

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**CRIMINAL MISC.APPLICATION NO. 1821 of 2002
with
CRIMINAL MISC.APPLICATION NO. 1822 of 2002**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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PEPSI CO. INDIA HOLDINGS LTD
THRO'ITS OFFICER VINAY MATHUR & 1....Applicant(s)
Versus
STATE OF GUJARAT & 1....Respondent(s)

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Appearance:
MR SV RAJU, ADVOCATE for the Applicant(s) No. 1 - 2
MR KI SHAH, ADVOCATE for the Respondent(s) No. 2
MR RR MARSHALL, ADVOCATE for the Respondent(s) No. 2
PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date :11/12/2014

CAV JUDGMENT

Since the challenge in both the captioned applications is to a selfsame complaint, those were heard analogously and are being disposed of by this common judgment and order.

1. The applicants (original accused) have filed these applications under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code") invoking inherent powers of this Court praying that the complaint being Food Adulteration Case no.55/2000 pending in the Court of the Judicial Magistrate First Class (Municipal), Surat, be quashed.

2. It appears from the materials on record that one A.S. Licencewala, a Food Inspector serving with the Surat Municipal Corporation lodged a private complaint in the Court of the JMFC (Municipal), Surat against 12 accused of the offence punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954.

3. The accused no.1 in the complaint is the Wholesaler carrying-on business in the name of the Kamal Enterprise and the accused no.2 is the Sales Manager of the accused no.1. The accused no.3 is a Cold Storage firm and the accused nos.4 to 9 are the partners of the accused nos.1 and 3 firms. The accused no.10 is a company who manufactures the product of aerated water like Pepsi, 7UP, Miranda, Slice etc. The accused no.11 is the nominee of the accused no.10 company.

4. It appears that on 29th November, 1997 the complainant visited the firm of the accused no.1 and at that point of time the accused no.2 was present and was selling the products manufactured by the accused no.10 like Pepsi, 7up, Miranda etc. The complainant wanted to draw a sample for the purpose of analysis and therefore, he called one person, namely, Rajubhai C. Thakkar as a panch witness. The complainant collected six bottles of 500 ml. of printed crown of Laher Pepsi and the same were sealed and packed and thereafter were sent for analysis. The complainant received the report from the Public Analyst dated 8/1/1998 certifying that the product was found to be adulterated. The Public Analyst certified that the aerated water had excessive impurity in the form of Floated Faculent Gelatin.

5. It appears that on receipt of the Public Analyst report the complainant applied for sanction under section 20 of the Act for the purpose of filing complaint against the accused persons. The Surat Municipal Corporation accorded sanction dated 15th June, 2000 as prayed for by the complainant and thereafter on 18th September, 2000 the complaint was lodged in the Court of the JMFC (Municipal), Surat.

6. The learned JMFC vide order dated 18th September, 2000 took cognizance upon the complaint and ordered issue of bailable warrant of Rs.3,000/- against each of the accused of the offence punishable under Sec. 16 r/w sec. 7 of the Act, 1954.

7. The Misc. Criminal Application No.1821/2002 is filed by the original accused nos.10 and 11 i.e. Pepsi Cola India Holdings Ltd., the manufacturer of the aerated water and its nominee. Whereas the Misc. Criminal Application No.1822/2002 is filed by original accused nos.1 to 9 i.e. the Wholesaler, Sales Manager, Cold Storage as a partnership firm and the partners of the partnership firm.

8. It also appears from the materials on record that the applicants of Misc. Criminal Application No.1822/2002 had filed an application for discharge/dropping of the proceedings before the learned Magistrate vide application Exh.67, however, the said application was ordered to be rejected vide order dated 21st April, 2001. Against the said order the accused Nos.1 to 9 had filed Criminal Revision Application No.56/2001 and the said revision application was also ordered to be rejected vide order dated 28th January, 2002.

