

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 4350 OF 2022

**PARTHA SARATHI TRIPATHY
-VS-
STATE OF WEST BENGAL & ORS.**

For the Petitioner : Mr. Debdatta Saha,
Mr. Subhamay Dewanji
Mr. Saikat Biswas

For the Opposite Party No.2 : Mr. Pramod Kumar Drolia
Ms. Sanjukta Gupta

Argument concluded on : 29.07.2026

Judgment Pronounced on : 29.07.2026

UDAY KUMAR, J.: –

INTRODUCTION

1. A supplementary affidavit has been filed today by the learned counsel appearing for the petitioner in compliance with the earlier directions of this Court dated June 8th, 2026, to remove doubts and discrepancies regarding the identity of the petitioner, Partha Sarathi Tripathi, whose name appears in the licence under FSS Act number 10012022000264 as Partha Tripathi, being the person in charge of operations as

evidenced by the document annexed at page 56 of the revisional application. In this regard, the deponent, Partha Sarathi Tripathi, has affirmed on affidavit dated July 7th, 2026, that Partha Tripathi and Partha Sarathi Tripathi are one and the same identical person, and that both names refer to the sole individual operating the enterprise. Accepting the statements made on affidavit as sufficient to dispel any clouds or ambiguity concerning his identity, I take up this matter for pronouncement of judgment.

2. By this application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973, the petitioner has invoked the inherent jurisdiction of this Court seeking quashing of the proceedings relating to C.R. Case No. 384 of 2021 under Section 59 of the Food Safety and Standards Act, 2006 (hereinafter referred to as the "FSS Act"), currently pending before the learned Chief Judicial Magistrate, Hooghly at Chinsurah. The challenge is primarily directed against the order dated December 15, 2021, whereby the learned Magistrate took cognizance of the alleged offense punishable under Section 59 of the said Act and directed issuance of process against the petitioner in his capacity as the Manager of the manufacturing concern.

II. FOUNDATIONAL FACTS

3. The chronological sequence of facts culminating in the filing of the instant revisional application lies within a narrow compass. On March 11, 2021, at approximately 11:00 A.M., Opposite Party No. 2, discharging functions as the Food Safety Officer, Eastern Railway,

conducted an inspection of a retail food stall styled as "La-Fasta," situated between Platforms 3 and 4 of the Bandel Railway Station, Hooghly. During the course of such inspection, the said officer purchased eight statutory Tetra Packs, measuring two hundred millilitres each, of Britannia Winkin Cow Thick Lassi (bearing Lot No. 351044FA5, Date of Packaging: 13.02.2021), manufactured by M/s. Schreiber Dynamix Dairies Private Limited. The purchase was executed upon a valid cash consideration of one hundred and sixty rupees against a formal money receipt.

4. In strict adherence to statutory sampling protocols, one part of the seized sample was dispatched on March 12, 2021, to the West Bengal Public Health Laboratory (Food & Water Department) for chemical and microbiological analysis. While the department maintains that the actual analysis of the sample was completed within the stipulated timeline, the final analysis report was formally generated, signed, and communicated only on May 20, 2021. This administrative delay in issuing the report was officially attributed by the Food Analyst to severe operational constraints, heavy backlogs, and staff limitations arising from the COVID-19 pandemic. The said report ultimately declared the food product to be "unsafe food" under Section 3(1)(zz) of the FSS Act, citing alleged microbiological contamination, specifically the presence of *Escherichia coli* (*E. coli*) and elevated coliform counts.
5. Following the receipt of the report and obtaining administrative sanction, Opposite Party No. 2 instituted a formal petition of complaint giving rise to C.R. Case No. 384 of 2021 before the Learned Chief

Judicial Magistrate, Hooghly at Chinsurah. The complaint arraigned the stall handler, stall owner, marketer, and the present petitioner in his individual capacity as Manager of the manufacturing unit as accused persons. Conspicuously and crucially, the corporate manufacturing entity itself, M/s. Schreiber Dynamix Dairies Private Limited, was omitted from the array of accused.

