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ahead of the curve

Taming the FSSAI Hydra: A Guide to Prosecutions under the Food Safety and Standards Act, 2006



fssai

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A brief introduction

From festive-season sweeps for spurious *ghee* and *khoya* to investigating the use of plastic sheets for steaming *idlis*, hardly a week goes by without the Food Safety and Standards Authority of India (“**FSSAI**”) making news. The FSSAI is charged with ensuring compliance with the multilimbed Food Safety and Standards Act, 2006 (“**Act**”), and the Rules and Regulations framed thereunder. The objective of the law was to guarantee that the food available for human consumption was safe and wholesome. To achieve this goal, the FSSAI was instituted to formulate science-based standards for food and oversee the manufacturing, storage, distribution, sale, and import processes. After decades of struggle with a sprawling food regulatory network, the FSSAI was created with the critical objective of being the single reference point for food safety and standards, regulation, and enforcement in India. It is not surprising then that it features heavily in day-to-day life, and its purview spans every food-related aspect, including imports, labelling, packaging, advertising, and categorisation.

The Act has been drafted to provide the widest possible import to the definition of “food”, and includes even items which do not necessarily have nutritional value and are not consumable or digestible – for instance, even chewing gum is “food” under the Act.¹ The FSSAI’s directions have been given due regard by Courts,² and the Act overrides conflicting provisions in other laws applying to the aspects covered by the Act,³ including those prescribing more stringent penalties.⁴ In some cases, Courts have even denied bail considering the nature and gravity of accusations regarding contaminated/adulterated food.⁵ The FSSAI, therefore, plays a central and powerful role in ensuring public health and safety in India.



The definition of “food” includes items that do not necessarily have nutritional value and are not consumable or digestible - for instance, even chewing gum is “food” under the Food Safety and Standards Act, 2006.

- **Insight:** In *Ram Nath v. State of U.P.*, (2024) 3 SCC 502, the Supreme Court held that by virtue of Section 89 of the Act, the Act would override all other laws, not merely those related to food. It noted that while the title of Section 89 stated “*Overriding effect of this Act over all other food-related laws*”, the main section itself contained no such restriction to “food-related” laws, and the unambiguous content of the section would prevail over its title in accordance with settled principles of statutory interpretation. In this case, the Court was dealing with a situation involving simultaneous prosecution under Section 59 of the Act, which prescribes the punishment for unsafe food, and

¹ Mohd. Yamin v. State of Maharashtra, 2021 SCC OnLine Bom 26 (Division Bench).

² R. Piyarelall Import & Export Ltd. v. Union of India, 2012 SCC OnLine Cal 13245

³ Section 89 of the Act; Ram Nath v. State of U.P., (2024) 3 SCC 502

⁴ Manik Hiru Jhangiani v. State of M.P., 2023 SCC OnLine SC 1678

⁵ Sukadev Sahoo v. State of Odisha, 2021 SCC OnLine Ori 680



Sections 272 and 273 of the Indian Penal Code, 1860 – now Sections 274 and 275 of the Bharatiya Nyaya Sanhita, 2023 – which deal with the adulteration and sale of adulterated food or drink. On analysing both sets of provisions, the Court held that offences established under Section 272 and 273 of the IPC also met the criteria under Section 59 of the Act. The Court noted that the Act contains comprehensive substantive and procedural provisions for addressing such offences, and since Section 89 of the Act provides overriding authority, Section 59 would take precedence over the provisions of Sections 272 and 273 of the IPC when such offences are committed, precluding simultaneous prosecution under both statutes.



The Food Safety and Standards Act, 2006, by virtue of Section 89, supersedes all other laws - including the IPC - when dealing with offences related to food safety, ensuring a unified and specialised legal approach.

