

(2006) 06 GAU CK 0010

In the Gauhati High Court

Case No : Criminal Revision No. 100 of 2000

Milk Food Ltd. and Others

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 22-06-2006

Acts Referred:

Agricultural Produce (Grading and Marking) Act, 1937 — Section 3, 5, 5A, 5B, 5C
Constitution of India, 1950 — Article 254
Criminal Procedure Code, 1973 (CrPC) — Section 433, 482
Essential Commodities Act, 1955 — Section 3
General (Grading and Marking) Rules, 1937 — Rule 4
General (Grading and Marking) Rules, 1988 — Rule 11, 11(2)
General Clauses Act, 1897 — Section 23(2), 26
Ghee (Grading and Marking) Rules, 1938 — Rule 7
Income Tax Act, 1922 — Section 52
Penal Code, 1860 (IPC) — Section 177, 409
Prevention of Corruption Act, 1988 — Section 5(1)
Prevention of Food Adulteration Act, 1954 — Section 16, 24, 7
Prevention of Food Adulteration Rules, 1955 — Rule 32, 50(1), 55, 57(2)

Citation : (2006) 3 GLT 807

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

Bench : Single Bench

Advocate : O.P. Bhati, for the Appellant; P. Bora, for the Respondent

Judgement

I.A. Ansari, J.—By making this revision petition, the Petitioners, who are accused in CR Case No. 309c/2000, presently pending in the Court of the Chief Judicial Magistrate, Kamrup, Guwahati, have sought for quashing of the complaint, which has given rise to the said Complaint Case.

2. I have heard Mr. O.R Bhati, learned Counsel for the accused-Petitioners and Mr. R Borah, learned Public Prosecutor, Assam.

3. The material facts and various stages, which have given rise to the present revision, may, in a nutshell, be set out as follows:

On 7.7.99, a Food Inspector collected sample of Ghee, sold under the brand

name of "Milk Food", from the shop premises of the accused-Petitioner No. 1. In course of time, the Public Analyst submitted his report, wherein the Public Analyst opined that the sample of Ghee is misbranded as per Rule 32(e) of the Prevention of Food Adulteration Rules, 1955 (in short, "the PFA Rules"). Based on the report of the Public Analyst and having received sanction for prosecution, the Food Inspector lodged a complaint for prosecution of the accused-Petitioners herein u/s 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954 (in short, "the PFA Act"). Since the Petitioner No. 1, as vendor, and the Petitioner No. 2, as manufacturer, of the Ghee, sold under the brand name of "Milk Food", faced prosecution for selling and storing for sale, the misbranded Ghee, they have challenged their prosecution in the present revision.

4. While considering the present revision, it may be pointed out that Rule 32(e), as the same stood earlier, became a subject-matter of Dwarka Nath and Another Vs. The Municipal Corporation of Delhi, and was, eventually, struck down by the Apex Court as ultra vires the PFA Act. At the initial stage of hearing of the present revision, it was contended, on behalf of the accused-Petitioners, that the earlier Rule 32(e) and the present one are substantially pari materia and Rule 32(e) still suffers from the same vires with which suffered the earlier Rule 32(e) and, hence, Rule 32(e) is still void being ultra vires the PFA Act. When it was pointed out by the prosecution that since after laying down of the law in Dwarkanath (supra), Section 24, which embodies rule-making powers of the Central Government, has already been amended, Rule 32(e) cannot be treated as ultra vires, the challenge posed to the prosecution of the accused-Petitioners, on the ground that Rule 32(e) is ultra vires, has not been pursued and it has been candidly conceded by Mr. O.P. Bhati, learned Counsel for the accused-Petitioners, that the accused-Petitioners do not wish to pursue their objection to their prosecution on the ground that Rule 32(e) is ultra vires the PFA Act in this revision and that the challenge to this Rule would be posed in an appropriate proceeding and, if necessary, by way of a writ petition.

5. Having abandoned the challenge made to the validity of the Rule 32(e) as ultra vires, Mr. O.P. Bhati challenges prosecution of the accused-Petitioners on, essentially, two grounds, namely, that the manufacturing process of Ghee requires that before the Ghee is exposed for sale, packet of Ghee must bear, in terms of the Ghee (Grading and Marking) Rules, 1938 (in short, "the Ghee (G&M) Rules, 1938, the melt number and since Ghee is, thus, an item covered by the Ghee (G&M) Rules, 1938, and the Ghee (G&M) Rules, 1938 is a special set of rules for maintenance of the quality of Ghee, the Ghee (G&M) Rules, 1938, will override the general Rules with regard to "misbranding" as embodied under Rule 32(e) of the PFA Rules and, as a sequel thereto, the giving of the melt number by the accused-Petitioners on the packet of Ghee, in question, is sufficient compliance of the Ghee (G&M) Rules, 1938, and one, who complies with the provisions of the Ghee (G&M) Rules, 1938, cannot be prosecuted for "misbranding" under Rule 32(e) of the PFA Rules. In short, according to what Mr. Bhati contends, Rule 32(e) is general in nature and this Rule is overridden by

special provisions made, in this regard, by the relevant provisions of the Ghee (G&M) Rules, 1938, so far as an article of food, such as, Ghee is concerned. The second ground of attack, on the prosecution of the accused-Petitioners, is that the purpose of providing of the batch number, lot number or code number, etc., in terms of Rule 32(e) is to enable one to identify the article of food in the manufacturing process or in the process of distribution. This purpose, according to Mr. Bhati, is fulfilled by giving melt number and, hence, the object with which Rule 32(e), is framed is satisfied by printing melt number on the label of the article of food inasmuch as one would be able to trace out, with the help of melt number, contends Mr. Bhati, the Ghee in the manufacturing process and would also be able to identify the same in the distribution.

