

(2022) 12 BOM CK 0110
In the Bombay High Court
Case No : Appeal From Order No. 09 Of 2019

State Of Maharashtra

APPELLANT

Vs

Pankaj Gupta, Nominee And Others

RESPONDENT

Date of Decision : 23-12-2022

Acts Referred:

Food Safety And Standards Act, 2006 — Section 68(1), 68(2), 68(3), 68(3)(a), 70, 71, 71(2), 71(2)(b), 71(2)(c), 71(2)(f), 71(3), 71(6), 76
Indian Penal Code, 1860 — Section 69, 71(3), 74, 193, 196, 228
Code Of Criminal Procedure, 1973 — Section 345, 346
Code Of Civil Procedure, 1908 — Section 100

Citation : (2022) 12 BOM CK 0110

Hon'ble Judges : Rajesh S. Patil, J

Bench : Single Bench

Advocate : S. B. Pulkundwar, S. V. Dixit, V. D. Sapkal

Judgement

Rajesh S. Patil, J

1. This Appeal from Order is filed challenging the Judgment and Order dated 24.04.2018 passed by the Food Safety Appellate Tribunal, Jalna.

2. At the initial stage, the Advocate appearing for the respondent raised an objection about the maintainability of the "Appeal from Order". Hence, this matter was heard only on the issue of maintainability of Appeal from Order, which challenges the Judgment and Order passed by the Food Safety Appellate Tribunal under Section 71(6) of the Food Safety and Standards Act, 2006 [hereinafter referred to as "FSS Act"]. The questions before this Court are,

Whether an order passed by Food Safety Appellate Tribunal, which is established under Section 70 of the FSS Act, can be challenged:

(i) Before Civil Side of High Court or at Criminal Side of High Court.

(ii) Whether the challenge under Section 71(6) of the FSS Act, 2006 can be by way of "Appeal from Order".

3. The State of Maharashtra through its Food Safety Officer have filed the present Appeal from Order under the provisions of Section 71(6) of the FSS Act.

SUBMISSIONS :

4. The Counsel for the respondents has preliminarily raised objection about maintainability of Appeal from Order. Therefore, matter is heard only on maintainability and not on merits. The Counsel for respondents submitted that the provision of Section 71(6) of the FSS Act mentions that an order of the Tribunal can be challenged by way of an Appeal to High Court. There is no mention of Appeal from Order in the said sub-section. Therefore, in clear terms, an Appeal from Order will not be tenable before this Court. Advocate for the respondent further argued that taking into consideration the provisions of the FSS Act and more particularly Section 68 thereof, it only refers to adjudication by the Addl. District Magistrate of the District for the purpose of adjudication and further refers to penalty. So also, Section 68(3)(a) of the FSS Act states that all the proceedings before him shall be deemed to be judicial proceedings within the meaning of Section 193 and 228 of the Indian Penal Code and further sub-section (b) mentions that, it should be deemed to be a Court for the purpose of Section 345 and 346 of the Code of Criminal Procedure. Sub-section (4) refers to quantum of penalty. Further, Section 69 refers to Power to Compound Offences. Further, Section 71(3) refers to Section 193 and 228 and Section 196 of the Indian Penal Code.

5. Further, Section 73 refers to offences triable by Special Court and Section 74 refers to Special Court and Public Prosecutor. Hence, the correct course of action for the State should have been to file Appeal at Criminal Side, under Section 71(6) of the FSS Act. The learned Counsel further submits that if the present proceeding of "Appeal from Order" is withdrawn and Criminal Appeal is filed, his client has no objection for the same.

6. The learned Amicus Curiae, who appeared on notice of this Court, has shown to me Chapter X of the FSS Act and submitted that there are two kind of appeals provided under Chapter X, one would be an Appeal before the Civil Side of this Court and another would be at the Criminal Side to the Division Bench.

7. He further referred to the provisions of Section 68(1), which states that for the purpose 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 Adjudicating Officer. Therefore, according to him, an Additional District Magistrate is not a Judicial Magistrate as contemplated under the Code of Criminal Procedure. He further showed me the provisions of Section 68(2). He argued that the Section states that Adjudicating Officer shall give an opportunity to the person and on such Inquiry, if satisfied that the person has committed the contravention of provisions of the Act or the rules or the regulations, he may impose such penalty as he thinks fit in accordance with the provisions relating to that offence. Therefore, he

