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Presented on : 07-08-2023
Registered on : 16-09-2023
Decided on : 21-06-2025
Duration : 1 years, 10 months, 14 days

**BEFORE THE SPECIAL COURT FOR ECONOMIC
OFFENCES: AT BENGALURU**

Dated this the 21st day of June 2025

:Present:

Sri. VISHWANATH C GOWDAR., B.A.L., LL.M.,
Presiding Officer,
Special Court for Economic Offences,
Bengaluru

C.C. No.66/2023

Complainant : The Senior Food Safety Officer,
Basavanagudi Circle,
B.B.M.P. South Range,
General Hospital Building,
Sheshadri Road,
Bengaluru – 560 001.

(Reptd. By Sr. APP)

V/s.

Accused : Roopa
D/o. Lingaiah,
Nandu's Food Private Ltd.,
No.304 & 305, Vishwabharathi,
HSBC Layout,
BSK III Stage,
Hosakerehalli Cross,
Bengaluru – 560 085.

(Reptd. By Sri. TP., Advocate)

: J U D G M E N T :

The instant complaint has been filed U/s.200 of Cr.P.C., by the complainant alleging that, the accused has committed the offence punishable U/s.59 of the Food Safety and Standards Act (hereinafter referred to as “the Act”).

2. The complainant’s case in nutshell is as under:

That on 13.12.2022, while CW-1/PW-2 being the Senior Food Safety Officer, having visited the shop premises of accused, who was employed in Nandu’s Foods Private Limited, No.304 & 305, Vishwabharathi, HSBC Layout, BSK III Stage, Bengaluru was found to be selling the Chicken. The aforesaid official suspecting the quality of the chicken with skin proceeded to collect four legal samples of 500 grams each by preparing Form No.VA of the Act and paid Rs.538.72 so also by serving the copy of the aforesaid Form on the accused by drawing mahazar. Thereafter, the PW-2 forwarded the aforesaid four samples of chicken with skin containing signature of the accused to the analysis by Food Analyst by intimating the accused regarding his right for independent examination at NABL accredited Laboratory, which was refused by accused. The aforesaid samples of chicken without skin were handed over to the Food Analyst along with Form No.VI and Specimen Seal Form.

3. The Food Analyst vide report dated 24.12.2022 declared the sample i.e., chicken with skin as “Fresh or Chilled

or Frozen Poultry Meat” Not Confirming as specified under Regulation 2.5.2(11) with the FSS Regulations, 2011 thereby held the subject food as “Unsafe”. Hence, the instant complaint.

4. The accused appeared on service of summons through her counsel and was released on bail. The copy of the complaint and other documents came to be furnished to her in compliance of Section 207 of Cr.P.C.

5. The substance of the accusation was recorded by reading over and explaining its contents to the accused, she denied the same and claimed to be tried.

6. The complainant in order to bring home the guilt of the accused beyond all reasonable doubts, got examined two witnesses as PW's-1 & 2 and got marked in all nine documents as Ex.P-1 to Ex.P-9 and got closed its side of evidence.

7. The statement of accused as contemplated U/s.313 of Cr.P.C., was recorded. The accused denied the incriminating evidence in the testimonies of the PW's-1 & 2 on her behalf and has got examined herself as DW-1.

8. The compliance U/s.437(A) of Cr.P.C., was dispensed by accepting the earlier personal bond and cash security furnished by the accused at the time of being enlarged on bail.

9. Heard the arguments addressed by learned counsel for the complainant and the accused. The counsel for the accused submitted the authority in support of his arguments.

10. Having due regard to the complaint, evidence on record and arguments addressed by the rival parties, the following points would arise for the consideration of this court namely:

1. Whether the complainant proves beyond all reasonable doubts that, the accused being the in-charge of store by name Nandu's Foods Private Limited has been involved in selling of chicken with skin, which was found to be "Unsafe" for Human Consumption on account of Not being in conformity with Regulation 2.5.2(11) of FSSR Regulations, 2011 as per the Analysis Report dated 24.12.2022 and thereby committed offence punishable U/s.59 of the FSS Act, 2006?

