

# Ranjitsinh H.N. Nimbalkar And Ors vs State Of Maharashtra And Anr on 5 March, 2024

**Author: N. J. Jamadar**

**Bench: N. J. Jamadar**

2024:BHC-AS:11378

14-WP373-2023.DOC

Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 373 OF 2023

1. Ranjitsinh H. N. Nimbalkar	
2. Mrs. Jijamala R. N. Nimbalkar	
3. Vinay Shrikant Thakur	...Petitioners
4. Dhanaji Maruti Tone	
5. Swaraj India Industries Ltd	
Versus	
1. State of Maharashtra	
2. Ashok Bhupal Koli	...Respondents

Mr. Nikhil Sakhardande, Senior Advocate, a/w Harsh  
Gursahani, Ms. Subhra Paranchpe i/b PLR Chambers,  
for the Petitioners.  
Mrs. Geeta Mulekar, APP for the State/Respondent No.1.

CORAM: N. J. JAMADAR, J.  
DATED: 5th MARCH, 2024

JUDGMENT:

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1. This petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of an order dated 20th August, 2022, passed by the learned Additional Sessions Judge, Sangli, in Criminal Revision Application No.52 of 2018, whereby the learned Additional Sessions Judge was persuaded to dismiss the revision application preferred by the petitioners against an order passed by the learned Chief Judicial Magistrate, Sangli of 14-WP373-2023.DOC issue of process against the petitioners for the offences punishable under Section 59 read with

26(2)(i),3(1)(zz)(v), 26(2)

(v) and 63 read with 31(1) of the Food Safety and Standards Act, 2006 ("the Act, 2006").

2. Background facts leading to this petition can be stated in brief as under:

(a) M/s. Swaraj India Industries Limited ("Swaraj") -

petitioner No.5, is a Company registered under the Companies Act, 1956. Petitioner Nos.1 to 4 claim to be the erstwhile directors of Swaraj.

(b) Swaraj is engaged in manufacturing and selling products made of milk and holds FSSAI Central Licence bearing No.10013022001422, since the year 2013. Swaraj collects milk at various milk collection and chilling centers located across the Maharashtra, the details of which are included in the list annexed to the said licence.

(c) On 15th July, 2013 Mr. N. S. Masare, the then Food Safety Officer ("FSO"), conducted inspection at the premises of Swaraj located at Plot No.11, M.I.D.C., Jath, Taluka Jath, District Sangli. Two samples of the raw material i.e. ice mixed milk were collected from the said center, which the petitioners 14-WP373-2023.DOC claimed to be the milk collection and chilling centre. The FSO, inter alia, noted that there was no licence to run the establishment at the said premises.

(d) An inspection report was prepared. The samples were sent for testing on 16th July, 2013. Vide Report No.705 of 2013, the food analyst opined that the sample did not conform to the standards of buffalo milk.

(e) On 24th April, 2014, the FSO sent a proposal for sanction for prosecution. The designated officer, in turn, forwarded the proposal to the Joint Commissioner on 10th July, 2014. Armed with the said sanction, the FSO filed the complaint.

(f) By an order dated 17th July, 2014, the learned Chief Judicial Magistrate took cognizance of the offences and issued process for the offences punishable under Section 59 read with 26(2)(i), 3(1)(zz)(v), 26(2)(v) and 63 read with 31(1) of the Act, 2006.

3. Being aggrieved, the petitioners preferred Criminal Revision Application No.52 of 2018. By the impugned order, the learned Additional Sessions Judge was persuaded to dismiss the revision opining, inter alia, that the question as to whether there was compliance of the mandatory requirements prescribed under the Act is a matter for trial 14-WP373-2023.DOC and the learned Magistrate was not required to delve into those aspects at the time of issue of process.

4. Being aggrieved, the petitioners have invoked the writ jurisdiction.

5. An affidavit-in-reply is filed by Mr. N. S. Masare, the Assistant Commissioner - the then FSO, on behalf of respondent No.2, controverting the averments in the petition.

