

(2022) 05 GUJ CK 0025

In the Gujarat High Court

Case No : R/Criminal Misc.Application No. 11338, 25239 Of 2017, 18181 Of 2018, Criminal Misc.Application (Fixing Date Of Early Hearing) No. 1 Of 2019

Piramal Enterprises Ltd

APPELLANT

Vs

State Of Gujarat & 1 Other(S)

RESPONDENT

Date of Decision : 06-05-2022

Acts Referred:

Food Safety And Standard Act, 2006 — Section 1(3), 2, 3, 3(1)(j), 3(1)(k), 4, 7, 8, 10, 11, 16, 27, 38, 52, 89, 97, 97 (1)(iii), 97(1)(iv), 98
Prevention Of Food Adulteration Act, 1954 — Section 2(x)(e), 7, 11(4), 16
General Clauses Act, 1897 — Section 6, 6(c)
Interpretation Act, 1889 — Section 38(2)
Income Tax Act, 1961 — Section 277, 297(1), 297(2)(h)
Income Tax Act, 1922 — Section 52

Citation : (2022) 05 GUJ CK 0025

Hon'ble Judges : Nikhil S. Kariel, J

Bench : Single Bench

Advocate : Mihir Thakore, J Sagar, Dilbur, Kalpanak Rava, M D Mehta

Final Decision : Disposed Of/Partly Allowed

Judgement

Nikhil S. Kariel, J

Associates for the petitioners, learned Advocate Ms. Dilbur Contractor for learned Advocate Ms. Kalpna K. Raval for the respondent No.2 and learned Advocate Ms. M.D. Mehta for the respondent-State in Criminal Misc. Application Nos. 25239 of 2017 and 18181 of 2018.

2. Heard learned Senior Advocate Mr. Mihir Thakore with learned Advocate Ms. Megha Jani for the petitioners, learned Advocate Mr. Masum K. Shah for learned Advocate Mr. K.I. Shah for respondent No.2 and learned APP Ms. M.D. Mehta for the respondent- State in Criminal Misc. Application No. 11338 of 2017.

3. Issue Rule in Criminal Misc. Application Nos. 25239 of 2017 and 18181 of

2018, returnable forthwith. Learned Advocates for the respective respondents waive service of Rule, and whereas Rule has already been issued in Criminal Misc. Application No. 11338 of 2017.

4. With consent of the parties, the present petitions are taken up for final hearing.

5. At the outset learned Senior Advocate Mr. Thakore for M/s. J. Sagar Associates for the petitioners in Criminal Misc. Application Nos. 25239 of 2017 and 18181 of 2018 and also appearing with learned Advocate Ms. Megha Jani for the petitioners in Criminal Misc. Application No. 11338 of 2017 has relied upon the communication dated 02.08.2016 issued by the Food Safety and Standards Authority of India being statutory authority established under the Food Safety and Standards Act, to the Commissioners of Food Safety of all States and Union territories, whereby it is stated that the Commissioners of Food Safety or States / Union territories may examine pending cases under the Prevention of Food Adulteration Act which are pending in various courts and tribunals across the country in a sizable number where offences alleged may not be very serious and penalties/ punishments prescribed may not be substantial, may be withdrawn to ensure that the judicial system is not burdened unnecessarily and scarce resources may be deployed in effective implementation of the provisions of the FSS Act and submitted that while the present issue involves complex questions of law, more particularly with regard to the applicability of the provisions of repealed Prevention of Food Adulteration Act and the provisions of the new statute being the FSS Act and since the offences alleged are of misbranding and furthermore since the provisions of Sections 52 and 58 providing for penalty of fine only, therefore the petitioners, without admitting guilt on their part, are ready and willing to pay any amount as suggested by this Court.

6. As against the same, learned Advocate Ms. Contractor for learned Advocate Ms. Kalpana K. Raval for the respondent- Corporation in Criminal Misc. Application Nos. 25239 of 2017 and 18181 of 2018 has submitted that the respondent- Corporation is not agreeable to any such proposal and whereas the said matters are taken for hearing on merits.

7. As far as Criminal Misc. Application No. 11338 of 2017 is concerned, learned Advocate Mr. Masum K. Shah appearing for the respondent No.2-Food Inspector of the Corporation, under instructions of Food Inspector Mr. D.K. Patel who is permitted to remain present through video conferencing having regard to the communication dated 02.08.2016, submitted that they are ready to abide by such proposal subject to direction of this Court to pay some amount. Thus, appropriate orders would be passed in the said petition in the concluding part of this judgment.

