

the Judge trying the case to record a conviction based on the plea of guilt. If, however, the accused does not plead guilty or the learned Judge does not act on his plea he must fix a date for the examination of the witnesses i.e. the trial of the case...."

26. In view of the facts and circumstances, which have been considered above, the case laws considered above, the impugned order dated 31.07.2024 (Annexure No.2) passed by the learned Additional Chief Judicial Magistrate, Court No.1/ Special Magistrate Court MP/MLA, Gonda is hereby set aside/ quashed.

27. Since the part of the charge-sheet relating to section 188 IPC has already been set aside/ quashed by this Court and the Public Prosecutor had already filed an application withdrawing the prosecution which would now be relating to the subsequent part of the same charge-sheet of section 341 IPC, therefore, instead of relegating the matter to the learned trial court to consider afresh, as I do not find any fruitful purpose to remand back the issue before the learned trial court, but invoking power of this Court under Section 528 B.N.S.S. (erstwhile under Section 482 Cr.P.C.), I hereby hold that the prosecution of Section 341 I.P.C., pursuant to the Charge-Sheet No.77 of 2014, shall be treated being withdrawn and the application of the Public Prosecutor dated 03.11.2020□ filed under Section 321 Cr.P.C., would be treated to have been allowed.

28. Accordingly, the instant application is **allowed**.

29. No order as to costs.

Before parting with, I appreciate the efforts and research made by Sri Piyush

Tripathi, Research Associate attached with me as well as Ms. Ayushi Pandita, Law Intern in finding out the relevant case laws applicable in the present case.

(2025) 2 ILRA 160
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 10.02.2025

BEFORE

THE HON'BLE ARUN KUMAR SINGH
DESHWAL, J.

Application U/S 482 No. 25418 of 2024

Piyush Gupta & Anr. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Applicants:
 Kabeer Tiwari, Sr. Advocate

Counsel for the Opposite Parties:
 G.A.

Criminal Law – Criminal Procedure Code, 1973- Section 482 - Food Safety & Standards Act, 2006 - Sections 3(1)(n), 3(1)(o), 3(1)(y), 26, 26(2)(i), 26(4), 27, 42(4), 59(i) & 80 - Application U/s 482 – challenging the summoning order as well as the entire proceeding – Applicant is the employee of applicant no. 2 who is running a restaurant – dealing with selling different kind of prepared food – inspection carried out by food safety officer - sample of four sealed packets of turmeric collected of Goldiee Masala Brand - which were found having lead-chromate which is harmful for human consumption – complaint lodged – summon order issued U/s 59(1) of the Act, 2006 – court finds that – it is not in dispute that the applicant has purchased sealed packet of turmeric powder from a licenced/registered manufacturer and relied upon the information given by the manufacturer of the turmeric powder about the quality – if the turmeric powder is found to be unsafe despite guarantee of its quality – in that case, food business operator dealing with business of selling the

turmeric powder or its distributor would be liable – held, the restaurant or its owner or any of its employee selling the food is not liable – consequently, the impugned proceeding against the applicants deserve to be quashed – accordingly, application is allowed – However, the court below is free to proceed against the manufacturer / distributor of the turmeric powder who despite issuing an invoice regarding its quality, failed to adhere to its standard.
(Para – 27, 28, 30)

Application Allowed. (E-11)

List of Cases cited:

1. Food Inspector, Berhampur Municipality Vs P. Mohan Rao (1988 Cr.LJ 1534) High court Orissa,
2. Gurumurty Patra Vs St. of Orissa (Criminal Revision No. 24/1984 (MANU/OR/0272/1990),
3. Dinesh Kumar Vs St. of U..P & ors. (Criminal Revision No. 55/1998 (200 Cr.:J 1879 – High Court of HP),
4. Sri Mahaveer Agency and others Vs St.of W.B. (Criminal Revision No. 982/2023 – AIR 2023 SC 2129 – Hon'ble Supreme Court).
5. Ran Kumar Vs St. of U.P. (2019 vol. 9 SCC 427),
6. Pyarali K. Tejani Vs Mahadev Ramchandra Dange (1974 vol. 1 SCC 167),

(Delivered by Hon'ble Arun Kumar Singh
Deshwal, J.)

1. I heard Sri Anil Tiwari, learned Senior Counsel assisted by Sri Kabeer Tiwari, learned counsel for the applicants, and Sri Pankaj Saxena, learned AGA for the State.

2. The instant application has been filed to quash the summoning order dated 16.2.2024 passed by A.C.J.M.-I, Court No.16, Shahjahanpur in Case No. 83 of 2024 (*State vs. Piyush Gupta and others*),

under Section 26(2)(i), 59(i) Food Safety and Standards Act, 2006 (hereinafter referred to as "Act, 2006") as well as the entire proceeding of the aforesaid case.

