

IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR

Reserved on: 27.05.2025

Pronounced on: 06.06.2025

CRM(M) No.310/2024

ALI MOHAMMAD BHAT & ORS.

... PETITIONER(S)

Through: - Mr. Jahangir Iqbal Ganai, Sr Advocate,
With Ms. Mehnaz Rather, Advocate.

Vs.

UT OF J&K

...RESPONDENT(S)

Through: - Mr. Hakeem Aman Ali, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioners have challenged the complaint filed by the respondent against them alleging commission of offence under Section 26(1)(2)(i)(ii) punishable under Section 59 read with Section 3(1)(zz), Section 51 read with Section 3(1)(zx) of Food Safety and Standard Act, 2006 (for short "the FSS Act") pending before the Court of Chief Judicial Magistrate, Srinagar (for short "the trial court"). Challenge has also been thrown to order dated 30.11.2023 passed by trial court, whereby cognizance of offences has been taken and process has been issued against the petitioners.

2) It is alleged in the impugned complaint that on 19.09.2022, the respondent, along with a team of Food Safety Officers, inspected the premises of petitioner No.1

(M/S The Daily Bazar) located at Saida Kadal, Srinagar. The complainant is stated to have collected the sample of Nestle Milkmaid, Sweetened condensed, partly skimmed milk and after completing the requisite formalities, the sample was sent for analysis to Food Analyst, National Food Laboratory, Ghaziabad. As per report of the Food Analyst dated 21.10.2022, the sample was found to be not conforming to the standard laid down under Regulation No.2.1.5 of Food Safety and Standards(Food Products Standards and Food Additive) Regulations, 2011 (for short “the Regulations”). It was further mentioned in the report that the sample was showing total plate count above the maximum prescribed limit and milk protein in milk solids not fat below the minimum prescribed limit. Thus, the sample was found to be sub-standard and unsafe. Corrigendum to the report was issued by the Food Analyst on 28.11.2022, thereby making corrections in the batch number.

3) Notice dated 17.11.2022 under Section 46(4) of the FSS Act was served upon petitioner No.1 herein, who did not prefer appeal before the Designated Officer. Thereafter petitioner No.1 was asked to disclose the name and address of any other person involved in the trade of the food article. In response, petitioner No.1 submitted the bills/invoices of

M/S Malhotra Brothers, Court Road, Srinagar, from whom he had purchased the food article in question.

4) Notice under Section 46(4) dated 22.11.2022 was served upon petitioner No.2 and he was given opportunity to prefer an appeal before the Designated Officer. Upon seeking information from respondent No.2 with regard to source of the food article in question, it was informed that M/S Nestle India Limited, New Delhi, has supplied the said food article. In this regard bill/invoice was submitted by petitioner No.2.

5) Notice under Section 46(6) of FSS Act dated 30.11.2022 was served upon petitioner No.3 but it did not prefer to file any appeal.

6) Vide communication dated 28.03.2023, the Designated Officer, Food Safety, Srinagar, placed the information before the Commissioner, Food and Drug Administration, Srinagar, for grant of sanction for prosecution against the petitioners herein. Vide order No.165-FDA of 2023 dated 17.10.2023, Commissioner, Food & Drugs Administration, J&K, accorded sanction for prosecution against the petitioners.

7) On the basis of aforesaid allegations, it has been claimed by the respondent/complainant that the

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petitioners have committed offences under Section 26(1)(2)(i)(ii) punishable under Section 59 read with Section 3(1)(zz), Section 51 read with Section 3(1)(zx) of FSS Act.

8) The trial court vide order dated 30.11.2023, has proceeded to take cognizance of the offences and issued process against the petitioners.

9) The petitioners have challenged the impugned complaint and the impugned order whereby cognizance of the offences has been taken and process has been issued against them, primarily, on the grounds that the complaint has been filed against them beyond the prescribed period of limitation and, as such, it was not open to the trial Magistrate to take cognizance of the offences and issue process against the petitioners. It has been further contended that the respondents have not adhered to the mandatory provisions of Section 42 of the FSS Act, inasmuch as the Food Analyst after receiving the sample from the Food Safety Officer has not stuck to the dead line of fourteen days in sending the report of the Designated Officer and the Designated Officer has not sent his recommendations to the Commissioner, Food Safety, for sanctioning of prosecution within the dead line of fourteen days. It has also been contended that the prosecution against petitioner No.3, without impleading the company

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M/S Nestle India Limited as an accused in the impugned complaint, cannot sustain.

