

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 842 OF 2017**

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1. Britannia Dairy Private Limited
a company incorporated under
the Companies Act, 1956, having
its registered office at 5/1A, Hungerford
Street, Kolkata 700 017 and also
having their address at Reay Road, Mazgaon,
Mumbai 400 010
(Through Amit Yelkar)

... Applicant

V/s.

1. The State of Maharashtra
Through the Public Prosecutor
having his office at P.W.D.
Building, M. G. road,
Mumbai -400 001
2. P. S. Pawar
Food Safety Officer, Greater Mumbai
Office of the Joint Commissioner,
(Greater Mumbai),
Food and Drugs Administration,
M. S., 341, FDA Building, Bandra-Kurla
Complex, Bandra (East),
Mumbai 400 051

... Respondents

Mr. Aabad Ponda, Senior Advocate a/w Mr. Jay Zavei, Mr. Suraj Agarwal i/by
Crowford Bayley & Co. for the Applicant.
Mr. Yogesh Dabke, A.P.P. for Respondent-State.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 20th JULY 2026

PRONOUNCED ON : 11th SEPTEMBER 2026.

JUDGMENT :-

1) By the present Application, under Section 482 of the Code of Criminal Procedure, 1973 (For short “CrPC”) (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023), the Applicant seeks to quash and set aside the complaint being Criminal Case No. 5349/SS/2014 pending before the Additional Chief Metropolitan Magistrate, 46th Court, Mazgaon, Mumbai, and the impugned Order of Issuance of Process dated 28th July 2014 and all further proceedings in connection with the said criminal case.

1.1) By Order dated 12th January 2018, this Court was pleased to grant Rule and interim relief in terms of prayer clause (b) inasmuch as the proceedings of Criminal Case No. 5349/SS/2014 pending before the Additional Chief Metropolitan Magistrate, 46th Court, Mazgaon, Mumbai were stayed.

2) Heard Mr. Aabad Ponda, learned Senior Counsel appearing for the Applicant and Mr. Yogesh Dabke, APP for the Respondent/State.

3) Some of the relevant facts are as under :-

3.1) The Applicant, Britannia Dairy Private Limited, is a wholly owned subsidiary of Britannia Industries Limited and is, inter alia, engaged in the marketing and distribution of various dairy products, including ghee, butter, cheese and other allied products under the Britannia Brand. The Applicant has a valid license under the FSS Act issued by the Food Safety and Standards Authority of India and is categorised as a wholesaler.

3.2) The Applicant also markets Britannia Cheese Cubes (Sour Cream and Onion) (for short “subject product”). The subject product is a food product falling within the definition of “food” under Section 3(1)(j) of the Food Safety and Standard Act, 2006 (for short “FSS Act”).

3.3) The Applicant executed a product supply agreement with Dynamix Dairy Industries Limited (“for short Dynamix”), under which Dynamix agreed to manufacture, pack and sell to the Applicant, amongst other products, processed Cheese. The Applicant was to market the said products.

3.4) On 30th July 2013 at 05.00 p.m., Respondent No.2, along with an independent panch witness, visited premises of Big Bazaar at R City Mall, Runwal Town Centre, Wyeth Lab, LBS Marg, Ghatkopar (West), Mumbai and purchased four packets of Britannia Cheese Cubes (Sour Cream and Onion), the subject product for test and analysis.

3.5) On 30th July 2013, notice was issued under Form V-A and under Rule 2.4.1(3) and 2.4.1(4) of the Food Safety and Standards Rules, 2011 (for short “FSS Rules”) to the food business operator, one Mr. Rupesh Marolie of the Big Bazaar Store. Notice under Form V-A would clearly mention the Applicant as the Marketer of the subject product. The subject product was packed on 12th February 2013 and that the shelf life of the subject product is “best before 9 months from the packing” i.e. 12th November 2013.

3.6) On 31st July 2013, Respondent No.2 delivered one sealed packet

containing the sample of the subject product to the Food Analyst for testing. Respondent No.2 had delivered and deposited the sealed sample of the subject product with the Designated Officer. On 17th September 2013, Respondent No.2 received the report of the Food Analyst bearing No. 734 of 2013 dated 14th August 2013 (Food Analyst Report) wherein it is stated that, the sample of the subject product is infested with fungus and therefore, the subject product is unsafe under Section 3(1)(zz)(iii) and (x) of the FSS Act.

