P. and another and Deepu Agrahari @ Siddharth Kumar Gupta vs. State of U.P. and another reported in 2013 (3) EFR 99. Legal provisions as well as other evidences were also considered by the High Court of Punjab and Haryana in the case of Neeraj Chaudhary and others vs. U.T. Administration and others reported in MANU/PH/2128/2015, paragraph nos. 12 to 22 of this judgement are being reproduced as under:-

"12. Learned counsel for the petitioners vehemently contended that Central Government has issued various Notifications (Annexures P-3/A to 3/G) whereby various sections of F.S.S. Act, 2006 have been made applicable. Section 97 of F.S.S. Act, 2006 is with regard to repeal and savings and it has been made applicable vide Notification dated 29.07.2010. The inspection was carried out on 08.09.2010. Once Section 97 of the F.S.S. Act, 2006 has been made applicable vide Notification dated 29.07.2010, the earlier enactment stands repealed with effect from the date of said notification. Vide F.S.S. Act, 2006, all the old enactments regarding food items stand consolidated and Food Safety and Standards Authority of India has been authorized

to lay down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. Since the P.F.A. Act, 1954 stands repealed, proceedings under this Act are void ab initio and are not sustainable in the eyes of law.

13. Per contra, learned Addl. P.P., U.T. Chandigarh vehemently opposed the contentions of learned counsel for the petitioners and submitted that many provisions of the F.S.S. Act, 2006 came into force with effect from various dates as mentioned in Notifications (Annexures P-3/A to P-3/G, for example, Sections 36 to 47 of F.S.S. Act, 2006, mentioned in Notification (Annexure P-3/F), came into force w.e.f 31.07.2009, Sections 19 to 21, 23 to 29, 31 to 35, 48 to 80, 89, 94 to 98 and 100, mentioned in Notification (Annexure P-3/G) came into force w.e.f 29.07.2010. She further contended that enactment and Orders specified in Second Schedule shall stand repealed from such date as the Central Government may appoint in this behalf. She further contended that notification for repealing the enactment and Orders has been issued on 04.08.2011 and enactment and Orders stood repealed w.e.f 05.08.2011. She further contended that the Food Safety and Standards Rules, 2011 has been published in the Gazette of India vide G.S.R. 362 (E) dated 5th May, 2011 and the same came into force on 05.08.2011. The entire proceedings have been rightly initiated as per the provisions of P.F.A. Act, 1954 and rules made thereunder. The proceedings under the P.F.A. Act, 1954 have been saved by Section 97 of the F.S.S. Act, 2006.

14. I have considered the rival contentions of learned counsel for the parties.

15. In view of arguments advanced by learned counsel for the parties, following point arises for consideration by this Court:

Whether prosecution under the provisions of P.F.A. Act and Rules framed thereunder is sustainable against the petitioners in respect of offences detected on 08.09.2010 and complaints filed under the provisions of the P.F.A. Act, 1954 and Rules framed thereunder upon which cognizance taken by the Chief Judicial Magistrate are liable to be set aside and resultantly complaints and summoning orders deserve to be quashed?

16. Before I deal with the point raised in these petitions, it would be appropriate to reproduce the relevant provisions of the F.S.S. Act, 2006 and notification. Sections 1(3), 89, 97 and 98 read as under:

"Section 1. Short title, extent and commencement

1) xxxx (2) xxxx (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be

appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

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.

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 there under; or

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

(ii) 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 an 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.

98. Transitory provisions for food standards.- Notwithstanding the repeal of the enactment and Orders specified in the Second Schedule, the standards, safety requirements and other provisions of

the Act and the rules and regulations made thereunder and Orders listed in that Schedule shall continue to be in force and operate till new standards are specified under this Act or rules and regulations made thereunder:

Provided that anything done or any action taken under the enactment and Orders under repeal shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force accordingly unless and until superseded by anything done or by any action taken under this Act."

17. The Notification dated 04.08.2011 reads as under:

"In exercise of powers conferred by sub-section (1) of Section 97 of the Food Safety and Standards Act, 2006 (34 of 2006), the Central Government hereby repeals the enactments and orders in the Second Schedule of the Food Safety and Standards Act, 2006 and the Milk and Milk Products Regulations, 1992, with effect from 5th August, 2011".

