Nestle India Ltd. Dlf. & Anr vs State Of West Bengal on 23 December, 2022

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:
THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 2069 of 2000

NESTLE INDIA LTD. DLF. & ANR.
VS.
STATE OF WEST BENGAL

For the Petitioner : Mr. Rajesh Batra, Adv.
Ms. Sonia Kukreja, Adv.
Mr. Sakabda Roy, Adv.
Ms. Sanjana Jha, Adv.
For the Opposite Party : Mr. Saswata Gopal Mukherjee, ld. P.P.

Hearing concluded on : 29th November, 2022

Judgement on : 23rd December, 2022

Siddhartha Roy Chowdhury, J.:

1. This criminal revision assails the order passed by learned Sub-

Divisional Judicial Magistrate, Barrackpore (as then was) on 29th June, 2000 in G.R. Case No. 3181 of 1998, whereby learned Sub-Divisional Judicial Magistrate was pleased to take cognizance of offence punishable under Section 272/273 of the Indian Penal Code and to issue warrant of Proclamation and Attachment against Sri. C.M. Donati, Managing Director, Nestle India Limited.

2. Briefly stated, Sri Kausik Mitra on 15th April, 1998 informed the Bizpore Police Station in writing that he had purchased 500 gram refill pack of Lactogen-2 manufactured by Nestle India Limited from M/s Neyogi Brothers of Bizpore and after opening the said pack he detected that the baby food was adulterated and improper as insect was found inside the pack. Upon receipt of information Bizpore P.S. General Diary No. 270 dated 5th April, 1998 was recorded and police visited the residence of Kausik Mitra, seized two open pack of Lactogen-2 and the cash memo. The police officer, thereafter, visited the premises of M/s Niyogi Brothers and seized 45 packets of Lactogen-2 out of which 3 packets were taken as sample. The open packet and sample packet had then been sent to the Director, West Bengal Public Health Laboratory, Government of West Bengal for analysis and Public Analyst (Food & Water) vide his report dated 13th August, 1998 opined that the opened refill pack seized from Kausik Mitra was unfit for human consumption and tested unsatisfactory for

bacteriological test. Pursuant to such report Bizpore P.S. Case No. 130 Dated 18th September, 1998 was registered under Section 272/273 of the Indian Penal Code which gave rise to G.R. Case No. 3181 of 1998. After investigation the Investigating Officer submitted the charge sheet under Section 272/273 of the Indian Penal Code, along with other accused persons against the petition no. 2 Mr. C.M. Donati showing him as absconder, though during investigation no summon was issued from the Police calling upon Mr. Donati to join the investigation. Learned Sub-Divisional Judicial Magistrate, Barrackpore however, issued warrant of proclamation and attachment against the petitioner no. 2, C.M. Donati.

3. Assailing the said order Mr. Rajesh Batra, learned Counsel representing the petitioner submits that the proceeding pending before the S.D.J.M., Barrackpore is not maintainable being barred by limitation. The proceeding has been initiated on the basis of a police report which is impermissible. Dilating on the point Mr. Batra argues that Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'P.F.A. Act') was enacted by the Parliament with effect from 29th September, 1954. It was a complete code providing for penalties and it provided an exhaustive procedure for inquiry and trial. The West Bengal Amendment in respect of four Central Acts so far as their operation within the State of West Bengal is concerned was made vide West Bengal Act No. XLII of 1973. Accordingly Prevention of Food Adulteration, Drugs and Cosmetics (West Bengal Amendment) Act, 1973 was brought into the statute book. This Act amended P.F.A. Act 1954. Sections 272 to 276 of the I.P.C. along with Schedule II to the Criminal Procedure Code, Act 5 of 1998 along with Drugs and Cosmetics Act. Thus, by West Bengal Amendment, Section 16 (1) of P.F.A. Act was amended to the effect that "punishment for a term which shall not be less than six months, which may extend to six years" was replaced with "imprisonment for life" for P.F.A. Act and in Sections 272 and 273 of I.P.C. "the imprisonment for six months" was be read as "imprisonment for life". The offences for both the aforesaid Acts were made triable by the Court of sessions, cognizable and non- bailable in nature.

