
(1987) 09 GUJ CK 0014
In the Gujarat High Court

Parle Beverages Pvt. Ltd. and Others	APPELLANT
Vs	
Thakore Pratapji Kacharaji and Another	RESPONDENT

Date of Decision : 28-09-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 482
Penal Code, 1860 (IPC) — Section 272, 272, 273, 273

Citation : (1988) 1 GLR 183

Hon'ble Judges : B.S. Kapadia, J

Bench : Single Bench

Judgement

B.S. Kapadia, J.—The petitioner has filed the present application u/s 482 of the Criminal Procedure Code for quashing the proceedings in the Criminal Case No. 17 of 1987 pending before the learned JMFC, Sidhpur.

2. On perusal of the complaint which is annexed as Annexure-A to the petition, it appears that the complaint was filed under Sections 272 and 273 of the IPC as also u/s 16 of the Prevention of Food Adulteration Act (hereinafter referred to as "the Act"). It is alleged in the complaint that the complainant is doing the business of selling cold drinks in the Court compound at Sidhpur. He was also keeping "Thums Up" drink manufactured and supplied by the original accused present petitioners. It is also alleged that on 15th May, 1987 a customer asked for "Thums Up" bottle which the complainant had purchased from the Garden Hindu Hotel who are the distributors of "Thums Up" for Sidhpur vide bill No. 3332. When the complainant took the bottle of "Thums Up" he found that it was containing insects. It was a sealed bottle. On realising that the drink of "Thums Up" was infected with insects, a notice was given to the accused through his lawyer, but no reply was given by the accused. The complainant therefore, filed the complaint making all the required allegations for the commission of the offences under Sections 272 and 273 IPC. He has also produced the said bottle before the learned Magistrate and also requested to send it for the report of the Chemical Analyser. On the said complaint the learned Magistrate has issued process against the present petitioners for the offences under Sections 272 and

273 IP Code only.

3. It may be stated that when the petition was originally filed the entire attack was with regard to the provisions of the Act, but at the time of hearing, Mr. S.K. Zaveri, the learned Advocate appearing for the petitioners learnt that process was issued under Sections 272 and 273 IPC and he sought permission to amend the petition. Permission was granted. Now he has amended the petition accordingly.

4. Mr. Zaveri during the course of arguments has submitted that the learned Magistrate has committed an error in issuing the process against the petitioners for the offences under Sections 272 and 273 IPC inasmuch as the provisions of Sections 272 and 273 IPC are repealed by the provisions of Section 25 of the Prevention of Food Adulteration Act. He submits that the provisions of Sections 272 and 273 IPC are provisions of corresponding law which was in force at the time when the provisions of the Act came into force and, therefore, the aforesaid two Sections of the IPC are repealed.

5. Mr. J.M. Panchal, the learned Addl. P.P. and Mr. P.K. Jani, the learned Advocate appearing for the original complainant have very strongly opposed the present application. In their submission the provisions of Secs, 272 and 273 cannot be said to be corresponding law and, therefore, they are not repealed. They further submit that they are not repugnant and/or inconsistent with the provisions of the Act and, therefore, also there is no question of implied repeal of the said provisions of the IPC. Relying on the statement of object and reasons for the Act and also on the wordings of Section 25(2) of the Act, they submits that all other local Prevention of Food Adulteration Acts which were prevalent are repealed but the provisions of the I.P. Code are not repealed.

