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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 14th October, 2026# **CNR No. DLHC010446102026**+ **CRL.M.C. 6955/2026 & CRL.M.A. 29114/2026****SH RISHI ARORA & ORS.**

.....Petitioners

Through: Mr. Madhav Khurraa, Mr. Sukrit R. Kapoor, Mr. Vijay Shankar, Mr. Aayushya, Mr. Aman Singhanian, Advocates

versus

STATE GOVT OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Mukesh Kumar, APP for State with SI Mohit Verma, P.S.: Parliament Street. Mr. Manjoor Ali, FSO.

CORAM:**HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. The present petition has been filed seeking setting aside of Complaint Case No. 8220/2023 titled as *Food Safety Officer v. Jitendra Soni & Ors.* and Summoning Order dated 22nd November, 2024 passed by ACJM, Patiala House Courts.
2. The complaint alleges offences under Food Safety and Standards Act, 2006 ('FSS Act') in relation to a sample of pre-packed '*Basic Kabuli Chana*', bearing batch no. U1KL02, packed on 2nd December, 2022 and



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having an expiry date of 1 June, 2023. The said sample was stored at the premises/dark store operated by petitioner no.2.

3. Petitioner no.2 company, i.e. Blink Commerce Private Limited, is an e-commerce intermediary that provides platform listing, warehousing, and delivery services to platform sellers. Petitioner no.1, i.e. Mr. Rishi Arora, is the Nominee appointed by petitioner no.2 company as mandated under Rule 2.5.1 of the Food Safety and Standard Rules, 2011 ('FSS Rules').

4. Petitioner no.4 company, i.e. Superwell Comtrade Private Limited, is the merchant that lists its products for sale to customers on the e-commerce platform operated by petitioner no.2. Petitioner no.3, i.e. Julius Denzil Natal is the Nominee appointed by Petitioner no.4 company as mandated under Rule 2.5.1 of the FSS Rules.

5. Petitioner no.6, i.e. Sunline Global Private Limited, is a company engaged in relevant supply chain of the products stored at dark store. Petitioner no.5, i.e. Mr. Baldev Singh, is the Nominee appointed by the petitioner no.6 company as mandated under Rule 2.5.1 of the FSS Rules.

6. Petitioner no.7, i.e. Mr. Vipul Gupta, is the Nominee appointed by petitioner no.8 company, i.e. Hands On Trades Private Limited as mandated under Rule 2.5.1 of the FSS Rules.

7. Petitioner no.9, Mr. Jitendra Soni, was the Manager of the dark store operated by petitioner no.2.

8. Mr. Madhav Khurana, Senior Advocate appearing on behalf of petitioner submits that in the present case, since the said product was sold in sealed, labelled and factory-packed retail packs, the petitioners who were only the re-sellers could not have tampered with it. He further submits that there are no allegations in the complaint that the petitioner had tampered or



altered the seal of the packaging.

9. Mr. Khurana further submits that the Magistrate ought to have issued notice under Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') prior to the issuance of summons. In this regard, reliance is placed on the judgment of the Allahabad High Court in **Atiqur Rahaman & Anr. v. State of U.P. & Anr.**, 2025 SCC OnLine All 4766, which is also in relation to Food Safety and Standards Act.

10. The reliance is also placed on the judgment of the Supreme Court in **Parvinder Singh v. Directorate of Enforcement**, 2026 SCC OnLine SC 903, wherein it is stated that even if the complaint is filed prior to 1st July, 2024, i.e. the date on which BNSS came into effect, the provision will still be applicable where cognisance is taken after the said date.

11. APP appearing on behalf of the respondent opposes the present petition.

12. Since the petition concerns only a legal question, with consent of the parties, the petition is being taken up for disposal without any formal reply.

13. At the outset, reference may be made to provisions of Section 223 of the BNSS, relevant extracts of which are set out below:-

“ 223. Examination of complainant.- A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his



official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.”

14. The Supreme Court in **Parvinder Singh** (supra) in the context of proceedings in Prevention of Money Laundering Act, 2002 (‘PMLA’) has clearly held that even if the complaint is filed prior to 1st July, 2024, the date on which BNSS came into force, but the cognisance has been taken after the said date, the provisions of Section 223 would come into play. The relevant observations in **Parvinder Singh** (supra) are set out below:

“37. As already discussed, though the complaint under the PMLA was filed earlier, the cognizance was only taken subsequently, on 02.07.2024, by which time the BNSS had come into force. Admittedly, the appellant has not been heard at the time of taking cognizance. The mandate of a legislation which ensures the right of an accused to a fair trial, whose liberty is at stake, cannot be dispensed with. Thus, the contention of the learned ASG that prejudice caused due to non-hearing at the stage of cognizance will have to be shown by the accused cannot be accepted, as it is not a mere irregularity that would attract either Section 506 or 511 of the BNSS, but is an illegality that would vitiate the very proceedings.

38. Based on the above discussion, the views expressed by the High Court are, therefore, liable to be set aside. We do find that the allegations against the appellant are quite serious. However, noncompliance with the first proviso to Section 223(1) of the BNSS vitiates the very order taking cognizance, and the same cannot be sustained in the eyes of the law. In fact, the appellant has, at the earliest point in time, filed the application for recall of the order taking cognizance by placing reliance upon the said proviso. Had the Special Court allowed it, the trial would have proceeded further. Suffice it to state that the appellant cannot be faulted for any delay that has occasioned.”



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15. In the judgment in **Atiqur Rahaman**, under similar circumstances and similar facts, the Allahabad High Court had quashed proceedings for non-compliance of provisions of Section 223 of BNSS. The relevant extracts from the said judgment are set out below:-

“16. Since the aforesaid exercise relatable to putting to the notice the applicant accused before taking cognizance is lacking and nothing is forthcoming from the summoning order thus the summoning order cannot be sustained and is liable to be set aside.”

16. In view of the aforesaid position of law, since the Summoning Order dated 22nd November, 2024 has been passed by the Magistrate without issuing notice to the petitioners before taking cognizance as required under Section 223 of the BNSS, the Summoning Order is bad in law and is accordingly set aside.

17. The matter is remanded back to the Magistrate to pass a fresh order in accordance with law, after giving an opportunity to accused persons as per the mandate of Section 223 of the BNSS.

18. It is made clear that this Court has not gone into the other issues raised by the petitioner in the present petition.

19. All rights and contentions of the petitioner shall remain open.

AMIT BANSAL, J

OCTOBER 14, 2026
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