2. What order?

11. The answer of this court to the aforesaid points is as under:

Point No.1: In the Negative

Point No.2 : As per final order
for the following:

REASONS

12. Point No.1: In the case on hand, the complainant is bound to establish the fact as to the accused being the in-charge of store by name Nandu's Foods Private Limited, BSK III Stage, Bengaluru, involved in selling of chicken with skin and was very much responsible for the legal sample of the said chicken being found to be "Unsafe" for human consumption, as it was not in conformity with Regulation No.2.5.2(11) of FSSR Regulations, 2011. Thereby, the accused has committed the offence punishable U/s.59 of the FSS Act, 2006.

13. The Senior Food Safety Officer by name Sri. L. Shivamurthy arrayed as CW-1 in support of the allegations set out in the complaint, got examined himself as PW-2. The said witness has accounted as to having conducted routine inspection in the shop premises of accused on 13.12.2022, having collected four samples of chicken with skin of 500 grams each by obtaining receipt for Rs.538.72 by drawing the mahazar in the presence of accused so also, having prepared Form No.VA. He has also narrated regarding the sample being sent to Food Analyst along with Specimen Seal Form and Form No.VI as well as receipt of the report from Food Analyst regarding the subject sample being “Unsafe” for human consumption.

14. In support of the said testimony, the PW-2 has got marked in all six documents as Ex.P-4 to Ex.P-9. Ex.P-4 is the original receipt dated 13.12.2022 bearing details pertaining purchase of chicken with skin weighing 2.080 Kgs by the PW-2 on paying Rs.538.72. Ex.P-5 is the mahazar dated 13.12.2022 claiming to be drawn by the PW-2 in the shop premises of accused in the presence of accused. Ex.P-6 is the Form No.VA dated 13.12.2022 duly signed by PW-2 addressed to accused bearing signature of accused. Ex.P-7 is the Form No.VI dated 13.12.2022 addressed to Eureka Analytical Services Pvt. Ltd., Bengaluru containing details pertaining to the samples being handed over for analysis. Ex.P-8 is the analysis report dated 24.12.2022, wherein, Eureka Analytical Services Pvt. Ltd., Bengaluru declared subject sample pertaining to chicken with skin being “Unsafe” for Human

Consumption as it is not in conformity with regulation 2.5.2(11) of FSSR Regulations, 2011. Ex.P-9 is the Form under Rule 2.4.10(iii) of FSS Act, dated 13.12.2022, wherein, the accused has refused to exercise the right of examination of the sample before the NABL Laboratory. The said document bears the seal of Nandu's Foods Pvt. Ltd.

15. PW-2 has been subjected to cross-examination by the counsel for the accused, wherein, it has been admitted regarding the PW-2 having not received any complaint from the public with respect to having undergone health issues on consuming the chicken purchased from the shop maintained by accused. It has been categorically admitted as to the time between which, the mahazar at Ex.P-5 was drawn is not reflected in the said Ex.P-5. It has been specifically admitted as to Ex.P-9 is in template format and the writings in the said Ex.P-9 as to "BBMP South" and "Bangalore" and "Date 13.12.2022" was in his handwriting so also, the underline beneath "Not willing" is in his handwriting. It is also conceded as to accused is employed in Nandu's Foods Pvt. Ltd. The other suggestions as to the chicken sold by the aforesaid company is good quality chicken and the chicken lost its potential quality on account of improper storage soon after the sample drawn and till being delivered to the Food Analyst has been denied by the witness. The other suggestions as to the accused is not guilty of having committed the offence alleged in the complaint has been categorically denied by the witness.

16. The complainant by name Sri. Chandrashekar K., in the case on hand, has been cited as CW-4 with permission of this court vide order dated 12.06.2024 has been examined as PW-1. This witness has accounted regarding having been placed in-charge of CW-1 vide office order dated 12.07.2023 for the period of one month between 12.07.2023 and 11.08.2023, so also, having lodged the complaint on the basis of sanction order dated 20.05.2023. The office order dated 12.07.2023, sanction order dated 20.05.2023 and complaint are marked as Ex.P-1 to Ex.P-3 respectively.

17. PW-1 has been subjected to the cross-examination by the counsel for the accused, wherein, the witness has categorically denied as to himself not having personal knowledge and information regarding the incident in the case on hand. The other suggestions as to the witness is deposing falsely at the instance of his superiors has been denied by the witness.