6. In support of the accused-Petitioner's plea that the prosecution of a person is not possible for contravention of Rule 32(e) on the ground that he has not given, while manufacturing Ghee, batch number, lot number or code number, for, the Ghee (G&M) Rules, 1938, are special set of Rules governing manufacture of Ghee and these Rules would override the requirements of Rule 32(e) of the PFA Rules and, secondly, that the purpose of Rule 32(e) of the PFA Rules is fulfilled by giving melt number in terms of the Ghee (G&M) Rules, 1938, and, hence, prosecution of a manufacturer for misbranding under Rule 32(e) is not possible if the manufacturer prints, on his product of Ghee, the melt number, support is sought to be derived from the case of *Sri Deepak Sharma Tamuli v. The State of Assam* Criminal Revision No. 133/2000 decided on 2.9.2004.

7. I have carefully read and, in fact, read, again and again, the decision in *Deepak Sharma Tamuli (supra)* and I find that the two reasons on which the complaint was quashed, in *Deepak Sharma Tamuli (supra)*, u/s 482 Code of Criminal Procedure, are (i) that the Ghee (G&M) Rules, 1938, being special, in nature, in respect of the article of food, such as, Ghee, the Ghee (G&M) Rules, 1938, will override the general provisions of the PFA Rules, particularly, Rule 32(e) thereof and (ii) that the Explanation IV to Rule 32 of the PFA Rules spells out the purpose of giving of batch number, lot number or code number or any distinguishing prefix and the purpose, so indicated, is fulfilled by giving melt number and as the purpose of Rule 32(e) is satisfied by giving melt number, prosecution of a manufacturer or vendor, under Rule 32(e), for selling, or storing for the purpose of sale, Ghee, in such a case, is not legally permissible.

8. Implicit in the first reason, assigned in *Deepak Sharma Tamuli (supra)*, is the application or extension of the doctrine of repugnancy between special and general law and an indirect application of the doctrine of implied repeal. For attracting these doctrines, however, the two statutes or the provisions of the two statutes to which the doctrine of repugnancy or implied repeal is sought to be resorted to must be *pari materia*. A careful study of the schemes of the two statutes, therefore, becomes imperative.

9. While considering the above aspects of the present case, it is pertinent to note that the Ghee (G&M) Rules, 1938, have been framed u/s 3 of the Agricultural

Produce (Grading and Marking) Act, 1937 (in short, "the Act of 1937"). A manufacturer of Ghee or any article of food may, let me hasten to clarify, choose not to register himself under the Act of 1937. Such registration is required for those manufacturers, who wish to gain public confidence as regards the quality of their food products by getting their manufactured articles of food graded and certified as the graded articles of food. Pursuant to the Act of 1937, General (Grading and Marking) Rules, 1937, (in short, "General (G&M) Rules, 1937") were published. These Rules made it clear that any person or body of persons, desirous of being authorized to mark any article with a graded distinct mark (i.e., agmark), shall apply to the Agriculture Marketing Advisor, Govt. of India, who was, under the General (G&M) Rules, 1937, empowered to issue certificate of authorization to a manufacturer, who gets himself registered under these Rules. The advantage of obtaining such certificate of authorization, as already indicated hereinbefore, is that the manufacturer concerned can acquire confidence of the people, at large, in the quality of its product. For receiving the certificate of authorization, certain standards, prescribed under the Schedule to the General (G&M) Rules, 1937, are required to be followed and adhered to by the manufacturer concerned. I may also hasten to add that the General (G&M) Rules, 1937, have been replaced by the General (Marketing and Grading) Rules, 1988 (in short, "the Ghee (G&M) Rules, 1988"). The distinguishing features of the Ghee (G&M) Rules, 1988, would be indicated at an appropriate stage of this order. Moreover, while the General (G&M) Rules, 1937, is a general rule for marking and grading, Ghee is an item, which is covered by Ghee (G&M) Rules, 1938.

10. Be that as it may, the fact remains that the Act of 1937 appears to have been amended five times, namely, in the year 1942, 1951, 1960, 1983 and, lastly, in 1986. From the scheme of the Act of 1937, grading of articles of food, under this Act and the Rules framed thereunder, appears to be optional. Indeed, the object and reasons of the amended Act of 1986, specifically, states, "grading under the Act is purely voluntary in nature". By this amendment Act of 1986, Sections 5A, 5B and 5C have been added to the Act of 1937 and, for the first time, power has been vested, u/s 5(b), in the Central Government to issue requisite notification listing the items of food articles, which may be required to be compulsorily graded under the Act of 1937.