Factual Matrix

3. Applicant No.1 is the employee of applicant No.2 which is the sole proprietorship concerned of Devendra Singh Negi. Applicant No.2 is a restaurant, dealing with selling different kinds of prepared food. Initially Form-C licence under the Act, 2006 was issued to Rakhi Arora on 11.2.2021. Subsequently, a Form-C licence of applicant No.2 was transferred in the name of Devendra Singh Negi on 11.2.2024. On 21.3.2023 premises of applicant No.2 was inspected by Chief Food Security Officer, Sahajahanpur along with his team and on demand of the Chief Food Security Officer, the applicant No.1 showed licence of applicant No.2 which was valid up to 10.2.2024. Thereafter, the Chief Food Security Officer purchased four packets of turmeric powder out of five packets of turmeric powder of Goldiee Masala Brand, found in the premises of applicant No.2. Thereafter, the sealed packets of turmeric powder were sent for examination on 22.3.2023 to the Government Food Laboratory, Lucknow. As per the report dated 15.5.2023 of the food analyst, Government Food Laboratory, Lucknow, the sealed packets of the turmeric powder were found having lead chromate which is harmful for human consumption, hence the sample was declared unsafe. Thereafter, after getting the required permission on 29.23.2023, under Section 42(4) of the Food Safety and Security Act, 2006 (hereinafter referred to as "Act,2006"), from the Commissioner Food Security, Lucknow, the complaint was filed by the Food Security Officer,

Sahjahanpur on 9.2.2024. Thereafter, on perusal of the complaint and other document, learned Magistrate has taken cognizance and issued summon under Section 59(1) of the Act, 2006 to the applicants by order dated 16.2.2024 which is impugned in the present application.

Submission of learned counsel for the applicants

4. Sri Anil Tiwari, learned Senior Advocate assisted by Sri Kabeer Tiwari, learned counsel for the applicants, has submitted that applicant No.2 had purchased sealed packets of turmeric powder of Goldiee Masala Brand from his licenced manufacturer and properly stored the same in the state it was purchased. If any ingredient is found in the sealed packet of the turmeric powder of a branded company that made it unsafe, then there will be no liability of the applicants and it is the manufacturer of the turmeric powder who will be liable for that. It is further submitted that the applicants were not selling the turmeric powder of Goldiee Masala Brand, but they were using the same while preparing the food that was served to the customers subsequently. Therefore, applicant No.2 will not fall within the definition of food business operator but it will fall within the definition of consumer.

5. It is further submitted by learned counsel for the applicants that even if for the sake of argument if the applicant is treated as food business operator then he will be liable under Section 26(2) of the Act, 2006 only when it stores any article of food for the purpose of sale, but applicant No.2 did not store the turmeric powder of Goldiee Masala Brand for sale but it stored the same for consumption to prepare food

in the restaurant without any knowledge about the contents of the sealed packet of turmeric powder of Goldiee Masala Brand. Therefore, applicants cannot be held liable under Section 26(2) of the Act, 2006. It is also submitted that the liability of the food business operator at the most could be a strict liability and not the absolute liability as of the manufacturer under Section 27 of the Act, 2006.

6. It is lastly submitted by the learned Senior Counsel that applicant No.2 is involved in the business of selling prepared food, therefore, the sample of sealed packet of turmeric powder of Goldiee Masala Brand is not the sample of food prepared by applicant No.2. In support of his contention, learned counsel for the applicants has relied upon the following judgements:-

(i) Food Inspector, Berhampur Municipality vs. P. Mohan Rao; 1988 Cr.L.J. 1534 (High Court of Orissa)

(ii) Gurumurthy Patra vs. State of Orissa; Criminal Revision No. 24 of 1984 (MANU/OR/0272/1990)

(iii) Dinesh Kumar vs. State of U.P. and others; Criminal Revision No. 55 of 1998 (2000 Cr.L.J. 1879) (High Court of H.P.)

(iv) Sri Mahaveer Agency and others vs. State of West Bengal; Criminal Appeal No. 982 of 2023 (AIR 2023 SC 2129) (Hon'ble Supreme Court).