submitted that what is contemplated is an "Inquiry" and not "Trial" as contemplated under Code of Criminal Procedure. He further showed me the provisions of Section 68(3), which states that the Adjudicating Officer shall have the powers of Civil Court. Therefore, according to him, for all purposes, the proceedings for adjudication under Section 68 are like a Civil Court. The order passed therein is appealable before Food Safety Appellate Tribunal. Further, Section 71 states that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure. Sub-section 2 of Section 71 further states that the Tribunal shall have same powers as vested in a Civil Court under Civil Procedure Code while trying a suit. It further states, Section 71(2)(f) provides for dismissing an application for default or deciding it ex parte. He further added that there is no concept in Criminal Law of dismissing an application for default. Such provisions can be seen only in Civil Laws. He further added that, sub-section 3 to Section 71 states that every proceeding before the Tribunal shall be deemed to be a Civil Court for all purposes. Therefore, he states that for all practical purposes, proceedings before the Tribunal are deemed to be before a Civil Court. Under sub-section 6 of Section 71, there is a provision for filing an appeal to the High Court against the decision or order of the Appellate Tribunal. Hence, he states that the provision of Appeal in sub-section 6 of Section 71 will only mean that it should be a Civil Appeal before the High Court. He further added that even if the proceedings before the Food Safety Appellate Tribunal is an Appeal, the Appeal from that Order to the High Court cannot be termed as Second Appeal. And provision of Second Appeal under Section 100 of Civil Procedure Code is not applicable to the same. Therefore, he submitted that an appeal as contemplated under Section 71(6) will be a Civil Appeal before the High Court just like a First Appeal.

8. He further added that, as far as Appeal under Section 76 of FSS Act is concerned, it is stated that the said Appeal is against a decision or order of a Special Court. Section 76 deals with Special Court and Public prosecutor. The said Section deals with trial of offences relating to grievous hurt or death and punishment of imprisonment of more than three years. The mention of word "trial" of offences gives it a colour of Criminal Court. Hence, the Appeal as mentioned in Section 76 will go to the Division Bench at Criminal Side.

ANALYSIS :

9. The provision of Section 68(1), mentions about adjudication by Additional District Magistrate, who would be Adjudicating Officer. Therefore, the said Officer is not a Judicial Magistrate, as contemplated under Code of Criminal Procedure. The Adjudicating Officer has power to impose penalty under Section 68(2). What is contemplated is an Inquiry under the said Section. The Adjudicating Officer has powers of Civil Court u/s 68(3). The order passed by Adjudicating Officer is challengeable before Food Safety Appellate Tribunal. Section 71(2) states that the Tribunal shall have same powers as vested in a Civil Court under Code of Civil Procedure, while trying a suit. Further, Section 71(2)(b) of FSS Act refers to

discovery and production of documents; Section 71(2)(c) deals with receiving evidence on affidavits; and Section 71(2)(f) provides for dismissing an application for default or deciding it ex parte. No such provision is found in Criminal Law. Therefore, I conclude the Appeal against the Order of Food Safety Appellate Tribunal will be Civil Appeal under Section 71(6). The question no. (i) is answered accordingly.

10. I have carefully gone through the provisions of FSS Act. There is no provision under the FSS Act to file "Appeal from Order". Section 71(6) of FSS Act mentions filing of Appeal before High Court. The provision of filing "Appeal from Order" is only found under Order 43 in the Code of Civil Procedure. Admittedly, the present Appeal from Order, is not filed under the provisions of Order 43 of the Code of Civil Procedure. Therefore, I hold that the Appeal from Order against the Order passed by Food Safety Tribunal, is not maintainable. The question No. (ii) is answered accordingly.

11. As far as an Appeal u/s 76 of FSS Act is concerned, the said Appeal is against decision or order of Special Court. The said section deals with trial of offences relating to grievous hurt or death and punishment of imprisonment of more than three years. The mention of trial of offences would only mean it relates to Criminal Court. Section 76(2) gives power to Division Bench to dispose of the Appeal. Therefore, such Appeal would lie only at Criminal Side of High Court.

12. Further, I conclude that an Appeal before the High Court under Section 71(6) will lie before the Single Judge by way of First Appeal, and an Appeal under Section 76 will lie before the Division Bench by way of Criminal Appeal. Therefore, the present Appeal from Order is allowed to be converted into First Appeal, which should be numbered as Civil First Appeal, and the same be listed before Single Judge, taking up assignment of First Appeal. Necessary steps be taken up by appellant within three (03) weeks from today.

13. Before parting with the judgment, I would like to extend special thanks to Mr. V. D. Sapkal, learned Senior Counsel, who was appointed as an Amicus Curiae by this Court, who threw light on the relevant sections of the FSS Act.