- This is a notable departure from the Supreme Court's ruling in ***State of Maharashtra v. Sayyed Hassan Sayyed Subhan***, (2019) 18 SCC 145, where it relied on Section 26 of the General Clauses Act, 1897 to hold that prosecution and punishment may be carried out under either or both enactments so long as the offender was not punished twice for the same offence. Although this judgment was cited in the *Ram Nath* matter, the Court distinguished it, observing that since the question of the effect of the overriding provisions of the Act had not arisen in *Sayyed Hassan*, its earlier decision had focused solely on the permissibility of simultaneous prosecutions based on the provisions of the General Clauses Act, 1897. Reiterating the primacy of Section 89 of the Act, the Court in *Ram Nath* held that simultaneous prosecution under both the Act and the penal statute was impermissible.
- The Allahabad High Court in *Kewal Dairy v. State of UP*⁶ also relied on the decision in *Ram Nath* to state that Section 77 of the Act, which provides for the time limit for prosecution under the Act, would override the provisions of Section 468 of the Criminal Procedure Code, 1973 – now Section 514 of the Bharatiya Nyaya Suraksha Sanhita, 2023 – which bars taking cognizance of an offence after the expiry of limitation.

Simultaneous prosecution under Food Safety and Standards Act, 2006, and the Indian penal statute for the same offence is not permissible because of the overriding effect of Section 89 of the Act.

⁶ 2024 SCC OnLine All 7190



- Thus, the decisions in ***Ram Nath*** and ***Kewal Dairy*** imply that the provisions of the Act would override any other law, insofar as the law pertains to the aspects within the domain of food in the Act.

Key cast of characters under the Act

The Act contemplates enforcement through a web of officers operating under the aegis of the FSSAI. The *dramatis personae* are:

1. **Commissioner of Food Safety.** The Commissioner of Food Safety (“**Commissioner**”), appointed by the State Government, oversees efficient implementation of food safety and standards. The Commissioner appoints and supervises officials including Designated Officers, Food Safety Officers, and Food Analysts, who oversee the implementation of the Act at district and local levels. Empowered with wide-ranging powers, the Commissioner can conduct compliance surveys of industrial units in the State that manufacture or process food, organise training programmes, generate awareness on food safety, ensure implementation of the prescribed food standards, and sanction prosecution in case involving offences punishable by imprisonment under the Act. Moreover, in the interest of public health, the Commissioner may also prohibit, for a period not exceeding one year the manufacture, storage, distribution or sale of any article of food.

- ***Insight:*** ***Whether permanent/indefinite prohibition can be imposed*** – Courts have taken different views on whether the Commissioner can impose a sort of permanent ban by issuing successive notifications year on year. This issue has particularly come up regarding prohibitions imposed on tobacco products.

Food Safety - Key Characters



Commissioner of Food Safety

The State-appointed chief enforcer of the Act, empowered with broad authority to regulate, prohibit, and prosecute to ensure food safety.



Designated Officer District-level administrator of food safety operations, empowered with issuing and cancelling licences, sample coordination, and prosecutorial recommendations; reports to the Commissioner, supervises Food Safety Officers within the district.



Food Safety Officer Building blocks of the Act operating under the Designated Officer, responsible for inspections, sample collection, and preliminary enforcement within local jurisdictions.



Food Analyst Scientific expert appointed by the Commissioner, responsible for analysing food samples in authorised labs to determine compliance with safety standards; receives samples mainly through Food Safety Officers.



- The Madras High Court and Patna High Court have held that this provision cannot be used for imposing a permanent ban by issuing successive notifications year on year. According to their rulings, the power is for imposing a temporary ban amid public health concerns; for instance, imposing a ban on poultry products during outbreaks such as bird flu.⁷
- The Delhi High Court, however, differed with this view in a recent judgment,⁸ stating “*Section 30(2)(a) embodies a power to prohibit a particular food article as well as regulate the nature of additives which may be permitted to be added in food articles. Therefore, the power to establish standards for food under the Act would include within its purview the power to prohibit the manufacture, sale, storage and distribution of scheduled tobacco products. The scheme of Section 30(2)(a) clearly stands on a pedestal distinct and different from other statutory provisions which empower authorities to prohibit or ban for a temporary period of time. The powers conferred under Section 30(2)(a) are not emergency provisions per se. Consequently, as long as the interest of public health requires a prohibition being imposed with respect to the addition of tobacco or nicotine in food articles, the appellant would clearly be justified in continuing those orders till the situation is remedied or where it is ultimately established on empirical terms that such additives would not constitute any harm to public health.*”
- However, as discussed subsequently, proceedings are pending in the Supreme Court challenging the judgments of the Madras, Delhi, and Patna High Courts on whether tobacco can be considered to fall under the purview of the Act. It will be interesting to note the Supreme Court’s observations on the scope of power under Section 30(2)(a).
- ***Insight: Interplay of Section 30 and Section 34:*** Section 30 of the Act sets out the powers of the Commissioner, while Section 34 outlines the power granted to the Designated Officer to issue emergency prohibition notices and orders. In its judgment, the Patna High Court also considered in some detail how the Commissioner must exercise the powers under Section 30.⁹ The Court held that in exercising these powers, the Commissioner must rely on objective evidence establishing that the food in question violates regulatory standards. It also emphasised that the Commissioner can only issue such a prohibition order if the Designated Officer’s report confirms the presence of a health risk at the food business.
- The Court held therefore that Section 30(2)(a) must be read in light of Section 34. The process of imposition of an emergency prohibition by the Commissioner would