Submission of learned A.G.A. for the State

7. Sri Pankaj Saxena, learned A.G.A. has submitted that the sealed packets of the turmeric powder of Goldiee Masala Brand found in the premises of applicant No.2 were declared unsafe based

on the report of the food analyst, which was being used by applicant No.2 in cooking food which was to be subsequently sold to the consumers in the restaurant of applicants. It is further submitted by learned A.G.A. that the food business operator has to ensure that food articles satisfy the requirement of the Act and the rules and regulations there under the Act within the business under their control. Since the sealed packets of turmeric powder, recovered from the premises of applicant No.2, were unsafe and were stored by it for human consumption, therefore, ingredients of Section 26(2)(i) of the Act, 2006 are attracted. In support of his contention, learned A.G.A. has relied upon the judgement of the Apex Court in the case of **Raj Kumar vs. State of U.P.; 2019 (9) SCC 427** wherein in paragraph No.8, the Apex Court has observed that once all the standards are laid down by the legislature under the Prevention of Food Adulteration Act, then those standards have to be followed. Learned A.G.A. further relied upon the judgement of the Apex Court in **Pyarali K. Tejani v. Mahadev Ramchandra Dange; (1974) 1 SCC 167** in which the Apex Court, while considering the provision of Sections 14 and 19 of the Prevention of Food Adulteration Act, observed that the question of exculpation of accused based on a warranty will not detain the court to reject such contention of law specifically provides action as the food laws should be interpreted strictly.

8. It is further submitted by learned A.G.A. that the argument raised by the applicants are their defence which can be considered during trial. Therefore, no ground for quashing the impugned proceeding is made out and the application deserves to be dismissed.

Analysis and Conclusion

9. From the averments as well as facts on record, it is clear that applicant No.2 is dealing with the business of selling food in its premises after preparing the same in which it uses different ingredients of food items including different spices and turmeric power of sealed packet of a branded company. Now the question arises if applicant No.2 in preparation of food used purchased sealed packets of turmeric power of a branded company, then whether it would be liable if the sealed turmeric powder is found to be unsafe even though applicant No.2 purchased the same after getting proper bills which is *prima facie* a proof of guarantee of the quality of sealed turmeric powder. Another question arises whether the restaurant, which is serving food in exchange of money, would be deemed to be food business operator under Section 3(1)(n) of Act, 2006 merely for storing the sealed packet of turmeric powder of a branded company which could subsequently be used in preparation of food.

10. To proceed further, it would be appropriate to first decide the question whether applicant No.2 (restaurant) would fall within the definition of "food business operator" merely on storing sealed turmeric powder, purchased from a branded company with warranty regarding its quality.

11. It is no more undisputed that turmeric powder comes within the definition of "food" as the same is consumed by human being by mixing it with other food items. Therefore, the turmeric powder will fall under the category of food ingredients as per Section

3(1)(y) of Act, 2006. Section 3(1)(y) of the Act, 2006 is being quoted as under:-

"3(1)(y) "ingredient" means any substance, including a food additive used in the manufacture or preparation of food and present in the final product, possibly in a modified form"

12. "Food business" is defined in Section 3(1)(n) and "food business operator" is defined in Section 3(1)(o) of the Act, 2006 which are quoted as under:-

"3(1)(n) "food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients

3(1)(o) "food business operator" in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder."

13. As per the Food Safety and Standards (Food Products Standard and Food Additives) Regulations, 2011, which prescribes the food product standard, Turmeric Powder (Haldi) falls within the category of food product as per Regulation 2.9.18 and as per Regulation 2.9.18(2) Turmeric Powder (Haldi) would also fall within the definition of a food product. Regulation 2.9.18 is quoted as under:-

"2.9.18: Turmeric (Haldi)

1. Turmeric (Haldi) whole means the primary or secondary rhizomes commercially called bulbs or fingers of Curcuma Longa L. The rhizomes shall be cured by soaking them in boiling water and

then drying them to avoid regeneration. The rhizome be in natural state or machine polished. The product shall have characteristic odour and flavour and shall be free from mustiness or other foreign flavours. It shall be free from mould, living and dead insects, insect fragments, rodent contamination. The product shall be free from Lead Chromate added starch and any other extraneous colouring matter.

It shall conform to the following standards—

(i)	Extraneous matter	Not more than 1.0 per cent by weight
(ii)	Defective Rhizomes	Not more than 5.0 per cent by weight
(iii)	Moisture	Not more than 12.0 per cent by weight
(iv)	Insect damaged matter	Not more than 1.0 per cent by weight
(v)	Test for lead chromate	Negative

Explanation.—Defective rhizomes consist of shrivelled fingers and or bulbs internally damaged, hollow or porous rhizomes scorched by boiling and other types of damaged rhizomes.

2. Turmeric (Haldi) powder means the powder obtained by grinding dried rhizomes or bulbous roots of Curcuma Longa L. The powder shall have characteristic odour and flavour and shall be free from mustiness or other foreign odour. It shall be free from mould, living and dead insects, insect fragments, rodent contamination. The powder shall be free from any added colouring matter including Lead Chromate and morphologically extraneous matter including foreign starch.