8. Criminal Misc. Application Nos. 25239 of 2017 and 18181 of 2018 challenge the Criminal Case No.810631 of 2011 pending before the learned Metropolitan Magistrate, Court No.8, Ahmedabad and whereas ancillary prayers have also

been sought for. Insofar as Criminal Misc. Application No. 11338 of 2017 is concerned, the same seeks to challenge the Criminal Case No.40 of 2011 pending before the learned Judicial Magistrate First Class, Municipal Court, Surat.

9. It would be pertinent to mention here that both the aforesaid criminal cases impugned in the petitions referred to hereinabove have been filed alleging violation of Section 7 of the Prevention of Food Adulteration Act, 1954 (for short "PFA Act") and seeking punishment for the said offence.

10. Facts in brief insofar as Criminal Misc. Application Nos. 25239 of 2017 and 18181 of 2018 are as follows :

10.1 The impugned criminal complaint has been filed on 29.09.2011 by the Food Inspector and whereas the complainant is stated to have visited the premises of the accused No.1 at about 5:30 p.m. on 02.06.2011 and whereas the complaint alleges misbranding of a product being 'Nicovej Atta Premix 01 Kg'. From the report of the Food Analyst which is annexed with the impugned complaint, it is revealed that the said item had been sent for analysis by the Food Inspector of the Ahmedabad Municipal Corporation on 03.06.2011 and it could also be made out that the shelf life of the product was till January, 2012. From the report of the Analyst, it can be seen that folic acid in the product which was required to be 1.5 gm. per 150 gm., as claimed on the cover of the product itself was not present and 0.35 gm. folic acid was present per 150 gm. Analysis was also conducted for iron and prescribed standard and the standard claimed was 320 gm. for every 150 gm. whereas in the report iron was found to the extent of 3.55 gm. per 150 gm. The Public Analyst had opined that the product being 'Nicovej Atta Premix 01 Kg.' packed plastic was misbranded under Section 2(x)(e) of the PFA Act and the Rules thereunder. Thus, the criminal case alleging misbranding came to be registered against the 08 accused and whereas accused No.7 being the petitioner in Criminal Misc. Application No. 25239 of 2017 is the company which had manufactured the product and whereas accused No.8 being the nominee/ employee of accused No.7-company.

11. It would be pertinent to mention here that the learned Magistrate had taken cognizance of the impugned complaint and had issued summons to the accused on 29.09.2011. That the learned Magistrate on 05.11.2011 had issued summons/ bailable warrant to the accused and non-bailable warrant/ notice to be served to the guarantor.

12. Petitioner in Criminal Misc. Application No. 18181 of 2017 at the time of filing of the complaint was employed with the accused No.7-company had inter alia submitted that he had not been served with the process issued by the learned Magistrate and whereas the petitioner had retired on 28.02.2014 and ceased to be a consultant of company from 30.06.2015, whereafter the arrest warrant had been issued and therefore the applicant had preferred the said petition.

13. Since one of the main grounds raised in submission by learned Senior Advocate Mr. Thakore for the petitioners was with regard to the repeal of

provisions of the PFA Act and introduction of provisions of the Food Safety and Standard Act, 2006 (for short "FSS Act"), in the opinion of this Court, reference to certain dates would be relevant. The said dates are as follows :

Dates

Particulars

28.05.2008

Effect was given to Section 3 of the FSS Act (the effect of the same being that the definition of "food", misbranded under the PFA Act came to be substituted by new definition "food" and "misbranded food".

Further a new term "food additive" was introduced under the FSS Act.

29.07.2010

Section 7 of the PFA Act provides for prohibited misbranded food came to be substituted by Section 27 of the FSS Act.

29.07.2010

Section 16 of the PFA Act which contemplates penalty came to be replaced by Section 52 of the new Act.

29.07.2010

Section 89 of the FSS Act has come into effect which gives overriding effect to the FSS Act over other food related laws.

02.06.2011

The Food Inspector had seized the product being Nicovej Atta Premix 01 Kg packed plastic packet.

03.06.2011

The Food Inspector had sent the product for analysis.