6. I have heard Mr. Sakhardande, the learned Senior Advocate for the petitioners, and Mrs. Mulekar, the learned APP for the State/Respondent No.1, at some length. With the assistance of the learned Counsel for the parties, I have perused the pleadings and the material on record.

7. Mr. Sakhardande, the learned Senior Counsel for the petitioners, submitted that the learned Additional Sessions Judge did not delve into the issues of non-compliance of the mandatory requirements, which were raised by the petitioners. Instead, the learned Additional Sessions Judge proceeded to decide the revision application on the premise that at the stage of issue of process, the learned Magistrate was not required to consider the aspects of breach of the provisions of the Act.

14-WP373-2023.DOC Such a technical approach, according to Mr. Sakhardande, vitiated the consideration by the revisional Court.

8. Mr. Sakhardande submitted that the prosecution against the petitioners suffers from three legal infirmities. First, under the provisions of the Act, 2006 and the Regulations framed thereunder, a separate licence for milk collection and chilling center was not required to be obtained. The premises from where the FSO collected the sample is duly included in the Annexure appended to the licence (Exhibit-C). Second, the prosecution has been initiated in flagrant violation of the provisions contained in Section 42 of the Act, 2006. Firstly, the food analyst did not send the analysis report within 14 days to the designated officer as mandated by sub-section (2) of Section 42. Secondly, the designated officer did not send the recommendations for sanctioning prosecution within 14 days as prescribed by sub-section (3) of Section 42. Third, Mr. Sakhardande would further urge, the prosecution was also lodged beyond the time limit stipulated under Section 77 of the Act, 2006, which proscribes a Court from taking cognizance of an offence under the Act, 2006 after the expiry of the period of one year from the date of the commission of an offence. In the case at hand, the samples were collected on 15 th July, 2013 14-WP373-2023.DOC and the cognizance of the offence was taken by the learned Chief Judicial Magistrate on 17th July, 2014, urged Mr. Sakhardande.

9. In opposition to this, Mrs. Mulekar, the learned APP, submitted that the complaint was lodged within one year of the collection of sample as is evident from the date of institution. The fact that the learned Magistrate took cognizance of the offence on 17th July, 2014, therefore, does not render the prosecution infirm. It is the date of the institution of the complaint which is of significance and not the date on which the Magistrate took cognizance of the offence. Mrs. Mulekar further submitted that the ground that the licence was not required as the milk chilling centre was included in the Annexure appended to the licence does not deserve consideration as the licence incorporates a specific note that the said licence was applicable for single premises and not for other locations listed in the Annexure, and the FBO will have to obtain independent licence from the applicable jurisdictional authority.

10. Joining the issue of the alleged non-compliance of the mandate contained in Section 42 of the Act, Mrs. Mulekar 14-WP373-2023.DOC would urge that the report of food analyst indicates that the analysis was completed within the stipulated period of 14 days. Thus, mere delay in dispatch of the report does not invalidate an otherwise legitimate prosecution. Mrs. Mulekar made an endeavour to urge that though there was non-compliance of the timeline by the designated officer in

making his recommendation for prosecution, as is envisaged by sub- section (3) of Section 42 of the Act, 2006, the same is not fatal to the prosecution. The delay was inadvertent and not intentional. Therefore, the petition does not deserve to be entertained, submitted Mrs. Mulekar.

11. To start with it is imperative to note that on 15th July, 2013, Mr. Masare N.S., FSO, Food and Drug Administration (M.S.), Sangli, had collected two sets of samples of ice mixed milk under D.O.paper slip SNG/ DO/ 040/ 125/ 2013 and SNG/DO/040/126/2013. Accordingly, notice to the Food Business Operator in form V-A under Rule 2.4.1 (3) was given. The samples so collected are mentioned at Item Nos. 1 and 2 respectively in the said notice.

