

**IN THE HIGH COURT OF MADHYA PRADESH**  
**BENCH AT INDORE**

**(SB: Hon'ble Mr. Justice Alok Verma)**

**MCRC No.5425/2015**

Jagdish S/o Ramprasad Maheshwari and another  
Vs.  
State of MP

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Shri Ashish Vyas, learned counsel for the applicant.  
Smt. Pritha Moitra, learned counsel for the respondent/State.

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**ORDER**

**(Passed on this 30<sup>th</sup> day of September, 2015)**

This is an application under section 482 of Cr.P.C. for quashment of the order dated 27.05.2015 passed in CRR Nos.87/2014 and 98/2014 by learned Additional Sessions Judge, Narsingharh, District – Rajgarh whereby, learned Additional Sessions Judge confirmed the order passed by learned JMFC, Narsingharh in Criminal Case No.1335/2012 dated 23.05.2014 and 13.06.2014.

The brief facts giving rise to this application are that the accused Ram Bhurani S/o Manoharlal Bhurani placed a proposal before the complainant that he would supply him pure *Desi Ghee* at low cost. The accused Ram Bhurani brought the food item loaded in mini truck bearing registration No.MP-04-LC-3013 which was being driven by co-accused Salim Khan. When the food item was

received by the complainant, he found that the pure *Ghee* was not the original *Ghee* but it was an imitation of pure *Ghee*. The matter was reported to the Police Station – Pachor, District – Rajgarh. After investigation, charge-sheet was filed in Crime No.04/2012 under sections 420 and 272 of IPC and under section 7/16 of Food Safety and Standards Act, 2006 and under section 3/7 of Essential Commodities Act.

After hearing both the parties, learned JMFC by order dated 23.05.2014 gave finding that charges under sections 420 and 272 of IPC and under section 7/16 of Food Safety and Standards Act were made out and then, by order dated 23.06.2014, he proceeded to frame charges under sections 420 and 272 IPC and section 7/16 of Prevention of Food Adulteration Act. According to the learned Magistrate, there is a violation of section 7(1) and 7(2) (ix) (K) (ii) of the Prevention of Food Adulteration Act.

Aggrieved by this order, revision was filed by all the accused persons. The present applicant filed Criminal Revision No.87/2014 and 98/2014 which were disposed of by common order dated 27.05.2015 which is under challenge before this Court.

The main contention of counsel for the applicants is that Prevention of Food Adulteration Act has been repealed and the Magistrate framed charges under a repealed Act, which is not proper. There is no evidence to show that the food item was adulterated. Infact, it is the submission of counsel for the applicants

that it was not meant for human consumption but it was only a “Vandan Deep Drav” meant to be used for burning in lamps during worship. Whether, the food item was meant for human consumption or it was just an oil for lamps, is to be decided by the Magistrate during trial. So far as this Court is concerned, the only short point involved in this case is whether, the charges can be framed under Prevention of Food Adulteration Act and whether, it was repealed?

Learned Additional Sessions Judge observed in para 7 of the impugned order that no notification was filed by the accused persons before him showing that Chapter 9 of the Food Safety and Standards Act was notified and enforced. Similarly, he also observed that no notification that Prevention of Food Adulteration Act was repealed, has been filed by the applicants.

So far as the repeal of Prevention of Food Adulteration Act is concerned, the Act was placed in Second Schedule of the Food Safety and Standards Act, 2006 and section 97 of the Act provides that with effect from such date, as the Central Government may appoint in this behalf the enactment of the order specified in the second schedule shall stand repelled.

The government issued a notification F.No.P-15025/41/2011-DFQC, dated 4<sup>th</sup> August, 2011. The notification is reproduced here as under:-

S3/F/BILL2011/GI/840GI

रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—11

REGISTERED NO. DL—(N)04/0007/2003—11

  
**भारत का राजपत्र**  
**The Gazette of India**

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 13] नई दिल्ली, बृहस्पतिवार, अगस्त 04, 2011/ श्रावण 13, 1933(शक)  
 No. 13] NEW DELHI, THURSDAY, AUGUST 04, 2011/SRAVANA 13, 1933 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
 Separate paging is given to this Part in order that it may be filed as a separate compilation.

GOVERNMENT OF INDIA  
 MINISTRY OF HEALTH AND FAMILY WELFARE  
 (DEPARTMENT OF HEALTH AND FAMILY WELFARE)

*New Delhi dated the 4th August, 2011*

NOTIFICATION

F. No. P-15025/41/2011-DFQC—In exercise of powers conferred by sub-section (1) of section 97 of the Food Safety and Standards Act, 2006 (34 of 2006), the Central Government hereby repeals the enactments and orders in the Second Schedule of the Food Safety and Standards Act, 2006 and the Milk and Milk Products Regulations, 1992, with effect from 5th August, 2011.

(F.No. P-15025/41/2011-DFQC)

(ARUN PANDA)

*Joint Secretary to the Govt. of India*

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So far as Chapter 9 is concerned, section 48 to 80 of the Food Safety and Standards Act, 2006, were notified and enforced by S.O.1855(E), dated 29<sup>th</sup> July, 2010 and, therefore, the order passed by learned Additional Sessions Judge and the Magistrate do not appear to be proper and charges are framed in the Act, which was repealed way back in the year 2011.

Accordingly, the application is allowed. The orders passed by learned Magistrate dated 23.05.2014 and 13.06.2014 in Criminal Case No.1335/2012 pending before learned JMFC, Narsinghgarh, District – Rajgarh, and the order passed by learned Additional Sessions Judge, Narsinghgarh, District – Rajgarh in Criminal Revision No.87/2014 and 98/2014 dated 27.05.2014, so far as it relates to the present applicants, are set aside. The matter is remanded back to the Court of JMFC with direction that he may proceed in the matter according to the provisions of law.

With the aforesaid observations and direction, this application stands disposed of.

Certified copy as per rules.

**(Alok Verma)**  
**Judge**

*Kratika/-*

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