⁷ *Food Safety & Drugs Control Dept v. Jayavilas Tobacco Traders LLP*, 2023 SCC OnLine Mad 408 (Division Bench); *Omkar Agency v. Food Safety and Standards Authority of India*, 2016 SCC OnLine Pat 10175 (Division Bench)

⁸ *Commr. (Food Safety) v. Sugandhi Snuff King (P) Ltd.*, 2023 SCC OnLine Del 2003 (Division Bench)

⁹ *Omkar Agency v. Food Safety and Standards Authority of India*, 2016 SCC OnLine Pat 10175 (Division Bench)



thus be as follows: (i) on being satisfied of the presence of a health risk condition exists at the food business, the Designated Officer must first serve notice on the food business operator (referred to in the Act as an “emergency prohibition notice”); (ii) thereafter, the Designated Officer would apply to the Commissioner of Food Safety for imposing the prohibition; (iii) if the Commissioner is satisfied with the Designated Officer’s report that a health risk condition exists with respect to the food business, the Commissioner would proceed to impose prohibition.

- However, the Bombay High Court took a different view in a recent judgement, holding that the Commissioner can exercise powers in the entire state under Section 34, unlike the Designated Officer whose power, under Section 36, is circumscribed to the district. Further, the powers of a Designated Officer under Sections 31(3) and 4, 32, 33(4), 34, and 36(3) are independent of the powers conferred on the Commissioner under Section 30(2). Consequently, since a report issued by the Designated Officer would be limited to within the district, it would be fallacious to interpret that the Commissioner’s powers under Section 30(2)(a) are dependent on the Designated Officer’s report. The Court clarified that a Commissioner may exercise any power under Section 30(2) on the basis of independent research, medical reports, and scientific studies, without requiring the Designated Officer’s recommendation.¹⁰
- As mentioned earlier, a challenge against the Patna High Court’s judgment in ***Omkar*** is pending in the Supreme Court. The Supreme Court’s findings on the manner and scope of powers under Section 30 is expected to have far-reaching implications.
- ***Insight: Section 30 and principles of natural justice.*** Courts have generally upheld a requirement of providing parties a fair chance of hearing before an order is passed that could result in adverse civil consequences for them. Adhering to this principle, the Bombay High Court has held that, “*Section 30 even though it does not in terms mention that principles of natural justice have to be followed, it is implied that such a course has to be normally followed.*”¹¹ However, the Court has recognised that an exceptional situation may warrant an immediate order prohibiting the manufacture or sale of food in the interest of public health. A similar emergency power exists under Section 34 that allows issuing an immediate order of prohibition when contamination in food poses an imminent threat to the public health. In such compelling and threateningly emergent situations, the principles of natural justice may not come into play. However, in situations with no such imminent threat, the Commissioner should provide the food operator a proper opportunity to

¹⁰ Mohd. Yamin v. State of Maharashtra, 2021 SCC OnLine Bom 26 (Division Bench).

¹¹ Nestle India Ltd. v. Food Safety & Standards Authority of India, 2015 SCC OnLine Bom 4713 (Division Bench)



prove that the product is safe for human consumption and justify that the imposition of such a ban is not necessary.