12. It would be contextually relevant to note that in respect of the samples collected vide Sr. No. 125/2013, a complaint was lodged by the FSO, being RCC No. 293/2014, for the offences 14-WP373-2023.DOC punishable under Sections 26 (2)(i), 3 (i), 22 (v), 26(2) (v) and 31 (1) of the Act, and process was issued in that complaint as well. The petitioners had carried the matter in Revision, being Criminal Revision Application No. 89 of 2014. By a judgment and order dated 1st October, 2018, the learned Additional Sessions Judge, Sangli in an almost identical fact- situation and with the same ground of challenge, was persuaded to set aside the order of issue of process passed by the learned Chief Judicial Magistrate. It was, inter alia, held that there was non-compliance of the provisions contained in Section 42 (2) of the Act, 2006 as the Food Analyst had not sent the report of analysis within 14 days of receipt of the sample. Secondly, there was non-compliance of Sub Section (3) to Section 42 as well, as the designated officer had not sent his recommendation within 14 days of the scrutiny of the report of the Food Analyst. Thirdly, the Food Analyst had applied the standard of buffalo milk when the sample collected was that of ice mixed milk.

13. Mr. Sakhardande the learned Senior Advocate for the petitioners strenuously urged that as the prosecution, based on the collection of sample Sr. No. 126 of 2013, suffers from the very same infirmities which were noticed in the case of 14-WP373-2023.DOC sample No. 125 of 2013, (in which the prosecution was interdicted by the Revisional Court), in the instant case the learned Sessions Judge was not at all justified in dismissing the Revision Application. On this count alone, according to Mr. Sakhardande, the impugned order deserves to be quashed and set aside.

14. The aforesaid submission deserves appreciation from two perspectives: factual and legal. On facts, the submission appears impeccable as the notice to the Food Business Operator (Exhibit-D Pg. 87) makes it abundantly clear that two samples of the very same food item i.e. 2000 ml of ice mixed milk were collected by the FSO under Sr. Nos. 125 of 2013 and 126 of 2013. The sample collected vide Sr. No. 125 of 2013 was the subject matter of RCC No. 293 of 2014. Eventually, the order of issue of process in the said case was set aside by the Revisional Court by the judgment and order dated 1st October, 2018 in Criminal Revision Application No. 89 of 2014. In the said case as well, the samples were sent for analysis on 16th July, 2014. The report of the Food Analyst was received by FSO on 6th September, 2013. The Designated Officer forwarded his recommendations on 10th July, 2014. It is not the case of the prosecution that the order passed in Criminal Revision 14-WP373-2023.DOC Application No. 89 of 2014 has not attained finality.

15. Evidently, both prosecutions have been assailed on the same grounds of non-compliance with the mandate contained in Section 42 (2) and 42 (3) and the absence of justification for prosecuting the petitioner Nos. 1 to 4 by invoking the provisions contained in Section 66 of the Act, 2006. In Criminal Revision Application No. 89 of 2014 arising out of Criminal Case No. 293 of 2014, the challenge was sustained by the learned Additional Sessions judge and the proceedings were quashed and set aside. In the instant case, however, the learned Additional Sessions Judge declined to interfere with the order of issue of process.

16. On first principles, the reasons which weighed with the learned Additional Sessions Judge in Revision Application No. 89 of 2014, arising out of RCC No. 293 of 2014, govern complaint RCC No. 292 of 2014 as well, since the facts are identical. Nonetheless, I deem it appropriate to independently evaluate the challenge in the instant case. Moreover, there is one aspect which, it seems, was not adverted to in Criminal Revision Application No. 89 of 2014, namely, the requirement of a license under the provisions of the Act, 2006 and the Regulations framed thereunder for a milk chilling center.

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17. The preamble of the Food Safety and Standards Act, 2006, indicates that it is an Act 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. In order to ensure food safety, the Act, inter alia, provides for licensing for the manufacture of food products to be entrusted to the Commissioner of food safety and officers under his control. Section 31 of the Act declares that no person shall commence or carry on any food business except under a licence. Section 26 casts responsibility on food business operators by providing that every food business operator shall ensure that the articles of food satisfy the requirements of this Act, the Rules and Regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under his control.