5A. Mr. J.M. Panchal Addl. P.P. submits that at the time of presenting the bill of Prevention of Food Adulteration Act the statement of objects and reasons was made and it inter alia stated that "laws exist in number of States in India for the Prevention of Adulteration of food stuff, but they lack uniformity having been passed at different times without mutual consultation between States. The need for Central Legislation for the whole country in this matter has been felt since 1937 when a Committee appointed by the Central Advisory Board of Health recommended the step. "Adulteration of food stuffs and other goods" is now included in the concurrent list in the Constitution of India. It has therefore, become possible for the Central Government to enact all India Legislation on this subject. The Bill will replace local Food Adulteration Laws where they exist and also apply to these States where there are no local laws on the subject." Relying on these observations with regard to the statement of objects and reasons Mr. Panchal submits that it only repeals the local laws and not the provisions of the Indian Penal Code. It is true that that is the statement made by the Minister while presenting the Bill and, therefore, there is no doubt that in view of the language of Section 25(1) of the Act all local law dealing with food adulteration are repealed on the commencement of the provisions of the present Prevention

of Food Adulteration Act, but the dispute in the present matter is whether the provisions of IPC namely Sections 272 and 273 are also repealed as corresponding law prevailing at the commencement of the Prevention of Food Adulteration Act.

5B. On this point Mr. S.K. Zaveri submits that the statement of objects and reasons cannot be used as a key for interpreting the section. It is true that in the case of S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others, the Supreme Court has so held and also observed in para 23 as under :

.... It is indeed true that the Statement of Objects and Reasons can be referred to for the purpose of ascertaining the circumstances which led to the legislation in order to find out what was the mischief which the legislation aimed at....

In that view of the matter the statement of objects and reasons can be useful for the purpose of ascertaining the circumstances which led to the introduction of the Bill of the Prevention of Food Adulteration Act. In that view of the matter for finding out the true interpretation thereof the statement of objects and reasons cannot be taken as an aid.

5C. It is true that for the purpose of ascertaining the intention of the Legislature other provisions of the Act can be considered. In that view of the matter Mr. Panchal further submits that Sub-section (2) of Section 25 of the Act also refers to the saving of the Rules, Regulations, Bye-laws relating to prevention of adulteration of food and, therefore, also the repeal applies only to the local laws of prevention of food adulteration which were prevalent, at the time of commencement of the Act. According to him, there were 22 different Acts prevalent in different states. He further submits that there were no rules under the I.P. Code. That argument also cannot be accepted at this juncture as in the present case the meaning of the words "any law corresponding" is to be ascertained and further that it is relating to the savings of the Rules and Regulations made under the relevant repealed Acts.

6. With a view to properly appreciate the contentions raised in this matter it is necessary to quote Section 25 of the Act which reads as under :

25(1) If, immediately before the commencement of this Act, there is in force in any State to which this Act extends any law corresponding to this Act, that corresponding law shall upon such commencement stand repealed.

(2) Notwithstanding the repeal by this Act of any corresponding law, all rules, regulations and bye-laws relating to the prevention of adulteration of food, made under such corresponding law and in force immediately before the commencement of this Act shall, except where and so far as they are inconsistent with or repugnant to the provisions of this Act, continue in force until altered amended or repealed by rules made under this Act.

The use of particular form of words is not necessary to bring about an express

repeal. It is clear from Section 25(1) of the Act that the Legislature has not chosen to put the list of the Acts repealed in a schedule nor the Legislature has used the phraseology to the effect that any law which is inconsistent with the provisions of the Act would be repealed. Instead of that the Legislature has used the words that if there is any law in force in any State to which this Act extends any law corresponding to this Act, that corresponding law shall upon such commencement stand repealed. This device is adopted by the Central Legislature because it was not in a position to know with any exactness the laws in force in the States. The principle underlying repealing the corresponding law is to avoid duplication of the proceedings under the corresponding law under two different Acts where the repealed law also provided substantially for all matters contained in the Act effecting the repeal. While the principle of implied repeal is based on the fact that provisions of the two Acts i.e. the Act which was in force and the new Act are so inconsistent with each other and/or repugnant with each other and that they cannot stand together. It is very clear from the wordings of Section 25 of the Act that what is expressly repealed is the law which was in force at the commencement of the Act which was corresponding to the provisions of the Act. It is true that as provided in some other Act no list of the repealed Act is provided for. Therefore, it is necessary for the Court to do some exercise for considering as to whether the provisions of Sections 272 and 273 IPC are the provisions corresponding to the provisions of the Act.