- The Delhi High Court has similarly held that exercise of powers under Section 30(2)(a) must adhere to the principles of natural justice, including the right of parties to be heard.¹²
2. **Designated Officer:** The Designated Officer, appointed by the Commissioner, heads the food and safety administration for each district and is responsible for several critical functions, including the issuance or cancellation of licenses of food business operators, receiving reports and samples of articles of food from the Food Safety Officers in the jurisdiction and facilitating their analysis, recommending to the Commissioner for sanction to launch prosecutions in case of contraventions punishable with imprisonment. The Designated Officer is also empowered with sanctioning or launching prosecutions for offences punishable with fine, maintaining a record of inspections made by Food Safety Officers, and investigating complaints on violations of the Act as well as grievances lodged against Food Safety Officers.
 3. **Food Safety Officer:** Food Safety Officers are the building blocks of the enforcement mechanism under the Act. Appointed by the Commissioner of Food Safety for local areas, their responsibilities are defined through Regulations formulated under the Act. Within their designated jurisdiction, Food Safety Officers are empowered to enforce and execute the provisions of the Act, particularly in instances where responsibility is not explicitly or implicitly assigned to some other authority. These powers include inspecting places where food is manufactured or stored, seizing samples suspected of violating the Act or its associated rules and regulations and collecting and sending samples of food for analysis to a Food Analyst.
 4. **Food Analyst:** Food Analysts are appointed by the Commissioner of Food Safety for local areas, with separate Food Analysts designated for different articles of food. Their primary responsibility is to analyse such samples sent by Food Safety Officers or other persons authorised under the Act. The Food Analysts may conduct these analyses at food laboratories and research institutions notified by the FSSAI.

¹² *Sugandhi Snuff King (P) Ltd. v. State (NCT of Delhi)*, 2022 SCC OnLine Del 3149 (Division Bench)



Framework of actions that can be taken under the Act

Broadly, the actions that can be taken can be taken under the Act are as follows:¹³

FSSAI Actions for Violations



- (i) *Suspension or cancellation of licence for the manufacture, sale, and supply of the food product*

A Designated Officer with reasonable grounds to believe that a food business operator has violated specified regulations under the Act may serve the operator with an “improvement notice”. This notice outlines *inter alia* the grounds for believing that the food business operator has failed to comply with the regulations and sets out the corrective measures the operator must take to secure compliance within the stipulated times. Should the operator fail to comply with the improvement notice, the Designated Officer may cancel the license, but after allowing the licensee an opportunity to show cause. In the interest of public health, the Designated Officer may also suspend any license, duly recording in writing the reasons for the suspension.

- (ii) *Prohibition/ban on the manufacture, sale, and supply, etc. of food product, in terms of the exercise of powers under Section 30 and Section 34 discussed above*
- (iii) *Imposition of fines, in terms of the procedure under Section 68 discussed below*
- (iv) *Launch of criminal prosecution for violation of provisions under the Act and its rules and regulations, in terms of the procedure under Section 42 discussed below*

Criminal Liability

When a food business operator violates the FSSAI’s regulations, he may be liable for civil or criminal consequences. In respect of offences where criminal penalties are contemplated, Section 42 of the Act sets out the procedure for launching prosecution, as follows:

¹³ *Nestle India Ltd. v. Food Safety & Standards Authority of India*, 2015 SCC OnLine Bom 4713



1. The Food Safety Officer inspects the food business, draws samples, and sends them to the Food Analyst.
2. On receiving the sample, the Food Analyst analyses it and submits the analysis report detailing the methods of sampling and analysis within 14 days to the Designated Officer, with a copy to the Commissioner of Food Safety. As per Section 46(3), if the analysis report cannot be completed within 14 days, the Food Analyst must inform the Designated Officer and Commissioner of the reasons for the delay and specify the expected time for analysis completion.
3. After scrutinising the Food Analyst's report, the Designated Officer must decide whether the contravention is punishable with imprisonment or only fine. If imprisonment is deemed necessary, the Designated Officer must forward the recommendation within 14 days to the Commissioner for sanctioning prosecution.
 - ***Insight:*** In ***Anand Ramdhani Chaurasia v. State of Maharashtra***,¹⁴ the Bombay High Court considered the Designated Officer's powers, observing that, a Designated Officer is empowered to determine, based on the Food Analyst's report, whether a regulatory contravention, if any, warrants punishment by imprisonment or may be resolved with fine. If satisfied that the contravention warrants imprisonment, the Designated Officer must send a recommendation to the Commissioner within 14 days, seeking a sanction for prosecution.
 - Under Section 42(3), the final decision on whether to initiate prosecution in Court or to report the matter to the Adjudicating Authority rests with the Designated Officer. If of the opinion that the contravention requires prosecution in court, the Designated Officer must send the recommendations to the Commissioner, seeking sanction for prosecution.¹⁵
 - On the other hand, when the Designated Officer concludes that the contravention should be punishable with fine only, the amount of penalty would then be adjudicated before the Adjudicating Officer in the following manner:
 - Within the prescribed period and considering the gravity of the offence, the Commissioner must determine whether to refer the matter to a court of ordinary jurisdiction (for offences punishable with imprisonment up to three years) or a special court (for offence with imprisonment exceeding three years). If no special court has been established, the matter is referred to a court of ordinary jurisdiction.
 - The Commissioner shall convey the decision to the Designated Officer and the Food Safety Officer concerned, who shall initiate prosecution before the appropriate

