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**BEFORE FOOD SAFETY APPELLATE TRIBUNAL/
DISTRICT JUDGE, AGRA***Presiding Officer– (Sri Sanjay Kumar Malik), (H.J.S.) – UP 01906***FOOD SAFETY MISCELLANEOUS APPEAL No. 178 of 2019**

M/s. Jyoti Products through Shri Jitendra Kumar S/o Shri Ram Kishore
R/o Rudhayan Post and P.S. Sasani, District- Hathras.

.....Appellant

Vs.

State of U.P. through Mr. Vinay Kumar Yadav, Food Safety Officer,
Department of Food Safety and Drugs Administration, Collectorate
Compound, Firozabad (U.P.)

.....Respondent

:- Judgment :-

1. This Food Safety Appeal No. 178/2019 is preferred by the appellant M/s Jyoti Products against the impugned judgment and order dated 27.12.2017 passed in Case No. D2017012601889 State Vs. Anup Singh and others for violation of Section 26(2)(ii) r/w Section 51 & 58 Food Safety Standard Act, 2006 by which Ld. Adjudicating Officer/Addl. District Magistrate (F&R) Firozabad has imposed a fine of Rs. 50,000/- on opposite party No. 1 Anup Singh and Rs. 1,00,000/- on opposite party No. 2 M/s Jyoti Products u/s 51 & 58 of Food Safety Standard Act, 2006.

2. Tersely, the brief fact of the case as per allegation in the complaint is that the Food Safety Officer Mr. Vinay Kumar Yadav on 27.01.2017 inspected the shop situated at Suhag Nagar Crossing, P.S. South Firozabad, District- Firozabad belonging to Anup Singh. There he found 12 packets of chilli sauce (Jyoti brand 1 kg. Manufacturer sealed packet) kept for sale. On being suspected as adulterated the food safety officer purchased 1 kg. Packet (in original mfg. Sealed packed) for the purpose of anlaysis by the government food analyst and gave notice on form V-A

to the vendor. Sealed and fastened as per law and sent it to the government food analyst Varanasi alongwith memo on form 6 containing seal impression. The government food analyst Varanasi after analysis of the sample so sent, delivered its report No. VA257 dated 07.02.2017 opining therein as follows:- ***"Manufacturer has declared ingredients, nutritional information, green veg. Symbol, complete manufacturer address, batch no. packing date & best before on a detachable slip and manufacturer has not declared net weight and best before 6 months from date of packing is written in running letter instead of capital letters which is violation of Regulation 2.2.1(4) and 2.2.1.(7&10) of FSS (Packaging and Labelling) Regulations 2011 and also total soluble solid and acid is less than the prescribed minimum limit of 8-0% & 1.0% respectively for chilli sauce. Hence, the sample violates the regulation and substandard"***

Thereafter the F.S.O. obtained requisite written consent from the appropriate authority and filed a complaint in the court of Adjudication Officer/ADM (F&R) Firozabad against the opposite party No. 1 Shri Anup Singh and opposite party No. 2 M/s Jyoti Products for violation of Section 26(2)(ii) r/w Section 51 and 58 of FSS Act. Whereafter the adjudication officer took cognizance of the matter, issued notice to the opposite parties concerned. After due service of the notice, the matter was adjudicated ex-parte. Finding guilty, a penalty of Rs. 50,000/- on opposite party No. 1 Shri Anup Singh and a penalty of Rs. 1,00,000/- on opposite party No. 2 M/s Jyoti Products were imposed vide judgment/order dated 27.12.2017 passed by the Adjudication Officer/ADM (F&R) Firozabad.

3. Being aggrieved, the appellant/opposite party No. 2 M/s Jyoti Products has preferred this Food Safety Appeal.

4. Tersely, the grounds of the appeal are as follows:-

- (i) The adjudicating order of learned adjudicating officer is assailable on the points of law and on facts.
- (ii) The judgment/order passed by the learned Adjudcating Officer is

erroneous, bad in law, devoid of application of mind and against well settled principles of law, therefore liable to be set aside.

(iii) The learned Adjudicating Officer has not done proper application of mind while appreciating evidence on record.

(iv) The prosecution has to prove its case beyond all reasonable doubts, whereas prosecution has miserably failed to prove its case.

(v) The Learned Adjudicating Officer has not examined the complainant/food safety officer and made no enquiry as contemplated u/S. 68(2) of FSS Act 2006. Thus the entire adjudication proceedings are vitiated.

(vi) The prosecution has not made parties in the case as has been contemplated u/S. 66 of FSS Act 2006.

(vii) The prosecution has not followed various mandatory provisions of the FSS Act 2006 as well as the Rules and Regulations made thereunder.

(viii) The food safety officer while collecting the sample did not observe the procedure prescribed by law.

(ix) The designated officer has not provided appellants an opportunity to prefer appeal against the report of the government food analyst Varanasi as contemplated u/S. 46(4) of FSS Act r/w Rule 3.1.1(1) of FSS Rules 2011.

(x) The sanctioning authority has not applied its mind while granting sanction for prosecution.

(xi) The prosecution has failed to associate independent witness at the time of lifting of the samples as is mandatory vide Section 38(7) of FSS Act r/w Rule 2.4.1(1) and (2) of FSS Rules 2011. Whereas the alleged place of incidence is situated in a village quite busy place, if genuine efforts would have been made by the FSO, independent witness could have been easily associated. In spite of this the FSO has made only bald assertion in this regard in order to legalize his illegal Act.

(xii) The learned Adjudicating Officer has not paid due regards to the guidelines specified in Section 49 of the Act 2006.