6. Upon receiving the said complaint, the learned Chief Judicial Magistrate passed the impugned order dated December 15, 2021, taking cognizance of the alleged offense punishable under Section 59 of the FSS Act, directing the issuance of process against the petitioner. Aggrieved by the initiation and continuation of the criminal proceeding, the petitioner has invoked the inherent jurisdiction of this Court under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973.

III. QUESTIONS FOR DETERMINATION

7. The canvas of the controversy at the threshold of this revisional application crystallizes into the following three pivotal legal questions:

First: Whether a criminal prosecution under Section 59 read with Section 66 of the FSS Act can be legally maintained against a corporate manager or officer in his individual capacity when the principal corporate offender, the manufacturing entity itself, has not been arraigned as an accused?

Second: Whether an unexplained, inordinate delay of fifty-nine days in delivering the Food Analyst's report, in patent contravention of the mandatory fourteen-day timeline under Section 46(3) of the FSS Act, destroys the evidentiary reliability of the analysis report of a short-shelf-life perishable dairy product, thereby fatally infringing the statutory defence rights guaranteed to the accused under Section 46(4) of the Act?

Third: Whether the complaint and investigation suffered from an incurable breakdown of the statutory chain due to non-compliance with the jurisdictional authorization mandated under Section 37 and the structured procedural workflow under Section 42 of the FSS Act?

IV. SUBMISSIONS FOR THE PETITIONER

8. Mr. Debdata Saha, learned counsel appearing for the petitioner, forcefully contends that the prosecution launched against the petitioner is an egregious abuse of the process of Court and legally non-maintainable. He submits that under Section 66 of the FSS Act, vicarious liability cannot be fastened upon a corporate officer unless the company itself is arraigned as a principal offender. The omission to implead M/s. Schreiber Dynamix Dairies Private Limited strikes at the root of the jurisdiction, rendering the prosecution void *ab initio*, as settled by the Apex Court in *Aneeta Hada v. Godfather Travels and Tours Private Limited* [(2012) 5 SCC 661] and *Sharad Kumar Sanghi v.*

Sangita Rane [(2015) 12 SCC 781], alongside the Madras High Court decision in *A.T. Kannan v. State* (2021 SCC OnLine Mad 14094).

9. Amplifying his submissions, Mr. Saha further submits that notwithstanding the department's administrative explanation regarding pandemic-related backlogs, an inordinate delay of fifty-nine days in issuing the Food Analyst's report severely prejudices the accused. In respect of a short-shelf-life perishable dairy product like lassi, holding the sample for nearly two months impairs its integrity and frustrates the statutory right of the petitioner under Section 46(4) to seek re-analysis through a Referral Laboratory, as articulated in *Municipal Corporation of Delhi v. Ghisa Ram* (AIR 1967 SC 970) and *G. Irudhayanathan v. B. Ramakrishnan* (2020 SCC OnLine Mad 12748).
10. Finally, he assails the foundational competence and jurisdictional authorization of the Food Safety Officer under Section 37 and the mechanical invocation of procedure under Section 42 of the Act (*Sailen Ganguly v. State of West Bengal & Anr.*, 2016 SCC OnLine Cal 153). Therefore, he prays for quashing of the impugned order against the petitioner.

V. SUBMISSIONS FOR THE OPPOSITE PARTY NO. 2

11. Conversely, Mr. Pramod Kumar Drolia, learned counsel appearing for Opposite Party No. 2, supports the impugned order by submitting that the petitioner was directly in charge of and responsible for the operational affairs of the manufacturing unit, thus fulfilling the requirements of Section 66(2) of the FSS Act.