¹⁴ 2019 SCC OnLine Bom 1857

¹⁵ Dharmendra Kumar v. State of Bihar, 2016 SCC OnLine Pat 8301



court. If the sample was collected under Section 40, a copy of this communication should also be sent to the purchaser.

Notably, it has been held that in the absence of following the procedure for launching prosecution laid down under Section 42, a person would not be liable to be prosecuted for the offence under the Act.¹⁶ Further, while the police does not play a part in launching prosecution under the Act, offences punishable by imprisonment must be tried before the Courts.

Chapter IX of the Act details penalties for various offences under the Act, with punishments ranging from imprisonment to fines depending on the nature and gravity of the offence. For instance, under Section 59, the punishment for the manufacture or distribution of unsafe food resulting in death may attract life imprisonment and a minimum fine of INR 10 lakh. On the other hand, under Section 61, providing false information may incur only a fine capped at INR 10 lakh, without imprisonment. Under Section 33, if a food business operator is convicted and the Court is convinced that health risks exist in that food business, the Court may, after providing the operator an opportunity to be heard, issue prohibition orders preventing the food operator's participation in the management of any food business.

In respect of the launching of criminal prosecutions, the FSSAI has also issued a manual outlining the adjudication, prosecution, offences, and penalties under the Act, accessible [here](#).

Civil Liability

Section 68 of the Act sets out the provisions for adjudication of cases where the Designated Officer determines that a contravention should be punished by fine only. In such instances, the State Government notifies an officer of the rank of Additional District Magistrate or above of the district where the alleged offence is committed to serve as the Adjudicating Officer, as prescribed by the Central Government. On deciding the offence is punishable only with fine, the Designated Officer authorises the Food Safety Officer to file an application before the Adjudicating Officer for adjudication of the alleged offence. The Adjudicating Officer, after providing the offender a reasonable opportunity for defence, and if, satisfied upon inquiry that a contravention has occurred, may impose a penalty deemed appropriate under the provisions relating to that offence. The Adjudicating Officer has the powers of a civil court, and (a) all proceedings before the officer are deemed judicial under Sections 193 and 228 of the IPC (now Sections 229 and 267 of the Bharatiya Nyaya Sanhita, 2023); (b) the officer is deemed to be a court under Sections 345 and 346 of the Code of Criminal Procedure, 1973 (now Sections 384 and 385 of the Bharatiya Nyaya Suraksha Sanhita, 2023).

¹⁶ *Sailen Ganguly v. State of W.B.*, 2016 SCC OnLine Cal 153



While determining the quantum of penalty, the Adjudicating Officer must follow the guidelines prescribed in Section 49. The order the Adjudicating Officer passes is challengeable before Food Safety Appellate Tribunal. Under Section 71(6), any appeal challenging the Order of Food Safety Appellate Tribunal must be a Civil Appeal. This appeal will be heard by a Single Judge of High Court by way of First Appeal. For cases requiring further recourse, a Criminal Appeal under Section 76 will be heard by the Division Bench.¹⁷

Section 72 states that no civil court shall have jurisdiction over any matters that fall under the authority of the Adjudicating Officer or the Food Safety Appellate Tribunal, and no court or other authority can issue injunctions related to any action taken or intended to be taken under any power conferred by or under the Act.