13.07.2011

The Food Inspector had issued a report.

04.08.2011

The PFA Act is repealed.

20.09.2011

The impugned complaint is filed under Section 7 of the PFA Act alleging commission of offence punishable under Section 16 of the PFA

Act.

29.09.2011

The learned Magistrate takes cognizance of the complaint and issued process to the accused.

31.07.2019

Section 38 of the FSS Act provides for power of the Food Safety Officer came into effect.

14. Heard learned Senior Advocate Mr. Mihir Thakore for the petitioners who has raised a preliminary objection that as per Section 11(4) of the PFA Act an article of food seized under the provisions of the Act is required to produce before a Magistrate as soon as possible and in any case not later than 07 days after the receipt of report of the Public Analyst. It is submitted by learned Senior Advocate that the provisions of the Act had not been complied with at all, since no food packet or sample thereof had been produced before the Magistrate. It is further submitted that in view of breach of provisions of Section 11(4) of the PFA Act, the impugned complaint would not survive and it is requested that the same may be quashed by this Court.

15. On merits, learned Senior Advocate has submitted that by virtue of Section 3 of the FSS Act being introduced on 28.05.2008, the product in question does not fall under the definition of food as per the new Act, more particularly since the FSS Act which defines food at Section 3(1)(j), and food additive at section 3(1)(k) separately. It is further submitted that the power of Food Safety Officer to collect the sample is restricted to food and not food additives. Learned Senior Advocate has submitted that the complaint filed on 29.09.2011 pertains to a product which according to the FSS Act is no longer food, hence the complaint itself would not be maintainable. Learned Senior Advocate has further submitted in this regard that as per the definition of Section 3(1)(j), the term "food" to be applicable the prerequisite is that the same is intended for human consumption. It is submitted that the product in question is not food, since the same was not intended for human consumption as it has high concentration of iron and folic acid which would prove to be fatal if consumed directly. It is further submitted that since the new Act which defines food not being co-relatable with the product, more particularly since the definition of the food on the date of drawing of the sample as well as on the date of filing of the complaint did not remain the same and more particularly since the product was not intended for human consumption and therefore, it could not be termed as food, therefore no complaint alleging commission of offence under Section 7 of the PFA Act could have been filed.

16. Learned Senior Advocate further submitted that the PFA Act prohibits the sale of misbranded food and whereas after change in definition of food

underwent a change and whereas it do not apply to anything which was not food that is not fit for human consumption and consequently the word "misbranded" also came to be changed and referred to as misbranded food. Learned Senior Advocate has submitted that since the product not falling under the definition of the food under the FSS Act, since the FSS Act contemplating misbranding of food and not mere misbranding, and therefore the impugned complaint would not be sustainable.

17. Learned Senior Advocate has also submitted that Section 16 of the PFA Act ought not to have been applied by the respondent authorities, more particularly when Section 52 of the FSS Act had already come into effect and more particularly since the extent of misbranding had been narrowed down by adding the term "food" along with the term "misbranded". Learned Senior Advocate has submitted that a material change with regard to the penal provision had also come into effect inasmuch as Section 16 of the PFA Act contemplates punishment with imprisonment whereas Section 52 of the FSS Act prescribes punishment for misbranded with monetary penalty.

18. Learned Senior Advocate has heavily relied upon Section 89 of the FSS Act and has submitted that the said Section gives an overriding effect to the provisions of the FSS Act over all other food related laws. Learned Senior Advocate in this regard has submitted that Sections 2, 7, 10 and 16 are inconsistent with the provisions of the FSS Act, more particularly Section 3 or the definition of Sections 27, 38 and 52.

19. Learned Senior Advocate has further submitted that since the complaint impugned had been filed after Section 89 of the FSS Act had come into effect, and the provisions of the PFA Act insofar as they are inconsistent with the provisions of the new Act, would be ineffective by virtue of Section 89 which gives overriding effect to the provisions of the FSS Act over any other provision inconsistent with itself. Learned Senior Advocate has therefore submitted that the impugned criminal complaint may be quashed by this Court.