11. To pointed and repeated queries made by this Court, Mr. Bhati could not bring to the notice of this Court any notification, which has been issued by the Central Government, in terms of Section 5(b), making compliance of the Ghee (G&M) Rules, 1938, compulsory for manufacturers of Ghee. Neither the prosecution nor the defence have, thus, been able to show that in respect of the item of Ghee, any notification, u/s 5(b) of the Act of 1937, exists making grading and marking of Ghee compulsory. Thus, giving of melt number of the item of Ghee is necessary only when a manufacturer registers himself under the provisions of the Act of 1938 and carries on his business in terms of the Ghee (G&M) Rules, 1938, if he wishes to gain public confidence in the quality of his

food product.

12. Even assuming, for a moment, that the grading in respect of Ghee has, now, been made compulsory, yet the Act of 1937, the General (G&M) Rules, 1937, and the Ghee (G&M) Rules, 1938, clearly reflect that the General (G&M) Rules, 1937, and the Ghee (G&M) Rules, 1938, are, primarily, regulatory in nature unlike the PFA Act, which is, essentially, a penal statute warranting strict construction and compliance thereof so much so that mens rea does not form part of the essential ingredients of an offence punishable under the PFA Act. No wonder, therefore, that in *State of Orissa Vs. K. Rajeshwar Rao*, the Apex Court has held as under:

5. The Act is a welfare legislation to prevent health hazards by consuming the adulterated food. The mens rea is not a essential ingredient. It is a social evil and the Act prohibit commission of the offences under the Act. The essential ingredient is sale to the purchaser the vendor. It is not the material to establish the capacity of the person vis-a-vis the owner of the shop to prove his authority to sell the adulterated food exposed for the sale in the shop. It is enough for the prosecution to establish that the person who sold the adulterated article of food had sold it to the purchaser (including the Food Inspector) and that Food Inspector purchased the same in strict compliance with the provision of the Act. As stated earlier the sanctioning authority has to consider the material placed before it whether the offence of adulteration of food was committed and punishable under the Act. Once that satisfaction is reached and the authority is competent to grant the sanction, the sanction is valid. It is not necessary for the sanctioning authority to consider that the person who sold is the owner, servant, agent or partner or relative of the owner or was duly authorised in this behalf.

13. Even in *Dayal Singh Vs. State of Rajasthan*, the Apex Court has expressed similar views on the concept of the PFA Act by observing thus:

15. In the instant case it was not disputed that for the offence charged a minimum sentence of 6 months rigorous imprisonment is prescribed by law. The Appellant has been sentenced to undergo 6 months rigorous imprisonment, which is the minimum sentence. We are not inclined to modify the sentence by passing an order of the nature passed in *N. Sukumaran Nair Vs. Food Inspector, Mavelikara*, where this Court in exercise of its extraordinary jurisdiction imposed only a sentence to fine and directed the state to exercise its powers u/s 433 of the Code of Criminal Procedure to commute the sentence of simple imprisonment for fine. In the instant case the Appellant has been sentenced to undergo 6 months" rigorous imprisonment. Moreover, we are firmly of the view that strict adherence to the prevention of Food Adulteration Act and the Rules framed thereunder is essential for safeguarding the interest of offenders could get away with mere fine. We therefore find no reason to interfere with the sentence imposed against the Appellant.

14. It is not only not uncommon, but, in fact, quite often that courts are faced with problem of taking a decision if the doctrine of repugnancy or implied repeal

is, in a given case, attracted or not. When a subject is claimed to be covered by a special law and such a special law is claimed to override the general law on the subject, the tests, which are, ordinarily, resorted to for the purpose of determining if an earlier law stands impliedly repealed by the subsequent law, on a given subject, are applied. The question, therefore, is as to what tests are to be resorted to in order to determine if the doctrine of implied repeal is attracted to the facts of a given case. The tests, which are applied for determining the repugnancy of enactments under Article 254 of the Constitution of India, are also applied, normally, for the purpose of determining if any Act or any provisions of an Act has impliedly repealed or impliedly override another Act or some provisions of another Act. These tests are--(i) when there is a direct conflict between the provisions of the two statutes; (ii) when there is exhaustive codification of the subject-matter in the statute, which is intended to repeal or override the provisions of another statute; and (ii) when both the statutes occupy the same field of legislation and cannot, on a given aspect, stand together. See *Deep Chand Vs. The State of Uttar Pradesh and Others*, and *Tansukh Rai Jain Vs. Nilratan Prasad Shaw and Others*, A classic case, which has some bearing in the present revision, is the case of *Municipal Corporation of Delhi Vs. Shiv Shanker*,

15. In *Shiv Shanker* (supra), the question raised was this: When vinegar is sold on the strength of a licence granted u/s 3 of the Essential Commodities Act, 1955, whether a person, who sells vinegar, can be prosecuted under the PFA Act, 1954? The Punjab and Haryana High Court, relying upon its earlier decision, held that prosecution under the PFA Act was not possible for sale of vinegar, when vinegar is sold under a licence granted under the Fruit Products Order, 1955 (in short, "the Order of 1955"), which is an order published under the provisions of Section 3 of the Essential Commodities Act, 1955. In *Shiv Shanker* (supra), it was contended before the High Court, on behalf of the State, that the PFA Rules come into force after commencement of the Order of 1955 and vinegar, having been mentioned as an article of fruit in both the Rules, prosecution under both the provisions of law was permissible. In support of these arguments, the provisions of Section 26 of the General Clauses Act were pressed into service. This argument did not find favour of the High Court and the High Court held, relying upon its earlier decisions, that the provisions of the Order of 1955 had overriding effect and, therefore, a manufacturer of food products, such as, vinegar, could only be prosecuted under the provisions of the Order of 1955 and not under the PFA Act. In the backdrop of these facts, the Apex Court, in *Shiv Shanker* (supra), observed and reiterated the position of law in the following words:

3. In this Court the view taken in *Raj Kumar's* case (supra) was sought to be supported by the learned Counsel for the Respondent. The provisions of the Fruit Order and of the Adulteration Act, it was contended, could not harmoniously co-exist on the statute book, as compliance with one would, in certain contingencies, result in violation of the other in some respects. With respect of

the particular charges tried in the cases in appeal, however, no attempt was made on behalf of the Respondents to show that there was any fatal conflict or inconsistency between the two provisions. The question before us accordingly lies within a very narrow compass. The Appellant urged that there is no implied repeal of the Adulteration Act by the Fruit Order in so far as the sale of vinegar is concerned, whereas the case of the Respondent is that there is an implied repeal and the Respondents are not liable to be prosecuted under the Adulteration Act for his submission from *Om Prakash Gupta Vs. State of U.P.*, and *T.S. Baliah Vs. T.S. Rengachari*, In the former case Section 5(1)(c) of the Prevention of Corruption Act was held not to repeal Section 409, I.P.C. The decision of the Punjab High Court (*The State Vs. Gurcharan Singh*, holding to the contrary was overruled. In the latter case Section 52 of the Income Tax Act, 1922 was held not to repeal Section 177 I.P.C.

5. The general principles governing implied repeal appear to us to have long since been settled. The difficulty is normally experienced in their application to a given case. From the passage quoted by Kapur, J., from the unreported Bench decision in *Raj Kumar's case* (supra) upholding the implied repeal of the Adulteration Act by the Fruit Order it seems to us that the Division Bench did not correctly and fully grasp them. We accordingly consider it proper to broadly restate the general rule. It was laid in *Maine v. State*, (1883) 11 QBD 120.that when two Acts are inconsistent or repugnant the latter will be read as having impliedly repealed the earlier. As the Legislature must be presumed in defence to the rule of law to intend to enact consistent and harmonious body of laws, a subsequent legislation may not be too readily presumed to effectuate a repeal of existing statutory laws in the absence of express or at least clear and unambiguous indication to that effect. This is essential in the interest of certainty and consistency in the laws which the citizens are enjoined and expected to obey. The legislature, which may generally be presumed to know the existing law, is not expected to intend to create confusion by its omission to express its intent to repeal in clear terms. The Courts, therefore, as a rule, lean against implying a repeal unless the two provisions are so plainly repugnant to each other that they cannot stand together and it is not possible on any reasonable hypothesis to give effect to both at the same time. The repeal must, if not express, flow from necessary implication as the only intendment. The provisions must be wholly incompatible with each other so that the two provisions operating together would lead to absurd consequences, which intention could not reasonably be imputed to the Legislature. It is only when a consistent body of law cannot be maintained without abrogation of the previous law that the plea of implied repeal should be sustained. To determine if a later statutory provision repeals by implication an earlier one it is accordingly necessary to closely scrutinise and consider the true meaning and effect both of the earlier and the later statute. Until this is done it cannot be satisfactorily ascertained if any fatal inconsistency exists between them. The meaning, scope and effect of the statutes, as discovered on scrutiny, determines the legislative intent as to

whether the earlier law shall cease or shall only be supplemented. If the objects of the two statutory provisions are different and the language of each statute is restricted to its own objects or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface. Statutes in *pari materia* although in apparent conflict, should also, so far as reasonably possible, be construed to be in harmony with each other and it is only when there is an irreconcilable conflict between the new provision and the prior statute relating to the same subject-matter, that the former, being the later expression of the Legislature, may be held to prevail, the prior law yielding to the extent of the conflict. The same rule of irreconcilable repugnancy controls implied repeal of a general by a special statute. The subsequent provision treating a phase of the same general subject-matter in a more minute way may be intended to imply repeal *protanto* of the repugnant general provision with which it cannot reasonably co-exist. When there is no inconsistency between the general and the special statute the later may well be construed as supplementary.

8. It may appropriately be pointed out at this stage that it was not the Respondent's case that the Essential Commodities Act had the effect of impliedly repealing the Adulteration Act for the purposes of these cases. The only argument urged was that the Fruit Order had that effect and its overriding effect by virtue of Section 3 of the Act was strongly emphasised.

9. The object and purpose of the Adulteration Act is to eliminate the danger to human life and health from the sale of unwholesome articles of food. It is covered by Entry 18, List III of the 7th Schedule to the Constitution. The Essential Commodities Act on the other hand has for its object the control of the production, supply and distribution of, and trade and commerce in, essential commodities and is covered by Entry 33 of List III. In spite of this difference in their main objects, control of production and distribution of essential commodities may, to an extent from a broader point of view, include control of the quality of the essential articles of food and, thus considered, it may reasonably be urged that to some extent it covers the same field as is covered by the provisions of the Adulteration Act. The two provisions may, therefore, have within these narrow limits *contemminus* fields of operation. On this premise we have to see if the two provisions can stand together having cumulative effect and in case they cannot, which provision has the overriding or controlling effect. It is needless to point out that they can stand together if the powers are intended to be exercised for different purposes without fatal inconsistency or repugnancy.