Offences committed by companies

Under Section 66(1) of the Act, if a company is found to have committed an offence, both the company and every individual who was in charge of and responsible for its business operations at the time of the offence are deemed guilty and are liable to be proceeded against.

However, if a company operates through multiple establishments, branches, or units, the responsibility of food safety violations falls on the person nominated by the company to supervise the specific location, typically the head or the person in charge, according to the first proviso to Section 66(1). However, such person can avoid punishment by proving lack of knowledge about the offence or that all due diligence was exercised to prevent it.

Rule 2.5.1 of the Food Safety and Standards Rules, 2011, mandates companies with multiple establishments, branches, or units to formally nominate individuals for food safety compliance. These nominations must come with due certification that the said person has been so nominated for the purposes of Section 66 of the Act and Regulations. The company must inform the licensing authority in the prescribed form, identifying the accountable individuals for each location in relation to any potential contravention of the Act, rules/regulations, or directions.

Additionally, if proven that the company had committed an offence with the approval, cooperation, or because of the negligence of any director (or, in case of a firm, partner), manager, secretary, or other officer of the company, such individuals shall also be held liable and may be prosecuted and punished accordingly.

- **Insight:** The company as well as the nominated person, are to be held guilty of the offences and/or liable to be proceeded against and punished accordingly. The Prevention of Food Adulteration Act, 1954, which was the predecessor of the Act, similarly provided for punishment by the nominated person and the company for

¹⁷ *State of Maharashtra v. Pankaj Gupta*, 2022 SCC OnLine Bom 7382



offences committed by companies. The Supreme Court has clarified that in the absence of the company, the nominated person cannot be convicted or *vice versa*.¹⁸ Further, the Courts have emphasised that merely holding the title of director of a company is not sufficient to make the person liable under Section 66 of the Act. Under Section 48 of the Act, knowledge is an essential for an act to be considered an offence.¹⁹ Further, Section 66(2) of the Act clearly mandates that if the director, manager, secretary, or any other officer of the company is shown to be an accused in the complaint, the complainant must demonstrate that the offence occurred with the individual's consent, connivance, or due to negligence. Mere designation is not sufficient to establish the offence was committed with consent or connivance.²⁰

Quashing of criminal prosecution initiated under the Act

Grounds for Quashing Criminal Proceedings under FSSAI Act

1. Improper Laboratory Used
2. Delayed Analyst Report Without Justification
3. Late Recommendation for Prosecution –
4. Expired Limitation Period Without Reason
5. Absence of Vicarious Liability Allegations
6. Sanction Granted Without Proper Application of Mind
7. Misidentification of Liable Party



Courts have largely been strict with the application of procedural safeguards set out in the Act, including regarding requirements such as specified laboratories for sample analysis, timelines for analysis completion and submission of reports, deadlines for sanctioning recommendations for prosecution, etc. These lapses are closely scrutinised when considering petitions to quash criminal proceedings initiated under the Act.

- **Insight:** Following are some illustrative grounds on which criminal proceedings initiated under the Act were quashed by Courts on account of procedural lapses violating the Act/Rules/Regulations:
 - i. Analysis samples from the Food Analyst can only be sent to laboratories (a) accredited and recognised by the National Accreditation Board for Testing and

¹⁸ *Hindustan Unilever Ltd. v. State of M.P.*, (2020) 10 SCC 751

¹⁹ *Ram Nath v. State of U.P.*, (2024) 3 SCC 502

²⁰ *Hemant v. State of Maharashtra*, 2017 SCC OnLine Bom 8230



Calibration of Laboratories and (b) notified by the FSSAI under Section 43(1) of the Act. Reliance cannot be placed on the results of analysis done at laboratories that do not pass these twin tests.²¹

