2023 INSC 1078

**Reportable**

**IN THE SUPREME COURT OF INDIA**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 3864 OF 2023**
(Arising out of Special Leave Petition (Crl.) No. 7041 of 2016)

**Manik Hiru Jhangiani** **... Appellant**

***versus***

**State of M.P.** **... Respondent**

**J U D G M E N T**

**ABHAY S. OKA, J.**

**1.** Leave granted.

**FACTUAL ASPECTS**

**2.** Various provisions of the Food Safety and Standards Act, 2006 (for short, 'the FSSA') were brought into force on different dates. The Prevention of Food Adulteration Act, 1954 (for short, 'the PFA') was repealed with effect from 5th August 2011, as provided in sub-section (1) of Section 97 of the FSSA.

**3.** The appellant was, at the relevant time, a Director of M/s. Bharti Retail Limited, (for short, 'Bharti'), a company that is engaged in the business of operating retail stores under the name of 'Easy Day' having its outlets all over the country. A Food Inspector appointed under the PFA visited a shop owned

by Bharti in Indore and purchased certain biscuit packets from the shop. The visit was made on 29th November 2010. On the next day, a panchnama was drawn, and the samples were sent to the State Food Laboratory, Bhopal, for analysis and testing. The report of the Public Analyst was received on 4th January 2011. On 4th August 2011, a notification was issued under sub-section (1) of Section 97 of the FSSA notifying 5th August 2011 as the date on which the PFA shall stand repealed. In Section 97, and in particular in sub-section (1), there is a provision that notwithstanding the repeal of PFA, any penalty, forfeiture, or punishment incurred in respect of any offences committed under the PFA shall not be affected by the repeal. Moreover, there is a sunset clause in the form of sub-section (4) of Section 97 which provides for a sunset period of three years from 5th August 2011 for taking cognizance of the offences under the PFA. On 11th August 2011, sanction was granted to the Food Inspector to prosecute the Directors of Bharti under the provisions of the PFA. The Food Inspector filed a charge sheet on 12th August 2011, and on the same day, cognizance of the offence was taken by the learned Judicial Magistrate, and a bailable warrant was issued against the appellant. The appellant filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') for challenging the order of cognizance. By the impugned judgment, the High Court dismissed the petition under Section 482 of CrPC. The High Court noted that the offence alleged against the appellant was of misbranding which had taken place prior to the repeal of the PFA. Hence, within a period of three years from the date

of repeal, the learned Magistrate was empowered to take cognizance in view of sub-section (4) of Section 97 of FSSA. Being aggrieved by the said decision of the High Court, the present appeal has been preferred.

**SUBMISSIONS**

**4.** The learned senior counsel appearing for the appellant made detailed submissions. The learned senior counsel firstly pointed out that Section 3 of the FSSA, which contains the definition of 'misbranded food' in clause (zf) of sub-section (1) thereof, was brought into force on 28th May 2008 and Section 52 of the FSSA, which provides for penalty for misbranding was brought into force with effect from 29th July 2010. Secondly, he pointed out that even Section 89 of the FSSA, which starts with a non-obstante clause providing that the FSSA shall have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force, was notified on 29th July 2010. He submitted that, therefore, Section 52 of the FSSA, which provides for a penalty for misbranding, would prevail over the relevant provisions of the PFA, which make the misbranding an offence punishable with imprisonment and a fine. He would, therefore, submit that with effect from 29th July 2010, the FSSA will govern misbranding and not the PFA.

**5.** The learned senior counsel also pointed out that the Prevention of Food Adulteration Rules, 1955 (for short, 'the PFA Rules') continued to remain in force till the repeal of the PFA. He pointed out that corresponding rules under the FSSA,

namely, the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 came into force on 5th August 2011. He would, therefore, submit that Rule 32 of PFA dealing with standards for labelling continued to operate till 5th August 2011. He submitted that only because the Rules corresponding to Rule 32 of PFA Rules were not notified on the date of commission of the offence, the appellant could not have been prosecuted under the PFA for violation of a provision that was eclipsed by Section 89 of FSSA. His submission is that after 29th July 2010, the regime under the PFA dealing with misbranding will not apply.

**6.** He submitted that though Rule 32 of the PFA Rules, the violation of which has been alleged along with other offences under the PFA, was in force on the date on which the alleged violation was committed, in view of Section 89 of FSSA, Rule 32 will have no application. Learned counsel pointed out that Section 97 of the FSSA was brought into force with effect from 29th July 2010. He submitted that only because the Rules corresponding to Rule 32 of the PFA Rules were not notified under the FSSA regime, the respondent could not have proceeded under the provisions of PFA in the light of Section 89 of the FSSA.

**7.** He relied upon a chart tendered across the Bar, which contains a comparison of the provisions regarding misbranding under both enactments. He pointed out that for violation of the provisions regarding misbranding, under PFA, the violator could be punished by imposing imprisonment of up to three

years. However, under the FSSA, there is a provision for a levy of only a penalty up to Rupees 3 lakhs, as provided in Section 52. He submitted that when two statutes are operating in the field prescribing a penalty for the same offence and when an earlier statute contains a more stringent penalty or punishment, the provision in the earlier statute will stand repealed by necessary implication. He relied upon Clause (1) of Article 20 of the Constitution of India. He relied upon decisions of this Court in ***T. Barai v. Henry Ah Hoe & Anr.***[1] and ***Nemi Chand v. State of Rajasthan***[2]. Lastly, he submitted that the High Court committed an error by relying upon the sunset clause under sub-section (4) of Section 97 since the same was not applicable in the facts of the case.