It shall conform to the following standards:—

(i)	Moisture	Not more than 10.0 per cent by weight
(ii)	Total ash on dry basis	Not more than 9.0 per cent by weight
(iii)	Ash insoluble in dil HCl on dry basis	Not more than 1.5 per cent by weight

(iv)	Colouring power expressed as curcuminoid content on dry basis	Not less than 2.0 per cent by weight
(v)	Total Starch	Not more than 60.0 per cent by weight
(vi)	Test for lead chromate	Negative

14. Therefore, it is no more in dispute that Turmeric Powder (Haldi) is also a food product being food ingredient.

15. From the above definition of "food business", it is clear that a restaurant, which carries out the activity of food service, will come within the definition of food business operator for the purpose of food prepared in the restaurant. It is also clear from the above definition of food business that restaurant cannot be treated as food business operator for food ingredient unless it sells the same.

16. In the present case, licence to the applicant No.2 was issued under Section 31 of the Act, 2006 in Form C which shows that the licence was given to applicant No.2 for food services of the restaurant for the following three products:-

- "(i) edible ices including sherbet and sorbe
- (ii) beverages including dairy products
- (iii) prepared foods"

17. As per Regulation 2.1.2(5) of the Food Safety and Standards (Licencing and Registration of Food Business) Regulations, 2011, the food business operator shall ensure that all the conditions of the licence as provided in Annexure-3 of Form-B in Schedule-2 and safety, sanitary, hygiene requirements provided in Schedule-IV, contained under different parts depending on the nature of business, are complied with at all times. For

reference, Regulation 2.1.2(5) is being quoted as under:-

"2.1.2 License for food business.—

(5) The Food Business Operator shall ensure that all conditions of license as provided in Annexure 3 of Form B in Schedule 2 and safety, sanitary and hygienic requirements provided in the Schedule 4 contained under different Parts depending on nature of business are complied with at all times:

Provided that the Licensing Authority shall ensure periodical food safety audit and inspection of the licensed establishments through its own or agencies authorized for this purpose by the FSSAI:

Provided further that no person shall manufacture, import, sell, stock, exhibit for distribution or sale any article of food which has been subjected to the treatment of irradiation, except under a license obtained from Department of Atomic Energy under the Atomic Energy (Control of Irradiation of Food) Regulations, 1996."

18. The conditions which are required to be complied with by a food business operator as per Annexure-3 of Form B in Schedule 2 are being quoted as under:-

**"SCHEDULE 2
Form B**

Annexure 3		
<i>Conditions of License</i>		
<i>All Food Business Operators shall ensure that the following conditions are complied with at all times during the course of its food business.</i>		
<i>Food Business Operators shall:</i>		
1.	<i>Display a true copy of the license granted in Form C</i>	

	<i>shall at all times at a prominent place in the premises.</i>				<i>returns also to be furnished as specified (1st April to 31st September before 30th November and 1st October to 31st March).</i>	
2.	<i>Give necessary access to Licensing Authorities or their authorised personnel to the premises.</i>				6.	<i>Ensure that no product other than the product indicated in the license/registration is produced in the unit.</i>
3.	<i>Inform Authorities about any change or modifications in activities/content of license.</i>				7.	<i>Maintain factory's sanitary and hygienic standards and worker's Hygiene as specified in the Schedule - 4 according to the category of food business.</i>
4.	<i>Employ at least one technical person to supervise the production process. The person supervising the production process shall possess at least a degree in Science with Chemistry/Bio-Chemistry/Food and Nutrition/Microbiology or a degree or diploma in Food Technology/Dairy Technology/Dairy Microbiology/Dairy Chemistry/Dairy Engineering/Oil Technology/Veterinary Science/Hotel Management and Catering Technology or any degree or diploma in any other discipline related to the specific requirements of the business from a recognized university or institute or equivalent.</i>				8.	<i>Maintain daily records of production, raw materials utilization and sales separately.</i>
					9.	<i>Ensure that the source and standards of raw material used are of optimum quality.</i>
					10.	<i>Food Business Operator shall not manufacture, store or expose for sale or permit the sale of any article of food in any premises not effectively separated to the satisfaction of the licensing authority from any privy, urinal, sullage, drain or place of storage of foul and waste matter.</i>
5.	<i>Furnish periodic annual return (1st April to 31st March), within up to 31st May of each year. For collection/handling/manufacturing of Milk and Milk Products half yearly</i>				11.	<i>Ensure Clean-In-Place systems (wherever necessary) for regular cleaning of the machine and equipments.</i>
					12.	<i>Ensure testing of relevant chemical and/or</i>

