

(2015) 05 AHC CK 0200
In the Allahabad High Court
Case No : Criminal Appeal No. 1586 of 2015

Pradeep Kumar Gupta

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Constitution of India, 1950 — Article 20(2), 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 195, 345, 346, 446
Food Safety And Standards Act, 2006 — Section 16, 41, 41, 42, 42
Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : (2015) 3 ACR 2924 : (2015) 6 ADJ 351 : (2015) 6 ALJ 426 : (2016) CriLJ 122

Hon'ble Judges : Pankaj Naqvi, J

Bench : Single Bench

Advocate : Santosh Yadav, for the Appellant; Vimlendu Tripathi and Rajeev Lochan Shukla, Advocates for the Respondent

Judgement

Pankaj Naqvi, J—Heard Sri Santosh Yadav, learned counsel for the appellant, Sri Vimlendu Tripathi, the learned A.G.A., and Sri Rajiv Lochan Shukla, the learned Amicus Curiae.

This appeal styled as "Criminal Appeal" is preferred under Section 71(6) of the Food Safety and Standards Act, 2006 (in short "the Act"), assailing the order dated 17.3.2015 in Criminal Appeal No. 19 of 2015 passed by District Judge, Agra, whereby the order of the Adjudicating Officer dated 19.2.2015 imposing a penalty of Rs. 5 lacs stands reduced to 50%, as a pre conditional deposit for admission of the appeal.

The core issue which falls for consideration is as to the nature of adjudication proceedings contemplated under Chapter X of the Act i.e., whether such proceedings are civil or criminal in nature as an answer on the said issue would have a bearing on the cognoscibility of this appeal before this bench on the criminal side of the jurisdiction.

2. The appellant claims to be a petty food vendor engaged in the business under the Act; on 9.11.2012 the Food Safety Officer inspected his shop, purchased a sample of paneer, which as per report of public analyst was found to contain fats less than the prescribed limit of 50% hence, sample was found to be sub-standard. On the basis of the report and after requisite sanction from the Designated Officer under the Act, a complaint dated 10.11.2012 was filed by the Food Safety Officer before the Adjudicating Officer/Additional District Magistrate. The Adjudicating Officer after notice and hearing the appellant passed an order dated 19.2.2015 imposing a penalty of Rs. 5 lacs. The appellant preferred an appeal under Section 70(1) before the Food Safety Appellate Tribunal (FSAT) i.e. the District Judge, Agra The F.S.A.T., vide its order dated 17.3.2015 passed a conditional order that the appeal be admitted subject to deposit of 50% of the penalty, which is impugned herein.

3. Sri Vimlendu Tripathi, learned A.G.A. at the threshold submits that although an appeal is maintainable against the order dated 17.3.2015 under Section 71(6) of the Act before this Court but the same could not be nomenclature and filed as "criminal appeal" thus the appeal as framed and filed is not cognizable by this bench, rather it is to be treated as an Appeal from Order on the civil side of the jurisdiction. To buttress his objection, learned A.G.A., submits that the Act of 2006 is a substantial departure from the Act of 1954 in many respect, and one of the new concepts, introduced under the new Act, is that proceedings could go on both for criminal prosecution of an offence under the Act and also for adjudication on the quantum of penalty. In this connection, he referred to the various provisions of the Act, reference of which would be given at an appropriate stage. He thus submits that the power of adjudication for determining the quantum of penalty contained in Chapter-X of the Act upon the Adjudicating Officer in the first instance and upon the Food Safety Appellate Tribunal/the Appellate Authority, in the second instance has no nexus whatsoever with the criminal prosecution, which is ordinarily followed by conviction and sentence, whereas "adjudication" is followed only by penalty. He also submits that both the Adjudicating Officer and Food Safety Appellate Tribunal while deciding the proceedings of adjudication on determination of quantum of penalty are acting like a Civil Court, hence appeals preferred from such orders could not be nomenclature as criminal appeal. In this connection, he placed reliance on the judgments of the Apex Court in the case of Director of Enforcement v. M.C.T.M. Pvt. Ltd. 1996 SCC (Cri.) 344 ; The Chairman, SEBI Vs. Shriram Mutual Fund and Another, AIR 2006 SC 2287 : (2006) 3 BC 392 : (2006) 131 CompCas 591 : (2006) 5 CompLJ 30 : (2006) 3 CTC 569 : (2006) 11 JT 164 : (2006) 6 SCALE 154 : (2006) 5 SCC 361 : (2006) 68 SCL 216 : (2006) 2 SCR 833 Supp : (2006) AIRSCW 2997 : (2006) 5 Supreme 1 and Radheshyam Kejriwal Vs. State of West Bengal and Another, (2011) 102 CLA 283 : (2011) 163 CompCas 509 : (2011) CriLJ 1747 : (2011) 266 ELT 294 : (2011) 335 ITR 58 : (2011) 333 ITR 58 : (2011) 2 JCC 943 : (2011) 2 JT 443 : (2011) 2 RCR(Criminal) 756 : (2011) 2 SCALE 540 : (2011) 3 SCC 581 : (2011) 2 SCC(Cri) 721 : (2011) 108 SCL 406 :