18. In the exercise of powers conferred by Section 91 of the Act, 2006, the Central Government framed the Food Safety and Standards Rules, 2011. Likewise in the exercise of the powers 14-WP373-2023.DOC conferred by Clause (o) of sub-section (2) of Section 92 read with Section 31 of the Act, 2006, the Central Government framed Regulations namely Food Safety and Standards (Licensing and Registration of Food Businesses) Regulation, 2011. Under the said Regulations by virtue of Regulation 2.1, all food businesses and food operators are required to obtain licenses and get themselves registered as per the provisions of FSS Regulations, 2011.

19. I shall advert to the aspect of the requirement of license for the milk chilling center, a little later. The challenge mounted on behalf of the petitioners on the count of non-compliance of the provisions contained in Section 42 deserves consideration, first.

20. Under Section 41 of the Act, 2006, the Food Safety Officer may search any place, seize any article of food or adulterant, if there is a reasonable doubt about them being involved in the commission of any offence relating to food, and shall thereafter inform the Designated Officer of the actions taken by him in writing. Section 42 of the Act, 2006 prescribes the procedure for launching prosecution. It reads as under:-

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42. Procedure for launching prosecution.-

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

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.

(3) The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.

(4) The Commissioner of Food Safety shall, if he so deems fit decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,-

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

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

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

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21. Upon collection of the sample, the FSO is required to send such samples for analysis to the Food Analyst. Sub Section (2) of Section 42 prescribes a time limit for analysis of the sample so received from FSO and for sending the report. The Food Analyst, sub Section (2) of Section 42 mandates, shall analyse the sample and send the analysis report mentioning the method of sampling and analysis within 14 days to the Designated Officer. Sub Section (3) of Section 42 enjoins the Designated Officer to decide, after scrutiny of the report of the Food Analyst, as to whether the contravention is punishable with imprisonment or fine only and in case the contravention is punishable with imprisonment, send his recommendations within 14 days to the Commissioner of Food Safety for sanctioning prosecution. Sub Section (4) of Section 42 further enjoins the Commissioner of Food Safety to decide within the period prescribed by the Central Government whether to refer the matter to the Court of ordinary jurisdiction or Special Court.

22. The provisions contained in Section 77 also deserve to be immediately noticed. It precludes the Court from taking cognizance of an offence under the Act, 2006 after the expiry of a period of one year from the date of commission of an 14-WP373-2023.DOC offence. The proviso empowers the Commissioner of Food Safety, for reasons to be recorded in writing, to approve prosecution within an extended period of upto three years.

23. Cumulatively, it becomes abundantly clear that the Parliament has considered it necessary to prescribe a time limit for taking actions by the competent authorities under the Act, 2006. In sub-sections (2), (3) and (4) of Section 42 as well as Section 77, the Parliament has used the word "shall", which ordinarily gives a mandatory character to the provision.

24. In the affidavit-in-reply, an endeavour has been made to contend that the aforesaid provisions are directory in nature. An effort also seems to have been made to contend that what is mandatory under Sub-Section (2) of Section 42 is the analysis of sample, within 14 days, and not the sending of the report.

25. The provisions contained in Section 46 of the Act, 2006 provide an answer. Section 46 incorporates the duties and functions of the Food Analyst. Sub Section (2) of Section 46 provides that the Food Analyst shall cause to be analysed such samples of article of food as may be sent to him by the Food Safety Officer or by any other person authorised under this Act. Sub-Section (3) of Section 46 reads as under:

14-WP373-2023.DOC (3) The Food Analyst shall, within a period of fourteen days from the date of receipt of any sample for analysis, send--

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

(ii) where such sample is received under section 40, a copy of the report indicating the method of sampling and analysis to the person who had purchased such article of food with a copy to the Designated Officer:

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

26. On a plain reading of Sub Section (3) of Section 46 it appears that, the time limit is for sending the report post- analysis. The proviso to sub Section (3) of Section 46 addresses a situation where the sample cannot be analysed within 14 days of its receipt and enjoins the Food Analyst to inform the Designated Officer and the Commissioner of Food Safety by ascribing reasons and specifying the time to be taken for analysis.

27. It is well recognized that the legislature does not use any word as a surplusage. A provision is required to be interpreted in such a manner that no word is rendered redundant. If the intent of the legislature was restricted to 14-WP373-2023.DOC prescribing the time limit for analysis only, it would not have used the expression "and send the analysis report" in subsection (2) of Section 42 of the Act, 2006. Nor the time limit could have been prescribed in Sub-Section (3) of Section 46 to "send report".