9. Submissions on behalf of the Petitioners :

9.1 Mr.Bhadrish Raju, the learned advocate appearing on behalf of the applicants vehemently submitted that there has been a gross delay in filing the complaint as the samples were drawn on 29th January, 1997 and the Public

Analyst report is dated 8th January, 1998, He submits that the complaint was filed on 18th January, 2000 i.e. nearly almost after 3 years from the date of drawing of the samples. He submits that on such ground alone the complaint deserves to be quashed. Mr.Raju further submits that the product in question was manufactured on 15th October, 1997 and the notice for re-analysis, mandatorily required under Sec. 13(2) of the Act is dated 21st September, 2000. He submits that the product was three years old when the accused persons were asked to exercise their right of getting the sample reanalyzed through the Central Foods Laboratory. He submits that the reanalysis of the sample after a period of three years would be nothing but an exercise in futility.

9.2 Mr. Raju's main bone of contention is that the right of the accused conferred under Section 13(2) of the Act to get the sample of the product "Laher Pepsi" reanalysed through the Central Food Laboratory was frustrated on account of gross delay on the part of the complainant in filing of the complaint.

9.3 Mr.Raju submits that the date of manufacture was well within the knowledge of the respondent no.2 and was duly noted by him in Form-VI that is issued to the Vendor at the time of the sampling of the product. The respondent no.2 in the said Form-VI had noted the label in detail, but the "Best Before" had not been noted where as the sampled product was Best Before 6 months from the date of manufacture.

9.4 He submits that the products such as the Sweetened Carbonated Water are best before 6 months from the date of manufacture only. In the present case since the date of manufacture of product is 15th October, 1997 it could be said to be Best Before only till 15th April, 1998.

9.5 Mr.Raju also submitted that the report of the Central Food Laboratory noted Yeast and Mould Count/ML.725 as against 2. The report of the Public Analyst is silent so far as the contents noted by the Central Food Laboratory is

concerned.

9.6 Mr.Raju has placed strong reliance on a decision of the Supreme Court in the case of Girishbhai Dahyabhai Shah Vs. C.C.Jani & another reported in (2009) 15 SCC -64. He has also placed reliance on the decision of the Supreme Court in the case of Northern Minerals Ltd., Vs. Union of India & another – (2010) 7 SCC -726. The decision of the Supreme Court in the case of Northern Minerals (Supra.) is relating to the provisions of the Insecticides Act, 1968.

10. Submissions on behalf of the complainant :

10.1 Mr. Vishwas Shah, the learned advocate appearing on behalf of the complainant, has vehemently opposed this application submitting that the delay in granting of sanction was due to the fact that at the relevant time i.e. from June, 1998, the power to accord sanction was delegated to the Medical Health Officer, Surat Municipal Corporation, however, the Medical Health Officer was suspended from his service in the month of September, 1998 and thereafter, the power was not delegated to any other officer during that period. Later on the power to accord sanction under the Act was delegated to the Deputy Commissioner, Health & Hospital, Surat Municipal Corporation, in the month of February, 2000. After the delegation of the power, the sanction was accorded in the present case and accordingly the complaint was lodged on 18th September, 2000.

10.2 Mr.Shah submits that the delay, if any, is no ground for quashing the complaint, more particularly when the Central Food Laboratory has certified the sample as fit for analysis and certified that the sample was adulterated.

10.3 Mr. Shah submits that once the Central Food Laboratory found the sample fit for analysis and was found to be adulterated, the principal argument canvassed on behalf of the accused regarding prejudice should fail. Mr.Shah

submits that Sec. 20A of the Act can be pressed into service only when the offence under the Act is alleged to have been committed by any person not being a manufacturer, distributor or dealer of any food. In such circumstances, if a person who is the manufacturer, distributor or dealer of food, commits the offence under the Act then it could not be said that having regard to the embargo under Sec. 20A of the Act, they cannot be impleaded as accused.