	<i>microbiological contaminants in food products in accordance with these regulations as frequently as required on the basis of historical data and risk assessment to ensure production and delivery of safe food through own or NABL accredited/FSSA notified labs at least once in six months.</i>		2.	<i>Food Business Operator selling cooked or prepared food shall display a notice board containing the nature of articles being exposed for sale.</i>	
1 3.	<i>Ensure that as much as possible the required temperature shall be maintained throughout the supply chain from the place of procurement or sourcing till it reaches the end consumer including chilling, transportation, storage etc.</i>		3.	<i>Every manufacturer [including ghani operator] or wholesale dealer in butter, ghee, vanaspati, edible oils, solvent extracted oil, de-oiled meal, edible flour and any other fats shall maintain a register showing the quantity of manufactured, received or sold, nature of oil seed used and quantity of de-oiled meal and edible flour used etc. as applicable and the destination of each consignment of the substances sent out from his factory or place of business, and shall present such register for inspection whenever required to do so by the Licensing Authority.</i>	
1 4.	<i>The manufacturer/importer/distributor shall buy and sell food products only from, or to, licensed/registered vendors and maintain record thereof.</i>				
	<i>Other conditions</i>				
1.	<i>Proprietors of hotels, restaurants and other food stalls who sell or expose for sale savouries, sweets or other articles of food shall put up a notice board containing separate lists of the articles which have been cooked in ghee, edible oil, vanaspati and other fats for the information of the intending purchasers.</i>		4.	<i>No producer or manufacturer of vegetable oil, edible oil and their products shall be eligible for license under this Act, unless he has own laboratory facility for analytical testing of samples.</i>	
			5.	<i>Every sale or movement of stocks of solvent-extracted oil, 'semi-refined' or 'raw grade I', edible groundnut</i>	

	<i>flour or edible coconut flour, or both by the producer shall be a sale or movement of stocks directly to a registered user and not to any other person, and no such sale or movement shall be effected through any third party.</i>	
6.	<i>Every quantity of solvent-extracted oil, edible groundnut flour or edible coconut flour, or both purchased by a registered user shall be used by him in his own factory entirely for the purpose intended and shall not be re-sold or otherwise transferred to any other person:</i>	
	<i>Provided that nothing in this sub-clause shall apply to the sale or movement of the following:—</i>	
	<i>(i)</i>	<i>karanjia oil;</i>
	<i>(ii)</i>	<i>kusum oil;</i>
	<i>(iii)</i>	<i>mahua oil;</i>
	<i>(iv)</i>	<i>neem oil;</i>
	<i>(v)</i>	<i>(vi) tamarind seed oil.</i>
	<i>(vii)</i>	<i>edible groundnut flour bearing the I.S.I. Certification Mark.</i>
	<i>(viii)</i>	<i>edible coconut</i>

		<i>flour bearing the I.S.I. Certification Mark.</i>
7.	<i>No Food Business Operator shall sell or distribute or offer for sale or dispatch or deliver to any person for purpose of sale any edible oil which is not packed, marked and labelled in the manner specified in the regulations unless specifically exempted from this condition vide notification in the Official Gazette issued in the public interest by Food Safety Commissioners in specific circumstances and for a specific period and for reasons to be recorded in writing.</i>	

19. Similarly, sanitary and hygiene requirement are provided in Part-II of Schedule 4 for the restaurant. The relevant extract of Part-II of Schedule 4 is being quoted as under:-

"SCHEDULE 2

Part II

General Requirements on Hygienic and Sanitary Practices to be followed by all Food Business Operators applying for License

The establishment in which food is being handled, processed, manufactured, packed, stored, and distributed by the food business operator and the persons handling them should conform to the sanitary and hygienic requirement, food safety measures

and other standards as specified below. It shall also be deemed to be the responsibility of the food business operator to ensure adherence to necessary requirements.

In addition to the requirements specified below, the food business operator shall identify steps in the activities of food business, which are critical to ensure food safety, and ensure that safety procedures are identified, implemented, maintained and reviewed periodically.

1. LOCATION AND SURROUNDINGS

.....

.....

5. FOOD OPERATIONS AND CONTROLS

5.1 Procurement of raw materials—

5.1.1 No raw material or ingredient thereof shall be accepted by an establishment if it is known to contain parasites, undesirable micro-organisms, pesticides, veterinary drugs or toxic items, decomposed or extraneous substances, which would not be reduced to an acceptable level by normal sorting and/or processing.

5.1.2 All raw materials, food additives and ingredients, wherever applicable, shall conform to all the regulations and standards laid down under the Act.

5.1.3 Records of raw materials, food additives and ingredients as well as their source of procurement shall be maintained in a register for inspection.