(2011) 4 SCR 889 : (2011) 2 UJ 1009 : (2011) 40 VST 11 : (2011) AIRSCW 1479 to demonstrate the nature of adjudication proceedings.

4. Sri Rajiv Lochan Shukla, learned Amicus Curiae has authenticated the objection of learned A.G.A.

5. Sri Yadav, opposed the submissions of learned A.G.A. on the ground that notwithstanding that certain powers of the Civil Court are made available to the Adjudicating Officer under Section 68(3) and under Section 71(2) of the Act on the Tribunal, yet the power, which is sought to be exercised is essentially criminal in nature. He places reliance on a Division Bench judgment of this Court in the case of State of Uttar Pradesh and Others Vs. Mukhtar Singh and Others, AIR 1957 All 505 .

SALIENT FEATURES OF THE NEW ACT, VIS-A-VIS THE ISSUE INVOLVED

6. The principal feature of the Statements of the Objects and Reasons of the Act of 2006 is that it provides for graded penalties depending on the gravity of offence and accordingly, civil penalties for minor offences and punishment for serious violations. The Act of 2006 vide Section 97 repealed the Act of 1954. The essential distinguishing feature in so far relevant for the purpose of the instant case is that it provides for two sets of proceedings, one for launching prosecution of an offence under the Act followed by punishment and/or fine and the other is of "adjudication" on the quantum of penalty for violating the provisions of the Act of 2006, unlike the old Act, where criminal prosecution was the only option followed by punishment with or without fine as contemplated under Section 16 of the said Act and in limited cases an order of penalty too under Section 6 of the old Act. But the cardinal distinction between the imposition of penalty under the old Act and the new Act was that in the former, it was a fall out of a criminal prosecution, whereas in the latter, it is independent of the criminal prosecution, i.e., by way of adjudication only.

7. The provisions pertaining to criminal prosecution commence with Section 41 of the new Act, which confers powers upon a Food Safety Officer of search, seizure, investigation, prosecution etc. Section 42 provides a procedure for launching prosecution. It provides that the Food Analyst after receiving the sample from the Food Safety Officer shall analyze the same and send his report within a specified period to the designated officer with a copy to Commissioner of Food Safety. The Designated Officer after scrutinizing the report of the Food Analyst shall decide as to whether contravention is punishable with imprisonment or fine only, and in case contravention is punishable with imprisonment, he shall send his recommendations within 14 days to the Commissioner, Food Safety for sanctioning prosecution and the Commissioner shall decide within the prescribed period as per the gravity of offence, whether the matter is to be referred to the Court of ordinary jurisdiction in case of offences punishable with imprisonment for a term upto 3 years; or a Special Court in case of offences punishable with imprisonment for a term exceeding 3 years and in case, no Special Court is

established, such cases shall be tried by a Court of ordinary jurisdiction. The Commissioner shall communicate his decision to the designated officer and the concerned Food Safety Officer, who shall launch prosecution before the Courts of ordinary jurisdiction or Special Court, as the case may be.