The provisions of the Adulteration Act and of the Fruit Order to which our attention was drawn seem to be supplementary and cumulative in their operation and no provision of the Fruit Order is shown to be destructive of or fatal to any provision of the Adulteration Act or the Rules made thereunder so as to compel the Court to hold that they cannot stand together. If the Adulteration Act or Rules impose some restrictions on the manufacturer, dealer and seller of vinegar then

they have to comply with them irrespective of the fact that the Fruit Order imposes lesser number of restrictions in respect of these matters. The former do not render compliance with the latter impossible, nor does compliance with the former necessarily and automatically involve violation of the latter. Indeed, our attention was not drawn to any provision of the Adulteration Act and Rules, compliance with which would result in breach of any mandate, whether affirmative or negative, of the Fruit Order. We are, therefore, unable to find any cogent or convincing reason for holding that the Parliament intended by enacting the Essential Commodities Act or the Fruit Order to impliedly repeal the provisions of the Adulteration Act and the Rules in respect of the vinegar in dispute. Both the statutes can function with full vigour side by side in their own parallel channels. Even if they happen to some extent to overlap, Section 26 of the General Clauses Act fully protects the guilty parties against double jeopardy or double penalty. This Section lays down that 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 those enactments but shall not be liable to be punished twice for the same offence. If, therefore, the provisions of the Adulteration Act and those of Fruit Order happen to constitute offences covering the same acts or omissions then it would be open to the prosecuting authorities to punish the offender under either of them subject to the only condition that a guilty person should not be punished twice over.

10. There is also another aspect which has to be kept in view. Both the Adulteration Act and the Essential Commodities Act have been amended from time to time after their enactment. Being governed by Entries in List III of the 7th Schedule even the States have power to amend these enactments and indeed they have been so amended in some States. The subsequent amendments of the Adulteration Act and of the Essential Commodities Act by the Parliament and the amendment of the Adulteration Rules would also tend to negative any legislative intendment of implied repeal of the Adulteration Act by the Essential Commodities Act or the Fruit Order. It may be re-called that Clause (1) of Sub-rule (1) of Rule 50 of the Adulteration Rules was amended in 1956 and again in 1960 and the amended clause is indicative of the rule-making authority being conscious of both the statutory provisions being operative in their respective fields at the same time, thereby negative implied repeal. A. 20 dealing with "vinegar" was also added in Appendix B of the Adulteration Rules in 1956 and A. 20.01 dealing with "synthetic vinegar" was added in April, 1960. A passing reference may also be made to some of the relevant amendments in some rules made subsequent to the enforcement of the amended Section 23(2). In Rule 55 in terms at Serial Nos. 19 and 20, dealing with pickles and Chutnies made from fruit or vegetables and with tomato and other sauces, respectively, the preservatives mentioned in Clause 2 were amended. Similarly in Rule 57(2) the table containing articles like fruit and vegetable juices including tomato-juice was amended. Both the above amendments were made in December, 1965. It may here be pointed out that pickles, Chutnies, tomato products, ketchups,

saucers and also other unspecified items relating to fruits or vegetables are included in the definition of "fruit product" under the Fruit Products Order. These amendments, though made after 1960, do seem to further negative the intendment of implied repeal as argued on behalf of the Respondent. In view of the foregoing discussion it seems to us that the two statutory provisions can harmoniously operate without causing confusion or resulting in absurd consequences and the scheme of the Adulteration Act and Rules can without difficulty fit into the scheme of the Fruit Order under the Essential Commodities Act. The challenge on the ground of implied repeal must, therefore, be rejected.

16. From what have been discussed in *Shiv Shanker* (supra), it is more than abundantly clear that when two Acts are inconsistent with, or repugnant to, each other, the latter enactment will be read as having impliedly repealed the earlier one. As the legislature must be presumed to intend to enact consistent and harmonious body of laws, a subsequent legislation may not be too readily presumed to effectuate a repeal of existing statutory laws in the absence of express or, at least, clear and unambiguous indication to that effect. The adherence to such interpretation of statutes is imperative in the interest of certainty and consistency in the laws, which the citizens are enjoined upon and expected to obey. The legislature, which is presumed to know the existing laws, is not, ordinarily, expected to intend to create confusion by its omission to express its intent to repeal a law in clear terms. The courts shall, therefore, as a rule, lean against implied repeal of an enactment unless the enactments or any particular provision contained therein are so irreconcilable with, or repugnant to, each other that they cannot stand together and when it becomes impossible on any reasonable hypothesis to give effect to both the enactments at the same time. Thus, the repeal must, if not expressed in clear terms, flow from necessary implication as the only legislative intendment.