5.1.4 All raw materials should be checked and cleaned physically and thoroughly.

5.1.5 Raw materials should be purchased in quantities that correspond to storage/preservation capacity.

5.1.6 Packaged raw material must be checked for 'expiry date'/'best before'/'use by' date, packaging integrity and storage conditions.

5.1.7 Receiving temperature of potentially high risk food should be at or below 5°C.

5.1.8 Receiving temperature of frozen food should be 8°C or below.

5.2 Storage of raw materials and food—

5.2.1 Food storage facilities shall be designed and constructed to enable food to be effectively protected from contamination during storage; permit adequate maintenance and cleaning, to avoid pest access and accumulation.

5.2.2 Cold Storage facility, wherever required, shall be provided to raw, processed/packed food according to the type and requirement.

5.2.3 Segregation shall be provided for the storage of raw, processed, rejected, recalled or returned materials or products which will be distinguishably marked and secured. Raw materials and food shall be stored in separate areas from printed packaging materials, stationery, hardware and cleaning materials/chemicals.

5.2.4 Raw food, particularly meat, poultry and seafood products shall be cold stored separately from the area of work-in-progress, processed, cooked and packaged products. The conditions of storage in terms of temperature and humidity requisite for enhancing the shelf life of the respective food materials/products shall be maintained.

5.2.5 Storage of raw materials, ingredients, work-in-progress and processed/cooked or packaged food products shall be subject to FIFO (First in, First Out), FEFO (First Expire First Out) stock rotation system as applicable.

5.2.6 Containers made of non-toxic materials shall be provided for storage of raw materials, work-in-progress and finished/ready to serve products. The food materials shall be stored on racks/pallets such that they are reasonably well above the floor level and away from the wall so as to facilitate effective cleaning and prevent harbouring of any pests, insects or rodents.

5.3 Food Processing/Preparation, Packaging and Distribution/Service—

5.3.1. Time and temperature control.

5.3.1.1 The Food Business shall develop and maintain the systems to ensure that time and temperature are controlled effectively where it is critical to the safety and suitability of food. Such control shall include time and temperature of receiving, processing, cooking, cooling, storage, packaging, distribution and food service up to the consumer, as applicable.

5.3.1.2 Whenever frozen food/raw materials are being used/handled/transported, proper care should be taken so that defrosted/thawed material are not stored back after opening for future use.

5.3.1.3 If thawing is required then only required portion of the food should be thawed at a time.

5.3.1.4 Wherever cooking is done on open fire, proper outlets for smoke/steam etc. like chimney, exhaust fan etc. shall be provided.

*5.4 Food Packaging—
....."*

20. From the perusal of the above mentioned conditions for food business operator (restaurant), it is clear that as per Condition No.14 of Annexure-3, the manufacturer or distributor shall buy food

products only from a licenced/registered vendor and maintain the record thereof. Similarly, Condition No.9 of the Annexure-3 provides that food business operator will ensure that the source and standards of raw material used are of optimum quality. Similarly, as per the condition No. 5.1.2, 5.1.3 as well as 5.1.6, mentioned in Part-II of Schedule 4 of the Food Safety and Standards (Licencing and Registration of Food Business) Regulations, 2011, all the raw materials or ingredients shall conform to all the standards and regulations and the register should be maintained regarding their source of procurement with further direction that the raw material should be used before the expiry date.

21. So far as the other question, regarding the liability of applicant No.2 being food business operator merely on storing the turmeric powder, purchased from a branded company is concerned, for that purpose Section 3(1)(o) of Act, 2006 itself provides that food business operator is responsible for ensuring compliance of this Act, rules and regulations. Therefore, a further question arises whether a restaurant, while storing the sealed turmeric powder, purchased from a branded company with its warranty regarding its quality, will be under the compliance of the Act, rules or regulations for ensuring proper ingredients of turmeric powder so that it does not fall within the definition of "unsafe food". Responsibility of the food business operator has been prescribed in Section 26 of the Act, 2006 which includes against storing of unsafe food. Section 26 of the Act, 2006 is quoted as under:-

"26. Responsibilities of the food business operator.—(1) Every food business operator shall ensure that the articles of food satisfy the requirements of

this Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under his control.

(2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food—

- (i) which is unsafe; or*
- (ii) which is misbranded or sub-standard or contains extraneous matter; or*
- (iii) for which a licence is required, except in accordance with the conditions of the licence; or*
- (iv) which is for the time being prohibited by the Food Authority or the Central Government or the State Government in the interest of public health; or*

(v) in contravention of any other provision of this Act or of any rule or regulation made thereunder.

(3) No food business operator shall employ any person who is suffering from infectious, contagious or loathsome disease.