7. At this juncture it is necessary to examine certain provisions of the Act. This Act first of all gives the definitions inter alia for words "adulterated" "food" and "sale". Section 2(v) defines that "food" means any article used as food or drink for human consumption other than drugs and water and includes - (a) any article which ordinarily enters into, or is used in the composition or preparation of or is in a state unfit for food or drink shall be punished with imprisonment. He submits that it speaks of selling such article with knowledge that the same has been noxious as food or drink. It may be stated that in this case allegations have been already made in para 3 of the complaint with regard to the manufacturing of the article (Thums Up) containing insects which are likely to cause danger disease like cholera and that after bottling the same the petitioners have put the same in the market for sale. In my view these allegations are sufficient for attracting the provisions of Sections 272 and 273 IPC. human food, (b) any flavouring matter or condiments, and (c) any other article which the Central Govt. may having regard to its use, nature, substance or quality, declare by notification in the official gazette as food for the purpose of this Act. The definition of "adulterated" also includes an article of food which will be deemed to be adulterated which inter alia also includes article which consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption. Definition of "sale" also includes agreement for sale and exposing for sale also. Further it provides in Section 4 of the Act about the Central Food Laboratory. It also provides in Section 7 that no person shall himself or by any person on his behalf

manufacture for sale, or store, sell or distribute any adulterated food. Act also provides for analysis by Public Analyst, who has to be appointed by the Central Govt. or State Govt. There is also provision for appointment of Food Inspectors. It also prescribes the method as to how the good Inspector should take the sample for analysis and send it to the Public Analyst and also to the Court by various provisions. However, it is important to note that Section 12 does not prevent a purchaser of any article of food other than a Food Inspector from having such article analysed by the Public Analyst on payment of such fees as may be prescribed and from receiving from the Public Analyst a report of his analysis. Section 16 of the Act provides for the punishment to a person whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes any article of food which is adulterated and it is prescribed that punishment shall not be less than six months but which may extend to three years and with fine which shall not be less than one thousand rupees. In the proviso it is provided in respect or certain excepted category like primary food, that for any adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees. Section 20 of the Act speaks about the cognizance of the offence under this Act. It specifically provides that no prosecution for an offence under this Act not being an offence u/s 14 or Section 14A shall be instituted except by, or with the written consent of the Central Government or the State Govt. or a person authorised in this behalf, by a general or special order. Proviso to Section 20 provides that a prosecution for an offence under this Act may be instituted by a purchaser referred to Section 12 if he produces in the Court a copy of the Report of the Public Analyst along with complaint. It is also to be noted that Section 13(5) of the Act provides for the use of certificate issued by the Public Analyst or by the Director of Central Food Laboratory as the case may be as evidence of the facts stated therein in any proceeding under this Act. It also provides that it can be so used in any proceedings u/s 272 to 276 of the IPC. It is important to note that Section 13 of the Act has undergone material changes by the Amending Act No. 34 of 1976 which has come in force with effect from 1-4-1976 and it has been renumbered and Sub-section (2A) to (2E) are newly inserted by the said Amending Act which has now become the part of the Act. Sub-section (4) of Section 13 is also accordingly amended by the Amending Act No. 34 of 1976 wherein it provides that on the production of the certificate u/s 13(2B) in any proceedings under this Act or under Sections 272 to 276 IPC it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis. Lastly, Section 25(2) of the Act speaks about the saving of the Rules, Regulations and Bye-laws relating to the prevention of adulteration of food made under such corresponding law and in force immediately before the commencement of this Act shall, except where and so far as they are inconsistent with or repugnant to the provisions of this Act, continue in force until altered, amended or repealed by rules made under this Act.