10.4 Mr. Shah in support of his submissions has placed reliance on the following decisions :

- i) Gangaihnaidu Ramakrishna & Ors. Vs. State of A.P. Represented by Food Inspector Division-II –MANU/AP/1110/2005.
- ii) Hyderabad Beverages Pvt. Ltd., etc. Vs. State of A.P. 2006 Cri. Law Journal -3988

11. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is whether the complaint should be quashed.

12. Before advertng to the rival submissions canvassed on either sides, I deem it necessary to look the into few relevant provisions of law.

"14. Section 2(ia) of the Prevention of Food Adulteration Act, 1954 defines 'adulterated' to mean :

*"(ia) "adulterated" - an article of food shall be deemed to be adulterated -
(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;*

(b) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof;

(c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;

(d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof;

(e) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health;

(f) if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;

(g) if the article is obtained from a diseased animal;

(h) if the article contains any poisonous or other ingredient which renders it injurious to health;

(i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health

(j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;

(k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

(l) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, which renders it injurious to health;

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health: Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.

Explanation - Where two or more articles of primary food are mixed together and the resultant article of food -

(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and

(b) is not injurious to health, then, such resultant article shall not be deemed to be adulterated within the meaning of this clause."

15. Under Section 7, no person shall himself, or by any person on his behalf, manufacture for sale, or store, sell or distribute any adulterated food. Section 8 empowers the Central and State Governments to appoint Public Analysts. Section 11 prescribes the procedure to be followed by Food Inspectors while taking samples of food for analysis. Section 13 relates to the report of the Public Analyst. Under sub-section (1) thereof, the Public Analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis. Under sub-section (2), on receipt of the report of the result of the analysis under sub-section (1), to the effect that the article of food is adulterated, the Local (Health) Authority shall, after institution of prosecution against the persons from whom the sample of the article of food was taken, and the person, if any, whose name, address and other particulars have been disclosed under Section 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that, if it is so desired, either or both of them may make an application to the Court within a period of 10 days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. Under sub-section (2A), when an application is made to the Court under sub-section (2), the Court shall require the local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the Court within a period of five days from the date of such requisition. Under sub-section (2B), on receipt of the part or parts of the sample from the Local (Health) Authority, the Court shall after ascertaining that the mark and seal are intact and not tampered with, dispatch the part to the Director of the Central Food Laboratory, who shall thereupon send a certificate to the Court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis. Under sub-section (2D), until receipt of the certificate of the result of the analysis from the Director of the Central Food Laboratory, the Court shall not continue with the proceedings before it in relation to the prosecution. Section 13(3) provides that the certificate issued by the Director of the Central Food Laboratory, under sub-section (2B), shall supersede the report given by the public analyst under sub-section (1). Under Section 14, no manufacturer or distributor of, or dealer in any article of food shall sell such article to any vendor, unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor. Proviso thereunder prescribes that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of,

or dealer in, such article to the vendor thereof shall be deemed to be a warranty. Section 14-A requires every vendor of an article of food, if so required, to disclose to the food inspector the name, address and other particulars of the person from whom he purchased the article of food.

16. Rule 2(d) of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the "Rules"), defines 'Form' to mean a Form set forth in Appendix A to the Rules. Rule 4 relates to analysis of food samples and reads thus :

"Analysis of food samples :-

(1)(a) Samples of food for analysis under sub-section (2) of Section 13 of the Act shall be sent either through a messenger or by registered post in a sealed packet, enclosed together with a memorandum in Form I in an outer cover addressed to the Director.

(b) Samples of food for analysis under sub-section (2) of Section 6 of the Act or under clause (a) of Rule 3 shall be sent either through a messenger or by registered post in a sealed packet enclosed together with a memorandum in Form 1-A in an outer cover addressed to the Director.

(2) The container as well as the outer covering of the packet shall be marked with a distinguishing number.

(3) A copy of the memorandum and a specimen impression of the seal used to seal the container and the cover shall be sent separately by registered post to the Director.

(4) On receipt of a package containing a sample for analysis the Director or an officer authorized by him, shall compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seals thereon.