18. The main purpose of the F.S.S. Act, 2006 is to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. The intention of the legislature can never be to create a situation when no law will remain in operation so as to prosecute a person for committing violation of the provisions of the P.F.A. Act, 1954.

19. It is pertinent to mention that F.S.S. Act, 2006 was made applicable w.e.f 28.05.2008. As per the provisions of the F.S.S. Act, 2006, Rules have to be framed and standards have to be prescribed and so many actions have to be taken under the said Act. Section 1(3) of the F.S.S. Act, 2006 makes it clear that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of the said Act and on the basis of notifications, only those provisions mentioned therein will come into force with effect from the dates specified therein, meaning thereby that if the F.S.S. Act, 2006 came into force on a date prior to the dates of detection of the offences, the same will not affect the power of the Food Inspectors to detect offence though the P.F.A. Act, 1954 stood repealed on the strength of the notification issued under Section 97(1) of the F.S.S. Act, 2006.

20. The effect of repealing a statute is to remove or destroy its all signs from the statute book completely as if it had never been in existence. Section 97 of the F.S.S. Act, 2006 is pari materia to Section 6-A of the General Clauses Act, 1897. When an old Act is repealed by new Act, period of change over is provided and this is specifically mentioned in the repeal and savings clauses of the new Act. The perusal of Section 97(1) of the F.S.S. Act, 2006 reveals that it will come into force w.e.f such date as the Central Government may appoint in this behalf. The Notification dated 29.07.2010 (Annexure P-3/G) is with regard to bring into force Section 97 of the F.S.S. Act, 2006 and Notification dated 04.08.2011 has been issued vide which enactments and Orders in Second

Schedule of F.S.S. Act, 2006 stand repealed. It means that till 05.08.2011, as mentioned in the Notification dated 04.08.2011, P.F.A. Act, 1954 and Rules framed thereunder remained in force.

21. Furthermore, Section 98 of the F.S.S. Act, 2006 refers to transitory provisions contained in it. The marginal note of Section 98 of the F.S.S. Act, 2006 contains a non obstante clause which reads thus: "notwithstanding the repeal of the enactment and Orders specified in the Second Schedule, the standards, safety requirements and other provisions of the Act and the rules and regulations made thereunder and Orders listed in the Schedule shall continue to be in force and operate till new standards are specified under this Act or the rules and regulations made thereunder. (Emphasis supplied)

22. In this case, the rules known as Food Safety and Standards Rules, 2011 have been published on 05.05.2011 and thereafter under Section 97(1) of the F.S.S. Act 2006, notification dated 04.08.2011 repealing enactment and Orders as mentioned in Second Schedule of the F.S.S. Act, 2006, has been issued and the F.S.S. Act, 2006 came into force w.e.f. 05.08.2011. The standards and safety requirements prescribed and actions to be taken under other provisions of the Act, Rules, Regulations and Orders enlisted in the Second Schedule shall continue to operate and shall have force till rules are framed and standards are prescribed under the F.S.S. Act, 2006. It is made clear that by virtue of notification issued under Section 1(3) of the F.S.S. Act, 2006, the provisions of P.F.A. Act, 1954 and Rules, 1955, framed thereunder, were not repealed and proceedings taken till 04.08.2011 under the provisions of the P.F.A. Act, 1954 are not affected by the provisions of the F.S.S. Act, 2006. In the present case, inspections were carried out on 08.09.2010, therefore, proceedings have been rightly initiated under the provisions of the P.F.A. Act, 1954 and Rules, 1955 made thereunder."

9. As incident was taken place prior to the implementation of new act, therefore, there is no illegality in the order passed by trial court.

10. In view of aforesaid observations, the present application U/s 482 CrPC stands dismissed.

11. However, it is open to the applicant that, in case, he surrender and applies for regular bail, the same shall be considered and decided by the court concerned in accordance with law laid down by the Hon'ble Apex Court in the case of Satendra Kumar Antil Vs. Central Bureau of Investigation and another (Special Leave to Appeal (Crl.) No.5191 of 2021).

Order Date :- 26.7.2023/Arpan