28. I, therefore, find it difficult to accede to the submission on behalf of the prosecution that not sending the report within 14 days of the receipt of the sample for analysis is a curable irregularity.

29. Non-compliance of Sub Section (3) of Section 46, in the facts of the case, is rather incontrovertible. The report of the Food Analyst was received on 6th September, 2013. The Designated Officer purportedly made the recommendations on 7th April, 2014 after about 7 months of receipt of the report, when Sub Section (3) of Section 42 enjoined the designated officer to send his recommendations within 14 days. An endeavour was made to salvage the position by submitting that the delay so caused was accidental and not intentional.

30. In the face of the peremptory nature of the provisions contained in Sub Section (3) of Section 42, a submission based on an unintentional delay, or for that matter inadvertence, does not merit countenance. As noted above, the Parliament 14-WP373-2023.DOC has, in its wisdom, considered it appropriate to prescribe definite time limit for analysis and sending the report as well as taking a decision to make a recommendation for sanction of prosecution.

31. If considered in the light of the consequences which the delay in the analysis of the sample and recommendation to sanction prosecution, when the parliament has prescribed a time limit of one year for taking cognizance of the offences, the delay cannot be brooked.

32. The decision of the Madras High Court in the case of A. Muthukumar Vs. Mr. Chidambaram<sup>1</sup>, on which reliance was placed by Mr. Sakhardande appears well founded.

33. In the said case, after following another judgment of the S.Sakthive and Others Vs. The State Rep. By Food Safety Officer in Crl.O.P.(MD)No.5994 of 2019 and Crl.M.P. (MD)Nos.3871 and 3872 of 2019 it was enunciated that the recommendation to sanction prosecution beyond the stipulated period of 14 days was in violation of provision of Section 42 (3) of the Act, 2006.



34. The submission on behalf of the petitioner that the order passed by the learned Magistrate taking cognizance of 1 2017 SCC Online Mad 32915 14-WP373-2023.DOC the offences under the Act, 2006 and the issue of process suffers from illegality as cognizance of the offence was taken beyond the period stipulated under Section 77 of the Act, 2006, however, does not appear to be well founded on facts and in law.

35. The complaint was lodged on 15th July, 2014, albeit on the last day of the year from the date of the commission of the alleged offences. The learned Magistrate took cognizance of the offences on 17th July, 2014. The submission on behalf of the petitioners that as the cognizance was taken by the learned Magistrate beyond the period of one year, though the complaint was lodged within the stipulated period of one year, is in teeth of Constitution bench judgment in the case of Sarah Mathew vs Inst., Cardio Vascular Diseases & Ors<sup>2</sup> on which reliance was placed by the learned APP. The Constitution Bench held that for the purpose of the period of limitation under section 468 of the Code of Criminal Procedure (which provides a bar to taking cognizance after lapse of the period of limitation), the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes 2 (2014) 2 SCC 62 14-WP373-2023.DOC cognizance.

36. This propels me to the question of the requirement of a separate license for a milk chilling center, which was allegedly operated by the petitioner No. 5- FBO at the subject premises.

37. Mr. Sakhardande submitted that in view of the provisions contained in Section 31 of the Act, 2006 and Regulations 2011, it was not obligatory to have a separate license for a milk chilling center. Inviting the attention of the Court to Annexure - A to the license, (pg.85) which includes the list of milk chilling center and bulk milk cooling centers. Mr. Sakhardande would urge that the prosecution of the petitioners for the alleged offence under Section 63 of the Act, 2006 was wholly untenable.

38. Mr. Sakhardande also banked upon an order issued by the Food Safety and Standards Authority dated 14th January, 2015 which, inter alia, provides that the Milk collections centers in the rural areas (village based), with or without cooling facilities, for raw milk collection from farmers and set up by licensed chilling centres/processing plants/organisations and working under their supervision, do not need to obtain individual license/registration provided such collection centers would be listed in an Annexe to the license of the overseeing 14-WP373-2023.DOC licensed chilling centres/processing plants/organisations.