(5) After test or analysis, the certificate thereof shall be supplied forthwith to the sender in Form II.

(6) The fees payable in respect of such a certificate shall be "Rs. 1000" per sample of food analysed.

(7) Certificates issued under these rules by the Laboratory shall be signed by the Director.

(8) The fee payable in respect of analysis of samples of imported food analysed in any designated laboratory shall be Rs. 3000 per sample payable by the importer."

17. Rule 5 provides that the standards of quality of the various articles of food specified in Appendix-B to the Rules are as defined in that appendix.

Rule 6 prescribes the qualification of a Public Analyst and Rule 7, which prescribes the duties of a Public Analyst, reads thus :

"Duties of public analyst :-

(1) On receipt of a package containing a sample for analysis from a Food Inspector or any other person the public analyst or an officer authorised by him shall compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seals thereon. Provided that in case sample container received by the public analyst is found to be in broken condition or unfit for analysis he shall within a period of seven days from the date of receipt of such sample inform the Local (Health) Authority about the same and send requisition to him for sending second part of the sample.

(2) The public analyst shall cause to be analysed such samples of articles of food as may be sent to him by Food Inspector or by any other person under the Act.

(3) The public analyst shall, within a period of (forty days) from the date of receipt of any sample for analysis, (send by registered post or by hand) to the Local (Health) Authority a report of the result of such analysis in Form III : Provided that where any such sample does not conform to the provisions of the Act or these rules, the public analyst shall (send by registered post or by hand) four copies of such report to the said Authority : Provided further that the public analyst shall forward a copy of such report also to the person who purchased an article of food and forwarded the same to him for analysis under Section 12 of the Act.

Note : In case of sample received under the proviso of Rule 7(1) or Rule 9-A, the period of forty days shall be counted from the date of receipt of the second part of the sample."

18. Rule 9-A relates to sending of samples by Local (Health) Authority, and reads thus :

"9A. Sending of sample by Local (Health) Authority :

(a) Local (Health) Authority shall within a period of seven days of receipt of requisition for second part of the sample from public analyst under the proviso of Rule 7(1), send such sample to the public analyst.

(b) Local (Health) Authority, while sending second part of the sample under the provision of sub-section (2-E) of Section 13 of the Act, shall do so within a period of 20 days from the date of receipt of the report from the first public analyst ."

Rule 12 provides that the notice of intention to take sample for analysis

should be given in Form VI. Rule 12-A relates to warranty and thereunder every manufacturer, distributor or dealer selling an article of food to a vendor shall give either separately or in the bill, cash memo or a label a warranty in Form VIA. Rule 14 prescribes the manner of sending the sample for analysis. Rule 22 relates to the quantity of the sample.

13. As noted above Appendix A contains the forms. Form II is the certificate of analysis by the Central Food Laboratory, under Rule 4(5) and reads as under :

Form II
(See Rule 4(5))
(Certificate of analysis by the Central Food Laboratory)
Certificate No.....

Certified that the sample bearing number..... purporting to be a sample of..... was received on..... with Memorandum No. dated..... from..... (name of the Court)..... for analysis. The condition of seals on the container and the outer covering on receipt was as follows :

.....
I..... (name of the Director)..... found the sample to be..... (category of the food sample)..... falling under Item No..... of *Appendix B of Prevention of Food Adulteration Rules. 1955/*proprietary food. The sample was in a condition fit for analysis and has been analysed on..... (Give date of starting and completion of analysis) and the result of its analysis is given below/*was not in a condition fit for analysis for Reasons :

- Analysis Report :
(i) Sample Description :
(ii) Physical Appearance :
(iii) Label :

Sr. No. Quality Name of Method Result Prescribed Standards as per :

- Characteristics of test used (a) Item A of Appendix 'B'
(b) As per label declaration for proprietary foods
(c) As per provisions of the Act and Rules, for both above.
1.
2.
3.
4.

5.

6.