8. After considering the aforesaid provisions of the Act it will be now convenient to refer to Sections 272 and 273 of I.P.C. Section 272 is in the Chapter XIV of the IPC which provides for the offences affecting the public health, safety, convenience, decency and morals. Sections 272 and 273 IPC read as under:

272. Wherever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

On perusal of Section 272 it is clear that it provides for the punishment to a person who adulterates any article of food or drink, so as to make such article noxious as food or drink, but that would become an offence provided he does so with the intention to sell articles as food or drink and the maximum sentence prescribed there for is imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. Similarly, Section 273 IPC also makes it an offence against the person who sells or offers or exposes for sale as food or drink, any article which has been rendered or has become noxious or in a state unfit for food or drink, but it also provides that it would be an offence provided he does so knowingly, or having reason to believe that the same is noxious and the punishment which is prescribed is imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. It is to be noted that I.P. Code nowhere defines "food" or "drink" or "article of food" or "drink" or "sale".

9. After perusing the aforesaid provisions of the Act as well as the IPC it is necessary to consider as to what meaning is attached to the words "corresponding law" occurring in Section 25(1) of the Act. The words "corresponding law" were required to be considered by the Bench of Five Judges of the Supreme Court in the case of A.B. Abdulkadir and Others Vs. The State of Kerala and Another, . In the said case in para 11 the Supreme Court referred to its earlier judgment in the case of The Custodian of Evacuee Property, Bangalore Vs. Khan Saheb Abdul Shukoor, etc., and observed as under :

.... Where the Act repealed provides substantially for all matters contained in the Act effecting the repeal there is correspondence between the two Acts and the earlier Act would thus stand repealed: it is not necessary that there should be complete identity between the repealing Act and the Act repealed in every respect....

Similar view is taken in the case of Jagir Singh Vs. Ranbir Singh and Another, where the question before the Supreme Court to be considered was whether the order passed u/s 488 of the Criminal Procedure Code can be considered as the order passed under the corresponding Section of the new Act. In the said case it is observed by the Supreme Court that "to accept the submission would be to give the expression "corresponding provision" the meaning "identical provision". Whenever an Act is repealed and re-enacted there are bound to be changes and modifications. To say that a modified provision deal with the same subject matter in substantially the same matter as the original provision is not a corresponding provision would be to practically nullify the effect of repealing provision like Section 484(2)(b) of the New Code." After referring to various dictionary meanings the Supreme Court held as under :

.... We are therefore, of the view that Section 125 of the new Code corresponds to Section 488 of the Code notwithstanding the fact that under the new Code a child who has attained majority and who does not suffer from any infirmity is not entitled to be maintained by the father... We, therefore, hold that the order for maintenance made in favour of the respondent must be deemed to be an order made u/s 125 of the new Code and that it does not automatically cease to be effective on the coming into force of the new Code....

Ultimately the Supreme Court allowed the application, u/s 127 for cancelling the order made u/s 125.

10. Now in view of the judgments of the Supreme Court the position of law in interpreting "corresponding law" is well settled that where the Act repealed provides substantially for all the matters contained in the Act effecting repeal there is correspondence between the two Acts and the earlier Act would stand repealed. That it is not necessary that there should be complete identity between repealing Act and the Act repealed in every respect. However, there will be no correspondence and no repeal if the two Acts are substantially of differing scopes.

11. In the present case applying the aforesaid principles, can it be said that the provisions of Sections 272 and 273 IPC are corresponding to the provisions of the Act. Answer would be definitely in the negative. As stated earlier, Section 16 of the Act provides for stricter punishment, than what is provided under the aforesaid provisions of the IPC. Apart from this main distinguishing feature there is also departure on the point of mens rea. So far as the offences under Sections 272 and 273 IPC are concerned, mens rea as required under the aforesaid provisions would be necessary to establish the commission of the offence under the provisions of the said Sections of the IPC. While Section 16 read with Section 7 of the Act make absolute liability and mens rea is dispensed with. It is clearly pointed out in the case of Pyarali K. Tejani Vs. Mahadeo Ramchandra Dange and Others, . In the said case in para 4 it is observed as under :

4. A close up of the law relevant to this case will help focus attention on the criminal area into which the appellant is alleged to have entered. The central

concept of the statute is prevention of adulteration of food in the somber background of escalating maneuvers by profiteers who seek to draw dividends from the damage to the health of the people caused by trade in adulteration. The social sternness and wide sweep of the statute can be realised from the thought that an insidious host that internally erodes the vitality of a nutritionally deficient nation is in one sense, a greater menace than a visible army of aggression at our frontiers and so the police power of the state must reach out to protect the unsuspecting community with over powering laws against those whose activities are a serious hazard to public health. And so a minimum Jail term is fixed in the Act itself.