20. These petitions are strongly opposed by learned Advocate Ms. Dilbur Contractor for learned Advocate Ms. Kalpna K. Raval for the complainant being the Food Inspector of the Ahmedabad Municipal Corporation. Learned Advocate has submitted that while the provisions of the FSS Act had come into effect on various dates as per notification issued under Section 1(3) of the FSS Act, yet the PFA Act was repealed by way of notification under Section 97 on 05.08.2011. Learned Advocate submits that merely because some provisions of the FSS Act had come into effect would not by itself mean that there is an implied repeal of the provisions of the PFA Act.

21. Learned Advocate Ms. Contractor further submits that Sections 97 and 98 of the FSS Act contain saving clause which save right/obligation/liability incurred under the old Act being the PFA Act. Learned Advocate has relied upon the Section 98 which contains transitory provisions for food standards inasmuch as

until new standards under the FSS Act would be specified, the standards specified under the PFA Act shall continue to remain in force and any action taken under the PFA Act shall be deemed to have been taken under the FSS Act. Learned Advocate has further submitted that in view of repeal of PFA Act on 05.08.2011 and the FSS Act containing saving clause and transitory provisions, the intention of the legislature was very clear inasmuch as, any action or prosecution under the PFA Act was maintainable, inspite of promulgation of the new Act.

22. Learned Advocate Ms. Contractor has further submitted that what would be pertinent to note here is that the offence was detected on 02.06.2011 and hence late filing of the complaint would not in any manner make it un-prosecutable under the provisions of the PFA Act. Learned Advocate has further submitted that Section 89 of the FSS Act which states regarding overriding effect, would come into effect only if there is any inconsistency between the FSS Act and other food related laws. It is submitted that there is no inconsistency between the PFA Act and the FSS Act. Leaned Advocate has further submitted that two Acts can be said to be inconstant with each other, if they are both irreconcilable and repugnant to each other. Learned Advocate has further submitted that upon perusal of the objects and reasons of the PFA Act and the FSS Act, the both Acts being enacted for the very selfsame purpose, therefore the former Act would be repugnant to the later Act.

23. Learned Advocate Ms. Contractor has in support of her submissions relied upon the following judgments :

(1) Judgment of Rajasthan High Court in case of M/s Modi Home Products v. State of Rajasthan in Civil Writ No. 3667 of 2011;

(2) Judgment of Kerala High Court in case of Naravana Reddiar v. State of Kerala and others reported in 2012 (3) KLJ 103;

(3) Judgment of Supreme Court in case of Municipal Corporation of Delhi v. Shiv Shankar reported in AIR 1971 SC 815;

(4) Judgment of Karnataka High Court in case of Shri Shrinivas P. Shetty v. State of Karnataka reported in 2013 (2) FAC 76;

(5) Judgment of Madhya Pradesh High Court in case of Manik Hiru Hangiani v. State of Madhya Pradesh in M.CR.C. No. 10611 of 2015.

24. Heard learned Advocates for the respective parties and perused the record.

25. The main plank of the submissions by learned Senior Advocate for the petitioners being the non-applicability of the provisions of the old Act i.e. PFA Act, more particularly upon the new Act i.e. FSS Act being brought into effect, cannot be countenanced. It requires to be noted that Section 97 of the FSS Act, inter alia saves proceedings including investigation, legal proceedings or remedy which may be instituted, continued or enforced or any penalty could be imposed

as if the new Act had not been passed. The position of law in this regard has been very succinctly explained by the Hon'ble Apex Court in case of Hindustan Unilever Limited Vs. The State Of Madhya Pradesh reported in (2020) 10 SCC 751. Paragraphs No. 14, 15, 16, 17 and 18 of the said decision being relevant, are reproduced hereinbelow for benefit.

"14. Section 97 of the 2006 Act, which came into force on 5.8.2011, is as follows:

"97. Repeal and savings.—(1) With effect from such date as the Central Government may appoint in this behalf, the enactment and orders specified in the Second Schedule shall stand repealed:

Provided that such repeal shall not affect:

(i) the previous operations of the enactment and orders under repeal or anything duly done or suffered thereunder; or

(ii) any right, privilege, obligation or liability acquired or incurred under any of the enactment or orders under repeal; or

(iii) any penalty, forfeiture or punishment incurred in respect of any offences committed against the enactment and orders under repeal; or

(iv) any investigation or remedy in respect of any such penalty, forfeiture or punishment, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed :

(2) If there is any other law for the time being in force in any State, corresponding to this Act, the same shall upon the commencement of this Act, stand repealed and in such case, the provisions of Section 6 of the General Clauses Act, 1897 (10 of 1897) shall apply as if such provisions of the State law had been repealed.