18. The accused has got examined herself as DW-1 and deposed as to on 13.12.2022, PW-2 visited the shop premises, in which, she was working between 11-30 am., and 12-00 noon and requested to pack 2 Kgs of chicken with skin and without skin separately. It was also insisted not to cut the chicken completely and cut the chicken in middle portion and to place in separate covers instead of cover used in their stores. It is also deposed as to her signatures were obtained on three blank sheets at Ex.P-5, Ex.P-6 & Ex.P-9. It is further deposed as to the chicken sold in their store will be stored in

temperature between 0 & -4 degree celcius and PW-2 was in their stores for about 90 minutes after having placed the purchased chicken inside two covers. It is also claimed that the said chicken is meant to be consumed within one hour from purchasing the chicken. It is further claimed that, the chicken sold by Nandu's Foods Pvt. Ltd., is of good quality and as per the standards of FSSAI Act. The report at Ex.P-8 is claimed to be on account of negligence on the part of PW-2 in having handed the chicken after drawing the sample and being dispatched to the Food Analyst.

19. DW-1 has been cross-examined by the learned Sr. APP, wherein, it is elicited as to DW-1 generally is in habit of going through the contents of documents before affixing her signatures. The other suggestions as to she has affixed her signatures on Ex.P-5, Ex.P-6 & Ex.P-9 after going through its contents has been denied by the witness. The Ex.P-9 has been marked as Ex.D-1 through DW-1, by inadvertance. The suggestion as to though Ex.P-8 is as per the actual quality of chicken, the DW-1 has put-forth her claim only to escape from the liability in the case on hand has been denied by the witness.

20. The learned Sr. APP for the complainant vehemently argued that, the accused having violated the provisions of FSS Act, 2006 and thereby committed offences punishable U/s.59 of the Act is very much forthcoming as per the testimonies of PW's-1 & 2. It is also highlighted regarding the examination-in-chief of PW's-1 & 2 so also regarding the documents Ex.P-1

to Ex.P-9 as well as cross-examination of DW-1 in support of her arguments. Amongst these arguments, it has been sought to convict the accused in the case on hand.

21. The learned counsel for the accused emphatically argued that, the instant complaint against accused is not tenable as the mense rea as required U/s.48 of the Act has not been demonstrated by the complainant. It is also highlighted as to there is no any iota of evidence to incriminate the accused to show the accused had knowledge regarding the subject matter being “Unsafe for Human Consumption”. It is also envisaged as to there is violation of Rule 7A of Food Safety Rules, 2011, amended 2023, so also, pursuant to violation of Section 46(4) of the Act due to Ex.P-8 not being duly served upon accused. It is also emphasized as to Ex.P-9 does not refer to the chicken in connection to the case on hand. It is also vehemently stressed that, the Ex.P-5 cannot be appreciated in absence of the independent witness being part of mahazar witness. The complaint is also argued to be bad as Nandu’s Foods Pvt. Ltd., not being made as party and only the employee of the said company being arrayed as accused in the case on hand. The cross-examination of PW’s-1 & 2 has been highlighted and amongst these arguments, it is sought to acquit the accused.

“Evaluation of Evidence as well as Claim and Contentions of either parties”

22. On overall examination of evidence on record, arguments canvassed by the rival parties, this court has to

determine as to whether the accused being in-charge of Nandu's Foods Pvt. Ltd., has intentionally and deliberately with a knowledge has been involved in selling of the chicken with skin, which was found to be "Unsafe" for human consumption and thereby committed the offence alleged in the case on hand.

23. The factum of seizure of subject matter is a crucial aspect in order to incriminate the accused. The aspect of seizure of the subject matter from the shop premises of the accused, is unable to be gathered. The said seizure being effected on 13.12.2022 in a busy and crowded area i.e., BSK III Stage of Bengaluru in between 11-30 am., and 12-00 noon, the shop of accused being located next to other business establishments, the seizure mahazar at Ex.P-5 not being witnessed by independent witness, certainly inclines the court to gather the contrary and to consider the arguments of the accused as to Ex.P-5 being fabricated and concocted document. The sole testimony of PW-3 i.e., the seizing official, in absence of corroboration by the independent witnesses creates a doubt in the mind of the court regarding the very seizure of the subject matter from the shop premises of the accused. This aspect certainly inclines the court to give the benefit of doubt in favour of the accused.

24. It is significant to note that, Section 48 of the Act shall be duly considered while deciding the allegations of commission of the offence U/s.59 of the Act. The plain reading of Section 48(1) of the Act mandates the deliberate

intention and knowledge on the part of the accused, which resulted in commission of offence needs to be analyzed by the court. In the case on hand, there is no iota of evidence on record disclosing the intention on the part of the accused to sell the subject matter, though she had knowledge as to the same being “Unsafe” for human consumption.