In para 11 of the said judgment the Supreme Court further observed that "It is trite law that in food offences strict liability is the rule not merely under the Indian Act but all the world over. The principle has been explained in American Jurisprudence (2nd Vol. 35, P. 864) thus :

Intent as element of offence: The distribution of impure or adulterated food for consumption is an act perilous to human life and health, hence a dangerous act, and cannot be made innocent and harmless by the want of knowledge or by the good faith of the seller, it is the act itself, not the intent, that determines the guilt and the actual harm to the public is the same in one case as in the other. Thus, the seller of food is under the duty of ascertaining at his peril whether the article of food conforms to the standard fixed by statute or ordinance, unless such statutes or ordinances, expressly or by implication, make intent an element of the offence.

Nothing more than the actus reus is needed where regulation of private activity in vulnerable area like public health is intended. In the words of Lord Wright in *McLeod v. Buchanan* 1940 (2) AER 179 at 186 (HL):

Intention to commit a breach of statute need not be shown. The breach in fact over powers individual freedom to injure, in special situations of strict liability. Section 7 casts an absolute obligation regardless of scienter, bad faith and mens rea. If you have sold any article of food contrary to any of the subsections of Section 7, you are guilty. There is no more argument about it. The law denies the right of a dealer to rob the health of a supari consumer. We may merely refer to similar plea overruled in the case reported in *Andhra Pradesh Grain and Seed Merchants Association Vs. Union of India (UOI) and Another*, .

Thus, the main distinguishing features are higher punishment and dispensing with mens rea in the offence under the provisions of the Act. Further looking to the definitions of the definitions "food", "adulterated" and, "sale" given in the Act they have very wide scope and embrace within its scope many items. While it is not so in the offence under Sections 272 and 273 IPC. In view of the above discussion it is clear that the ingredients of the offence u/s 7 read with Section 16 of the Act are different from the ingredients for the offence under Sections 272 and 273 IPC. In substance the offence described in the earlier Act. Under

these circumstances it cannot be said that the provisions of Sections 272 and 273 IPC is the law corresponding to the provisions of the Act. Hence the offences under Sections 272 and 273 of the IPC cannot be held to have been expressly repealed by Section 25(1) of the Act.

12. Mr. Zaveri, the learned Advocate for petitioners further submitted that if the principle of implied repeal is to be applied than also the test of inconsistency and repugnancy will be complied with and, therefore, in his submission it should be held that provisions of Sections 272 and 273 IPC are impliedly repealed. In support of his submission he has relied on two authorities which lay down the test of repugnancy. The test of repugnancy was laid down by the Supreme Court in the case of *Zaverbhai Amaldas Vs. The State of Bombay*, , which has been subsequently approved by the Supreme Court in the case of *T. Barai Vs. Henry Ah Hoe and Another*, .

13. It may be stated that similar question arose before the Full Bench of Seven Judges of this Court in the case of *Babulal Vadiyal v. Ambica Iron and Steel Works and Re-Rolling* 1974 GLR 474. In para 25 of the said judgment it is observed as under :

.... It is true that the Legislature can exercise the power of repeal by implication but it is an equally well-settled principle of law that there is a presumption against implied repeal. That presumption is based on the ground that the intention to repeal, if any had existed, would have been declared in express terms. Of course, this presumption would be rebutted if the provisions of the subsequent statute are so inconsistent with these of the prior statute that the two cannot stand together or "the two statutes together would lead to wholly absurd consequences or the entire subject matter were taken away by the subsequent statute".... In other words, they must be absolutely repugnant, or irreconcilable. Otherwise there can be no implied repeal, as we have pointed out in the preceding section, for the intent of the legislature to repeal the old enactment is utterly lacking.