39. The controversy sought to be raised can be resolved by a conjoint reading of the provisions contained in the Sections 31 and 63 of the Act, 2006 and the Regulations, 2011. The relevant part of Section 31 reads as under.

31. Licensing and registration of food business.- (1) No person shall commence or carry on any food business except under a licence.

.....

(5) Every licence shall be in such form and subject to such conditions as may be specified by regulations. (6) A single licence may be issued by the Designated Officer for one or more articles of food and also for different establishments or premises in the same area.

(7) If the articles of food are manufactured, stored, sold or exhibited for sale at different premises situated in more than one area, separate applications shall be made and separate licence shall be issued in respect of such premises not falling within the same area..."

40. Section 63 prescribes punishment for carrying out a food business without a license. If any person or food business operator (except the persons exempted from licensing under sub-section (2) of section 31 of this Act), himself or by any person on his behalf, who is required to obtain a licence, manufacturers, sells, stores or distributes or imports any article of food without a licence, shall be punishable with imprisonment for a term which may extend to six months and 14-WP373-2023.DOC also with a fine which may extend to five lakh rupees. Clause (1) of Regulation 2.1.2 under the heading, license for food business, reads as under:-

" (1) Subject to regulation 2.1.1, no person shall commence any food business unless he possess a valid license:

..... "

41. Regulation 2.1.5 provides for the procedure for license in certain local areas, it reads as under:-

"(1) A single license may be issued by the Licensing Authority for one or more articles of food and also for different establishments or premises in the same local area including collection and chilling units run by milk co-operatives or its members."

42. As reliance was placed on the order dated 14th January, 2015 issued by the Food Safety and Standards Authority of India, it may be appropriate to extract Clause Nos. 2 and 3 of the said order.

"...2. Milk collection centres in the rural areas (village based), with or without cooling facilities, for raw milk collection from farmers and set up by licensed chilling centres/processing plants/ organisations and working under their supervision, do not need to obtain individual license/registration.

Provided that all such collection centres should be listed in an Annexure to the license of the overseeing licensed chilling centres/ processing plants/organisations. A copy of such license/ registration certificate shall be displayed at a prominent place in the premises of the licensee and the collection centres.

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3. All other Food Business Operators (FBOs) not covered under para 2 above shall be required to obtain individual license/registration..."

43. If the provisions contained in Sub Sections (6) and (7) are read in conjunction, it becomes abundantly clear that sub Section (6) enables the issue of a single license for one or more articles of food and also for different establishments or premises in the same area. In contrast, if the articles of food are manufactured stored, sold or exhibited for sale at different premises situated in one or more area separate applications shall be made and a separate license shall be issued in respect of such premises not falling within the same area. The provisions of Regulations 2.1.5 (1) are required to be construed keeping in view the enabling provision for a single license for the establishments or premises in the same area, under sub- Section (6) of Section 31, and the mandatory requirement of a separate license in respect of the different premises not falling within the same area, under sub Section (7) of section 31. The order dated 14th January, 2015 issued by the Food Safety and Standards Authority of India cannot be read in derogation of the aforesaid statutory provisions and regulations.

44. A profitable reference in this context can be made to a Division Bench judgment of this Court in the case of The 14-WP373-2023.DOC Association of the Traders carrying the Food Business of various Food items Vs. Union of India and Others in Writ Petition No. 477 of 2012, where the constitutional validity of the provisions contained in the Act, 2006 was challenged. The interplay between sub-Sections (6) and (7) of Section 31 of the Act, 2006 was explained by the Division Bench as under:-