10) I have heard learned counsel for the parties and perused record of the case.

11) The first ground that has been urged by learned Senior counsel appearing for the petitioners is that in the impugned complaint has been filed by the respondent beyond the prescribed period of one year from the date of commission of the offence. In this regard, it is to be noted that as per Section 77 of the FSS Act, a court cannot take cognizance of the offence under the said Act after the expiry of the period of one year from the date of commission of an offence. However, Proviso to Section 77 vests power with the Commissioner, Food Safety, to approve prosecution within an extended period upto three years, subject to the condition that reasons for the same are recorded in writing.

12) Adverting to the facts of the present case, the sample of the food article in question was lifted from the premises of petitioner No.1 on 19.09.2022. The Food Analyst rendered his report on 21.10.2022 and corrigendum thereto was issued on 28.11.2022. In the complaint it has been pleaded that the corrigendum dated 28.11.2022 was received by the respondent/complainant on 07.12.2022.

The complain in the instant case has been presented before the learned trial court on 30.11.2023.

13) Learned Senior Counsel appearing for the petitioners has contended that the period of one year has to be reckoned from the date of commission of offence and an offence stands committed on the date when sample is lifted from the premises of the offender. In this regard, reliance has been placed upon the judgment of this Court in the case of **Neeraj Shastri and another vs. State of J&K and another** (CRMC No.291/2016 decided on 16.02.2023).

14) Learned counsel appearing for the respondent, on the other hand, has contended that the period of limitation would start running against the respondent from the date when it came to its knowledge that the sample of the food article was found to be of sub-standard quality, meaning thereby that it would start running from the date when the report of the Food Analyst is received by the complainant. The learned counsel has in this regard, relied upon the judgment of the Supreme Court in the case of **State of Rajasthan vs. Sanjay Kumar & Ors.** AIR 1998 SC 1919, wherein it has been held that limitation for launching prosecution would start from the date when it comes to the knowledge of the Drugs Inspector that the drugs were of sub-

standard/adulterated quality and that would be when the report of the Government Analyst is received by him.

15) The provisions contained in Section 469 of Cr. P. C and those contained in Section 77 of FSS Act are quite distinct from each other, inasmuch as Section 469 of Cr. P. C also deals with situations where the commission of offence has not come to the notice of the aggrieved person and where the offender is unknown whereas Section 77 of the FSS Act does not deal with such situations. The Supreme Court in **Sanjay Kumar's** case (supra), has interpreted the provisions of Section 469 of the Cr. P. C while holding that commission of offence comes to the knowledge of the Drugs Inspector only when he receives the report of the Government Analyst.

16) In the judgment delivered by this Court in **Neerja Shastri's** case (supra), which was a case under the FSS Act, it is recorded that the offence can be said to have been committed on the date when sample was lifted from the premises of the accused. However, in the said case, the issue as to when an offence is stated to have been committed was not the subject matter of discussion before this Court, because in the said case even from the date when the report of the Food Analyst was received by the

complainant, more than one year had elapsed prior to the filing of the complaint. So, the issue which poses itself for determination in the present case was not deliberated by the Court. A stray reference to date of commission of alleged offence in the said judgment would not be a binding precedent. Thus, the issue as to when an offence can be stated to have been committed in the context of Section 77 of FSS Act needs to be deliberated upon irrespective of what has been laid down by the Supreme Court in **Sanjay Kumar's** case (supra) or by this Court in **Neeraj Shastri's** case (supra).

17) With the aforesaid background in mind, let us now determine as to when an offence under FSS Act can be stated to have been committed. When a sample of food is collected from a premises of an accused, no offence can be stated to have been committed as at that time it is not known whether or not the food article, of which sample has been lifted, is of a sub-standard quality and, therefore, there is no prohibition to sell said food article at the relevant time. Thus, at the time of lifting of the sample, it cannot be stated that an offence has been committed by the accused person. It is only when report of the Food Analyst is received declaring the sample as unsafe or sub-standard that commission of offence takes place and the sale of such food

article by the accused is prohibited. Therefore, an offence under FSS Act can be stated to have been committed on the date when the report of the Food Analyst indicating that the sample of the food is unsafe or sub-standard. In my aforesaid view, I am supported by the judgment of Allahabad High Court in the case of **M/S Kewal Dairy vs. State of UP and another**, 2024 AHC 177238 (Neutral citation).