8. Chapter IX of the Act relates to offences and penalties. Section 49 lays down the criteria, which the Adjudicating Officer or the Tribunal shall have due regard while adjudging the quantum of penalty under this Chapter. Sections 50-58 relate to imposition of penalty in respect of selling food not of the nature or substance or quality demanded; sub-standard food; misbranded food; misleading advertisement; food containing extraneous matter; penalty for failure to comply with direction of F.S.O., penalty for unhygienic or unsanitary processing or managing of food; penalty for possessing adulterant and a provision relating to residuary penalty. Sections 59 to 64 relate to punishments; for unsafe food, interfering with seized items, disclosing false information, obstructing or impersonating a Food Safety Officer, carrying business without license and punishment for subsequent offences. These provisions (Sections 59-64) provide imprisonment for a term for different periods alongwith fine for different sums depending upon the nature of the offence. Section 65 relates to the power of the Adjudicating Officer or the Court, as the case may be to grant compensation in case of injury or death of consumer. Section 66 relates to offences by companies. Section 73 confers powers upon the Court to try cases summarily, which are not triable by a Special Court. Section 74 relates to constitution of Special Courts and appointment of public prosecutors. Section 75 confers powers upon the Special Court to transfer cases to regular Courts, if it is of the opinion that the offence is not triable by it. Section 76 makes the decision or order of the Special Court appealable to the High Court, which appeal shall be disposed of by the High Court by a Bench of not less than two Judges. Section 77 provides that no Court shall take cognizance of an offence under the Act after expiry of the period of one year from the date of commission of an offence, unless the Commissioner of Food Safety by a reasoned order approves prosecution within an extended period of upto 3 years. Section 78 confers powers upon the Courts to implead manufacturer at any time during the trial of any offence under this Act. Section 79 empowers the Court of ordinary jurisdiction to pass any sentence authorized under the Act except a sentence of imprisonment for a term exceeding 6 years. Finally, Section 80 provides the defences, which may or may not be allowed of prosecution under the Act.

9. A conspectus of the aforesaid statutory scheme commencing from Sections 41 to 80 would evidently manifest that it provides an exhaustive machinery for initiating criminal prosecution in the mode and manner prescribed therein for trial of an offence under the Act in which either of the above punishments are only inflicted when a person is subjected to criminal prosecution either before Special Court or the Ordinary Criminal Court, as the case may be.

NATURE OF ADJUDICATION PROCEEDINGS

10. Chapter X of the Act relates to Adjudication and Food Safety Appellate Tribunal. The relevant Sections, i.e. 68, 70 and 71 are extracted hereunder:

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

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

(3) The Adjudicating Officer shall have powers of a Civil Court and-

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

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

(4) While adjudicating the quantum of penalty under this Chapter the Adjudicating Officer shall have due regard to the guidelines specified in Section-49."

"70. Establishment of Food Safety Appellate Tribunal--(1) The Central Government or as the case may be, the State Government, may, by notification, establish one or more tribunals to be known as the Food Safety Appellate Tribunal to hear appeals from the decisions of the Adjudicating Officer under Section 68.

(2) The Central Government or the State Government, as the case may be, shall prescribe, the matters and areas in relation to which the Tribunal may exercise jurisdiction.

(3) The Tribunal shall consist of one person only (hereinafter referred to as the Presiding Officer of the Tribunal) to be appointed, by notification, by the Central Government or the State Government, as the case may be:

Provided that no person shall be qualified for appointment as a Presiding Officer to the Tribunal unless he is or has been a District Judge.

(4) The qualification, appointment, term of office, salary and allowances, resignation and removal of the Presiding Officer shall be such as may be prescribed by the Central Government.

(5) The procedure of appeal and powers of the Tribunal shall be such as may be prescribed by the Central Government."

"71. Procedure and powers of Tribunal--(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made there under, the Tribunal shall have powers to regulate its own procedure including the place at which it shall have its sittings.

(2) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:--

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents or other electronic records;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) any other matter which may be prescribed by the Central Government.

(3) Every proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code (45 of 1860), it shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) The appellant may either appear in person or authorize one or more legal practitioners or any of its officers to represent his case before the Tribunal.

(5) The provisions of the Limitation Act, 1963 (36 of 1963), shall, except as otherwise provided in this Act, apply to an appeal made to the Tribunal.