12. He argues that arraigning the Manager in his official designation satisfies initial procedural requirements and that any plea regarding lack of direct oversight or transit-temperature variations are disputed questions of fact to be tested during trial rather than evaluated at the threshold under Section 482 of the Cr.P.C.
13. Addressing the delay in issuing the food analysis report, Mr. Drolia relies upon the official communication dated April 7, 2021, wherein the Food Analyst specifically explained that heavy backlogs and operational constraints caused by the COVID-19 pandemic delayed the issuance of the report, although the scientific evaluation of the sample itself was duly handled. He contends that the detection of pathogenic organisms renders the food unsafe, and therefore, the revisional application is devoid of merit and ought to be dismissed.

VI. DISCUSSIONS AND LEGAL ANALYSIS

14. I have given anxious and circumspect consideration to the rival submissions advanced by the parties, examined the statutory architecture of the FSS Act, and perused the materials on record.
15. The first question strikes at the structural foundation of the prosecution. The law governing corporate criminal liability under modern welfare and regulatory statutes is well settled. Section 66(1) of the FSS Act codifies the statutory doctrine of vicarious liability in corporate crimes, stipulating that where an offense under the Act has been committed by a company, every person who at the time the offense was committed was in charge of, and was responsible to, the company

for the conduct of its business, as well as the company, shall be deemed to be guilty of the offense and shall be liable to be proceeded against and punished accordingly.

16. The explicit phraseology of Section 66(1) establishes that the commission of an offense by the company is the foundational *sine qua non* for attracting vicarious liability against its officers or employees. Vicarious criminal liability is a legal fiction created by statute; it cannot exist in a vacuum or operate independently. Unless the primary offender, the corporate body, is formally arraigned as an accused and its penal liability is brought into the *lis*, no derivative or vicarious criminal liability can be fastened upon its individual directors, managers, or employees.

17. This legal position is no longer *res integra*. A three-Judge Bench of the Supreme Court in *Aneeta Hada (supra)*, while interpreting analogous provisions under Section 141 of the Negotiable Instruments Act, 1881, authoritatively held as follows:

"59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself."

18. The aforesaid legal principle was reaffirmed with equal vigor in *Sharad Kumar Sanghi (supra)*, wherein the Apex Court underscored that where the company has not been made a party to the criminal complaint, an order taking cognizance against an individual officer alone is legally

unsustainable. Applying these binding principles to the FSS Act, the Madras High Court in *A.T. Kannan (supra)* has correctly held that a prosecution under Section 66 of the FSS Act cannot be sustained against a manager or officer in the absence of the manufacturing company as an accused.

- 19.** The contention of the prosecution that citing the petitioner as "The Manager, M/s. Schreiber Dynamix Dairies Pvt. Ltd." satisfies the mandate of Section 66 of the FSS Act is fundamentally flawed. Arraigning an officer by their official designation does not equate in law to impleading the corporate entity itself as a distinct juristic person. A bare scrutiny of the cause title of C.R. Case No. 384 of 2021 reveals the total omission of M/s. Schreiber Dynamix Dairies Private Limited from the array of accused. Citing the petitioner merely as Manager in his individual capacity does not cure this jurisdictional infirmity. This omission constitutes a fatal, incurable jurisdictional defect that strikes at the root of the prosecution.
- 20.** Turning to the second question, Section 46(3) of the FSS Act mandates that the Food Analyst shall, within a period of fourteen days from the date of receipt of any sample for analysis, deliver to the Designated Officer a report of the result of such analysis.
- 21.** The prosecution has earnestly relied upon the written communication dated April 7, 2021, wherein the Food Analyst explained that the sample was processed within the functional window, but the formal release of the report was delayed due to heavy backlogs and staffing constraints precipitated by the COVID-19 pandemic. While

administrative exigencies and pandemic hardships are understandable, I find that they must be weighed against the stringent statutory timelines designed to protect the rights of the accused, particularly in handling short-shelf-life perishable commodities.

