IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 558 OF 2022

SAILESH VENKATESAN

VS.

THE STATE OF WEST BENGAL & ANR.

For the Petitioner	:	**Mr. Sudipto Sarkar, Sr.Adv.**
		Mr. R. Jawhar Lal, Adv.
		Mr. S. Prasad, Adv.
		Mr. Daipayan Dan, Adv.
		Ms. Meghna Kumar, Adv.
For the State	:	**Mr. Debasish Roy, Learned Public Prosecutor.**
		Mr. Saryati Dutta, Adv.
		Ms. K. Roy, Adv.

Reserved On	:	**07.04.2026**
Judgement on	:	**08.07.2026**
Uploaded on	:	**08.07.2026**

CHAITALI CHATTERJEE DAS, J.:-

1. This is an application filed under Section 482 of Code of Criminal Procedure 1973 for quashing of the proceeding in Charu Market P.S. case no. 333 of 2015 and charge sheet no. 190 of 2021 dated 06.09.2021 under Section

269/270/272/273 and 114 of the Indian Penal Code ,1860 read with Section 51 and 59 (ii) of the Food Safety and Standards Act,2006, pending in the Court of Learned Chief Judicial Magistrate, Alipore and quashing of order dated 07.10.2021 taking cognizance of the charge sheet and issuing summons to the petitioner.

<u>Fact of the case</u>

2. Draped in brevity the fact of the case is that, Mead Johnson Group has its presence in over fifty countries and has over 70 products focussed on infant and Child Nutrition with a global turnover of USD 4 billion approx. Rupees 33.350 crore. One of Mead Johnson product is Enfamil A+ Stage 3 follow up formula for children (Enfamil A+3) meant supplement for infant (12 to 24 months) was imported and distributed by Mead Johnson India . The petitioner was appointed as an Additional Director of MJN India in the month of March 2009, and subsequently appointed as a Director in the month of December 2009. On 15.06.2009 the petitioner was appointed as a Managing Director of MJN India. A private complaint was filed by one Ms. Ayesha Ali with the Opposite Party no. 2 Police Station alleging that she was feeding Enfamil A+ Stage 3 to her baby and black dust particles were found (mould) .Further on 8.11.2015 she bought Enfamil A+ Stage 3 and had claimed that on opening the container, she found the live insect and she apprehend that due to the inferior quality of food her baby suffered earlier.. The complaint was lodged on 10.11.2015 and it was registered on the same day under the aforesaid Section against manufacturing Company of Enfamil A+ Stage 3 (1) Manufacturing Company of Enfamil A+ Stage 3 and (2) Med plus that is the shop from where complainant alleged to have purchased the product. Nearly 4 years after registration of FIR a notice was sent to MJN India from the Investigation Officer under Section 91 of Cr.P.C. and a detailed reply was given on 05.06.2019 and after 2 years from such reply a notice was issued under Section 161 of Cr.P.c to the Director of MJN India and MJN approached this High Court under Section 482 of Cr.P.C for quashing of the said complaint and further proceeding was stayed for 8 weeks. After that on 07.09.2021 the charge sheet was submitted against three persons as accused and name of MJN is dropped and the present petitioner is included as accused no.3. Other accused are the distributor and the owner of the medicine shop. The Learned Trial Court took cognizance on 07.10.2021 and also issued summons against which the present revisional application has been filed by the petitioner.

Submissions

3. The Learned Senior Counsel appearing on behalf of the petitioner Mr. Sudipta Sarkar made arguments raising the following points ;

The sections invoked in the charge sheet are not maintainable since it was alleged violation of FSS Act as the specific allegation in the FIR was that Enfamil A+ Stage 3 is the sub-standard and unsafe and hence there is no basis to invoke the provision of the Indian Penal Code as the FSS Act overrides the Indian Penal Code.