(3) Notwithstanding the repeal of the aforesaid enactment and orders, the licences issued under any such enactment or order, which are in force on the date of commencement of this Act, shall continue to be in force till the date of their expiry for all purposes, as if they had been issued under the provisions of this Act or the rules or regulations made thereunder.

(4) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act or orders after the expiry of a period of three years from the date of the commencement of this Act."

(Emphasis Supplied)

15. Section 6 of the General Clauses Act, 1897 provides the effect of repeal as under:

"6. Effect of repeal.-Where this Act or any Central Act or Regulation made after

the commencement of this Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.....

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Repealing Act or Regulation had not been passed.”

16. In terms of Section 6 of the General Clauses Act, 1897, unless different intention appears, the repeal of a statute does not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Repealing Act or Regulation had not been passed. But in the 2006 Act, the repeal and saving clause contained in Section 97 (1)(iii) and (iv) specifically provides that repeal of the Act shall not affect any investigation or remedy in respect of any such penalty, forfeiture or punishment and the punishment may be imposed, “as if the 2006 Act had not been passed”. The question as to whether penalty or prosecution can continue or be initiated under the repealed provisions has been examined by this Court in *State of Punjab v. Mohar Singh*, wherein this Court examined Section 6 of the General Clauses Act which is on lines of Section 38(2) of the Interpretation Act of England. It was held as under:

“6. Under the law of England, as it stood prior to the Interpretation Act of 1889, the effect of repealing a statute was said to be to obliterate it as completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prosecuted and concluded while it was an existing law [*Vide Craies on Statute Law*, 5th edn, p. 323] . A repeal therefore without any saving clause would destroy any proceeding whether not yet begun or whether pending at the time of the enactment of the Repealing Act and not already prosecuted to a final judgment so as to create a vested right. To obviate such results a practice came into existence in England to insert a saving clause in the repealing statute with a view to preserve rights and liabilities already accrued or incurred under the repealed enactment.

Later on, to dispense with the necessity of having to insert a saving clause on each occasion, Section 38(2) was inserted in the Interpretation Act of 1889 which provides that a repeal, unless the contrary intention appears, does not affect the previous operation of the repealed enactment or anything duly done or suffered under it and any investigation, legal proceeding or remedy may be instituted, continued or enforced in respect of any right, liability and penalty under the repealed Act as if the Repealing Act had not been passed. Section 6 of the General Clauses Act, as is well known, is on the same lines as Section 38(2) of the Interpretation Act of England.

* * *

9. The offence committed by the respondent consisted in filing a false claim. The claim was filed in accordance with the provision of Section 4 of the Ordinance and under Section 7 of the Ordinance, any false information in regard to a claim was a punishable offence. The High Court is certainly right in holding that Section 11 of the 9 AIR 1955 SC 84 Act does not make the claim filed under the Ordinance a claim under the Act so as to attract the operation of Section 7.

Section 11 of the Act is in the following terms:

"11. Repeal.-The East Punjab Refugees (Registration of Land Claims) Ordinance 7 of 1948 is hereby repealed and any rules made, notifications issued, anything done, any action taken in exercise of the powers conferred by or under the said Ordinance shall be deemed to have been made, issued, done or taken in exercise of the powers conferred by, or under this Act as if this Act had come into force on 3rd day of March, 1948"....

...The truth or falsity of the claim has to be investigated in the usual way and if it is found that the information given by the claimant is false, he can certainly be punished in the manner laid down in Sections 7 and 8 of the Act.

If we are to hold that the penal provisions contained in the Act cannot be attracted in case of a claim filed under the Ordinance, the results will be anomalous and even if on the strength of a false claim a refugee has succeeded in getting an allotment in his favour, such allotment could not be cancelled under Section 8 of the Act. We think that the provisions of Sections 4, 7 and 8 make it apparent that it was not the intention of the Legislature that the rights and liabilities in respect of claims filed under the Ordinance shall be extinguished on the passing of the Act, and this is sufficient for holding that the present case would attract the operation of Section 6 of the General Clauses Act.