14. In the case of *Zaverbhai Amaldas Vs. The State of Bombay*, . There as Bombay Act No. 36 of 1947 which was to provide for enhanced penalty for contravention of the orders under the Essential Supplies (Temporary Powers) Act, 1946 and subsequently there was Central Act No. 52 of 1950 on the same subject matter, in para 11 of the said judgment it is observed as under :

11. It is true as already pointed out, that on a question under Article 254(1) letter an Act of Parliament prevails against a law of the State, no question of real arises but the principle on which the rule of implied repeals rests, namely, at if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together than the earlier is repealed by the later enactment, will be equally applicable to a question under Article 254(2) where the further legislation by Parliament in respect of same matter as that of the state law. We must accordingly hold that Section 2 of Bombay Act No. 36 of 1947

cannot prevail as against Section 7 of the Essential Supplies (Temporary Powers) Act (24 of 1946) as amended by Act No. 52 of 1950.

15. Similar question arose with regard to the State's amendment made to the provisions of the Prevention of Food Adulteration Act by the West Bengal Government in the case of *T. Barai Vs. Henry Ah Hoe and Another*, wherein subsequently the parliament amended the said Act by the Amendment Act of 1976. In the said case it is observed that "the predominance of the State law may however be taken away if Parliament legislates under the proviso to Clause (2). The proviso to Article 254(2) empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent. Parliament may repeal or amend the repugnant State law, either directly or by itself enacting a law repugnant to the State law with respect to the "same matter." Even though the subsequent law made by Parliament does not expressly repeal the State law even then, the State law will become void as soon as the subsequent law of Parliament creating repugnancy is made. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise where both laws operate in the same field and the two cannot possibly stand together e.g., where both prescribe punishment for the same offence but the punishment differs in degree or kind or in the procedure prescribed. In all such cases, the law made by Parliament shall prevail over the State law under Article 254(1) of the Constitution. Thus, these two cases referred to by Mr. Zaveri are on the point with regard to interpretation as to whether law made by the Parliament would prevail over the State law which is repugnant to the law made by the Parliament.

16. Similar question arose before the Supreme Court in the case of *Municipal Corporation of Delhi Vs. Shiv Shanker*, wherein it was contended that the provisions of the Prevention of Food Adulteration Act are repealed by the provisions of Essential Commodities Act or the Fruit Products Order made thereunder. In the said case the Supreme Court observed that:

When two Acts are inconsistent or repugnant the later will be read as having impliedly repealed the earlier. As the legislature must be presumed in deference 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 law 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, loathe 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 not when a consistent body of law cannot be maintained without abrogation of the proviso 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 two 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 reasonable 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 *pro tanto* of the repugnant general provision with which it cannot reasonably co-exist. When there is no inconsistency between the general and the special the latter may well be construed as supplementary.

17. The provisions of both the Acts have been considered to some extent earlier in the judgment. Now considering the said provisions again in the light of the aforesaid judgments we have to consider as to whether they can stand together or not. It is true that Sections 272 and 273 IPC also separate in the field of public health as the provisions of the Act. The test is as to whether they can stand together or not. At this juncture it is important to note that apart from the fact that there is no reference of the provisions of the Penal Code in Section 25 of the Act providing for the repeal, still however, it is necessary to scan certain provisions of the Act which would clearly give the indication that the provisions of the IPC namely, Sections 272 and 273 are also to work as the supplementary provisions. Sections 13(4) and (5) of the Act gives the clue on this point. Section 13(5) of the Act also speaks about the using the certificate given by the Public Analyst as also the Director of Central Food Laboratory as evidence even in the proceedings under Sections 272 to 276 of the IPC. It is interesting to note that Section 13 of the Act underwent drastic changes by the Act No. 34 of 1976 and Sub-section (2B) of Section 13 imposes a duty on the Court for ascertaining that the mark and seal or fastening as provided in Clause (b) of Sub-section (1) of Section 11 are intact and the signature or thumb impression, as the case may be