3.7) On 17th May 2014, Respondent No.2 issued notice to the Applicant under Rule 2.4.1(4) and Rule 2.4.5 of the FSS Rules calling for information as stated in the said notice. On 16th June 2014, the Applicant, while replying to the notice sought clarification in respect of the Laboratory Report and was informed of the fact that, the Laboratory Reports were not forwarded to the Applicant. That, the statutory rights of the Applicant to apply for a re-test was adversely affected. The Applicant neither replied to the said letter nor provided the Lab Report/information as requested.

3.8) On 19th June 2014, Respondent No.2 submitted a proposal to the Designated Officer seeking a consent order from the Food Safety Commissioner for filing the Complaint. On 24th July 2014, the Designated Officer, while returning the proposal, directed Respondent No.2 to obtain a copy of the license of Big Bazaar Store under the FSS Act. Upon the proposal being resubmitted to the Designated Officer on 25th July 2014, seeking consent order from the Food Safety Commissioner, Respondent No.2 received

the consent order from the Designated Officer.

3.9) On 28th July 2014, Respondent No.2 filed the present complaint being Criminal Case No. 5349/SS/2014 against the Applicant and other co-accused. On 28th July 2014, the Additional Chief Metropolitan Magistrate, 46th Court, Mazgaon, Mumbai issued process against the accused including the Applicant. The said complaint and order have been challenged by the present Applicant.

4) Mr. Aabad Ponda, learned senior Counsel appearing for Applicant submits that:-

4.1) The subject product was purchased on 30th July 2013 from the Big Bazaar Store and sent for test/analysis on 31st July 2013. The report was prepared on 14th August 2013 and the complaint was filed on 28th July 2014. That, the shelf life of the product was for 9 months from the date of packaging which was 12th February 2013. The shelf life got over on 12th November 2013. The complaint has been filed after the expiry of the shelf life of the subject product.

4.2) That, the Order of issuance of Process is a rubber stamp order which has been passed on the very same date of which the complaint was filed. That, the Order of Issuance of Process is without any reason or justification. Perusal of the said order would clearly indicate a non-application of mind.

4.3) The Order of issuance of process has been passed without

conducting any inquiry whatsoever or causing an investigation as would be required under Section 202 of the Code of Criminal Procedure, as original Accused Nos. 12 and 13 reside beyond the jurisdiction of the Additional Chief Metropolitan Magistrate, Mazgaon, Mumbai. It was mandatory to conduct an inquiry and or cause investigation before issuing the Order of Process.

4.4) The Applicant could not avail of the option provided under Rule 2.4.5(1) of the FSS Rules. Such notice under Rule 2.4.1(4) of the FSS Rules was issued to the Applicant after a long delay of 6 months. That, under Rule 2.4.5(1) of the FSS Rules, the Applicant being a person whose name, address and other particulars have been disclosed under Rule 2.5 of the FSS Rules has the option of getting the 4th part of the sample analysis by an NABL accredited/ FSSAI notified laboratory by making an application in writing to the Food Safety Officer under intimation to the designated officer. That, the Applicant could not avail of the said recourse.

4.5) Section 46(4) of the FSS Act (Food Safety and Standards Act, 2006) read with Rule 2.4.6 of the FSS Rules provides for an Appeal against the report of the Food Analyst. Due to the delay on the part of the Respondents, the Applicant could not prefer an Appeal under the relevant provisions as the Food Analyst Report was never provided/forwarded to the Applicant.

5) Mr. Yogesh Dabke, learned Counsel appearing for Respondents submits that:-

5.1) The present Application filed under 482 of the CrPC, is an attempt made to in some or other manner bypass the statutory mandate and escape criminal liability for distributing unsafe food and violating license conditions under the FSS Act.