It may be pointed out that Section 11 of the Act is somewhat clumsily worded and it does not make use of expressions which are generally used in saving clauses appended to repealing statutes; but as has been said above the point for our consideration is whether the Act evinces an intention which is inconsistent with the continuance of rights and liabilities accrued or incurred under the Ordinance and in our opinion this question has to be answered in the negative."

17. In another judgment reported as *Tiwari Kanhaiyalal & Ors. v. Commissioner of Income Tax, Delhi*, the assessments were completed under the Income Tax Act, 1922 after the Income Tax Act, 1961 came into force. There was search on the premises of the assessee. The revised returns were filed after the Income Tax Act, 1961 came into force. The penalty proceedings were initiated and it was levied under the 1961 Act. Later, the complaints were filed alleging commission of the offences under Section 277 of 1961 Act. Another set of complaints were filed under the Income Tax Act, 1922. This Court held that the complaints under the 1922 Act remains unaffected. It was held as under:

"7. It is advisable to discuss and dispose of a new point which arose during the hearing of these appeals. Sub-section (1) of Section 297 of the 1961 Act repealed the 1922 Act including Section 52. In sub-section (2) no saving seems to have been provided for the launching of the prosecution under the repealed Section 52 of the 1922 Act. It does not seem correct to take recourse to clause (h) of Section 297(2) to make the offences come under Section 277 of the 1961 Act as was endeavoured to be done by the respondent in the first 12 complaint petitions. But then from no clause under sub-section (2) a different intention appears in this regard from what has been said in Section 6 of the General Clauses Act. On the facts alleged the criminal liability incurred under Section 52 of the 1922 Act remains unaffected under clause (c) of Section 6 of the General Clauses Act"

18. Thus, in view of Section 97 of the 2006 Act, as also under Section 6 of the General Clauses Act, 1897, the proceedings would continue under the Act. No benefit can be taken under the 2006 Act as the prosecution and punishment under the Act is protected."

26. The Hon'ble Apex Court in the above referred judgment has inter alia observed that in terms of Section 6 of the General Clauses Act, 1897, upon repeal of a statute, the same would not affect any investigation, legal proceedings or remedy in respect of any penalty, forfeiture or punishment or any investigation, legal proceedings may be instituted, continued or enforced unless a different intention appears. The Hon'ble Apex Court has observed that in the later Act i.e. FSS Act, more particularly vide Repeal and Saving Clause contain in Section 97, clearly provides that repeal shall not affect any investigation or remedy and whereas for the present purpose it requires to be observed that legal proceedings or remedy could be instituted as if the 2006 Act, had not been passed. In view of the very specific provision of law, more particularly the same having been explained as above by the Hon'ble Apex Court, the submission of the learned Senior Advocate for the petitioners is not required to be entertained.

27. It would be relevant to mention here that in view of the saving clause, the submission, more particularly with regard to overriding effect of the FSS Act etc. are not required to be taken into consideration. At the same time, it would be relevant at this stage to refer to the communication dated 02.08.2016 issued by the Food Safety and Standards Authority of India being the statutory authority established under the FSS Act, whereby the Commissioners of Food Safety of all States have been directed to examine cases which are not of very serious nature and whereas penalties/punishments for such offences also not being substantial, more particularly to ensure that such cases may not unnecessarily burden the judicial system and also divert scarce resources of the Government in pursuing such cases rather than deploying them for effective implementation of the provisions of the FSS Act. In this backdrop, Commissioners of Food Safety of all States have been directed to examine pending cases against food business operators inter alia under the provisions of various enactment and orders

repealed on enactment of Food Safety and Standard Act, 2006, and take a view on withdrawal of the same if consider appropriate.

28. Having regard to the said communication which is produced in Criminal Misc. Application No. 11338 of 2017, inspite of holding as above, in the preceding para as regards the submission of learned Senior Advocate for the petitioners, this Court seeks to observe as below.