- 22.** The legislative intent behind imposing a strict fourteen-day timeline is self-evident. Food products, particularly fermented dairy products like lassi, are perishable commodities subject to rapid natural biological degradation and microbial evolution. In the instant case, the sample was received by the laboratory on March 12, 2021, but the test report was generated only on May 20, 2021, representing an unexcused, inordinate delay of fifty-nine days.
- 23.** As propounded by the Apex Court in *Ghisa Ram (supra)*, where a perishable food sample undergoes natural decomposition or where unexplained procedural gaps occur, the evidentiary value of the analysis report is severely tested. Although the department has offered an explanation that the analysis was conducted within time and that the delay was confined to the administrative dispatch of the report due to pandemic constraints, the fifty-nine-day hiatus between sample receipt (March 12, 2021) and report generation (May 20, 2021) creates a substantial grey area regarding sample integrity.
- 24.** I am of the view that whether the sample remained free from environmental or natural microbial self-generation during this extended interim period, notwithstanding the reported presence of *Escherichia coli* (*E. coli*) and coliform counts, raises serious triable concerns

regarding prejudice to the accused's statutory right of re-analysis under Section 46(4) of the FSS Act (*G. Irudhayanathan, supra*).

- 25.** Finally, the statutory scheme under Sections 37 and 42 of the FSS Act establishes an integrated, time-bound workflow governing inspection, reporting, evaluation, and sanction. Section 37 deals with the appointment of Food Safety Officers and vests them with specific, territorially defined powers. Sub-section (2) of Section 37 read with relevant rules mandates that a Food Safety Officer must be duly notified for a specific local area by the Commissioner of Food Safety before exercising statutory powers of entry, inspection, and seizure.
- 26.** Section 42 prescribes a structured sequence requiring the receipt of the analysis report, followed by an independent application of mind by the Designated Officer, leading to a recommendation or sanction by the competent authority, and culminating in the filing of a complaint. An examination of the record discloses that this statutory chain was broken at multiple junctures. The fifty-nine-day delay in analysis fractured the workflow under Section 42(1), and the record demonstrates a mechanical transmission of files rather than a reasoned, independent application of mind. Compliance with the procedural mechanics of Section 42 is a mandatory prerequisite for taking valid cognizance.
- 27.** Where the foundational steps, from initial analysis to formal authorization and sanction, are marked by procedural lapses and non-compliance with Sections 37 and 42 of the FSS Act, the entire edifice of the prosecution collapses (*Sailen Ganguly, supra*). The failure to adhere

to the mandatory procedural workflow vitiates the prosecution and renders the order taking cognizance legally unsupportable.

- 28.** In the present case, the record reflects a significant jurisdictional gap regarding the formal authorization of the Food Safety Officer, Eastern Railway, to exercise statutory powers over a retail stall located within the railway station premises without seamless integration into the statutory scheme envisaged for the local administrative jurisdiction of Hooghly district.
- 29.** In view of the exhaustive legal analysis and the binding precedents cited herein, this Court arrives at the irresistible conclusion that the prosecution initiated against the petitioner suffers from incurable jurisdictional illegality, serious procedural non-compliance, and fatal prejudice caused by statutory delay. Permitting such a proceeding to continue against the petitioner amounts to a flagrant abuse of the process of Court.

VII OPERATIVE PART & DIRECTIONS

- 30.** Accordingly, the revisional application being **CRR 4350 of 2022** succeeds and is **allowed**.
- 31.** The criminal proceeding in C.R. Case No. 384 of 2021 pending before the Learned Chief Judicial Magistrate, Hooghly at Chinsurah, together with the impugned order dated December 15, 2021 taking cognizance of the offense against the petitioner, Sri Partha Sarathi Tripathy, is hereby quashed and set aside.

32. It is made clear that this order shall not preclude or affect the continuation of proceedings, if any, against the remaining co-accused persons in accordance with law.
33. All connected applications stand disposed of.
34. Interim orders stand vacated.
35. There shall be no order as to costs.
36. The Trial Court Record (TCR), if any, shall be sent down to the Trial Court at once.
37. Case diary, if any, be returned forthwith.
38. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)