18) With the aforesaid position of law in mind, let us now advert to the facts of the present case. As already indicated, the corrected report of Food Analyst was received by the complainant on 07.12.2022. Therefore, the offence can be stated to have been committed on 07.12.2022. The impugned complaint has been filed on 30.11.2023. Thus, the same has been filed by the respondent/complainant within the prescribed period of one year from the date of commission of the offence, which is the date on which the complainant received the corrected report of Food Analyst. The contention raised by learned Senior counsel appearing for the petitioner is, therefore, without any merit and is liable to be rejected.

19) That takes us to the second ground urged by learned Senior counsel appearing for the petitioner. According to the petitioners, the respondent/complainant has not

adhered to the mandatory provisions of Section 42 of the FSS Act, which reads as under:

42. Procedure for launching prosecution.- (1) *The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.*

(2) *The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.*

(3) *The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.*

(4) *The Commissioner of Food Safety shall, if he so deems fit, decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to,-*

- (a) *a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or*
- (b) *a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a court of ordinary jurisdiction.*

(5) *The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer who shall launch prosecution before courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under section 40.*

20) From a perusal of the aforesaid provision, it is evident that the Food Analyst, after receiving the sample from the Food Safety Officer, has to analyse the same and send his report to the Designated Officer within fourteen days. It is

further evident that the Designated Officer, after scrutinizing the report of the Food Analyst, has to take a decision whether contravention is punishable with imprisonment or fine only and in case of the contravention is punishable with imprisonment, he has to send his recommendation within fourteen days to the Commissioner Food Safety for sanctioning prosecution.

21) In the present case, the sample was received by the Food Analyst on 03.10.2022. He rendered his report on 21.10.2022 and corrigendum thereto on 28.11.2022. Thus, he has rendered his report after eighteen days of receipt of the sample, which is clearly beyond the period prescribed under sub-section (2) of Section 42 of the FSS Act. The Designated Officer received the report of Food Analyst on 11.11.2022, which is clear from the averments made in the complaint. The corrigendum to the report of the Food Analyst, as already stated, was received by the Designated Officer on 07.12.2022. It was only on 28.03.2023 that the Designated Officer made a recommendation to the Commissioner Food Safety for accord of sanction for prosecution against the accused persons, which is 111 days after the receipt of corrigendum to the report of the Food Analyst. This is way beyond the stipulated fourteen days as laid down in sub-section (3) of Section 42 of the FSS Act.

Thus, the contention of the petitioners that the respondent/complainant has not adhered to the timelines given in sub-sections (2) and (3) of Section 42 of FSS Act, is well-founded. The question that arises for determination is as to whether on this ground, the prosecution against the petitioners can be quashed. This question has been considered by various High Courts of the Country. It would be apt to refer to some of these judgments.

22) The High Court of Madras has, in the case of **S. Sakthivel and Ors. Vs. The State**, 2022 (1) MWN (CR.) 632, while dealing with a similar situation, observed as under:

10. Considering the above, as rightly pointed out by the learned counsel for the petitioners, the respondent has violated the mandatory requirements contemplated under Section 42 of the said Act. Considering the above and also the legal decision above referred, this Court has no other option, but to hold that the very launching of the complaint itself is not proper. Considering the above violations, no purpose would be served in directing the petitioners to face the trial, as the respondent authorities have miserably failed to follow the mandatory requirements contemplated in the said Act. Hence, this Court has no hesitation to hold that the case in S.T.C. No. 915 of 2018, pending on the file of the Court of Judicial Magistrate, Musiri, Trichy District as against the petitioners is liable to be quashed.

23) Relying upon the aforesaid judgment, the High Court of Telangana in the case of **Kantilal vs. the State of Telangana and others**, (Writ petition No.41 of 2023

decided on 09.03.2023) has held that the provisions contained in Section 42 are mandatory in nature and any violation of the timelines given in the said provision would lead to quashment of the prosecution against the accused.