4. Subsequently P.F.A. Act 1954 was amended through amending Act being Act 34 of 1976 with effect from 1st April, 1976. Amended P.F.A. Act provides for graded punishment based on the degree of violation. But offences under P.F.A. Act were triable by the Court of Magistrate and the complaint could only be filed by authorized person or the purchaser, as the case may be. Thus according to Mr. Batra, provisions of West Bengal Act XLII of 1973 becomes repugnant to Central Act.

5. Mr. Batra further contended that Article 254 of the Constitution deals with a situation when law enacted by Parliament and enacted by the State Legislature are repugnant to each other with regard to the subject enumerated in the concurrent list, the Central Law will prevail over the State legislation. Adulteration of Food Staff and other goods finds place under entry 18 of the Concurrent list. The West Bengal Amendment was on the subject matter of adulteration and entry 18 of the Concurrent list was the source of such legislation. Therefore, by necessary implication the West Bengal Amendment Act, 1973 stood repealed with the introduction of Act 34 of 1976 in the Parliament amending thereby P.F.A. Act 1954 with effect from 1st April, 1976.

6. To buttress his argument Mr. Batra refers to a decision of Hon'ble Supreme Court pronounced in the case of SAVERBHAI AMAIDAS VS. THE STATE OF BOMBAY reported in AIR 1954 SC 752 wherein Hon'ble Court held:-

"7. This is, in substance, a reproduction of section 107(2) of the Government of India Act, the concluding portion thereof being incorporated in a proviso with further additions. Discussing the nature of the power of the Dominion Legislature, Canada, in relation to that of the Provincial Legislature, in a situation similar to that under section 107(2) of the Government of India Act, it was observed by Lord Waston in Attorney-General for Ontario v. Attorney-General for the Dominion [1896] A.C. 348), that though a law enacted by the Parliament of Canada and within its competence would override Provincial legislation covering the same field, the Dominion Parliament had no authority conferred upon it under the Constitution to enact a statute repealing directly any Provincial statute. That would appear to have been the position under section 107(2) of the Government of India Act with reference to the subjects mentioned in the Concurrent List. Now, by the proviso to article 254(2) the Constitution has enlarged the powers of Parliament, and under that proviso, Parliament can do what the Central Legislature could not under section 107(2) of the Government of India Act, and enact a law adding to, amending, varying or repealing a law of the State, when it relates to a matter mentioned in the Concurrent List. The position then is that under the Constitution Parliament can, acting under the proviso to article 254(2), repeal a State law. But where it does not expressly do so, even then, the State law will be void under that provision if it conflicts with a later "law with respect to the same matter"

that may be enacted by Parliament.

8. In the present case, there was no express repeal of the Bombay Act by Act No. LII of 1950 in terms of the proviso to article 254(2). Then the only question to be decided is whether the amendments made to the Essential Supplies (Temporary Powers) Act by the Central Legislature in 1948, 1949 and 1950 are "further legislation" falling within section 107(2) of the Government of India Act or "law with respect to the same matter" falling within article 254(2).The important thing to consider with reference to this provision is whether the legislation is "in respect of the same matter." If the later legislation deals not with the matters which formed the subject of the earlier legislation but with other and distinct matters though of a cognate and allied character, then article 254(2) will have no application. The principle embodied in section 107(2) and article 254(2) is that when there is legislation covering the same ground both by the Centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State.

8. xxxxxx

9. xxxxxx

10. xxxxxx

11. It is true, as already pointed out, that on a question under article 254(1) whether an Act of Parliament prevails against a law of the State, no question of repeal arises; but the principle on which the rule of implied repeal rests, namely, that if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question under article 254(2) whether the further legislation by Parliament is in respect of the same matter as that of the State law.

We must accordingly hold that section 2 of Bombay Act No. XXXVI of 1947 cannot prevail as against section 7 of the Essential Supplies (Temporary Powers) Act No. XXIV of 1946 as amended by Act No. LII of 1950."

7. Consequent upon such effect of implied repeal of West Bengal Amendment Act relating to P.F.A. Act as well as Sections 272 and 273 of the I.P.C., the punishment under Sections 272 and 273 of the I.P.C. thereby reverted to six months in the State of West Bengal and offence under Sections 272 and 273 of the I.P.C. became non-cognizable as they originally were.