(4) No food business operator shall sell or offer for sale any article of food to any vendor unless he also gives a guarantee in writing in the form specified by regulations about the nature and quality of such article to the vendor:

Provided that a bill, cash memo, or invoice in respect of the sale of any article of food given by a food business operator to the vendor shall be deemed to be a guarantee under this section, even if a guarantee in the specified form is not included in the bill, cash memo or invoice.

(5) Where any food which is unsafe is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed

assessment within a specified time, it is found that there is no evidence that the rest of the batch, lot or consignment is unsafe:

Provided that any conformity of a food with specific provisions applicable to that food shall be without prejudice to the competent authorities taking appropriate measures to impose restrictions on that food being placed on the market or to require its withdrawal from the market for the reasons to be recorded in writing where such authorities suspect that, despite the conformity, the food is unsafe."

22. From the perusal of Section 26 of the Act, 2006, it is clear that the responsibility of food business operator is to comply with the requirement of the Act, rules and regulations made therein at all stages of production, distribution or sale and he will not store any article of food which is unsafe. Section 26(4) of the Act, 2006 further provides that the food business operator will not sell any article of food without giving a guarantee in writing for its nature and quality and bill, cash memo, or invoice in respect of the sale of any article of food shall be deemed to be guaranteed under this Act.

23. Several cases cited by the counsel for the applicant relates to Section 19 of Prevention of Food Adulteration Act which has been repealed as on date by the Act, 2006, but the defence, available under Section 19 against the sale of adulterated food if same was purchased from a duly licensed manufacturer, is also available to some extent under Section 80 of the Act, 2006. Section 80 of the Act, 2006 is quoted as under:-

"80. Defences which may or may not be allowed in prosecution under this

Act.—(A) Defence relating to publication of advertisements—

(1) In any proceeding for an offence under this Act in relation to the publication of an advertisement, it is a defence for a person to prove that the person carried on the business of publishing or arranging for the publication of advertisements and that the person published or arranged for the publication of the advertisement in question in the ordinary course of that business.

(2) Clause (1) does not apply if the person—

(a) should reasonably have known that the publication of the advertisement was an offence; or

(b) had previously been informed in writing by the relevant authority that publication of such an advertisement would constitute an offence; or

(c) is the food business operator or is otherwise engaged in the conduct of a food business for which the advertisements concerned were published.

(B) Defence of due diligence—

(1) In any proceedings for an offence, it is a defence if it is proved that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence by such person or by another person under the person's control.

(2) Without limiting the ways in which a person may satisfy the requirements of clause (1), a person satisfies those requirements if it is proved—

(a) that the commission of the offence was due to—

(i) an act or default of another person; or

(ii) reliance on information supplied by another person; and

(b)(i) the person carried out all such checks of the food concerned as were reasonable in all the circumstances; or

(ii) it was reasonable in all the circumstances to rely on checks carried out by the person who supplied such food to the person; and

(c) that the person did not import the food into the jurisdiction from another country; and

(d) in the case of an offence involving the sale of food, that—

(i) the person sold the food in the same condition as and when the person purchased it; or

(ii) the person sold the food in a different condition to that in which the person purchased it, but that the difference did not result in any contravention of this Act or the rules and regulations made thereunder; and

(e) that the person did not know and had no reason to suspect at the time of commission of the alleged offence that the person's act or omission would constitute an offence under the relevant section.

(3) In sub-clause (a) of clause (2), another person does not include a person who was—

(a) an employee or agent of the defendant; or

(b) in the case of a defendant which is a company, a director, employee or agent of that company.

(4) Without limiting the ways in which a person may satisfy the requirements of clause (1) and item (i) of sub-clause (b) of clause (2), a person may satisfy those requirements by proving that—

(a) in the case of an offence relating to a food business for which a food safety programme is required to be prepared in accordance with the regulations, the person complied with a food safety programme for the food business that complies with the requirements of the regulations, or

(b) in any other case, the person complied with a scheme (for example, a quality assurance programme or an industry code of practice) that was—

(i) designated to manage food safety hazards and based on national or international standards, codes or guidelines designed for that purpose, and

(ii) documented in some manner.

(C) Defence of mistaken and reasonable belief not available—

In any proceedings for an offence under the provisions of this Act, it is no defence that the defendant had a mistaken but reasonable belief as to the facts that constituted the offence.

(D) Defence in respect of handling food—

In proceedings for an offence under Section 56, it is a defence if it is proved that the person caused the food to which the offence relates to be destroyed or otherwise disposed of immediately after the food was handled in the manner that was likely to render it unsafe.

(E) Defences of significance of the nature, substance or quality of food—

It shall be no defence in a prosecution for an offence pertaining to the sale of any unsafe or misbranded article of food to allege merely that the food business operator was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale."