(6) Any person aggrieved by any decision or order of the Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Tribunal to him on any question of fact or law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

11. A perusal of Section 68 would spell out that for the purpose of adjudication, i.e., for determination of quantum of penalty, under this Chapter, the State

Government is empowered to notify an officer not below the rank of Additional District Magistrate as the Adjudicating Officer for adjudication. The said officer after giving a person an opportunity of being heard and if on such enquiry is satisfied that the person concerned has committed the contravention of the provisions of the Act or the Rules or the Regulations made there under impose such penalty as he thinks fit in accordance with the provisions relating to that offence. Sub-section (3) thereof specifically confers the powers of a Civil Court upon the Adjudicating Officer and the proceedings before him shall be deemed to be judicial proceedings for the purpose of 193 and 228 IPC and it shall be deemed to be a Court for the purpose of Sections 345 and 446 Cr.P.C. Sub-section (4) provides that while assessing the quantum of penalty, the said officer shall have due regard to the statutory guidelines prescribed in Sections 49.

12. Section 70 provides that the Central Government or the State Government, as the case may be, by a notification establish one or more Tribunals to be known as the Food Safety Appellate Tribunal to hear appeals from the decision of the Adjudicating Officer under Section 68. It is not disputed that the State of U.P. has notified the District Judges within the areas of their jurisdiction to exercise the powers of the Food Safety Appellate Tribunal, as the proviso appended to sub-section (3) of Section 70 itself provides that the Presiding Officer of the Tribunal has to be or has been a District Judge. Sub-section (5) provides that the procedure of appeal and powers of the Tribunal shall be such as may be prescribed by the Central Government.

13. Section 71 provides that the Tribunal shall have, for the purpose of discharging its function under the Act, the same powers as are vested in Civil Court under the Code of Civil Procedure 1908, while trying a suit in respect of certain matters. Sub-section (6) provides that any person aggrieved by a decision or order of the Tribunal may file an appeal before the High Court within 60 days from the date of communication of the decision or order of the Tribunal.

14. A conjoint reading of Sections 68, 70 and 71 leads to an irresistible conclusion that the Adjudicating Officer or the Food Safety Appellate Tribunal notified and established under Chapter X of the Act, are only empowered to adjudicate on the quantum of penalty qua a person, who has committed the contravention of the Act. The Adjudicating Officer and the Food Safety Appellate Tribunal, while adjudicating such proceedings are only exercising the powers, which are available with the Civil Court. This is amply evident from sub-section (3) of Section 68 and sub-section (1) and (2) of Section 71.

15. The Apex Court in the case of Director of Enforcement v. M.C.T.M. Pvt. Ltd. 1996, SCC (Cri.) 344 , after referring to a Constitution Bench judgment of the Apex Court in the case of Maqbool Hussain Vs. The State of Bombay, AIR 1953 SC 325 : (1983) 3 ECR 1598 : (1983) 13 ELT 1284 : (1953) 4 SCR 730 , observed that a penalty imposed for a tax delinquency is a civil obligation remedial and coercive in its nature and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal

or penal laws. The Apex Court coined the term "blameworthy conduct" for contraventions of the provisions of the FERA, 1947.

16. Subsequently, in the case of *The Chairman, SEBI Vs. Shriram Mutual Fund and Another*, AIR 2006 SC 2287 : (2006) 3 BC 392 : (2006) 131 CompCas 591 : (2006) 5 CompLJ 30 : (2006) 3 CTC 569 : (2006) 11 JT 164 : (2006) 6 SCALE 154 : (2006) 5 SCC 361 : (2006) 68 SCL 216 : (2006) 2 SCR 833 Supp : (2006) AIRSCW 2997 : (2006) 5 Supreme 1 , the Apex Court while considering the nature of adjudication proceedings, held that when a penalty is imposed by Adjudicating Officer, it is done so in adjudicatory proceeding and not by way of fine as a result of prosecution of an accused for commission of an offence in criminal proceedings. The Court went on to hold that penalty is attracted as soon as the contravention of the statutory obligation, as contemplated by the Act and the Regulation is established hence, the intention of the parties committing such violation becomes wholly irrelevant.

17. The above two decisions, i.e. *Director of Enforcement and Sri Ram Mutual Funds (supra)* once again found approval in the case of *Radheshyam Kejriwal Vs. State of West Bengal and Another*, (2011) 102 CLA 283 : (2011) 163 CompCas 509 : (2011) CriLJ 1747 : (2011) 266 ELT 294 : (2011) 335 ITR 58 : (2011) 333 ITR 58 : (2011) 2 JCC 943 : (2011) 2 JT 443 : (2011) 2 RCR(Criminal) 756 : (2011) 2 SCALE 540 : (2011) 3 SCC 581 : (2011) 2 SCC(Cri) 721 : (2011) 108 SCL 406 : (2011) 4 SCR 889 : (2011) 2 UJ 1009 : (2011) 40 VST 11 : (2011) AIRSCW 1479 , wherein the Apex Court culled out the following features between the adjudication proceedings and criminal prosecution in paragraph 38 as under:

"38. The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent Court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases."