8. Mr. Batra placed his reliance on judgement of Hon'ble Supreme Court pronounced in the case of T. BARAI VS. HENRY AH HOE & ORS. reported in (1983) 1 SCC 177 wherein it is held:-

> "A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together e.g., where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law made by Parliament shall prevail over the State law under Article 254(1)."

9. Drawing my attention to the facts of the case Mr. Batra learned Counsel submits that alleged noxious sample was purchased on 5th April, 1998 whereupon Public Analyst report was filed on 18th August, 1998. F.I.R. was registered on 18th of September, 1998. Therefore, the offence should be considered to have been committed on 18th August, 1998 i.e. the date when public analyst report was filed and the period of limitation of one year after taking cognizance expired on 17th August, 1999. While learned Trial Court took cognizance of offence vide order dated 29th June, 2000 beyond the prescribed period of limitation as stipulated under Section 468 (2) of the Cr.P.C. Therefore, the impugned order dated 29th June, 2000 is liable to be set aside.

10. It is further adverted by Mr. Batra that consequent upon the repeal of West Bengal Amendment Act, the offence within the meaning of Sections 272/273 of the I.P.C. have become non-cognizable and bailable with effect from 1st April, 1976 and it does not permit the police to investigate into the offence alleged. Police investigated into the matter without complying with the provision of Section 155 (2) of the Criminal Procedure Code and on that count also the proceeding pending before learned S.D.J.M. Barrackpore is liable to be quashed.

11. Mr. Batra learned Counsel for the petitioner further submits that P.F.A. Act has laid down the procedure to be followed while investigating the offence relating to adulteration of food products whereas Sections 272/273 of the I.P.C. does not prescribe any such procedure. Section 11 envisages samples are to be taken in three parts. One sample is to be sent to laboratory for analysis and two other parts are to be kept with the local health authority. In view of Section 10 of the P.F.A. Act a qualified person is only authorized to collect sample following the procedure laid down under the statute for sampling and dispatch. Therefore, the provision of Section 13 of the P.F.A. Act read with Rules 16 and 17 are required to be followed. The right of a person from whom sample has been taken, to apply for re-analysis is secured under Section 13 (2) of the P.F.A. Act and report of

re-analysis may supersede the analysis report in view of Sub-Section 5 of Section 13 of the Act. Complaint can only be filed by authorized person after obtaining written consent from the competent authority. In view of Section 20 of the P.F.A. Act even a right has been given to the purchaser to request for analysis of any food product by a public analyst under Section 12 of the P.F.A. Act and in absence of any such prescribed procedure the general act cannot be set into motion. It would amount to violation of Section 5 of the Indian Penal Code which enunciates:-

> "Section 5 in The Indian Penal Code
>
> 5. Certain laws not to be affected by this Act.--Nothing in this Act shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law."

12. It is submitted further that for any special law or local law for the time being in force if contemplates any special jurisdiction or power or any special form of procedure is prescribed, unless there is something to the contrary to be found, it is the provisions of the special law or the local law which would prevail. To buttress his point Mr. Batra relied upon a decision of Hon'ble Apex Court pronounced in the case of Union of India vs. Ashok Kumar Sharma & Ors. reported in 2020 SCC Online 686 wherein Hon'ble Apex Court held:-

> "162. Thus, we may cull out our conclusions/directions as follows:
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> I. In regard to cognizable offences under Chapter IV of the Act, in view of Section 32 of the Act and also the scheme of the CrPC, the Police Officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same.
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> II. There is no bar to the Police Officer, however, to investigate and prosecute the person where he has committed an offence, as stated under Section 32(3) of the Act, i.e., if he has committed any cognizable offence under any other law. III. Having regard to the scheme of the CrPC and also the mandate of Section 32 of the Act and on a conspectus of powers which are available with the Drugs Inspector under the Act and also his duties, a Police Officer cannot register a FIR under Section 154 of the CrPC, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the CrPC.
>
> IV. Having regard to the provisions of Section 22(1)(d) of the Act, we hold that an arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in D.K. Basu (supra) and to follow the provisions of CrPC.