24. From the perusal of the Section 80 of the Act, 2006, it is explicit that the defence of due diligence and reasonable protection to prevent the commission of the offence as well as act or default of another person or reliance on the information supplied by another person is still available during trial, being subject matter of

evidence, but when it is not in dispute, even at the time of filing the complaint, that the food business operator has taken due diligence and reasonable precaution by complying all the conditions mentioned in the Act, 2006 as well as regulations framed therein, then such a plea can be considered even at the time of exercising the power under Section 482 Cr.P.C./528 B.N.S.S. to quash the proceeding.

25. Therefore, from the above analysis, it is clear that if any food business operator like a restaurant purchased any raw material or ingredient of food from a registered manufacturer in a sealed packet with a proper invoice, then it would be deemed that the raw material or ingredient of food is of standard quality. If the ingredient of food in sealed packet is found to be unsafe, then *prima facie* liability will be of its registered manufacturer or its distributor and not of the restaurant unless the seal of packet or its invoice is disputed or doubted.

26. In the present case, it is not in dispute that applicant No.2 had purchased the turmeric powder of a standard quality from its manufacturer with the invoice. Therefore, in view of Section 26(4) of the Act, 2006, the turmeric powder purchased by applicant No.2 will be deemed to be of good quality. Therefore, there is sufficient compliance of the conditions, mentioned in the Act as well as Regulation by the applicant being food business operator, providing food services regarding purchase of turmeric powder as well as is quality.

27. In the present case, it is not in dispute that the applicant has purchased the turmeric powder from a licensed/registered

manufacturer and relied upon the information given by the manufacturer of the turmeric powder about the quality and standard on the basis of invoices, then in such circumstances if the turmeric powder is found to be unsafe despite guarantee of its quality by its registered/licensed manufacturer, in that case the food business operator dealing with business of selling the turmeric powder or its distributor would be liable and not the restaurant or its owner or any of its employees selling the food.

28. In view of the above, this Court is of the view that the impugned proceeding against applicant No.2 and applicant No.1, who is employee of applicant No.2, deserves to be quashed. Therefore, the impugned proceeding so far as the present applicants are concerned is hereby quashed.

29. Accordingly, the application is **allowed**.

30. However, the court below is free to proceed against the manufacturer/distributor of the turmeric powder who despite issuing an invoice regarding its quality, failed to adhere to its standard.

(2025) 2 ILRA 174

**ORIGINAL JURISDICTION
CRIMINAL SIDE**

DATED: ALLAHABAD 24.02.2025

BEFORE

**THE HON'BLE ARUN KUMAR SINGH
DESHWAL, J.**

Application U/S 482 No. 27233 of 2024

**Amit Kumar Tiwari & Ors. ...Applicants
Versus**

State of U.P. & Ors. ...Opposite Parties

Counsel for the Applicants:

Indra Deo Mishra, Manoj Kumar Mishra,
Pankaj Kumar Tiwari

Counsel for the Opposite Parties:

Brijesh Kumar, G.A., Sudhanshu Kumar
Singh

Criminal Law - Criminal Procedure Code, 1973 - Sections 362 & 482 - Indian Penal Code, 1860 - Sections 147, 354-Kha, 323, 504 & 506 - The Protection of Children from Sexual Offences (POCSO) Act, 2012 – Sections 7 & 8 - Application u/s 482 – for quashing the impugned order - FIR - lodged by the opposite party no. 4, alleging sexual assault on his minor daughter - investigation - final report - Magistrate issue notices – opposite party no. 4 was not appeared - final report accepted – recalled applicant along with a protest petition – trial court recalled and ordered to registered as complaint case – under challenged - plea taken that, acceptance of a final report does not bar cognizance if sufficient material exists – objected that, if a final report is accepted after hearing the informant, it cannot be recalled u/s 362 Cr.P.C – The legal issue revolves around whether recalling the acceptance of the final report violates Section 362 Cr.P.C., which bars courts from reviewing final orders except for clerical errors – Applicability of Section 362 Cr.P.C. - Section 362 Cr.P.C. bars courts from reviewing or altering final orders except for clerical errors, However, cognizance can still be taken based on fresh material – court finds that, the trial court passed acceptance order of the final report after serving the notice upon the opposite party no. 4 but, it was recalled later without giving any reasoning that the case was of procedural recall/review and not the substantive recall/review, despite the fact that order of accepting the final report was a final order disposing the case regarding cognizance on the basis of material available in the case diary – therefore, same is barred by section 362 Cr.P.C. - Consequently, the impugned order is set aside, and the matter is remanded for fresh consideration – application is allowed. (Para – 17, 18, 19, 20, 21)

Application Allowed. (E-11)

List of Cases cited: