

(2016) 04 PAT CK 0116

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 119 of 2016

Dharmendra Kumar @ Raja

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 08-04-2016

Acts Referred:

Food Safety And Standards Act, 2006 — Section 3(j), 40, 42, 42(3), 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 70, 71, 71(1), 71(3), 96

Constitution Of India, 1950 — Article 226

Food Safety And Standard Rules, 2011 — Rule 2.5, 3.1, 3.1.1(2), 3.1.1(3), 3.1.1(4), 3.1.1(5)

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 173(2)(i), 345, 346, 482

Code Of Criminal Procedure, 1898 — Section 561A

Employees' Provident Funds And Miscellaneous Provident Act, 1952 — Section 6, 14, 17

Indian Penal Code, 1860 — Section 193, 195, 196, 228

Citation : (2016) 3 ECRC 20 : (2016) 5 RCRCriminal 808

Hon'ble Judges : I.A. Ansari, ACJ.

Bench : Single Bench

Advocate : Mr. Prabhat Ranjan, Advocate, for the Appellant; Mr. Partha Sarthi, (GA-11), for the Respondent

Final Decision : Allowed

Judgement

I.A. Ansari, ACJ.—With the help of this application, made under Article 226 of the Constitution of India, the petitioner, an accused in the case, has sought for, inter alia, quashing of not only the First Information Report (hereinafter referred to as the "FIR"), lodged by Food Safety Officer, Patna, which led to the registration of Gandhi Maidan Police Station Case No. 344 of 2015, under Section 58 of the Food Safety and Standards Act, 2006 (in short the "Act"), but also the charge sheet, which has been submitted therein in purported exercise of power under Section 173(2)(i) of the Code of Criminal Procedure.

2. In a nutshell, the allegations, giving rise to the lodging of the First Information Report, are in brief, set out as under:

(i) Upon secret information, the premises of one Banarsi Paan Shop, situated in Raj Complex, at Dak Bungalow Road, Patna, belonging to the petitioner, was raided by the Food Safety Officer with the help of police and, on conducting the search, Paan Masala and Zarda (chewing tobacco) were seized, seizure list was prepared and the persons, from whose possession the goods had been seized, were taken to police station with the aid of the police.

(ii) Based on the First Information Report, Gandhi Maidan Police Station Case No.344 of 2015, under Section 58 of the Food Safety and Standards Act, 2006, was registered and following the investigation, which was conducted by the police, a charge sheet has been submitted under Section 58 of the Food Safety and Standards Act, 2006.

3. We have heard Mr. Prabhat Ranjan, learned Counsel, appearing on behalf of the petitioner, and Mr. Anjani Kumar, learned Additional Advocate General No.6, appearing on behalf of the State-respondents.

4. It is the submission of Mr. Prabhat Ranjan that Section 58 of the Act does not give jurisdiction to the police to entertain any First Information Report and register any criminal case inasmuch as there is no offence, which Section 58 envisages, and it (Section 58) merely makes the person, who commits an omission, which falls within the ambit of Section 58, liable to pay penalty. It is also submitted by Mr. Prabhat Ranjan that Section 58 of the Food Safety and Standards Act, 2006 does not envisage prosecution and/or punishment, but imposes penalty, which involves civil consequences.

5. As regards the seizure of chewing tobacco by the Food Safety Officer, Mr. Prabhat Ranjan's contention is that the seizure is beyond jurisdiction as chewing tobacco is a scheduled tobacco product within the meaning and definition of tobacco products.

6. From a conjoint reading of the contents of the First Information Report and the charge sheet, it is clear, points out, learned counsel, Mr. Prabhat Ranjan, that petitioner was arrested by the police and was taken to the police station, which were wholly without jurisdiction and that the present one is a fit case for exercise of power under Article 226 of the Constitution of India and the First Information Report as well as the charge sheet may, therefore, be quashed.

7. The Food Safety and Standards Act, 2006, according to Mr. Prabhat Ranjan, lays down a special procedure and an elaborate mechanism for launching of prosecution for commission of offences as envisaged by the Act.

8. Without expressing any opinion on the question as to whether Zarda, Paan Masala and scented tobacco fall within the definition of "food", as envisaged by Section 3(j) of the Act, it needs to be pointed out that the Act, when read carefully as a whole, makes it clear that the Act stands, broadly speaking, divided into two parts. While one part of the Act deals with the prosecution of an offender and the punishment prescribed for the offence concerned, the other part

of the Act deals with adjudication of default on the part of a person and punishes such contravener by penalty. This would be evident from the fact that acts of omissions or commissions, as mentioned in Sections 50, 51, 53, 54, 55, 57 and 58 of the Act provide only for imposition of penalties, which may extend to 5 Lac rupees as provided therein. All these Sections provide for penalty only and nothing else. Even the head notes and the wordings of the Sections use the word penalty.

9. On the other hand, the caption "omission" as mentioned in Sections 59, 60, 62, 63 and 64 of the Act provides for and uses the word "punishment" for certain acts of omission and commission. The punishment, as provided under these Sections, include imprisonment as well as imposition of fine.

10. Before entering into the merit of the petitioner's case, it is necessary to point out that the law, with regard to the quashing of criminal complaint or First Information Report, is no longer res integra. A catena of judicial decisions has settled the position of law on this aspect of the matter. I may refer to the case of R.P. Kapoor v. State of Punjab, AIR 1960 SC 866, wherein the question, which arose for consideration, was whether a First Information Report can be quashed under Section 561A of the Code of Criminal Procedure, 1898. The Court held, on the facts before it, that no case for quashing of the proceeding was made out; Gajendragadkar, J. speaking for the Court, however, observed that though, ordinarily, criminal proceedings, instituted against an accused, must be tried under the provisions of the Code, there are some categories of cases, where the inherent jurisdiction of the Court can and should be exercised for quashing the proceedings. One such category, according to the Court, consists of cases, where the allegations in complaint or the First Information Report, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases, no question of appreciating evidence arises and it is a matter merely of looking at the complaint or the First Information Report in order to decide whether the offence alleged is disclosed or not. In such cases, observed the Court, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused.

11. From the case of R.P. Kapoor (supra), it becomes abundantly clear that when a mere look into the contents of a complaint or First Information Report shows that the contents thereof, even if taken at their face value and accepted to be true in their entirety, do not disclose commission of offence, the complaint or the First Information Report, as the case may be, shall be quashed.

12. As a corollary to what has been discussed above, it is also clear that if the contents of a complaint or an First Information Report constitute offence, such a complaint or First Information Report cannot be quashed except where the complaint or the First Information Report is, otherwise also, not sustainable in law.

13. Laying down the scope of interference by the High Court in matters of quashing of First Information Report or complaint, the Supreme Court, in the leading case of *State of Haryana and Ors. v. Bhajanlal and Ors.*, reported in, 1992 Supp (1) SCC 335, observed as follows:

"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 extraordinary power under Article 226 of 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 the 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 of rigid formulae and to give an exhaustive list of myriad kinds of cases, wherein such power should be exercised:-

(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 made in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognisable 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 un-controverted allegations made in the FIR or complaint and evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegation in the FIR do not constitute a cognisable offence but constitute only a non-cognisable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(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 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.

(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 of the accused and with a view to spite him due to private

and personal private grudge."

(Emphasis is added).

14. In the case of Bhajanlal (supra), the Supreme Court gave a note of caution on the powers of quashing of criminal proceeding in the following words:

"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extra ordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

(Emphasis is added).

15. It is clear from a close reading of the principles laid down in the case of R.P. Kapoor (supra) and Bhajanlal (supra) that broadly speaking, quashing of a First Information Report or a complaint is possible (a) when the allegations made in the First Information Report or the complaint, even if taken at their face value and accepted in their entirety as true, do not prima facie constitute any offence or make out a case against the accused; (b) when the uncontroverted allegations, made in the First Information Report or complaint and evidence collected in support of the same, do not disclose the commission of any offence and/or make out a case against the accused; and (c) when the allegations, made in the First Information Report or complaint, are so absurd and inherently improbable that on the basis of such absurd and inherently improbable allegations, no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

16. In other words, when the allegations made in a complaint disclose commission of an offence, such a complaint cannot be quashed by relying upon some other materials on which will depend the defence of the accused, for, in such cases, truthfulness or otherwise of the allegations contained in the complaint or the probability of the defence plea can be determined only by effective investigation or at the trial. I am also guided to take this view from the case of State of Bihar and Anr. v. Mohd. Khalique and Anr., reported in (2002) SCC 652, wherein the Supreme Court, while dealing with the quashing of First Information Report, observed as follows:

"7. In Bhajanlal case, this Court has also held that the power of quashing a criminal proceeding should be exercised sparingly and with circumspection and that too in the rarest or rare cases. The present case is not rarest of rare case.