V. It would appear that on the understanding that the Police Officer can register a FIR, there are many cases where FIRs have been registered in regard to cognizable offences falling under Chapter IV of the Act. We find substance in the stand taken by learned Amicus Curiae and direct that they should be made over to the Drugs Inspectors, if not already made over, and it is for the Drugs Inspector to take action on the same in accordance with the law. We must record that we are resorting to our power under Article 142 of the Constitution of India in this regard.

VI. Further, we would be inclined to believe that in a number of cases on the understanding of the law relating to the power of arrest as, in fact, evidenced by the facts of the present case, police officers would have made arrests in regard to offences under Chapter IV of the Act. Therefore, in regard to the power of arrest, we make it clear that our decision that Police Officers do not have power to arrest in respect of cognizable offences under Chapter IV of the Act, will operate with effect from the date of this Judgment.

VII. We further direct that the Drugs Inspectors, who carry out the arrest, must not only report the arrests, as provided in Section 58 of the CrPC, but also immediately report the arrests to their superior Officers."

Hon'ble Apex Court in JEEWAN KUMAR RAUT VS. CBI reported (2009) 7 SCC 526 held:-

"26. It is a 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 authorization 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.

27. The provisions of the Code, thus, for all intent and purport, would apply only to an extent till conflict arises between the provisions of the Code and TOHO and as soon as the area of conflict reaches, TOHO shall prevail over the Code. Ordinarily, thus, although in terms of the Code, the respondent upon completion of investigation and upon obtaining remand of the accused from time to time, was required to file a police report, it was precluded from doing so by reason of the provisions contained in Section 22 of TOHO.

28. To put it differently, upon completion of the investigation, an authorized officer could only file a complaint and not a police report, as a specific bar has been created by the Parliament. In that view of the matter, the police report being not a complaint and vice-versa, it was obligatory on the part of the respondent to choose the said method invoking the jurisdiction of the Magistrate concerned for taking cognizance of the offence only in the manner laid down therein and not by any other mode. The

> procedure laid down in TOHO, thus, would permit the respondent to file a complaint and not a report which course of action could have been taken recourse to but for the special provisions contained in Section 22 of TOHO."

13. Mr. Batra, learned Counsel for the petitioner further argues that Sri C.M. Donati was not even assumed his office when the alleged offence was taken place. Therefore, there is no reason to lumber him with criminality and vicarious liability is alien to penal Code offences.

14. Per contra learned Public Persecutor Mr. Saswata Gopal Mukherjee submits that Section 272/273 of the I.P.C., as amended by Act XLII of 1973 are not only still in force, Apex Court suggested other states to bring amendment as is done in West Bengal to make the provision of law more harsh. Learned P.P. to bring home his argument relies upon the judgement of Hon'ble Apex Court in the case of SWAMI ACHYUTANAND TIRTH & ORS. VS. UNION OF INDIA (UOI) & ORS. reported in (2016) 9 SCC 699 wherein it is held:-

> "Taking note of the seriousness of the offence, State of Uttar Pradesh has amended Section 272 of the Indian Penal Code by enhancing the sentence to imprisonment for life and also fine. Similar amendment has been made by the States of West Bengal and Orissa. State of Madhya Pradesh in its counter affidavit has stated that it has also decided to amend Section 272 of IPC by enhancing the sentence to imprisonment for life with or without fine and consequential amendments to Schedule II to the Criminal Procedure Code. Considering the seriousness of the offence, the Supreme Court vide its orders dated 05.12.2013 and 30.01.2014 has directed similar amendments be made in other States as well. Vide its order dated 10.12.2014, this Court directed Union of India to come up with necessary amendments in Food Safety and Standards Act, 2006 and also in the Indian Penal Code to make penal provisions at par with State Amendments."

15. It is further contended by learned Public Prosecutor that there is no bar to hold trial of offence under two different enactments but the bar is only with regard to the punishment of the offender twice for the same offence. Mr. Mukherjee, learned Police Prosecutor has relied upon the judgement of Hon'ble Supreme Court pronounced in the case of STATE OF MAHARASHTRA & ANR. VS. SAYYED HASSAN SAYYED SUBHAN & ORS. reported in (2019) 18 SCC 145 wherein it is held:-

> "7. There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence. 1. The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time, an offence under any other law. 2 The High Court ought to have taken note of Section 26 of the General Clauses Act, 1897 which reads as follows:

> "Provisions as to offences punishable under two or more enactments - Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of 1 T.S. Baliah v.
>
> T.S.Rengachari - (1969) 3 SCR 65 2 State of Bihar v.
>
> Murad Ali Khan - (1988) 4 SCC 655 those enactments, but shall not be liable to be punished twice for the same offence."