5.2) Under section 31(1) of the FSS Act, it is mandatory for every food business operator to obtain a license for each specific premises where the food business is conducted. The Applicants product label explicitly declared the marketing address as 'Reay Road, Mazgaon, Mumbai 400 010'. Upon verification it was found that, the Applicant holds a valid license only for the address at 'Ballard Estate, Mumbai'. Therefore, the marketing and distribution business of the Applicant was from a unlicensed premises which is direct violation of Section 31(1) and 63 of the FSS Act.

5.3) Respondent No.2 had issued proper notice as required under the law. Verification of the label conclusively proves that, the Applicant was conducting the food business from a location which did not hold the statutory license.

5.4) The Food Analyst Report (No. 734/2013) confirms that, the sample was 'infested with fungus'. Under Section 3(1)(zz)(iii) of the FSS Act, the food was unsafe. The Applicant as marketer cannot shift their responsibility to the manufacturer. Under Section 27 of the FSS Act, a seller or marketer is liable for the food article if there is a violation of the act or the Rules. The prosecution was not launched in a mechanical manner.

5.5) The Joint Commissioner (Food) after perusing the Food Analyst Report, investigation papers and licensee discrepancies issued sanction/consent orders, after an independent application of mind. The Order is issued in accordance with Section 42(3) of the FSS Act. The Respondents have followed every mandatory procedure. The procedure under Section 47 of the FSS Act for drawing, sealing and labelling samples in presence of witnesses was followed. The samples were dispatched to the Food Analyst within the statutory time frame as per Rule 2.4.2. There was no requirement of sending the Food Analyst Report to the Applicant. The Food Analyst Report was sent to the Food Business Operator. The mandatory statutory procedure was followed at the point of sample sent to the Food Business Operator and there is no violation of the rights of the Applicant.

5.6) The law does not require the initial report to be served on the marketer if the sample is not physically drawn from the marketer. The Applicant being a marketer remains liable for the safety of the product regardless of the issue of sampling. There is a direct violation in respect of the marketing address. The marketing address is given from unlicensed premise at 'Reay Road' which is a violation of Section 31(1) of the FSS Act and punishable offence under Section 63 of the FSS Act.

5.7) The company is unlawfully trying to shield its directors from prosecution by claiming that, they had appointed a nominee responsible for food safety. This defence is invalid. Under Section 66(1) of the FSS Act, when

an offence is committed by a company, every person in charge of the company is deemed to be guilty.

5.8) Section 66(2) read with Rule 2.5.1 allows a licensed company to file a nomination in form IX to designate a specific manager or officer as a responsible person for a particular premises. In the present case as the activities was carried out from an unlicensed premises, the question of filing of nomination would not arise. As the legal protection of nominee is unavailable to the Applicant company hence, all its directors remained directly and personally liable. The Courts have consistently ruled the strict compliance with the FSS Act is required to protect public health.

6) Perused the entire record. Perusal of the notice dated 30th July 2013 issued to the Food Business Operator indicates that, the subject product was Britannia Cheese Cubes (Sour Cream and Onion) which was packed on 12th February 2013 and the shelf life of the said cubes is mentioned as 'best before 9 months from packaging when stored, refrigerated at 4⁰ Celsius under hygienic conditions. The shelf life was therefore till 12th November 2013. The notice refers to the Applicant as the marketer and the address is shown as 'Reay Road (East), Mazgaon, Mumbai 400 010. The subject product has been manufactured by Schreiber Dynamix Dairies Limited. The said notice is issued under Rule 2.4.1(4) of the FSS Rules. Perusal of the report of the Food Analyst dated 14th August 2013 reaffirms the date of manufacturing and packaging as 12th February 2013 and the shelf life as 9 months from the date of packaging.

The microscopical examination has indicated that, the sample was infested with fungus and unsafe under Section 3(1)(zz)(iii) and (x) of the FSS Act.

6.1) The notice to the manufacturer was issued on 10th February 2014 under Rule 2.4.1(4) and Rule 2.4.5. Similar notice was issued to the Applicant on 17th May 2014. The Applicant is the marketer of the product in question.

6.2) Section 47 of the Food Safety and Standards Act, 2006, provides for sample and analysis. Section 47(1)(a) of the FSS Act provides that, when a Food Safety Officer takes a sample of food for analysis, he shall give a notice in writing of his intention to have the sample so analysed to the person from whom he has taken the sample and to the person, if any, whose name, address and other particulars have been disclosed.