25. Further, the mandate of the Act as contemplated U/s.46(4) of the Act regarding the report of the Food Analyst could not be challenged before the Referral Food Laboratory as notified by the Authority, pursuant to the report as per Ex.P-8 not being communicated by the complainant authority to the accused is certainly a valid defence, as there is no any iota of evidence on record to demonstrate the intimation regarding the Ex.P-8 being duly served on the accused.

26. The acknowledgment i.e., Ex.P-9 not referring to the subject matter, is also the justifiable defence pursuant to the obligation on the part of the complainant to demonstrate the guilt of the accused beyond all reasonable doubts. The said defence of the accused will certainly be the valid ground pursuant to the accused disputing the very seizure of the subject matter. It is also pertinent to note that, the aforesaid defence in view of failure on the part of the complainant to array the Nandu's Foods Pvt. Ltd., as a party in the case, in light of the accused being employed in the said store, the accused cannot be held liable unless her master i.e., the management of Nandu's Foods Pvt. Ltd., is prosecuted in order

to bring home the vicarious liability. The accused is also entitled to the benefit of doubt on this aspect.

27. This court is bound to consider the complainant's case having not been established beyond all reasonable doubts. In the light of the discussion made supra, an anxious examination of testimonies of PW's-1 & 2, certainly inclines the court to hold as to the complainant's case is tainted with substantial omissions, improvements and contradictions as well as substantial non-disclosure of material facts. Hence, this court is justified to hold that, the complainant has miserably failed to bring home the mens-rea which is the pre-requisite in the criminal cases as laid down in the catena of decisions of the Hon'ble Apex Court as well as our Hon'ble High Court so also U/s.48(1) of the Act.

28. Furthermore, the specific defence put-forth by the accused/DW-1 as to the sample being declared to be "Unsafe" for human consumption on account of improper storage and the said sample being transmitted from the store to the Food Analyst in a manner, which was contrary to the norms prescribed for carrying the Frozen Poultry Meat, as the subject matter was bound to be consumed within an hour from the time it is delivered is also a valid and tenable defence, which has not been rebutted by the complainant by cogent and satisfactory oral and documentary evidence. In the light of discussion made supra, this court holds that the complainant has miserably failed to bring home the guilt of the accused

beyond all reasonable doubts. Accordingly, this court without any hesitation proceeds to answer Point No.1 in the *Negative*.

29. Point No.2: In the light of the discussion and findings, assigned supra while appreciating the Point No.1, this court proceeds to pass the following:

ORDER

By exercising the power conferred under section 255(1) of Cr.P.C., the accused is hereby acquitted of the offence punishable under section 59 of the Food Safety and Standards Act.

Consequently, the accused is set at liberty.

The bail bonds of the accused stands canceled.

(Dictated to the Stenographer directly on computer, typed by him, corrected and then pronounced by me, in open court on this the 21st day of June 2025)

(VISHWANATH C GOWDAR)
Presiding Officer,
Spl. Court for Economic Offences,
Bengaluru.

:ANNEXURE:**List of the Witnesses examined on behalf of the Complainant:**

PW-1 : Chandrashekar K
PW-2 : L. Shivamurthy

List of the Documents exhibited on behalf of the Complainant:

Ex.P-1 : Office order dated 12.07.2023
Ex.P-2 : Sanction Order
Ex.P-3 : Complaint
Ex.P-4 : Receipt
Ex.P-5 : Seizure Mahazar
Ex.P-6 : Form No.VA
Ex.P-7 : Form No.VI Notice
Ex.P-8 : Test Report
Ex.P-9 : Acknowledgment

List of Witnesses examined on behalf of the Accused:

DW-1 : Smt. Roopa

List of Documents examined on behalf of the Accused:

Ex.D-1 : The Acknowledgment dated 13.12.2022

Presiding Officer,
Spl. Court for Economic Offences,
Bengaluru.

Judgment pronounced in the open court (vide separate order)

ORDER

By exercising the power conferred under section 255(1) of Cr.P.C., the accused is hereby acquitted of the offence punishable U/s.59 of the Food Safety and Standards Act.

Consequently, the accused is set at liberty.

The bail bond of the accused stands canceled.

PRESIDING OFFICER.