Section 89 of FSS Act overrides other enactment and in this regard placed reliance on the judgement of the Hon'ble Supreme Court in ***Ramnath versus State of UP***[1] Paragraph 25 to 27.It is further submitted in the decision of ***Ramnath (Supra)*** the judgement of the Hon'ble Allahabad High Court in ***Pepsico India Holding Private Limited and Another vs. State of UP and***

[1] 2024 SCC Online SC 177

Ors.[2] was considered where quashed the prosecution under Section 272 and 273 of Indian Penal Code on the ground that with effect from 29.07.2010 when Section 97 of FSS Act came into force ,action with respect to quality of food only had to be taken by statutory authorities created under the FSS Act and Police do not have the power to invoke Indian Penal Code.

4. The other point raised by the Learned Senior Counsel is that the cognizance taken by the Trial Court is barred by the period of limitation prescribed under Section 77 FSS Act. In terms of the Section 77 no court shall take cognizance of an offence under the Act after the expiry of the period of 1 year from the date of commission of an offence. Therefore even if it is assumed without admitting that Opposite Party no. 2 has jurisdiction to file a complaint in respect of offences under FSS Act and it came to be filed after obtaining extension from the Commissioner of Food Safety under proviso to Section 77 of FSS Act the Learned Trial Court took cognizance beyond the period of limitation prescribed under Section 77 of FSS Act. The complainant was supposed to have purchased the product on 08.11.15 and FIR was registered on 10.11.25 and the charge sheet was filed more than 6 years on 07.09.21 and the cognizance was taken after 6 years from the date of alleged crime of offence hence it is hit by the limitation prescribed in Section 77 of FSS Act.

5. It is further argued that police authorities do not have the jurisdiction to register FIR under the FSS Act since there is specific provision under the 51, penalty for sub-standard food and Section 59 which provides for punishment for sale of unsafe food and also that violation or contravention results in non-grievance for a term which may extent to 1 year and with fine which may

[2] (2010) SCC Online ALL 1708

extent to 3 Lakhs Rupees. Therefore the FIR and the charge sheet is without jurisdiction in term of Section 29(1) of FSS Act and food authorities and State food authorities alone are responsible enforcement of FSS Act. Since exclusive jurisdiction is vested on food authorities, opposite party no. 2 has no jurisdiction. In addition under Section 42 of the FSS Act only the designated Officer / Food Safety Officer to initiate prosecution that is opposite Party no. 2 not being the designated authority under the said act has not and could not have sought for or obtained sanction from Commissioner of Food Safety and in fact indisputable has not obtained any such sanction hence Opposite Party no. 2 cannot invoke Section 51 and 59 of the FSS Act in the FIR and the charge sheet. The last argument as advanced on behalf of Mr. Sarkar the Learned Senior Advocate that vicarious liability cannot be cast against the petitioner, as there is nothing on record in the FIR or in the charge sheet with respect to the role of the petitioner in the alleged commission of the offence .Merely Enfamil A+ Stage 3 being sub-standard or un safe food and merely because the petitioner was the managing Director of MJN India at the relevant time he has been made an accused in the charge sheet even without including the company as an accused. Reliance is placed on ***Sunil Bharti Mittal vs Central Bureau of Investigation***[3] (relevant para 42 to 44). In addition the Hon'ble Supreme Court in ***Thermax Limited and Others vs K.M. Jony and Ors.***[4] and ***GHCL Employees stock option trust vs. Kranti Sinha***[5] where it was held that there is no concept of vicarious liability under Indian Penal Code and specific allegation must be made against every accused. The learned Senior