As seen from the chart annexed at Page 13, the samples had been seized by the Food Inspector in the month of June, 2011 and whereas the impugned complaint is filed in the month of September, 2011 and whereas immediately thereupon the learned Magistrate had taken cognizance of the complaint. It also appears that while the petitions had been preferred in the year 2017 and whereas learned Co-ordinate Bench of this Court had been pleased to stay the proceedings of the criminal case and whereas it appears that in the interregnum i.e. from the date of cognizance till the present petitions had been filed, the case had not proceeded any further before the learned Trial Court, more particularly as seen from the Rojkam, the trial had been adjourned for one reason or the other. It would be also pertinent to mention here that Section 16 of the PFA Act inter alia sets out the penalties for offences mentioned in the said Act and insofar as misbranded food is concerned, the PFA Act inter alia provides for punishment for a period of six months which could extend to three years and a fine which shall extend to Rs. 1000/-. On the other hand, it appears that Section 52 of the FSS Act, 2006 inter alia provides for penalty for misbranded food which could extend upto Rs.3,00,000/-.

29. The above referred facts viewed from the perspective of the communication issued by the Food Safety and Standards Authority of India dated 02.08.2016, referred to hereinabove, would make it clear that the nature of punishment and penalty prescribed for offence of misbranded food, is not substantial i.e. for a term which shall not be less than six months, but may extend upto three years and for penalty of Rs.1000/-. It also appears that after the learned Magistrate had taken cognizance, for approximately five years, the trial had not moved further, more particularly it appears that there was no clarity insofar as whether summon, bailable/non-bailable warrant being issued against the accused and/or learned Advocate for the complainant remaining present. Having regard to the same, more particularly, in the considered opinion of this Court, since the FSS Authority taken a decision with regard to not contesting the cases where penalties/punishments are not substantial and to ensure that judicial system is not burdened and the resources of the Government is not spent in pursuing litigations under the old Act, rather than implementation of the provisions of the new Act, in the considered opinion of this Court, the present being a case where the penalty/punishment is not substantive, in the considered opinion of this Court, the proceedings, ought not to be permitted to proceed any further, more particularly after 11 years of filing of the impugned complaint and as much years having passed after the old Act has been repealed.

30. At the same time, since it is already observed by this Court that legal submissions of learned Senior Advocate raised on behalf of the petitioners not being countenanced, therefore to meet the ends of justice, suitable penalty is required to be imposed upon the petitioners, more particularly keeping in view the penalty which could be imposed upon the petitioners as per Section 52 of the FSS Act i.e. upto Rs. 3,00,000/-. Such penalty without imposing a criminal liability upon the petitioners, in the considered opinion of this Court would balance the scale of justice and would also met the ends of justice.

31. Having regard to the above discussion and observations, the following directions are passed :

(1) Insofar as the Criminal Misc. Application Nos. 25239 of 2017 and 18181 of 2018, the Criminal Case No. 810631 of 2011, pending before the learned Metropolitan Magistrate, Court No.8, at Ahmedabad, is hereby quashed and set aside, subject to the petitioners depositing an amount of Rs. 1,00,000/- as litigation costs, with the Gujarat High Court Legal Services Authority within a period of six weeks from the date of receipt of this order and whereas such penalty shall be without imposing any criminal liability upon the petitioners. Out of the said amount of Rs. 1,00,000/-, Rs.50,000/-shall be transmitted by the said authority to the Ahmedabad Municipal Corporation, as litigation costs towards the impugned complaint and the present petitions.

In case the aforesaid amount of costs is not deposited by the petitioners within the stipulated time period as above, then the Criminal Case No. 810631 of 2011 pending before the learned Metropolitan Magistrate, Court No.8, at Ahmedabad, shall stand revived and whereas the learned Magistrate shall endeavor to conduct and conclude the trial from the date of reviving the said Criminal Case.

(2) Insofar as Criminal Misc. Application No. 11338 of 2017, the Criminal Case No. 40 of 2011, pending before the Judicial Magistrate First Class, Municipal Court, Surat, is hereby quashed and set aside subject to the the petitioners depositing an amount of Rs.25,000/- in total with the respondent- Corporation as litigation cost, within a period of six weeks from the date of receipt of this order. In case the amount of cost is not deposited by the petitioners within the stipulated time period as above, then the Criminal Case No. 40 of 2011, pending before the Judicial Magistrate First Class, Municipal Court, Surat, shall stand revived and whereas the learned Magistrate shall endeavor to conduct and conclude the trial from the date of reviving the said Criminal Case.

32. With the above observations and directions the present petitions are disposed of as partly allowed. Rule is made absolute to the aforesaid extent.

33. In view of the order passed in the main matter, Criminal Misc. Application (Fixing Date of Early Hearing) No.1 of 2019, would not survive, hence the same is disposed of accordingly.