The above features are only indicative that under the new enactment these two proceedings i.e. criminal prosecution and adjudication can simultaneously go together with one impacting the other only to the above extent and penalty is imposed for contravention of the provisions of the Act.

18. Coming to the decision in the case of Mukhtar Singh (supra) cited by learned counsel for the applicant, the Court finds that the issue involved therein was as to the nature of the writ proceedings under Article 226 as to whether they are civil, criminal or other proceedings. The said issue had already been resolved by the Apex Court in the case of S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another, AIR 1965 SC 1818 : (1965) 57 ITR 149 : (1966) 1 SCR 190(1) , wherein the Apex Court held that there is no ground for restricting the expression civil proceedings only to those proceedings, which arise out of civil suits or proceedings, which are tried as civil suits nor is there any rational basis for excluding from its purview proceedings instituted and tried in the High Court in exercise of its jurisdiction under Article 226 of the Constitution, where the aggrieved party seeks relief against the infringement of a civil right by authorities purporting to act in exercise of powers conferred upon them by relevant statutes.

19. A Division Bench of the Bombay High Court in M/s. Nagpur Cable Operators" Association Vs. Commissioner of Police, Nagpur and another, AIR 1996 Bom 180 : (1995) 2 MhLj 753 , while resolving a similar issue held that if the writ petition/application under Articles 226 and/or 227 of the Constitution arises out of or relates to a proceeding, which if carried to its conclusion ultimately, may result in sentence of death or by way of imprisonment, fine or forfeiture of the property, then such writ petition/application under Article 226 and/or 227 of the Constitution should be treated as a criminal writ petition and styled as such.

20. In view of aforesaid discussion, the Court is of the view that both the Adjudicating Officer and the Food Safety Appellate Tribunal, while adjudging the quantum of penalty under Chapter X of the Act of 2006 were only exercising the powers of the Civil Court as their determination was only confined to the adjudication on the quantum of penalty and nothing else. They had no jurisdiction or power or authority to impose any punishment/sentence, which power was only conferred upon the Special Courts or the Ordinary Criminal Courts as the case may be, for prosecution of an offence under the Act. If this is the position, which is emerging from the analysis of Sections 68, 70 and 71 of the Act, then the Court has no option but to hold that an appeal against an order of the Adjudicating Officer under Section 70(1) before the Food Safety Appellate Tribunal could not be filed as criminal appeal and would only lie as a civil miscellaneous appeal. Similarly, the appeal provided under sub-section (6) of

Section 71 of the Act of 2006 against any decision or order of the Tribunal would lie to the High Court not as criminal appeal but as an appeal from order on the civil side. The objection of learned A.G.A. is upheld. It is accordingly directed that:

(i) An appeal under Section 70(1) of the Food Safety and Standards Act, 2006 against the decision of the Adjudicating Officer under Section 68 before the Food Safety Appellate Tribunal would be treated as "Civil Miscellaneous Appeal" and not as "Criminal Appeal".

(ii) The appeals filed under Section 71(6) of the Food Safety and Standards Act, 2006 before this Court be treated as an appeal from order and shall be dealt with on the civil side accordingly. The instant appeal shall therefore be de-registered as criminal appeal and it be re-registered as an appeal from order. Registry to take follow up action.

(iii) The Registrar General is directed to circulate a copy of this judgment to the subordinate judgships.

Learned counsel for appellant is permitted to make necessary corrections in the memorandum of appeal. Interim order granted earlier would continue till the next date.

It is made clear that the Court has not adjudicated the issue on merits and the observations made hereinabove were only confined to determine the cognoscibility of this appeal before this Bench (Criminal).

This appeal shall be placed before the appropriate Bench as fresh on 20.7.2015 but subject to the convenience of the bench.

The Court places on record its appreciation for the valuable assistance rendered by Sri Rajiv Lochan Sukla, as Amicus Curiae in this case.