- ii. The Food Analyst must submit the report within 14 days as prescribed in Section 42(2) of the Act. If delayed, the Designated Officer and Commissioner of Food Safety must be informed of the same, with reasons and a specific the timeline required for analysis, as per Section 46(3). The reasons for delay must be provided within the 14-day period. Considered mandatory provisions, the violation of which has been allowed as a ground for quashing;²² however, courts have not always been consistent in the application of this principle.²³
- iii. Cases have been also quashed where the Designated Officer did not send the recommendation to the Commissioner for sanctioning prosecution within 14 days of receipt of the report, as required under Section 42(3).²⁴
- iv. Section 77 of the Act provides that notwithstanding anything contained in the Act, no court shall take cognizance of an offence under the Act after the expiry of the period of one year from the date of commission of an offence, unless the Commissioner of Food Safety approves, for reasons to be recorded in writing, prosecution within an extended period of up to three years. The date of commission of offence is the date on which the Food Analyst's report is received.²⁵ In cases where the extension beyond one year was approved without providing reasons, it was held to be violation of a mandatory provision and grounds for quashing.²⁶
- v. The absence of specific allegations demonstrating vicarious liability of the director of a company or partner of a firm in terms of Section 66 has been considered ground for quashing proceedings against the said parties.²⁷
- vi. Where the provision alleged to have been violated required specific intent to commit the offence and sanction for prosecution was granted with total non-application of mind, without any reference to the relevant matter and material, and in a single-line order without recording any reasons, it was considered grounds for quashing.²⁸
- vii. In one case, tobacco products banned in Tamil Nadu were found in a shop. The FSSAI arrayed the owner of the shop and the manufacturer as accused parties.

²¹ *Nestle India Ltd. v. Food Safety & Standards Authority of India*, 2015 SCC OnLine Bom 4713 (Division Bench); *Shyamkumar Tulsilal Warnawal v. State of Maharashtra*, 2025 SCC OnLine Bom 271, *Ramamoorthi Rao v. State of Kerala*, 2023 SCC OnLine Ker 11201

²² *H.P. Gupta v. S. Selvaraj*, 2023 SCC OnLine Mad 3293; *Noufal N.K. v. Food Safety Officer*, 2023 SCC OnLine Mad 3111

²³ *Blue Planets Foods (P) Ltd. v. State*, 2023 SCC OnLine Mad 8119

²⁴ *Srilakshmi v. Food Safety Officer*, 2022 SCC OnLine Mad 6564 (Division Bench); *P. Panneer Selvam v. P. Jaganathan*, 2022 SCC OnLine Mad 9019

²⁵ *Kewal Dairy v. State of UP* 2024 SCC OnLine All 7190; *State of Rajasthan vs Sanjay Kumar* (1998) 5 SCC 82

²⁶ *P. Panneer Selvam v. P. Jaganathan*, 2022 SCC OnLine Mad 9019

²⁷ *K.T. Venkates Raja v. State*, 2023 SCC OnLine Mad 4480; *Ahammed Naseef v. State of Kerala*, 2025 SCC OnLine Ker 1692

²⁸ *Kaushik Keshavlal Lakhani v. State of Maharashtra*, 2023 SCC OnLine Bom 2070



However, as the manufacturer was in Karnataka, where the said products were not banned, and nothing on record demonstrated that the manufacturer was directly involved in the sale of the banned substance in Tamil Nadu, proceedings against the manufacturer were quashed.²⁹ On the other hand, where a restaurant had purchased turmeric from a registered manufacturer in a sealed packet with a proper invoice and the said food had been found to be unsafe, it was held that *prima facie* liability would be of the manufacturer or its distributor and not of the restaurant, and proceedings against the restaurant were quashed.³⁰

Import of articles of food

Under Section 25 of the Act, all imported articles of food are subject to the Act. The Central Government is also required to follow the FSSAI standards when regulating the food imports under the Foreign Trade (Development and Regulation) Act, 1992. Importing any unsafe, misbranded, or sub-standard food or food containing extraneous matter into India is prohibited. Imported food consignments are scrutinised and inspected by the officers authorised by the FSSAI and notified from time to time for this purpose. Such officers may draw samples and pass directions to ensure compliance with standards of packaging and labelling. Food articles shall be disposed of when not in conformance with the Act and the relevant rules and regulations.

- ***Insight:*** The High Court of Calcutta has underscored the scope of the FSSAI's powers under Section 25 of the Act in two judgments, refusing to interfere in exercise of its writ powers. In ***R. Piyarelall Import & Export Ltd. v. Union of India*** (2012 SCC OnLine Cal 13245), it refused to intervene in a matter where samples of a food consignment failed to conform to parameters stipulated by the FSSAI for foreign matter and mineral matter. It held that discretion in customs-bonded area rests with the authorised FSSAI officer regarding allowing an importer facilities to improve the quality of foodgrains. To permit this, the authorised officer must be satisfied that the food can be brought in conformity with the stipulated standards.
- In another case,³¹ the Calcutta High Court dealt with the import of food products that were safe for consumption but failed to meet the applicable labelling standards. It ruled that FSSAI is not obligated by law to permit the import of food articles merely because they are safe for consumption if they have not fulfilled labelling requirements, as it would defeat the



The FSSAI is not obligated by law to permit the import of food articles merely because they are safe for consumption if they have not fulfilled labelling requirements, as it would defeat the provisions of the regulations.