is not tampered with and the Court has to despatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory. By virtue of Sub-section (4) of Section 13 as amended by the Act No. 34 of 1976 it is also made applicable to the proceedings under Sections 272 to 276 IPC meaning thereby that it shall not be necessary in any such proceedings to produce any part of the sample taken for analysis where the certificate of Director of Central Food Laboratory is produced. If at all the Legislature wanted to have the implied repeal they would not have made these provisions. This is clear indication of the intention of the Legislature to keep those provisions of the IPC as a supplementary one to the provisions of the Act. It may be that the same facts may invite the applicability of the offences under the provisions of the IPC as well as the Act. Still however, at that time the provisions of Section 26 of the General Clauses would come in to play. Section 26 of the General Clauses Act lays down that where an act of omission constitute an offence of two or more enactments then the offenders shall be liable to be prosecuted and punished under either or any of the enactments, but shall not be punished twice for the same offence. In that view of the matter it cannot be said that the provisions of Sections 272 and 273 IPC and the provisions of the Act are so repugnant that they cannot stand together though in certain cases Section 26 of the General Clauses Act would take care. In that view of the matter the argument of implied repeal advanced by Mr. Zaveri cannot be accepted.

18. Looking to the facts of the present case as alleged in the complaint which is annexed to the application, it is clear that there are sufficient allegations with regard to the alleged commission of the offences under Sections 272 and 273 of the IPC. When that is so and when the learned Magistrate after taking cognizance of the offence and on perusal of the complaint and the record having been satisfied that there was prima facie case for issuing process against the present petitioners has issued the process it cannot be said that the learned Magistrate has exceeded the powers vested in him under the law. As the Magistrate is restricted to finding out whether there is a prima facie case or not for proceeding against the accused and he cannot enter into detailed discussion on merits or demerits of the case and as the learned Magistrate has accordingly issued process against the petitioners-accused there is no case for interference by this Court u/s 482 of the Criminal Procedure Code.

19. Before concluding the judgment I would like to deal with the additional argument advanced by Mr. Zaveri. He submits that Section 272 IPC refers to adulteration of article of food or drink so as to make such article noxious as food or drink and further it refers to the intention of the adulterating party. He further submits that Section 273 IPC provides that whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink shall be punished with imprisonment. He submits that it speaks of selling such article with knowledge that the same has been noxious as food or drink. It may be stated that in this case allegations have been already made in para 3 of the complaint with regard

to the manufacturing of the article (Thums Up) containing insects which are likely to cause danger disease like cholera and that after bottling the same the petitioners have put the same in the market for sale. In my view these allegations are sufficient for attracting the provisions of Sections 272 and 273 IPC.

20. Mr. Zaveri in this connection has relied on the judgment in the case of Emperor v. Saling Ram 3 Criminal Law Journal page 208 wherein the case was u/s 273 IPC. In the said cases the accused did not sale any article as food or drink. He sold to a trader in grain a grain pit containing some 350 maunds of grain, a portion of which was found to be in a state unfit for human consumption. In the said case it was held that as the sale was for the purpose of trade and not as food, no offence u/s 273 was committed. Section 273 refers to sell or offer or expose for sale as food or drink any article which has been rendered or has become noxious. In the aforesaid case what was sold was food grain which could not have been used as food or drink, without undergoing any process of cooking etc. In that view of the matter in my view the said judgment does not help Mr. Zaveri. Hence, the additional argument advanced by Mr. Zaveri cannot be accepted.

21. In result the Misc. Criminal Application fails and stands dismissed. Rule discharged. Interim relief stands vacated.

Mr. Zaveri states that the petitioners want to approach the Supreme Court and, therefore, he requests that the operation of this judgment may be stayed for a period of six weeks from today. Accordingly, the operation of this judgment is stayed for a period of six weeks from today.