17. In order to, therefore, determine if a later statutory provision repeals, by implication, an earlier one, it is necessary to closely scrutinize and consider the true meaning and effect of both the earlier as well as the later statute. Until this is done, it cannot be satisfactorily ascertained if any fatal inconsistency exists between the two statutes. The meaning, scope and effect of the statutes determine the legislative intent as to whether the earlier law shall cease or shall only be supplemented. When the objects of the two statutory provisions are different from each other and the language of each statute is restricted to its own objects and subjects, then, such statutes are, generally, intended to run in parallel lines without meeting and there would be no real conflict, though it may appear to be so on the surface. Statutes in *pari materia*, although in apparent conflict with each other, should also, so far as reasonably possible, be construed to be in harmony with each other and it is only when there is irreconcilable conflict between the two provisions that the subsequent law shall be deemed to prevail upon the former one or else, both the enactments former as well as the later ones, shall survive.

18. In the light of the principles laid down in Shiv Shanker (supra) with regard to the doctrine of implied repeal, the Apex Court also made it clear, in Shiv Shanker (supra) itself, as to when two statutes, general and special, which are *pari materia* and in apparent conflict with each other, should, notwithstanding such apparent conflict, be still construed by the courts, to survive. In order to determine if both the statutes on a given subject would or would not survive together and/ or which statute, between the two, would prevail, tests have been indicated in Shiv Shanker (supra). On this aspect, made it clear the Apex Court, in Shiv Shanker (supra), that the principle of irreconcilable repugnancy, which controls the doctrine of implied repeal, shall also be applied to determine the question of implied repeal, of a general statute by a special statute. In no uncertain words, the Apex Court emphasizes this principle, in Shiv Shanker (supra), by observing thus:

The same rule of irreconcilable repugnancy controls implied repeal of a general by a special statute. The subsequent provision treating a phase of the same general subject-matter in a more minute way may be intended to imply repeal *protanto* of the repugnant general provision with which it cannot reasonably co-exist. When there is no inconsistency between the general and the special statute, the later may well be construed as supplementary.

In short, when the court is required to determine if a statute, which is special in nature, would prevail upon a statute on a same subject, which is general in nature, the tests, which are indicated above, for the purpose of determination of implied repeal of a statute, are to be resorted to.

19. The Apex Court has further made it clear, in Shiv Shanker (supra), that if two statutes can stand together and if it appears that the two statutes are intended to be taken resort to for different purposes and without fatal inconsistency or repugnancy, both shall be allowed to be stand good. Section 26 of the General Clauses Act fully, points out the Supreme Court, in Shiv Shankar (supra), protects the guilty parties against double jeopardy, for, Section 26 of the General Clauses Act clearly lays down that 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 those two enactments, but shall not be liable to be punished twice for the same offence. If, therefore, the provisions of the PFA Act and those of Ghee (G&M) Rules, 1938, happen to constitute offences covering the same acts or omissions, then, it would be open to the prosecuting authorities to punish the offender under either of them subject to the only condition that a guilty person should not be punished twice over.

20. For the purpose of implying a repeal or for the purpose of holding that it is the subsequent law, which will prevail, or for the purpose of holding whether a subsequent legislation, which is general in nature, will be, on a particular aspect, inapplicable because of an earlier special legislation, in this regard, necessary it is to determine if the two statutes relate to the same subject-matter and have the same purpose. If the statutes have two objects, operating in two different

fields and if such statutes can stand together without being wholly irreconcilable with, or repugnant to, each other, mandatory it is for the court to ensure that the legislative intendment of both the statutes are enforced.

21. In the backdrop of the position of law, as discussed above, with regard to the doctrine of implied repeal or repugnancy or with regard to the approach, which the courts shall adopt to consider if a special law shall be allowed to prevail over the general law or not, when I come to the factual matrix of the present case, what I notice, as already indicated above, is that the two Acts, namely, the Act of 1937 and the PFA Act occupy two different fields. No provision of the PFA Act or the Rules made thereunder is destructive of, or fatal to, any of the provisions of the Ghee (G&M) Rules, 1938. Though the item of Ghee may be common in both, the former being an enactment, which is optional and regulatory in nature, whereas the latter one is penal in nature. This apart, while the Ghee (G&M) Rules, 1938, require giving of melt number, the PFA Rules require giving of batch number, lot number or code number. Can it be said that if melt number is given, then, batch, lot or code number is not possible to give? The answer to this question is obviously in the negative, for, it is possible that a manufacturer of Ghee, even if he is registered under the Ghee (G&M) Rules, 1938, can give melt number and also, at the same time, in terms of the requirements of Rule 32(e) of the PFA Rules, print, on the container of Ghee, the batch number, code number or lot number. In fact, when Mr. Bhati's attention was drawn to this aspect of the matter, he could not dispute that the accused-Petitioners, in the present case, could have printed, on the container of the item of Ghee, not only melt number, but also batch number or lot number or code number. In a situation, such as the present one, it is, to my mind, perhaps, incorrect to hold, as has been done in Deepak Sharma Tamuli (supra), that the Ghee (G&M) Rules, 1938, being a special rule in respect of the item of Ghee, will "definitely override the General Rules under 32(e).

22. At any rate, when it is possible for a manufacturer of Ghee to comply with the requirements of both the provisions, namely, the provisions of the Ghee (G&M) Rules, 1938 and the PFA Rules, it would be, in my view, not reasonable to hold that the Ghee (G&M) Rules, 1938, would override the provisions of Rule 32(e) of the PFA Rules and that giving of batch number, lot number or code number, in terms of Rule 32(e), on the item of Ghee, is not mandatory.