" Section 31 provides for licencing and registration of food business. Sub-section 6 of section 31 provides that a single licence may be issued by the Designated Officer for one or more articles of food and also for different establishments or premises in the same area. Sub-section 7 provides that if articles of food are manufactured, stored, sold or exhibited for sale at different premises situated in more than one area, separate applications shall be made and separate licence may be issued in respect of such premises not falling within the same area. A plain reading of these provisions in our opinion, does not create any unreasonableness. The intention of the legislature is quite clear that a person who intends to deal with one or more articles of food, however in different establishments or premises in the same area could become eligible for a single licence. In other words, such a person is not required to apply for multiple licences for different premises being used in 'same area'. The legislative intent which can be derived is that a person who seeks to deal with one or more articles of food from different premises in the same area need not be subjected to multiple applications so as to make it convenient both for the person seeking such a licence as also for the authorities. Sub-section 6 cannot be read in isolation as sought to be urged on behalf of the petitioner. Sub-section 6 is required to be read along with sub-section 7 which throws a complete light as to how the requirement of sub-section 6 which pertains to a person who would deal in one or more articles of food in the same area is different from a person who would deal in articles of food, manufactured, sold, or exhibited for sale at different premises situated in more than one area, where separate applications for licence are required to be made, in respect of premises not falling within the same area. Sub-section 7 therefore, covers a province different from what is contemplated under sub- section

6. Sub-section 7 in fact is more extensive and postulates that a separate licence could be necessary for dealing in articles of food when manufactured, stored, sold or exhibited for sale at different premises situated in more than one area and/or premises not falling within the same area..."

45. In view of the aforesaid enunciation that sub Section (7) of Section 31 is more expansive in operation and postulates that a separate license would be necessary for dealing in articles of food when manufactured, stored, sold or exhibited for sale at different premises situated in more than one area and/or premises not falling within the same area, the submission that the license is not required for the concerned milk chilling unit does not merit acceptance unreservedly.

46. The facts of the case are quite stark. The principal place of business of Swaraj is at Phaltan, Dist. Satara. The milk chilling center in question is situated at Jath MIDC, Tal. Jath, Dist. Sangli. Evidently, the units are situated at different and far off places. Prima facie it does not appear that it could be urged that the milk chilling center in question is situated in the same local area, so as to fall within the ambit of Sub Section (6) of Section 31 of the Act, 2006. Nor it could be shown that the place of Milk Chilling Centre falls within the 14-WP373-2023.DOC 'local area' as notified by the Commissioner of Food Safety, as provided under Clause (zb) of Section 3 of the Act, 2006.

47. I am, therefore, not inclined to accede to the submission that the establishment in question did not require a license. Resultantly, the complaint for the offence punishable under Sections 63 of the Act, 2006 for storing an article of food without license must proceed to trial.

48. This takes me to the submission on behalf of the petitioners that in the absence of any material to show that the petitioners were in charge of, and responsible to, the company for the conduct of the business, the petitioners could not have been prosecuted by invoking the provisions contained in Section 66 of the Act, 2006.

49. A bare perusal of Section 66 indicates that under Sub Section (1) where an offence under the Act, 2006 has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, shall be liable to be proceeded against and punished. However, under the first proviso, where a company has different establishments or branches or different units, the concerned Head or the person in-charge of such 14-WP373-2023.DOC establishment, branch, unit nominated by the company as responsible for food safety shall be liable for contravention in respect of such establishment, branch or unit. Under Sub Section (2) of Section 66 where an offence under the Act, 2006 has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished.

50. Reverting to the facts of the case in the complaint, apart from the designation of petitioner Nos. 1 to 3 as Director and petitioner No. 4 as area Manager of petitioner No. 5- Swaraj, there are no averments to indicate that the role of the petitioners-accused especially that of petitioner Nos. 1 to 3.

Prima facie, there is no material to show that the petitioner Nos. 1 to 3 were in charge of and responsible for the conduct of the business of Swaraj at the Milk Chilling Center, Jath where the offences were allegedly committed.

51. Nor there is material to show that the offence has been committed with the consent or connivance or is 14-WP373-2023.DOC attributable to neglect on the part of petitioner Nos. 1 to 3, so as to bring their acts and conduct within the dragnet of Sub Section (2) of Section 66 of the Act, 2006. In the absence of such averments or material, it is impermissible to proceed against the petitioner Nos. 1 to 3 by invoking the principle of vicarious liability.