8. In Hat Singh's case this Court discussed the doctrine of double jeopardy and Section 26 of the General Clauses Act to observe that prosecution under two different Acts is permissible if the ingredients of the provisions are satisfied on the same facts. While considering a dispute about the prosecution of the Respondent therein for offences under the Mines and Minerals (Development and Regulation) Act 1957 and Indian Penal Code, this Court in State (NCT of Delhi) v. Sanjay4 held that there is no bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offences. A perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties. We, therefore, set aside the finding of the High Court on the first point."

16. According to learned Public Prosecutor concept of corresponding law is now well settled that where an act repealed provides substantially for all the matters contained in the act, effecting repeal, there is correspondence between the two acts, the earlier act would stand repealed. It is not necessary that there must be complete identity between the repealing act and act repealed in every aspect. However, there should be no correspondence and no repeal if the two acts are substantially of different scopes. Sections 272 and 273 of the I.P.C. cannot be said to be corresponding to the provisions of the P.F.A. act and, therefore, without any hesitation it should be held that Sections 272 and 273 are still in force and they can be held to have been repealed by Section 25 (1) of the P.F.A. Act.

17. According to Mr. Mukherjee, learned Public Prosecutor the provision of Section 272 and Section 273 of the I.P.C. are not repugnant to the provision of Section 16 (1A) of the P.F.A. Act. To bring home his argument Mr. Mukherjee relies upon judgement of the Co- ordinate Bench of this Court in the case of BHASKAR TEA & INDUSTRIES LTD., CALCUTTA VS. STATE reported in 2007 SCC ONLINE CAL 662 AND (2008) 1 CHN 298 wherein His Lordship Hon'ble Justice Partha Sakha Datta (as His Lordship the was) was held:-

> "20. In, the result, I hold the following:
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> a. The West Bengal Act No. 42 of 1973 enhancing the punishment to life imprisonment with a proviso thereto has stood impliedly repealed in view of the decision of the Hon'ble Supreme Court in .
>
> b. Original Section 272 of the IPC which is a Central enactment is not repugnant to Section 16(1A) of the PFA Act. They can stand together.

c. No sanction is necessary for prosecution under Section 272 of the IPC.

d. Whether the Article of food is noxious or not cannot be decided in the revisional forum.

e. The decision in Standard Chartered is applicable in the instant case.

f. The liability of the company being a statutory liability the distinction between strict liability and absolute liability has reached a vanishing point.

18. Judgement in Bhaskar Tea & Industries Ltd. (supra) has recognized the West Bengal Act No. XLII, 1973 stand impliedly repealed and trial under Sections 272/273 of the I.P.C. as stood prior to amendment can continue. But as rightly pointed out by Mr. Batra, in Bhaskar Tea & Industries (supra) limitation for launching prosecution was never an issue before Hon'ble Co-ordinate Bench. Bhaskar Tea & Industries (supra) did not consider the provision of Section 155 (2) of the Cr.P.C. The question of application of special act was neither raised nor discussed in the said lis.

19. Now it has become settled principle of law that Article 254 of the Constitution mandates if there is any inconsistency between the provision of a Central Act and a State legislature, the Central Act will prevail.

20. It is contended by Mr. Batra, learned Counsel for the petitioner and rightly that Sections 272 and 273 of the I.P.C. have been repealed impliedly with the advent of amendment of P.F.A. Act in the year 1976. Therefore, now under Sections 272 and 273 of the I.P.C. prescribed punishment of imprisonment for both the offences is six months. Under Sub-Section 2 of Section 468 of the Code of Criminal Procedure the period of limitation shall be one year if the offence is punishable for imprisonment for a term not exceeding one year.