[3] (2015) 4 SCC 609
[4] (2011) 13 SCC 412
[5] (2013) 4 SCC 505

Advocate has further placed reliance on the judgement of Hon'ble Supreme Court in ***Girish Bhai , Daya Bhai Sha vs. C.C. Jani and Ors.***[6] relevant para 7, 8, 9 and 10 in the context of prevention of Food Adulteration Act which was repealed and replaced by FSS Act where it was held that the right of retesting is a valuable statutory right and in case, the manufacturer is not given the right of retesting or the manufacturer could not avail such right due to the reason that the best before period had expired, such valuable statutory right stands negated/extinguished and in such circumstances no prosecution could be launched by the statutory authorities. Further reliance was placed on two decisions under FSS Act ***2006 ITC Limited State of Madhya Pradesh and Ors.(Manu/MP/4341/2024) and Marico Limited and Ors. Vs. State of Delhi and another***[7] in this regard. Accordingly prayed for quashing of the entire proceeding.

6. The Learned Public Prosecutor on the other hand submits that the FIR was lodged on 10.11.2015 and within 6 months the proceeding was started, notice was sent and the investigation continued. Initially the name of the present petitioner was not mentioned in the FIR and hence took time to find out his involvement and subsequently the charge sheet was submitted where the name of the petitioner was incorporated as sufficient materials was found against him who was the Managing Director of the said Company. Further submitted that the relevant provisions in the Indian Penal Code are still there in the BNS and so the intention of the legislature was to keep those provision and therefore if any proceeding has been initiated under those provision and

[6] (2009) 15 SCC 64
[7] 2015 (1) 149 DRJ 695

the charge sheet has been submitted with the serious allegation dealing with baby food product that should not be quashed on the technical ground. Accordingly prayed for dismissal of this revisional application.

Analysis

7. Heard the submission of both the Learned Advocate .The prosecution case was launched on the basis of the FIR being 333 of 2015 dated November 10, 2015 registered before the Charu Market Police Station alleging that she found some black dust particles for a long time in the baby food and considering the same as not harmful she continue with using Enfamil A+ Stage 3 baby food but after consumption of such baby food her daughter often suffered from dehydration. Lastly two days before lodging such FIR on 08.11.2015 she purchased from Med plus unit of optival health solution private limited the baby food Enfamil A+ Stage 3 and when she opened the seal of the food, found live insect and therefore she believed that on previous occasion also her daughter suffered due to inferior quality and accordingly ask for taking appropriate steps.

8. The complaint was received on the same date and the P.S. case started on the very same date. It appears from the record that the charge sheet was submitted on 06.09.2021 that is long after 6 years from the date of lodging of such complaint. On careful perusal of the charge sheet it transpires that till such time the food analysis public health laboratory , Department of Health that the sample in Enfamil A+ Stage 3 bearing label mark "A" does not confirm to the standard of follow up formulas as laid down in regulation and the sample was sub-standard and unsafe. The baby food was seized during investigation and sent for such opinion and thereafter submitted the charge sheet. The question involved in this case is that whether any report in terms of Section 462 Of the Food Safety and Standard Act 2006 was called for and in terms of the observation made by the Hon'ble Supreme Court after FSS Act came into force the present complaint lodged under the provision of IPC can continue against the petitioner or not.

9. Prior to delving deep into the bottom the case it is to be ascertained at the outset as argued by the Learned Senior counsel about the role attributed as an accused in the entire case or the maintainability of the proceeding against the petitioner being the Managing Director without arraying the Company as an accused . It is evident from the charge sheet that the Mead Johnson Private Limited is not made as an accused and no specific allegation was made against the present petitioner who was the Managing Director of the said company. In the case of ***Sunil Bharti Mittal (supra)*** it was held that *" if the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the Company as well as they are "alter ego" of the company."* The legal proposition that is laid down in the aforesaid judgement in ***Iridiunm India Telecom Ltd. Vs Motorola Inc.***[8] is that if the person or group of persons who controls the affair of the of the company commits an offence with a criminal intent their criminality can be imputed to the company as well as they are 'alter ego' of the company. In the said case the principle as applied was exactly was reverse scenario .There the company was the accused person and the Learned Special magistrate observed that since the appellant represent the directing mind and will of each company, their state of mind is the state of mind of the company and

