

# Vishal Jaiswal vs The State Of West Bengal & Ors on 8 May, 2023

**Author: Bibek Chaudhuri**

**Bench: Bibek Chaudhuri**

08.05.2023  
Sl. No.31.  
M/L.  
Mithun.  
Ct.No.42.

CRR/931/2023

Vishal Jaiswal  
Vs.  
The State of West Bengal & Ors.

Mr. S.S. Sarkar, Adv.  
Mrs. Indrani Chakraborty, Adv.  
Ms. Sarda Sha, Adv.

...for the petitioner.

A complaint was lodged by one Ashis Kumar Sen, Sub-Inspector, Food and Edible Oil, Enforcement Branch of Kolkata Police with the Officer-in-Charge of the said Branch on 2 nd September, 2021 against the petitioner under Sections 120B/420/269/272 of the Indian Penal Code.

It is alleged that the petitioner was involved in food adulteration by mixing white talcum powder with mosoor pulses. On receiving such complaint, investigation was undertaken and charge-sheet was filed against the petitioner under Sections 269/272/420 of the Indian Penal Code.

At the time of consideration of charge by the learned Additional Sessions Judge, Sealdah, the petitioner filed an

application under Section 227 of the Code of Criminal Procedure

contending, inter alia, that the alleged incident if committed at all would be an offence under the Food Safety and Standards Act,

2006. If any food material is adulterated, investigation, search and

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seizure would be conducted by the Food Safety Officer under the Commissioner of Food Safety.

The Food Safety Officer is entitled to take samples of the adulterated goods, seize the adulterated goods, conduct search of the premises where adulterated goods are allegedly stored and also submit prosecution.

Section 89 of the said Act clearly states that the provisions of the 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. Thus, Clause 89 provides for overriding effect of this act over all other food related laws.

The learned Advocate for the petitioner further refers to a decision of the Hon'ble Supreme Court in Jeewan Kumar Raut & Anr. Vs. Central Bureau of Investigation reported in (2009) 7 SCC 526 wherein it is clearly held by the Hon'ble Supreme Court :-

"26. It is well-settled principle of law that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. In a situation of this nature, the respondent could carry out investigations in exercise of its

authorisation under Section 13(3)(iv) of TOHO. While doing so, it could exercise such powers which are otherwise vested in it. But, as it could not file a police report but a complaint petition only; sub-section (2) of Section 167 of the Code may not be applicable."

The learned Advocate for the petitioner has also filed a reported decision of the Gauhati High Court in WP(Crl.)/12/2022 decided on 16th January, 2022 wherein it is observed that the provision of Section 41 and 42 of the said Act, make special provision as regard how investigation needs to be carried out whenever there is a reasonable doubt about commission of the offence relating to food item by the authority. Section 41 prescribes that Food and Safety Officer have the power to search and seizure of food articles and Section 42 prescribes that the Food and Safety Officer is responsible for inspection of food business, drawing samples and sending the same to the food analyst for analysis and thereafter can launch the prosecution in appropriate case. The above provision clearly indicates that only the Food Inspector can carry out such investigation, inquiry and can launch prosecution to determine the article whether same is adulterated. Further, in view of the provision of Section 4(2) of CrPC, all offences under any other law shall be dealt with in accordance with the enactment regulating the manner of investigation and trial etc. and as such the Food Safety and Standard being a complete statute, has an overriding effect as Special Act to deal with such food items.

Therefore, the investigation carried out by the police authority is illegal and the charge-sheet is also bad in law.

Having heard the learned Advocate for the petitioner, it appears to this Court that the moot question involved in the instant revision is as to whether in view of the Food Safety and Standards Act, 2006, penal provision under Sections 269 and 272 of the Indian Penal Code have become redundant or not.

Therefore, the instant revision is admitted.

Petitioner is directed to serve notice upon the opposite party No.2 and 3 under registered speed post with acknowledgment due and file affidavit of service within three weeks from the date of this order.

The State of West Bengal be served through the learned Public Prosecutor, High Court, Calcutta.

In the meantime, further proceedings in connection with Sessions Case No.21(01) of 2023 be stayed till 31st July, 2023.

Liberty to mention.

( Bibek Chaudhuri, J. )