8. In view of the settled legal position and as offences have been disclosed in the FIR, the High Court ought not to have interfered with the investigation and should have permitted the police to complete it. We, accordingly, hold that the High Court has committed a grave error in quashing the entire proceedings and

ought not to have thwarted the prosecution.

See also *Latif Ahmed Bin Hussain v. State of Assam* reported in 2005 Supp GLT 872, and *Kailash Chandra Pareek v. State of Assam* reported in 2003 (2) GLT 576."

17. Having delineated the law regarding quashing of First Information Report, the scheme of the Act, is, now, required to be examined in order to answer the issues raised in this application.

18. Chapter IX of the Act deals with "Offences and Penalties" commencing from Section 48 to Section 67. Within these Sections, Section 50 to Section 58 (both inclusive) and Section 67 deals with penalty; whereas Section 59 to Section 64 deal with punishments. It is apparent, therefore, that the Act seeks to create a distinction between the expression "penalty" and "punishment" .

19. It would, thus, be necessary to determine the meaning of penalty, when used in the context of the Act.

20. In *N.K. Jain v. C.K. Shah*, reported in (1991) 2 SCC 495, the question before the Supreme Court was with reference to Section 14 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The question was whether criminal proceedings can be instituted under Section 14 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("Act" for short) against an establishment exempted under Section 17 of the Act for the contravention of the provisions of Section 6 of the Act?

21. The argument put forward by the appellants was that the Act does not provide for prosecution in respect of any of the offences enumerated under Section 14 in case of breach by an exempted establishment in not paying the provident fund contributions to the trust and, therefore, no prosecution can be launched and if at all the management of the establishment had not deposited the provident fund contributions with the trust, the Government was empowered only to cancel the exemption, which also amounts to a penalty.

22. The Supreme Court, in *N.K. Jain* (supra), while appreciating the arguments of the appellants, held that in the common parlance, the word "penalty" is understood to mean a legal or official punishment, such as, a term of imprisonment. In some contexts, it is also understood to mean some other form of punishment, such as, fine or forfeiture for not fulfilling a contract. But in gathering the meaning of the word, penalty, the context, in which the word is used, becomes important.

23. The relevant extract of the observations, appearing in *N.K. Jain* (supra), is reproduced below;

"11. In the common parlance the word "penalty" is understood to mean; a legal or official punishment such as a term of imprisonment. In some contexts it is also understood to mean some other form of punishment such as fine or

forfeiture for not fulfilling a contract. But in gathering the meaning of this word, the context in which this is used is significant."

24. In the light of the observations made in N.K. Jain (*supra*), it, now, needs to be seen what the expression penalty, appearing in Sections 50 to Section 58 (both inclusive) and Section 67, actually convey.

25. Section 68 of the Act deals with the topic of adjudication. Section 68 provides that for the purposes of adjudication, an officer not below the rank of Additional District Magistrate of the district, where the alleged offence is committed, shall be notified by the State Government as the Adjudicating Officer for adjudication in the manner as may be prescribed by the Central Government.

26. While prescribing the procedure to be followed by the Adjudication Officer, Section 68 provides that the Adjudicating Officer shall, after giving the person a reasonable opportunity for making representation in the matter, and if, on inquiry, he is satisfied that the person has committed the contravention of provisions of this Act or the rules or the regulations made thereunder, impose such penalty as he thinks fit in accordance with the provisions relating to that offence.

27. Section 68 further provides that while discharging functions as Adjudication Officer, the Adjudication Officer shall have the powers of a civil court and penalties, if any, must be imposed bearing in mind the guidelines prescribed in Section 49 of the Act.

28. Section 68, for the sake of reference, is reproduced below;

"68. Adjudication. - (1) For the purposes of adjudication under this chapter, an officer not below the rank of Additional District Magistrate of the district where the alleged offence is committed, shall be notified by the State Government as the Adjudicating Officer for adjudication in the manner as may be prescribed by the Central Government.

(2) The Adjudicating Officer shall, after giving the person a reasonable opportunity for making representation in the matter, and if, on such inquiry, he is satisfied that the person has committed the contravention of provisions of this Act or the rules or the regulations made thereunder, impose such penalty as he thinks fit in accordance with the provisions relating to that offence.

(3) The Adjudicating Officer shall have the powers of a civil court and-

(a) all proceedings before him shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860);

(b) shall be deemed to be a court for the purposes of Sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) While adjudicating the quantum of penalty under this chapter, the Adjudicating Officer shall have due regard to the guidelines specified in Section

49."