[8] (2011) 1 SCC 74

therefore, on that premise, acts of the Company are attributed and imputed to the appellant. The Hon'ble Supreme Court found it difficult to accept as a correct principle of law as the proposition would run contrary to the principle of vicarious liability dealing the circumstances under which are Director of a Company can be held liable. It was therefore held that when the company is the offender, vicarious liability of the Directors cannot be imputed automatically in the absence of any statutory provision to this effect. Therefore an individual who has perpetrated the commission of an offence on behalf of a company can be made accused along with the company if there is sufficient evidence of his active role coupled with the criminal intent.

10. In the case of ***Managing Director, Castrol India Limited (Supra)*** no specific act of the appellant accused was mentioned in the complaint in commission of alleged offence and he was made vicariously liable and he was the Managing Director at the relevant point of time. There was no statement whatsoever that the accused was responsible or in charge of conduct of the business of the company and no averment in the complaint that he was connected or responsible for commission of any act. For fastening of vicarious liability or offence committed by company a clear and categorical statement in complaint is required as observed by the High Court. It was further held that Company was not even made accused in the proceeding and accordingly in considering the absence of any specific averment in the complaint petition the Hon'ble Supreme Court was of the view that proceeding against the appellant accused are liable to be quashed.

11. In the present case it is evident from the charge sheet that the present petitioner has been named in the charge sheet as an accused being the

Managing Director of MJN Company but the company has not been arrayed as an accused while submitting the charge sheet.The Learned CJM -In-charge based on the challan /charge sheet took cognizance despite being aware of the order of stay of the High court passed in C.R.R no. 176/2011 on 7.10.21 and later on the Learned CJM observed in his order dated 29.12.2021 that the learned Magistrate ought not to have taken cognizance after the order passed by the Hon'ble High court staying all further proceeding of this case however in absence of any statutory provision to recall such order no such order could be passed and the order issuing W/A was nullified . In the case of Ravinder Kumar Agarwal vs State of M.P (supra) it was held that in Special statute which provides for prosecution of company for offences committed by it ,the Directors of the company itself is made an accused ,prosecution of the applicant who was one of the Directors of the Company is impermissible in law and the proceeding against him was quashed .In that case the matter pertains to Food Safety and Standard Act where in terms of Section 66, where a person in charge of an Establishment or unit nominated by the company as responsible for Food Safety shall be the person who will be liable for contraventions in respect of such Establishment, Branch or unit ,only such Nominee and not the Directors shall be responsible for the contravention in respect of Establishment.

12. In the present case neither in the complaint the petitioner was made an accused and in the charge sheet no such involvement can be found against him. Therefore in view of the above factual matrix coupled with the law laid down in this regard this court do not find any materials to allow a proceeding against the petitioner against whom the proceeding is not maintainable in the eye of law.

13. Additionally the question arises whether the proceeding lodged under the provisions of Indian Penal Code is maintainable where the allegation unequivocally speaks of commission of offence under FSSA Act. In the decision of ***Ramanath (Supra)*** a revisional application was filed for quashing of the prosecution for the offences punishable under Section 272 and 273 of the IPC on the strength of an order issued by the State of UP granting power to the authorities to initiate prosecution under those Sections as well as under the prevention of Food Adulteration Act 1954. The decision of the Allahabad High Court passed in September 2010 in the case of ***PepsiCo India Holding Private Limited Vs. State of UP*** was relied upon and after that it was challenged before the Hon'ble Apex Court where it was held in the said decision that after coming into force of FSSA Act with effect from 29th July,2010 it would have an overriding effect on the other food related laws including the PFA and therefore the High Court held that invocation of Section 272 and 273 of IPC concerning Food adulteration pursuant to a Government order dated 11th may ,2010 was bad in law.