> "Section 468(2) in The Code Of Criminal Procedure, (2) The period of limitation shall be-
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> (a) six months, if the offence is punishable with fine only
>
> 1. Provisions of this Chapter shall not apply to certain economic offences, see the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), s. 2 end Sch.
>
> (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
>
> (c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years."

21. From the attending facts of the case it is found that the alleged offence known to be committed on 18th August, 1998 when Public Analyst report confirmed that the content was adulterated food

while cognizance was taken by the Trial Court on 29th June, 2000 after the prescribed period of the limitation which ex-facie is not permissible under the law and on this score alone the prosecution should be quashed.

22. Generalia specialibus non derogant is a maxim used for interpretation of statute which means general laws do not prevail over special law. When two provisions of law one being a general law and other being a special law governed a matter, in case of any repugnancy the prior special law cannot be presumed to be repealed by the later general law unless there is a clear intention to make a rule of universal application by superseding the earlier special law is evident from general law, then the later general law will prevail. When the later general law is repugnancy or inconsistency, the later special law will prevail over the earlier general law.

23. It has become settled principle of law that special law will prevail over and above the general legislation. The P.F.A. Act has extended certain rights to the accused person under Sections 11 and 13 of the P.F.A. Act. Launching of a prosecution under Sections 272 and 273 of the I.P.C., without following the procedure prescribed under this Special Act would amount to depriving an accused of his statutory right. On that score also the proceeding cannot be allowed to remain in force. Sections 272 and 273 of the I.P.C. are offences non-cognizable in nature. Therefore, police is not empowered to hold investigation without obtaining permission from the jurisdictional Magistrate. In this case provision of Section 155 (2) Cr.P.C. since has not been complied with it gives a fatal blow to the prosecution case and it is yet another point to justify an order of quashment.

24. In this regard we can profitably rely upon the judgement of Hon'ble Supreme Court pronounced in the case of State of Haryana vs. Bhajan Lal reported in 1992 Supp (1) SCC wherein it is held:-

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
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> 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima- facie constitute any offence or make out a case against the accused.
>
> 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

> 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
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> 4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.
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> 5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> 6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
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> 7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

25. The petitioner no. 2, Mr. C.M. Donati joined the Company as it appears from the certified copy of Form 32 issued by office of the Register of Companies with effect from 1st July, 1998 while the sampling of the alleged adulterated product was done on 5th April, 1998, when the petitioner no. 2 was not associated with the petitioner company. Therefore, he cannot be lumbered with criminal liability, as it is decided by the Hon'ble Supreme Court in the case of HARSHENDRA KUMAR D. VS. REBATILATA KOLEY AND ORS. reported in (2011) 3 SCC 351 wherein it is held:-

> "As noticed above, the Appellant resigned from the post of Director on March 2, 2004. The dishonoured cheques were issued by the Company on April 30, 2004, i.e., much after the Appellant had resigned from the post of Director of the Company. The acceptance of Appellant's resignation is duly reflected in the resolution dated March 2, 2004. Then in the prescribed form (Form No. 32), the Company informed to the Registrar of Companies on March 4, 2004 about Appellant's resignation. It is not even the case of the complainants that the dishonoured cheques were issued by the Appellant. These facts leave no manner of doubt that on the date the offence was committed by the Company, the Appellant was not the Director; he had nothing to do with the affairs of the Company. In this view of the matter, if the criminal complaints are allowed to proceed against the Appellant, it would result in gross injustice to the Appellant and tantamount to an abuse of process of the court."

26. In view of this, I am of the opinion that the criminal proceeding being G.R. Case No. 3181 of 1998 arising out of Bizpore Police Station Case No. 130 dated 18th September, 1998 under Sections 272/273 of the I.P.C. before learned S.D.J.M., Barrackpore (now A.C.J.M., Barrackpore) should not be allowed to remain in force to avert the abuse of process of law.

27. Under such circumstances, I am inclined to invoke the Section 482 of the Cr.P.C. and quash the proceeding pending before the learned S.D.J.M. Barrackpore (as then was), presently learned Additional Chief Judicial Magistrate, Barrackpore.

28. Let a copy of this judgement be sent down to learned Trial Court for information and necessary compliance. With the disposal of criminal revision, application pending, if any, also stands disposed of.

29. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)