6.3) Under Section 47(1)(b), when a Food Safety Officer takes sample of food for analysis, he shall except in special cases as may be provided by Rules made under Act, divide the sample into four parts and mark and seal or fasten up each part in such a manner as its method permits and take signatures or thumb impression of the person from whom the sample has been taken. In case the person refuses to sign or put his thumb impression, Food Safety officer shall call upon one or more witnesses and take his signature or thumb impression, in lieu of the signature or thumb impression of such person. Section 47(1)(c)(i) of FSS Act provides that one of the said part is sent for analysis to the Food Analyst under intimation to the designated officer. Section 47(1)(c)(ii) provides that two parts be sent to the designated

officer for keeping in safe custody and, Section 47(1)(c)(iii) provides that the remaining part be sent for analysis to an accredited laboratory, if so requested by the Food Business Operator, under intimation to the designated officer.

6.4) Rule 2.4 of the Food Safety and Standard Rules, 2011 provides for sampling and analysis. Rule 2.4.1(4) provides that, in case the Food Business Operator discloses that the product has been obtained from a manufacturer, the distributor or supplier, a notice shall also be given to such manufacturer, distributor or supplier. Rule 2.4.5 provides for the Business Operators right to have the food analysed. Rule 2.4.5(1) provides that, in case the Food Business Operator from whom the sample has been taken or the person whose name and address and other particulars have been disclosed under Rule 2.5 of the Rules desirous to have a 4th part of the sample analysed he shall request the Food Safety Officer in writing to send the sample to any NABL accredited/FSSAI notified laboratory for analysis under intimation to the designated officer. Under the proviso, the cost of the testing by the accredited lab shall be born by the Food Business Operator or the person identified under Rule 2.5.

6.5) Rule 2.4.6 provides for an appeal to the designated officer. Sub rule 1 of 2.4.6 provides that, when an appeal as provided under Sub section 4 of Section 46 is preferred to a designated officer by the Food Business Operator against the report of the Food Analyst, the designated officer, shall if so decides within 30 days from the receipt of such appeal after considering the

material placed before him and after giving an opportunity to the Food Business Operator to be heard shall forward one part of the sample to the referral lab. Such appeal shall be in form VIII and be filed within 30 days from the date of the receipt of the copy of the Analysis Report from the designated officer. It is further provided that, the report of the referral laboratory shall be final.

6.6) Section 46 of the FSS Act provides for functions of a Food Analyst. Section 46(4) provides that an appeal against report of the Food Analyst shall lie before the designated officer who shall, if he so decides, refers a matter to the referral food laboratory as notified by the food authority for opinion.

7) Perusal of the aforesaid Sections and the Rules clearly indicates that the Applicant as the Marketer and a person whose name is available on the label of the subject product has a right under Rule 2.4.1(4) of the FSS Rules to receive a notice when a sample has been taken and proposed to be sent for analysis. Under Rule 2.4.5, the Applicant would also had the option of analysing the 4th part of the sample and on a request being made to the Food Safety Officer in writing to send the sample to any NABL accredited/FSSAI notified laboratory for analysis under intimation to the designated officer. Further the Applicant is also clearly entitled to file an Appeal under Section 46(4) of the FSS Act against a report of the Food Analyst before the designated officer who shall, if he so decides, refer the matter to the referral

food laboratory for opinion.

8) In the present matter, after taking the sample, the Applicant was given notice only on 17th May 2014 and certain information was sought from the Applicant under the FSS Act, rules and regulations. I have noted that, the notice is itself issued after expiry of the shelf life of the subject product. The record indicates that, the product was packed on 12th February 2013 and the shelf life was 9 months from the date of packaging which would expire on 12th November 2013. In the present case, the notice under Rule 2.4.1(4) and Rule 2.4.5 is issued only on 17th May 2014 i.e. nearly 6 months after the expiry of the shelf life.