14. It was further held that the Section indicates that the intention is to give an overriding effect to the provision of FSSA over all food related laws. The settled law is that if the main section is unambiguous the aid of the title of section or its marginal note cannot be taken to interpret the same. Only if it is ambiguous, the aid of the title of the Section or the marginal note cannot be taken to interpret the same. Therefore, the main Section clearly gives over riding effect to the provision of FSSA over any other law in so far as the law applies to the aspects of food in the field covered by FSSA. Therefore when the offences under Section 272 and 273 of the IPC are made out, even the offence under Section 59 of the FSSA will be attracted. In fact, the offence under Section 59 of the FSSA is more stringent.

15. The instant proceeding was started under Section 272, 273 along with 269 and 270 and 114 of the Indian Penal Code read with section 51 and 59(ii) of FSS Act and in the light of the above discussion the case ought to have been initiated not under the Penal Code but under the Food Safety and Standard Act 2006, as there will not be any question of simultaneous prosecution under both the statute. Section 51 of FSSA Act deals with penalty for substandard food where section 59(ii) is punishment for unsafe food .The other two Sections that is Section 269 and 270 which relates to negligent act likely to spread infection dangerous to life and malignant act likely to spread infection dangerous to life and 114 abettor present when of offence is committed. The argument advanced on behalf of the Learned Senior Counsel that there is no basis for invocation of Section 269, 270, 283 of Indian Penal Code invocation of Section 114 of Indian Penal Code in absence of any allegation in that regard against the present petitioner .

16. This court after giving a careful consideration is of the view the petitioner being the Managing Director was not a person against whom any specific allegation was levelled or in course of investigation anything was found against him and as discussed above the proceeding should not have been proceeded against him hence there is no need for further threadbare discussion regarding applicability of provision of Indian Penal Code or section FSSA Act against him.

17. In the light of the above discussion and the law laid down by the Hon'ble Supreme Court regarding the vicarious liability when there is no concept of vicarious liability under IPC and there must be specific allegation to be made every accused in the present case nothing can be found from the complaint itself regarding any action or role played by the present petitioner who was the Managing Director of the Company which has not been arrayed as an accused.

18. Additionally there was prolong delay in the process of investigation as nearly 4 years after the registration of F.I.R ,MJN India received a notice from the I.O under section 91 of CrPC and gave a definite reply questioning the jurisdiction of the investigating authority as only Central Food Authority and the State Food Authorities have jurisdiction to enforce FSS Act .Hence section 51 & 59 of the FSS Act cannot be invoked by him .It was further replied that MJN has a right of retesting under FSSA Act as the notice was issued 4 years after registration of the F.I.R when the Enfamil A +Stage 3 has a Best before period maximum 24 months. Two years after such reply the notice was issued under Section 160 Cr.P.C to the Director of MJN and after MJN approached this High Court and obtained an order of stay the investigating authority hastily filed the Charge sheet where the name of MJN was dropped and name of the petitioner along with other two persons arrayed as accused.

Conclusion

19. It is therefore clear that the Learned Magistrate without application of mind took cognizance against the petitioner when is a sine qua non that the application of the mind of the Learned Magistrate should be reflected to his satisfaction that the allegations if proved would constitute an offence which is admittedly missing in this case . Therefore merely because the petitioner was the Managing Director of MJN India at the relevant time without including the company as an accused the petitioner cannot be made an accused and if the proceeding is allowed to be continued against the present petitioner it would be an abuse of the process of law and hence it should be quashed.

20. Hence this C.R.R is hereby allowed. The proceeding pending before the Learned Court of Chief Judicial Magistrate, Alipore being Charu Market P.S Case no 333 of 2015 and the Charge sheet no 190 of 2021 dated 10.11.2015 is hereby quashed qua the petitioner.

21. All connected applications are hereby disposed of.

22. Urgent certified copy Urgent of the order if applied for be provided to the parties upon observance of all necessary requirements.

[CHAITALI CHATTERJEE (DAS), J.]