²⁹ *S.S. Essence (P) Ltd. v. State of T.N.*, 2023 SCC OnLine Mad 5783

³⁰ *Piyush Gupta v. State of U.P.*, 2025 SCC OnLine All 599

³¹ *Food Safety and Standards Authority of India v. Heartland Trading Company Pvt. Ltd.*, 2014 SCC OnLine Cal 19348 (Division Bench)



provisions of the regulations. The Court emphasised that the Act and related regulations operated on a principle of strict compliance dictated by public interest.

The inclusion of tobacco products within the ambit of the Act

The legal classification of tobacco products under the Act has emerged as a significant issue in the context of state-level bans imposed by the FSSAI on *gutka*, *khaini*, *zarda*, and similar chewable products. Central to this debate is the definition of “food” under Section 3(1)(j) of the Act, which includes “*any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food... but does not include animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances.*”

The controversy revolves around whether tobacco, especially in its oral, chewable, or otherwise consumable forms falls within this definition of “food” and hence is subject to regulation under the Act. This matter is currently pending before the Supreme Court in a slew of appeals against many High Court judgments with different views.

For instance, the Delhi High Court recently held that “food” under the Act does not prescribe a prerequisite nutritional requirement – rather, it seeks to regulate “any substance meant for human consumption”.³² The Court also noted that the Act specifically excludes

High Courts' Views on Tobacco as Food



Delhi High Court holds “food” includes any substance meant for human consumption, regardless of nutritional value, including forms of chewing tobacco such as gutka and pan masala under its ambit.



Madras High Court takes a stance similar to Delhi High Court, supporting regulatory control of tobacco-based products under the FSSAI Act



Calcutta High Court disagrees with the broader definition, holding that “food” must involve nutritional content and excludes tobacco products such as zarda from being classified as food



Andhra Pradesh High Court aligns with Calcutta High Court and emphasises that the tobacco-specific law (COTPA, 2003) overrides the general FSSAI framework; declines to treat tobacco as food under the FSSAI Act.

³² *Commr. (Food Safety) v. Sugandhi Snuff King (P) Ltd.*, 2023 SCC OnLine Del 2003 (Division Bench).



substances from the ambit of Section 3(1)(j), and absent such specific exclusion, no substance can be excluded from under the Act on the grounds of an unspecified requirement, including nutritional value. Therefore, *pan masala*, *gutka*, or any other form of chewing tobacco meant for human consumption would be included under the ambit of “food” and would, therefore, be subject to regulation under the Act.

The Madras High Court³³ has taken a similar view.

However, the Calcutta High Court has a different view, holding that nutrition is an inherent part of any product falling under the ambit of food, and “*food cannot be meant to include stimulant(s) like zarda or other tobacco products which temporarily stimulate the human body without infusing any nutrient(s).*”³⁴

The Andhra Pradesh High Court has a similar view, further holding that the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, being a special legislation, would prevail over the Act, which is a general legislation.³⁵

It will be interesting to see finality brought to this matter by the Supreme Court and its decision will also have far-reaching implications, since an interpretation in favour of bringing tobacco under the definition of “food” would enable the food safety authorities to take enforcement action, including bans, seizures, and prosecution against the manufacture and sale of tobacco-laced food products.

³³ *J. Anbazhagan v. Union of India*, 2018 SCC OnLine Mad 1231; *Food Safety & Drugs Control Dept v. Jayavilas Tobacco Traders LLP*, 2023 SCC OnLine Mad 408.

³⁴ *Sanjay Anjay Stores v. Union of India*, 2017 SCC OnLine Cal 16323.

³⁵ *Dwarapudi Sivarama Reddy v. Union of India*, 2023 SCC OnLine AP 444 (Division Bench).



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