**8.** Learned counsel for the respondent- State firstly urged that the acts or omission constituting the alleged offence took place when the PFA was not repealed though the FSSA was brought into force. Rule 32 of the PFA was also in force on that date, the violation of which has been alleged by the respondent. Learned counsel relied upon sub-section (4) of Section 97 of the FSSA, which permits cognizance of an offence under the PFA before the expiry of three years from the date of the commencement of the FSSA. He would submit that considering the principles laid down in sub-section (4) of Section 97, the prosecution for violating the provisions of the PFA Act and the PFA Rules will certainly be maintainable. He submitted that

[1] (1983) 1 SCC 177
[2] (2018) 17 SCC 448

after coming into force of the FSSA, all the provisions of PFA and the PFA Rules continued to apply. Inviting our attention to Section 52 of the FSSA, he submitted that even the Rules under the FSSA were not brought into force on the date the offence was committed. He would, therefore, support the reasons recorded by the High Court in the impugned order. He relied upon a decision of this Court in the case of ***Hindustan Unilever Limited v. State of Madhya Pradesh***[3] in support of his submissions that the criminal proceedings initiated under the PFA before its repeal and the punishment to be imposed under the PFA after its repeal have been protected by Section 97 of the FSSA. He would, therefore, submit that the view taken by the High Court calls for no interference.

**CONSIDERATION OF SUBMISSIONS**

**9.** We have given careful consideration to the submissions. The offence alleged against the appellant is under Section 2(ix)(k), read with Rule 32 of the PFA, which was made punishable under Section 16(1)(a). In short, the allegation was that the label on the food product of the appellant was not in accordance with the requirements of the PFA and the Rules framed thereunder. Therefore, the definition of 'misbranded' under Section 2 (ix) will apply. Clause (ix) of Section 2 of PFA reads thus:

> "(ix) "misbranded"—an article of food shall be deemed to be misbranded—
>
> (a) if it is an imitation of, or is a substitute for, or resembles in a

[3] (2020) 10 SCC 751

manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character;

(b) if it is falsely stated to be the product of any place or country;

(c) if it is sold by a name which belongs to another article of food;

(d) if it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the articles is made to appear better or of greater value than it really is;

(e) if false claims are made for it upon the label or otherwise;

(f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act;

(g) if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents;

(h) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article;

(i) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning its vitamin, mineral, or other dietary properties in order sufficiently to inform its purchaser as to its value for such uses;

(j) if it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made thereunder;

(k) if it is not labelled in accordance with the requirements of this Act or rules made thereunder;"

**10.** The corresponding provision under the FSSA is clause (zf) of Section 3 which reads thus:

"(zf) "misbranded food" means an article of food–

(A) if it is purported, or is represented to be, or is being–

(i) offered or promoted for sale with false, misleading or deceptive claims either;

(a) upon the label of the package, or

(b) through advertisement, or

(ii) sold by a name which belongs to another article of food; or

(iii) offered or promoted for sale under the name of a fictitious individual or company as the manufacturer or producer of the article as borne on the package or containing the article or the label on such package; or

(B) if the article is sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer bearing his name and address but–

(i) the article is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character; or

(ii) the package containing the article or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular, or if the package is otherwise deceptive with respect to its contents; or (iii) the article is offered for sale as the product of any place or country which is false; or

(C) if the article contained in the package–

(i) contains any artificial flavouring, colouring or chemical preservative and the package is without a declaratory label stating that fact or is not labelled in accordance with the requirements

> of this Act or regulations made thereunder or is in contravention thereof; or
>
> (ii) is offered for sale for special dietary uses, unless its label bears such information as may be specified by regulation, concerning its vitamins, minerals or other dietary properties in order sufficiently to inform its purchaser as to its value for such use; or
>
> (iii) is not conspicuously or correctly stated on the outside thereof within the limits of variability laid down under this Act."

Sub-clause (A) (i) deals with food being offered or promoted for sale with false, misleading or deceptive claims upon the package's label.

**11.** Under Section 16 of PFA, penalties have been prescribed. Under clause 1(i) of sub-section (1) of Section 16, misbranding within the meaning of Clause (ix) of Section 2 is an offence punishable with imprisonment for a term which may not be less than six months, but it may extend to three years and with a fine of the minimum amount of Rupees one thousand. The procedure for taking cognizance is prescribed by Section 20.

**12.** As against this, Section 52 of FSSA provides for penalties for misbranded food. FSSA does not prescribe any punishment of imprisonment for misbranding, but the power under Section 52 is to impose a penalty, which may extend to Rupees 3 lakhs.