24) The High Court of Kerala in the case of **Jemini Anil and others vs. Food Safety Officer Pala Circle and another**, 2025 SCC OnLine Ker 1603, has, after noticing the provisions contained in Sections 42 and 46 of the FSS Act, observed as under:

11. It appears from the provisions contained in the aforesaid two Sections of the Act that it is mandatory for the Food Analyst to complete the analysis within 14 days from the date of receipt of the food samples, and to send the analysis report mentioning the method of sampling and analysis within 14 days to the Designated Officer, with a copy to the Commissioner of Food Safety. In any case, if the Food Analyst is not in a position to comply with the above requirement of analysis and report within 14 days, the proviso to Section 46(3) of the Act requires the Food Analyst to inform the Designated Officer and the Commissioner of Food Safety, giving reasons, and specifying the time to be taken for analysis. As far as the present case is concerned, the Food Analyst is seen to have submitted a statement to the Designated Officer and the Commissioner of Food Safety on 27.06.2018, indicating that the analysis report of the 25 samples shown in the table thereunder, which include the food sample in the present case, could not be sent within 14 days due to incompleteness of analysis, including pesticide residue of sample within the stipulated time. It is further made clear by the Food Analyst in the aforesaid statement that the analysis

report of the above samples will be sent within 50 days from the date of receipt of the samples.

25) In a recent judgment delivered by Madras High Court in the case of **H. P. Gupta & Ors. v. S. Selvaraj**, 2023 SCC OnLine Mad 3293, similar view has been reiterated and reaffirmed.

26) In the face of aforesaid position of law, it is evident that the provisions contained in Section 42 of the FSS Act, which provide for timelines for taking certain actions by the Food Analyst and the Designated Officer, are mandatory in nature. In the present case, as already stated, the respondent has violated these timelines without explaining the reasons for delay in the complaint filed by him. Therefore, the prosecution against the petitioners cannot sustained.

27) The third ground that has been urged by learned Senior counsel appearing for the petitioners is confined to the case of petitioner No.3. It has been contended that petitioner No.3, who is claimed to be the Incharge of operations of M/S Nestle India Ltd., could not have been impleaded as an accused without impleading the company as an accused. In this regard, the learned Senior counsel

has relied upon the judgment of this Court in **Neeraj Shastri's** case (supra).

28) In **Neeraj Shastri's** case (supra), this Court, has, after taking note of Section 66 of the FSS Act, which relates to offences by companies, observed as under:

13) From a perusal of the aforesaid provisions, it is clear that when an offence has been committed by a company, every person, who at the time the offence was committed, was incharge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence. This provision extends the concept of vicarious liability to the persons responsible for the conduct of the business of the company, in a case where the offence has been committed by the company.

14) In criminal law, there is no concept of vicarious liability and it is only, if there is statute, which makes a person vicariously liable of the act of another person then such a person can be prosecuted for a criminal offence. Section 66 of the FSS Act makes a person, who is incharge of, and responsible for conduct of the business of the company, vicariously liable for the offence committed by the company

15) Explanation to the aforesaid provisions provides that the company includes a firm or other association of individuals and the Director in relation to a firm, means a partner in the firm. Thus, the explanation makes it clear that the provisions contained in Section 66 of FSS Act are equally applicable to the case of the partnership firm.

29) In the same case, the Court, after noticing the ratio laid down by the Supreme Court in **Aneeta Hada vs.**

Godfather Travels and Tours Pvt. Ltd., (2012) 5 SCC 611, and **Ashish Damija vs. UT of J&K** (CRM(M) No.14/2021 decided on 04.08.2012), observed that without impleading the partnership firm as accused, the criminal prosecution against the partners cannot proceed.

30) Taking a cue from the ratio laid down in the aforesaid case, it is clear that without impleading M/S Nestle India Pvt. Ltd, of which petitioner No.3 is claimed to be the person incharge of operations, the said petitioner could not have been impleaded as an accused and proceeded against. The prosecution against petitioner No.3 is, therefore, not sustainable in law.

31) For what has been discussed hereinabove, the petition is allowed and the impugned complaint and the proceedings emanating therefrom as against the petitioners are quashed.

32) A copy of this order be sent to the learned trial court for information.

(Sanjay Dhar)
Judge

Srinagar,
06.06.2025
"Bhat Altaf-Secy"

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No