23. Turning to the second ground on which Mr. Bhati has challenged the prosecution of the accused-Petitioners, namely, that the purpose of Rule 32(e) is satisfied even by giving melt number and the reliance placed by him in, in this regard, on the observations made in Deepak Sharma Tamuli (supra), what is pertinent to point out is that when the substantive part of the PFA Rules makes the giving of batch number or code number or lot number mandatory, it will not be possible for any manufacturer to contend to the effect that, in the face of the Explanation IV to Rule 32 of the PFA Rules, since the melt number is sufficient to enable anyone to trace the Ghee in the manufacturing process or identify the

same in the distribution, the object and purpose of Rule 32(e) stands, in such a case, satisfied. It is not the business of a manufacturer to contend that notwithstanding his omission to carry out the mandatory provisions of the substantive part of the PFA Rules, the purpose of the PFA Rules, in terms of the Explanation IV to Rule 32, stands satisfied. When mens rea is, admittedly, not an essential ingredient of an offence under the PFA Act, it is not material as to why the mandatory provisions of the Rules have not been followed. The moment contravention of Rule 32(e) is proved, the penal consequences ensuing therefrom would automatically follow and no resistance to such penal consequences can be objected to by the contravener by contending that notwithstanding the contravention, the object or purpose of the Rules stands satisfied.

24. Notwithstanding, therefore, the fact that the purpose of the Rule 32(e) may be satisfied by a particular act of a manufacturer, yet when the contravention of a mandatory provision of the PFA Act or the Rules made thereunder is proved, the explanation as to why the contravention was not with criminal intent becomes redundant.

25. Unable to sustain the grounds on which the accused-Petitioners sought to challenge the validity of their prosecution, Mr. O.P. Bhati, learned Counsel for the accused-Petitioners, has, at the end, contended, that Rule 32(e) permits giving of even a distinguishing prefix. By giving melt number, the manufacturer, in the present case, according to Mr. O.P. Bhati, can be held to have used, in terms of Rule 32(e), melt number as a distinguishing prefix. Support for this submission is sought to be derived by Mr. Bhati from the case of Deepak Sharma Tamuli (supra).

26. While considering the above submission, what needs to be carefully noted is that Section 32(e) reads as under:

Rule 32 Package of food to carry a label-- Every package of food shall carry a label and unless otherwise provided in these rules, there shall be specified on every label.

(a) *** ***(b) *** ***(c) *** ***(d) *** ***(e)

(e) A distinctive batch number or lot number or code number, either in numerals or alphabets or in combination, the numerals or alphabets or their combination, representing the batch number or lot number or code number being preceded by the words "Batch No" or Batch or "Lot No" or "Lot" or any distinguishing prefix:

Provided that in case of canned food, the batch number may be given at the bottom, or on the lid of the container, but the words "Batch No" given at the bottom or on the lid, shall appear on the body of the container.

Explanation iv--A Batch Number or Code Number or Lot Number is a mark of identification by which the food can be traced in manufacture and identified in distribution.

27. A careful reading of Rule 32(e) shows that a manufacturer is required to give a distinctive batch number, lot number or code number either in numerical or alphabets or in combination, meaning thereby that the batch number or lot number or code number can be 1, 2, 3 and so on or a, b, c and so on or a1, a2, a3 or b1, b2, b3 and so on, Rule 32(e) also states that the numerical or alphabets or other combination, representing the batch number or lot number or code number, shall precede by the words batch number or batch or lot number or lot or distinguishing prefix meaning thereby that one may have batch number 1 or batch 1 or batch number 2 or batch 2 or batch number 3 or batch 3 or batch number a or batch a, batch number a1 or batch a1, batch number b1 or batch b1, batch numerical or batch c1, and, similarly, lot number 1 or lot 1, lot number 2 or lot 2 or lot number 3 or lot 3, lot number a1 or lot a1, lot number b1 or lot b1, lot number c1 or lot c1 or code number 1 or code 1, code number 2 or code 2, code number 3 or code 3 or code number a or code a or code number a1 or code a1, code number b1 or code b1 or code number c1 or code c1. Now, the question is as to what the words "any distinguishing prefix", appearing in Rule 32(e), would mean.

28. Under the Explanation IV to the PFA Rule, a batch number or code number or lot number is defined as a mark of identification by which the food can be traced in manufacture and identified in distribution. Thus, the purpose of providing batch number or code number or lot number is for identifying the article of food in the manufacturing process and in the distribution.

29. Now, a careful analysis of Rule 32(e) read with the Explanation IV thereto would reflect that resorting not only to the process of labelling by printing a distinctive batch number or code number or lot number, but also by any distinguishing prefix, the food can be labelled under the provisions of the PFA Act. It is well established principle of construction of statutes that general terms, following particular expressions, take their colour and meaning as that of the preceding expressions.

30. Applying the principle of *ejusdem generis*, it is clear that the distinguishing prefix shall be restricted to mean that it has to be a prefix meant to signify the batch number, lot number or code number. The melt number can, in no case, be said to signify the batch number, lot number or code number. Hence, it cannot be said that melt number, in itself, is a distinguishing prefix for the purpose of Rule 32(e), particularly, when I have already indicated hereinabove that as contended by Mr. O.P. Bhati himself, it is possible for a manufacturer of Ghee to print, on the container of his product, the batch number, code number or lot number besides printing the melt number thereon.

31. Let me, now, take note of Rule 7 of the Ghee (G & M) Rules, 1938, which reads as follows:

7. Special conditions of certificate of authorization--In addition to the conditions specified in Rule 4 of the General (Grading and Marking) Rules, 1937, the

conditions set out in Schedule IV shall be conditions of every Certificate of Authorisation issued for the purposes of these Rules.

32. A careful reading of Rule 7 of the Ghee (G&M) Rules, 1938, shows that the Ghee (G & M) Rules, 1938, is in addition to the General (G&M) Rules, 1937, and not in derogation thereof, for, in addition to fulfilling the requirements of Rule 4 of the General (G&M) Rules, 1937, one has to comply with the provisions of the Ghee (G&M) Rules, 1938. Thus, in sum, indicates that a manufacturer of Ghee, who has opted to be covered by the Ghee (G&M) Rules, 1938, must also follow and comply with the provisions of the General (G&M) Rules, 1937.

33. I may, now, pause here to point out that the General (G&M) Rules, 1937, has undergone amendment by virtue of a gazette notification, dated 17.5.89, published by the Government of India, whereby the General (G&M) Rules, 1937, stands amended. The amended Rules have been titled as General (Grading and Marking) Rules, 1988 (in short, "General (G&M) Rules, 1988"). Rule 11 of the General (G&M) Rules, 1988, reads as follows:

Rule 11. Packing and marking:(1) An article graded in accordance with the provisions of the Act, shall be packed in the manner and using the type of packaging material and the pack sizes, by weight or number as prescribed for the said article:

Provided that relaxation/modification in the mode of packing of a graded article may be allowed, on receipt of written request from the authorized packer by the Agricultural Marketing Adviser or any other officer authorised by him in this behalf, to meet the specific requirement of the buyer.

(2) Every package containing Agmark graded article will, in addition to the grade designation mark, carry such details like Certificate of Authorisation, number, lot/batch number, date of packing, place of packing, net weight etc. as prescribed for the said article.

(3) Private marks, if any, applied on the packages of Agmark graded article shall not represent quality or grade different from that indicated by the grade designation mark affixed thereon.

(4) In respect of such articles where expiry period has been prescribed, the "date of expiry" shall be prominently marked on the packages.

34. A microscopic reading of Sub-rule (2) of Rule 11 of the General (G&M) Rules, 1988, makes it clear that every package of a graded article, such as, Ghee, shall carry, in addition to the graded distinction mark, certificate of authorisation, number, lot/batch number, date of packing, place of packing, net weight etc. as prescribed for the said article. Sub-rule (2) of Rule 11 makes it abundantly clear that even under the General (G&M) Rules, 1988, giving of lot number or batch number on the package is mandatory. The melt number is meant for Ghee under the General (G&M) Rules, 1938. The requirement of printing on the package of every graded article, such as Ghee, batch number, lot number, in terms of the

requirements of Sub-rule (2) of Rule 11, makes it abundantly clear that the lot number or batch number is not the same as melt number. Hence, the melt number cannot be described as a distinguishing prefix in respect of lot number, batch number or code number. Viewed from this angle also, it is clear that if an article of food, such as Ghee, contains melt number, it would not be distinguishing prefix in respect of batch number, lot number or code number as is mandated by Rule 32(e) of the PFA Rules.

35. At any rate, therefore, when it is clearly seen that it is possible to print, on the package of food, even if the package of food be of Ghee, batch number, code number or lot number in addition to printing thereon melt number, it logically follows that whoever sells or stores for sale a package of food, even if the package of food be Ghee, and the same does not contain batch number, code number or lot number, as is required under Rule 32(e) of the PFA Rules, contravention of Rule 32(e) takes place and such contravention, being a contravention within the meaning of Section 7(v) of the PFA Act, is punishable u/s 16 of the PFA Act. In these circumstances, prosecution of a person for such contravention of Rule 32(e) cannot, perhaps, be interfered with, particularly, when mens rea does not form part of an offence punishable under the PFA Act.

36. What crystallizes from the above discussion is that the provisions of Ghee (Grading and Marking) Rules, 1938, does not override the PFA Act and the PFA Rules and printing of melt number on the package of Ghee is, perhaps, not complete compliance of the provisions of Rule 32(e) of the PFA Rules. It logically follows that if a manufacturer of Ghee does not print, on the package of Ghee, batch number, code number or lot number in terms of the requirements of Rule 32(e), this amounts to contravention of Rule 32(e) exposing such manufacturer to prosecution for offence committed under the PFA Act. As the conclusion, so reached, is in apparent conflict with, and different from, the law laid down in Deepak Sharma Tamuli (supra), the matter needs to be referred to a larger Bench for examining the matter and for a final decision in the matter so as to prevent flow of conflicting orders emanating from the Courts on the above subject.

37. Considering, therefore, the matter in its entirety and in the interest of justice, the Registry is directed to lay the matter before the Hon'ble Chief Justice for consideration.

38. Let the above directions be brought to the notice of the Deputy Registrar (I&E).