**13.** Thus, under the provisions of the PFA, for misbranding, a person can be sentenced to imprisonment of a minimum six months with a fine of Rupees one thousand and more. However, for a similar violation under the FSSA, there is no penal provision in the sense that there is no provision for sentencing the violator to undergo imprisonment and to pay a fine. Under the FSSA, only a penalty of up to Rupees 3 lakhs can be imposed.

**14.** We must note here that Sections 4,5,6,7,8,9,10,87,88,91 and 101 were brought into force with effect from 15th October 2007. Section 3 of the FSSA which defines 'misbranded food' came into force on 28th May 2008. As noted earlier, Section 97 which provides for repeal of the PFA was brought into force on 5th August 2011. Thus, the penal provisions of the PFA were in force till 5th August 2011. In this case, the alleged offence was committed on 29th November 2010. Thus, on that day, Section 52 of FSSA was in force as also the provisions of the PFA and the PFA Rules.

**15.** At this stage, we may refer to sub-section (4) of Section 97 of FSSA, a sunset clause. Sub-section (4) of Section 97 reads thus:

> "(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."

**16.** Sub-section (4) provides that notwithstanding the repeal of the PFA, cognizance of the offence committed under the PFA can be taken within three years from the date of commencement of the FSSA. The implication of sub-section (4) of Section 97 is that if an offence is committed under the PFA when the PFA was in force, cognizance of the crime can be taken only within three years from the date of commencement of the FSSA.

**17.** In this case, on the day on which the alleged offence was committed, the offender could have been sentenced to imprisonment under Section 16 of the PFA and under the FSSA, he could have been directed to pay the penalty up to Rupees 3 lakhs. The punishment under PFA and the penalty under the FSSA cannot be imposed on the violator for the same misbranding because it will amount to double jeopardy, which is prohibited under Article 20(2) of the Constitution of India. Thus, when the penal action can be taken under both statutes, the question is which will prevail. An answer to the said question has been provided by Section 89 of the FSSA, which reads thus:

> **"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."

**18.** The effect of Section 89 is that if there is an inconsistency between the provisions of the PFA and the FSSA, the provisions of the FSSA will have an overriding effect over the provisions of the PFA. When it comes to the consequences of misbranding, the same has been provided under both the enactments, and there is inconsistency in the enactments as regards the penal consequences of misbranding. As pointed out earlier, one provides for imposing only a penalty in terms of payment of money, and the other provides imprisonment for not less than six months. In view of the inconsistency, Section 89 of the FSSA will operate, and provisions of the FSSA will prevail over the provisions of the PFA to the extent to which the same are inconsistent. Thus, in a case where after coming into force of Section 52 of the FSSA, if an act of misbranding is committed by anyone, which is an offence punishable under Section 16 of PFA and which attracts penalty under Section 52 of the FSSA, Section 52 of the FSSA will override the provisions of PFA. Therefore, in such a situation, in view of the overriding effect given to the provisions of the FSSA, the violator who indulges in misbranding cannot be punished under the PFA and he will be liable to pay penalty under the FSSA in accordance with Section 52 thereof.

**19.** There are other arguments made by the learned senior counsel appearing for the appellant. But we need not deal with the same as the appellant must succeed on the abovementioned grounds.

**20.** Reliance was placed on a decision of the Bench of three Hon'ble Judges of this Court in the case of ***Hindustan Unilever Limited***[3]. In this case, an offence punishable under the PFA was committed in February 1989. The Trial Court passed the order of conviction of the accused on 16th June 2015. Relying upon sub-clause (iii) of clause (1) of Section 97 of the FSSA, this Court held that the repeal of the PFA will not affect any penalty, forfeiture or punishment incurred in respect of any offences committed under the PFA before its repeal. Thus, when the offence was committed, the provisions of the FSSA were not on the statute book. Therefore, the issue of conflict between the penal provisions under the PFA and the FSSA did not arise before this Court. That is the reason why this Court had not adverted to Section 89 of the FSSA, which deals with a situation where there is a conflict between the provisions of the PFA and the FSSA. As noted earlier, we are dealing with a case where the alleged act of misbranding was committed when the relevant provisions of the FSSA, and in particular, Section 52 thereof, were already brought into force. Therefore, we are dealing with a situation where the act of misbranding will attract penal provisions both under the PFA and the FSSA. Thus, Section 89 of the FSSA comes into the picture which did not apply to the fact situation in the case of ***Hindustan Unilever Limited***[3]**.**

**21.** In paragraph 19 of the impugned judgment, the High Court has committed an error by holding that there is no inconsistency between the penal provisions relating to

misbranding under the PFA and FSSA. Hence, in our view, the High Court ought to have quashed the proceedings of the prosecution of the appellant under Section 16 of the PFA. Accordingly, the impugned judgment and order dated 13th May 2016 is hereby set aside. The proceedings of Criminal Case No. 15830 of 2011 pending before the Special Judicial Magistrate, Indore, are hereby quashed. However, this judgment will not prevent the authorities under the FSSA from taking recourse to the provisions of Section 52 thereof in accordance with the law.

**22.** The appeal is allowed on the above terms.

.....J.
(Abhay S. Oka)

.....J.
(Sanjay Karol)

**New Delhi;**
**December 14, 2023.**