29. The two key words, appearing in Section 68, are "contravention" and "penalty". Thus, the Adjudication Officer is vested with jurisdiction to determine "contravention" and impose "penalty". The other important feature of Section 68 is that while exercising powers of adjudication, the Adjudication Officer shall have the powers of civil Court.

30. It may be pertinent to look into the provisions of Section 49 of the Act, which reads as follows;

"49. General provisions relating to penalty. - While adjudging the quantum of penalty under this Chapter, the Adjudicating Officer or the Tribunal, as the case may be, shall have due regard to the following:-

(a) the amount of gain or unfair advantage, wherever quantifiable, made as a result of the contravention,

(b) the amount of loss caused or likely to cause to any person as a result of the contravention,

(c) the repetitive nature of the contravention,

(d) whether the contravention is without his knowledge, and

(e) any other relevant factor."

31. Section 49 also refers to the imposition of penalty by the Adjudication Officer as notified under Section 68 of the Act. Since the penalty, prescribed for contraventions of Section 50 to 58 and Section 67, are substantial exceeding even Rs. 5 lakhs, guidelines have been provided, in Section 49, to exercise the discretion as to the quantum of penalty to be imposed.

32. Any person, aggrieved by the order of payment of penalty, may prefer an appeal before the Food Safety Appellate Tribunal constituted, under Section 70 of the Act, against the decision of the Adjudicating Officer under Section 68. Section 71 of the Act lays down the procedure to be followed by the Food Safety Appellate Tribunal. Section 71 (1) of the Act, dealing with the powers of the Appellate Tribunal, specifically provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of the Act and the rules made thereunder, the Tribunal shall have the power to regulate its own procedure including the place at which it shall have its sittings. Section 71 (3) provides that every proceeding before the Appellate Tribunal shall be deemed to be judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and, for the purposes of Section 196 of the Indian Penal Code (45 of 1860), it shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

33. Now, when a power is vested with an Authority to impose penalty, it inherently incorporates within its ambit the power to enforce that penalty and power to realise the penalty. In this regard, Section 96 of the Act provides that if a penalty, imposed under the Act, is not paid, the same shall be recovered as an arrear of land revenue and the defaulter's licence shall be suspended till the penalty is paid.

34. It is, thus, apparent that a contravention, for which penalty is imposable, has to be adjudicated by the Adjudication Authority by exercising powers of a civil Court and the penalty, so imposed, is to be recovered as arrear of land revenue. The penalties, thus, are in the nature of civil penalties as opposed to criminal penalties.

35. Now, if the penalties, provided for contraventions mentioned in Section 50 to 58 and Section 67, are looked into, it would be apparent that none of these provisions contains any reference to imprisonment. The only mode of penalty prescribed is payment of money determined as penalty by the Adjudicating Authority.

36. Thus, penalties, provided in Section 50 to 58 and Section 67 of the Act, can be imposed only by an Adjudication Officer, who is notified under Section 68 of the Act. A reference to Adjudication Officer is also found in Section 52 of the Act.

37. A reference to Rule 3.1 of the Food Safety and Standard Rules, 2011, would make the situation clearer. Rule 3.1 of the Rules, 2011 deals with adjudication proceedings. It provides how and in what manner, inquiry should be conducted.

38. Clause 2 of Rule 3.1.1. of the Rules, 2011, provides that if the Designated Officer decides that the contravention is not punishable with imprisonment, but only with fine under the provisions of the Act, he shall cause and authorise the Food Safety Officer to file with the Adjudicating Officer an application for adjudication of the offence alleged to have been committed by the person from whom the food sample has been taken or the person whose name and address and other particulars have been disclosed under Rule 2.5 of these rules and/or the seller or manufacturer of the food item in respect of which the report has been received.

39. Clause 3 of Rule 3.1.1. of the Rules, 2011, provides that on receipt of the communication from the Designated Officer authorising the filing of the adjudication application, the Food Safety Officer shall file the application for adjudication with the Adjudicating Officer for adjudication of the offence/contravention alleged to have been committed.

40. Clause 4 of Rule 3.1.1. of the Rules, 2011, provides that on receipt of the application for adjudication from the Food Safety Officer, the Adjudicating Officer shall commence the inquiry proceedings.