52. A useful reference in this context can be made to a decision of the Supreme Court in the case of Managing Director, Castrol India Limited Vs. State of Karnataka and Another<sup>3</sup> wherein in the context of Section 74 of the Standards of Weights and Measures Act, 1976, which ingrafts the principle of vicarious liability for offences committed by a Company, the following observations were made.

"7. In the present complaint petition, there is no averment or statement whatsoever that the appellant as the Managing Director of the Company was responsible or incharge of the conduct of the business of the Company in respect of which the offence in question has been alleged to have been committed. Neither there is any averment to the effect that the appellant is otherwise connected or responsible for commission of any of the acts on the basis of which the offence(s) is alleged to have been committed.

8. It will not be necessary to burden this order by a detailed reference to numerous pronouncements of this Court interpreting 3 (2018) 17 SCC 275 14-WP373-2023.DOC similar provisions of other statutes holding that a clear and categorical statement to the above effect is required to be made in the complaint petition to proceed against an officer of the Company so as to determine his vicarious liability for the offence committed by the company. In the present case the Company is not even arrayed as an accused.

9. Taking into account the provisions of Section 74 of the Act, the views expressed by this Court on pari materia provisions contained in different statutes and the absence of any specific averments in the complaint petition, as indicated above, we are of the view that the proceedings against the accused- appellant are liable to be quashed.... "

53. Thus, the petitioner Nos. 1 to 3 cannot be proceeded against even for the alleged offence punishable under Section 63 of the Act, 2006.

54. The position of petitioner No. 4 -accused No. 1, who was stated to be the Area Manager and was present at the time of the inspection, would however be different. There are categorical averments in the complaint that the accused No. 1 was present at the time of inspection and was managing the affairs of the establishment. The FSO purchased the samples of food from accused No.1 and

obtained a receipt under the signature of accused No. 1. Copy of notice in Form V-A was also served on accused No. 1. In the aforesaid view of the matter, the case of the petitioner No.4-accused No.1 may fall within the ambit of 14-WP373-2023.DOC the first proviso to Section 66 (1) of the Act, 2006 as he appeared to be the person in charge of the said establishment. Thus, the aspect of vicarious liability of petitioner No. 4 - accused No. 1 must, therefore, be decided at the trial.

55. The upshot of aforesaid consideration is that the impugned order deserves to be interfered with to the extent of issue of process for the offences punishable under Section 59 read with Section 66 of the Act, 2006 for contravention of the provisions contained in Section 26 (2) (1), 3 (1) (zz) (v) of the Act, 2006 and Regulation 2.1.1 (1) and 1.2 (10) of Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011, qua all the petitioners, and for the offence punishable under Section 63 for contravention of Section 31 (1) of the Act, 2006 and Regulation 2.1.2 (1) of Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011, qua petitioner Nos. 1 to 3 only. The complaint would, however, proceed against petitioner No. 4 - accused No. 1 and petitioner No. 5 - accused No. 5 for an offence punishable under Section 63 read with Section 66 of the Act, 2006 only.

56. Resultantly, the Petition deserves to be partly allowed.

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57. Hence, the following order:-

#### ORDER

1. The Petition stands partly allowed.
2. The Order passed by the learned Magistrate of issue of process for the offence punishable under Section 59 read with Section 66 of the Act, 2006 for contravention of Section 26 (2) (1), 3 (1) (zz) (v) of the Act, 2006 and Regulation 2.1.1 (1) and 1.2 (10) of Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011, stands quashed and set aside qua all the petitioners - accused.
3. The order of issue of process for the offence punishable under Section 63 for contravention of Section 31 (1) of the Act, 2006 and Regulation 2.1.2 (1) of Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011, stands quashed and set aside qua petitioner Nos. 1 to 3 - accused Nos. 2 to 4, only.
4. The complaint shall proceed against petitioner No. 4 - accused No. 1 and petitioner No. 5 - accused No. 5 for the offence punishable under Section 63 read with Section 66 of the Act, 2006 for contravention of Section 31 (1) and Regulation 2.1.2 (1) of Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011, only.

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5. Rule made absolute to the aforesaid extent.

6. No costs.

[N. J. JAMADAR, J.]