



THE TIMES OF INDIA

SC gives more teeth to food officers to curb gutka menace

Dated: - 22nd September 2018 (Saturday)

E-paper

Giving more power to food safety officers to curb manufacturing and sale of gutka/pan masala and other unsafe consumable items, the Supreme Court has empowered them to set in motion criminal proceedings against the offender by lodging case under Indian Penal Code in addition to proceedings under Food and Safety Standards Act which prescribe fine up to Rs 2 lakh.



A bench of Justices SA Bobde and L Nageswara Rao set aside Bombay high court ruling which had said non-compliance of FSS Act could be penalised by food safety officer only by imposing of fine mentioned in the Act and no complaint for offences under the IPC could be lodged by the officer. "There is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence. Where an act or an omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence," the bench said. While the penalty of violation of FSS Act for sale and transportation of prohibited consumable items is up to Rs 2 lakh, the punishment under IPC for selling noxious food items or drinks is imprisonment up to six months jail term or fine which may extend to Rs 1,000 or with both.

Paving the way for food officers to initiate criminal proceedings against the offenders, the apex court said that HC erred in holding that Section 55 of the FSS Act is the only provision which can be resorted to for non compliance of orders passed under the FSS Act as it is a special enactment and provision of IPC cannot be invoked. Section 55 says that if a food business operator fails to comply with the requirements of this Act or the rules or regulations or orders issued there under, as directed by the food safety officer, he shall be liable to a penalty which may extend to Rs 2 lakh. "There is no dispute that Section 55 of the FSS Act provides for penalty to be imposed for non compliance of the requirements of the Act, Rules or Regulations or orders issued there under by the food safety officer. But, we are afraid that we cannot agree with the conclusion of the HC that non compliance of the provisions of the Act, Rules or Regulations or orders cannot be subject matter of a prosecution under IPC unless expressly or impliedly barred. The HC is clearly wrong in holding that action can be initiated against defaulters only under Section 55 of FSS Act or proceedings under Section 68 for adjudication have to be taken," it said. The court passed the order on a plea of Maharashtra government challenging HC decision. The state had issued notification IN 2013 under FSS Act prohibiting manufacture, storage, distribution or sale of tobacco, gutka, pan masala, flavored, scented tobacco, flavored/scented supari. The food safety officer had apprehended few persons for selling gutka and lodged an FIR against them under Sections 188(disobedience of order), 272(adulteration), 273(sale of noxious food) and 328 (causing hurt by means of poison) of the Indian Penal Code. The accused then moved HC which set aside the criminal proceedings.

Quashing the HC order, the apex court said , "A perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties. We, therefore, set aside the finding of the High Court."