41. Clause 5 of Rule 3.1.1. of the Rules, 2011, provides that the Adjudicating Officer shall have power to hold an inquiry for purpose of adjudicating offences

punishable under Sections 50, 51, 52, 53, 54, 55, 56, 57, 58, 64, 65, 66 and 67 of the Act.

42. With regard to the above, Section 42 of the Act, which lays down the procedure for launching prosecution under the Act, provides as follows;

"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."

(Emphasis is added)

43. What clearly surfaces from a close reading of Section 42 is that offences, for which imprisonment has been provided for, shall be triable by Courts. The prosecution for offences, punishable with imprisonment for a term up to three years, shall be launched in the Court of ordinary jurisdiction, whereas prosecution for offences, punishable with imprisonment for a term exceeding three years, shall be launched in the Special Court or, if no Special Court has been constituted, then, in the Court of ordinary jurisdiction.

44. Section 42 also reveals that certain conditions, requisite for initiation of

prosecution, have to be observed before launching prosecution. The conditions, among others, are as follows;

Sending the sample, along with analysis report, to the Designated Officer within 14 days from the date of taking of sample,

Decision by the Designated Officer, after scrutiny of the report of Food Analyst, whether the contravention is punishable with imprisonment or fine only and, in the case of contravention punishable with imprisonment, with recommendations to be sent within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.

45. The final decision, whether the prosecution should be launched in Court or whether should be reported to Adjudicating Authority, lies only with the Designated Officer as provided under Section 42(3) of the Act. If the Designated Officer forms an opinion that the contravention requires prosecution in court, he shall send his recommendations to the Commissioner of Food Safety seeking sanction for prosecution.

46. The scheme of the Act, in creating a distinction between prosecution in Court and proceeding before an Adjudication Officer, can also be clearly understood from the Statement of Objects and Reasons to the Act.

47. Clause 5 of the Prefatory Note to the Statement of Objects and Reasons provides that the Bill, inter alia, incorporates the salient provisions of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and is based on international legislations, instrumentalities and Codex Alimentaries Commission (which related to food safety norms). In a nutshell, the Bill takes care of International practices and envisages on overarching policy framework and provision of single window to guide and regulate persons engaged in manufacture, marketing, processing, handling, transportation, import and sale of food. The main features of the Bill are:

"(a) ?????

(b) ??????..

(c) ??????..

(d) ???????

(e) ??????

(f) ????????

(g) provision for graded penalties depending on the gravity of offence and accordingly, civil penalties for minor offences and punishment for serious violations."

(Emphasis is supplied)

48. Thus, the idea behind creating a distinction between "penalty" and "punishment", appearing in the Chapter IX of the Act, is that the form of penalty has been graded as civil penalties and punishment depending on the gravity of offence. Hence, contraventions, mentioned in Sections 50 to 58, etc., are statutorily considered as less grave offence, when compared to contraventions mentioned in Section 59 to 64 of the Act.

49. From the scheme of the Act, particularly, those contained in Section 42, it becomes evident that the police, nowhere, comes into picture for the purpose of launching of prosecution against a person, who may have contravened the provisions of the Act and/or the Rules made thereunder. When a Food Inspector, upon inspection, draws sample and sends the sample to Food Analyst for analysis, the report of the Food Analyst shall be sent by the Food Safety Officer to the designated officer with a copy to the Commissioner of Food Safety. As laid down by Sub-section (3), the Designated Officer has to take a decision on the basis of the report of Food Analyst if the contravention is punishable with imprisonment or fine only and, if the contravention is punishable with the imprisonment, he shall send his recommendations to the Commissioner of Food Safety seeking sanctioning for prosecution. The Commissioner of Food Safety shall, if he so deems fit, take a decision in the matter, within the period prescribed by the Central Government depending upon the gravity of offence.

50. In the case at hand, the Food Inspector, as transpires from the First Information Report, carried with him the police to the petitioner's establishment and, finding a person, standing there, in possession of allegedly prohibited Paan Masala in gunny bags, stopped him. From inside the shop, prohibited Paan Masala and Zarda were allegedly recovered and seized and the man, with the seized material, was carried to the police station, where the First Information Report was lodged by the Food Safety Inspector and the case aforementioned came into existence. Hence, the very institution of the First Information Report, arrest, seizure, etc., of the accused-petitioner, leading to the filing of the charge sheet, cannot but be treated to be without jurisdiction and wholly untenable in law.

51. In the result and for the foregoing reasons, the impugned First Information Report as well as the charge sheet are hereby set aside and quashed.