(xiii) The appellant has never sold the article of food in question as such. There is no bill/warranty issued by him to the vendor. The label of the article of food is forged and fabricated.

(xiv) No notice on form V-A has been given to the appellant by the complainant/food safety officer.

(xv) The penalty imposed is too exorbitant and is against the principles of natural justice.

5. Heard learned Counsel for the appellant and learned D.G.C. (Civil), perused the impugned order passed by the Adjudication Officer/ADM (F&R) Firozabad and relevant record carefully.

6. The perusal of record reveals that before examination of the sample, the Food Analyst found condition of seals of the container and other covering and receipt intact and unbroken. Hence, it cannot be said that the Food Analyst did not compare the seals. A perusal of report of Food Analyst for the conformation that the sample was taken on 27.01.2017 which was sent to Food Analyst Varanasi, U.P. on 28.01.2017 and sample item was found fit for analysis and has been analysed on 03.02.2017 to 06.02.2017. It is also notable point here that the Food Analyst has prepared the report within 14 days i.e. 07.02.2017 after analysis, because according to Food Analyst Report sample was received on 02.02.2017 for analysis, it means Rule 3(1)(A)(ii) and 57(1) (i) of Food Safety and Standard Act, 2006 has been complied.

As far as the contention of appellant's learned counsel that Rule 2.4.1(3) of FSS Rules 2011 was not complied. However, after perusal of the file, court found that Rule 2.4.1(3) of F.S.S Rules 2011 has not been complied with because notice under Rule 2.4.1(3) of FSS Act was not served on appellant M/s Jyoti Products rather it is only served on opposite party No. 1 i.e. vendor/FBO Anup Singh. It means appellant M/s Jyoti Products is a manufacturing firm but there is no evidence on the file like bill/warranty which can clearly show that the manufacturing firm has any connection of sale with the vendor, so the appellant M/s Jyoti Products has no knowledge regarding notice of Form V-A since it

was not served on him.

7. It has also been contended that no public witness was taken by the Food Safety Officer at the time of incident whereas on the alleged place so many people were present there. In this regard court perused the record and found that on perusal of Paper No. 3-A/3 and 3-A/4 it is true that there are no public witness in this matter but it is natural that no one wants to become a witness of any case nowadays. That's why it is evident that FSO could not associate the public witness at the time of taking the sample. However, it is also notable point here that no such documentary or oral evidence is on the file which shows the prior enmity between the Food Safety Officer and Food Business Operator, so in these circumstances when there is no prior enmity between them, no any ground is on the file that why would FSO falsely implicate the FBO. So on the above, court does not found any ground about the above contention of appeal.

8. It has also been contended by the appellant that notice u/S. 46(4) of the Act has not been sent to the FBO and he has been deprived of the opportunity to file appeal. In this regard court perused the file and found that no notice u/S. 46(4) was served on the appellant and thereby he was deprived of an opportunity to file an appeal against the report of the Food Analyst within 30 days before the Designated Officer.

9. It is further contended by the appellant that Section 68 of the Act has not been complied with by the learned Adjudicating Officer. In this regard the court perused the record and found that notice u/S. 68 was served on the opposite party No. 1 Shri Anup Singh, but no notice has been served on opposite party No. 2 M/s Jyoti Products and opposite party No. 2 M/s Jyoti Products is a manufacturing firm and there is no evidence on the file which shows any connection of sale or otherwise between the vendor and the manufacturing firm so it cannot be assumed that notice was also served on appellant M/s Jyoti Products.

10. It is pertinent to mention here that the none of the parties appeared in the court nor any reply/objection was filed by them.

Thereafter the court proceeded ex-parte and decided the matter.

11. It is also notable point here that as per the Inspection letter (Paper No. 3-A/5) it is clearly evident that the sample which was purchased by the food safety officer was of chilli sauce (Jyoti Brand) and the vendor himself has declared that the product is being manufactured by M/s Jyoti Products but there is no bill/warranty of sale on the file which can clearly show that the food item was purchased by Anup Singh from M/s Jyoti Products, there is no bill of sale on the record. The registration certificate could also not be produced by the vendor at the time of inspection. It is also considerable point here that the opposite parties did not appear in the court and the learned Adjudicating Officer has passed an ex-parte order.

12. Therefore on the basis of the above discussion and conclusion, the learned adjudicating officer has not taken into consideration the above mentioned points, hence the order passed by the learned Adjudicating Officer is not worthy of being sustained, rather it deserves to be quashed. Accordingly, this Food Safety Miscellaneous Appeal is liable to be allowed.

ORDER

This Food Safety Miscellaneous Appeal is allowed. The impugned judgment and order dated 27.12.2017 passed in Case No. D2017012601889 State Vs. Anup Singh and others for violation of Section 26(2)(ii) u/S. 51 & 58 of Food Safety Standard Act, 2006, is hereby quashed and the case is sent back with the direction that the Adjudicating Officer/ADM (City) Agra shall dispose off the case by giving both the parties another opportunity of evidence as per the observation made in this judgment. This Food Safety Appeal is disposed off accordingly.

Let the record be sent back to the concerned Court along with a copy of this judgment.

The parties should appear before the concerned Court on 06.08.2026 for hearing.

Thereafter the record of this appeal be duly consigned/merged as per Rules.

(Sanjay Kumar Malik)
Food Safety & Standard
Appellate Tribunal/District Judge,
Dated:23.07.2026 **Agra.**

Judgment signed, dated & pronounced in the open Court today.

(Sanjay Kumar Malik)
Food Safety & Standard
Appellate Tribunal/District Judge,
Dated:23.07.2026 **Agra.**