9) By issuing a notice after the expiry of the shelf life, the Applicant has clearly lost its right to exercise the option available under 2.4.5(1) and 2.4.6 of the FSS Rules. Further along with the said notice, the report of the Food Analyst was not provided to the Applicant despite a request being made. In that view of the matter, the Applicant has also been denied its right of preferring an Appeal under Section 46(4) of the FSS Act and Rule 2.4.6 of the FSS Rules as the Food Analyst Report was never forwarded to the Applicant. In view thereof, the rights available to the Applicant under the FSS Act have been denied. I have noted that, the issuance of notice under Rule 2.4.1(4) and Rule 2.4.5 of the FSS Rules is mandatory as the words used is “shall”.

10) Perusal of the complaint would also indicate that, as regards the present Applicant, who is Original Accused No.11 in the complaint, the

offences alleged are under Section 26(2)(i), 3(zz)(iii) read with Regulation 2.1.6.3 of the Food Safety and Standards (Food Products Standards and Food Additive) Regulations, 2011 and Section 59 of the FSS Act, 2006. Perusal of the reply filed by Respondent No.2 indicates that, Respondent No.2 has now sought to argue and make out a case for violation of Section 31(1) of the FSS Act and a corresponding offence punishable under Section 63 of the FSS Act. The case of Respondent No.2 in the complaint is not for violation of Section 31(1) or Section 63 of the FSS Act. Paragraph 6 of the complaint clearly indicates that, Respondent No.2 had divided the sample into four equal parts. Though the sampling was done, the notice issued to the Applicant was only after the expiry of the shelf life and without forwarding or providing the Applicant the Food Analyst Report. It is pertinent to note that, even in the complaint, Respondent No.2 does not refer to the notice issued on 17th May 2014 to the Applicant. Respondent No.2 has relied upon the Food Testing Lab Report without providing the same to the Applicant. Further even the process is issued against the Applicant under Section 26(2)(c), 3(zz)(iii) read with regulation 2.1.6.3 of Food Safety & Standards (Food Products and Food Additive) Regulations, 2011, Section 59 of FSS Act.

11) Perusal of the Order of Issuance of Process indicates that, the said Order is clearly a rubber stamp order and does not indicate or reflect any application of mind. I have also noted that, original Accused Nos. 12 and 13 are situated at Baramati, District Pune and, therefore, beyond the territorial

jurisdiction of the learned Additional Chief Metropolitan Magistrate, 46th Court at Mazgaon, Mumbai. Considering that some of the accused were beyond the territorial jurisdiction, it was necessary that an enquiry under Section 202 of the CrPC ought to have been conducted before issuance of process. The said provision is clearly mandatory. There is no discretion available or left to the Magistrate where the accused persons reside beyond the territorial jurisdiction.

12) Considering the aforesaid facts, in my opinion, the Respondent No.2 has clearly failed to comply with the statutory provisions of the FSS Act. It cannot be that the mandatory provisions and safeguards as provided under the FSS Act which is a Special Act are not complied with in their proper letter and spirit. It cannot be that, the noticee/proposed accused is denied the opportunity which is available under the statute to prove its innocence or have a probable defence. The main object of the FSS Act is to consolidate the laws relating to food and establish the food safety and standards authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sell or import to ensure availability of safe and wholesome food for human consumption or matter connected their with or incidental thereto. At the same time, it is also necessary to ensure that, the procedural safeguards as provided under the said Act are complied in letter and spirit. It is necessary that, the provisions of the FSS Act have to be strictly complied with.

13) Considering the aforementioned facts, submissions, and settled position of law, I am of the considered opinion that the Applicant has made out a fit case for this Court to exercise its inherent powers under section 482 of the Code of Criminal Procedure. The peculiar circumstances of the present case specifically the delay in issuing notice, the non-supply of the laboratory testing report, and the consequent deprivation of the Applicant's statutory right to have the food sample tested by a referral laboratory and to file an appeal render the continuation of the proceedings entirely untenable. Allowing the criminal proceedings to continue in their present form would amount to a clear abuse of the process of the Court. Therefore, to prevent such abuse and to secure the ends of justice, it is imperative to invoke the inherent powers of this Court under Section 482 of the Code of Criminal Procedure (now Section 528 of the BNSS) to quash and set aside the present proceedings.

14) In view thereof, the Application is allowed in terms of prayer clause (a).

(RANJITSINHA RAJA BHONSALE, J.)