*Opinion**--*

Place :

Date : Central Food Laboratory (Seal)

(Signature)

Director

20. It is necessary to note that Form II was substituted by G.S.R. No. 530 (E) dated 29-7-2002 with effect from 29-1-2003. Under Form II the Central Food Laboratory is, among others, required to certify as to whether the sample was in a condition fit for analysis or was not fit for analysis. Where a sample is not in a condition fit for analysis, the reasons therefore are also required to be stated in the certificate.

14. Since the learned counsel appearing for the accused has also placed reliance on the provisions of the Insecticides Act, 1968, I may look into few of the relevant provisions of the Act. Sec.24(3) and (4) of the Act reads as follows :

"Sec.24. Report of Insecticide Analyst

3. Any document purporting to be a report signed by an Insecticide Analyst shall be evidence of facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty-eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector or the Court before which any proceeding in respect of the sample are pending that he intends to adduce evidence in contravention of the report.

4. Unless the sample has already been tested or analyzed in the Central Insecticides Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in contravention of the insecticide analysts report the Court may, of its own motion or its discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the Magistrate under sub-section (6) of Sec. 22 to be sent for test or analysis to the laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein."

15. I may now look into the two reports, one of the Public Analyst and the other of the Central Food Laboratory.

FORM II

(Certificate of test or analysis by the Central Food Laboratory, Calcutta)

Certificate No. G.14-1/2000(Pt.

Certified that the sample (s), bearing number 3/MDH & LHA/SMC/J-1_8 (as on label) purporting to be a sample of Laher Pepsi received on 4.12.00 with Memorandum No. 424/2000 dated 24.11.2000 from Shri P. H. Gohil, Judicial Magistrate, 1st Class, Municipal Corporation, Surat was in a condition fit for analysis and have been tested/analysed and that the result/ results of such test(s)/analysis is/are stated below :

(i) Physical Examinations (including label declarations) : 500ml sample of Laher pepsi is in a sealed glass bottle with label declaration.

Total plate count/ml.	:	45
Colaform count/100 ml	:	Absent
Yeast & mould count/ml	:	725
Test for Carbon dioxide	:	Positive
Total Sugar (expressed as Sucrese) : 9.8%		
Artificial Sweeteners (Saccharin, acesulfame & Aspartame) :		
Absent		

Caffeine : 112.23 ppm

Added colour : Absent

Opinion: - The sample of Laher Pepsi is adulterated.

2. The condition of the seals on the container and the outer covering on receipt was as follows :

The seals were intact and tallied with the specimen impression of seals separately along with copy of the memorandum.

Place : CALCUTTA.

Date:

Sd/ (illegible)
(Dr. __ Chakrabarti)
Director
Central Food Laboratory, Calcutta

S.M.C. _____ 00-10-95

SURAT MUNICIPAL CORPORATION
Report by the Public Analyst

Report No. PHL/ J-132/9-7-98

I hereby certify that I, Shri R. M. Ray M.Sc. Technical Assistant, Public Health Laboratory, Surat Municipal Corporation, Public Analyst for Surat Municipal area, duly appointed under the provision of the Prevention of Food Adulteration Act, 1954, received on the 1st day of December -97 from Food Inspector, Surat Municipal area Shri A. S. Lincewala a sample of Lahar Pepsi – Sweetend Carbonated Beverages being code number and serial number 3/M. O. H. & L.H.A./ S.M.C./ _____J/130_____ of Local Health Authority,

Place of collection : - Surat City Area.

For analysis, properly sealed and fastened and that I found the seal intact and unbroken.

The seals fixed on the container and the outer cover of the sample tallied with the specimen Impression of the seal separately sent by the food Inspector and the sample was in a condition fit for analysis.

I further certify that I had caused to be analyzed the afore mentioned sample, and declare the result of the analysis to be as follows :-

Result of Analysis	P. F. A. limits.
Macroscopy:- Sealed bottles of 500 ml. capacity floating impurity in abundance in the form of flocculent gelations particles.	
Artificial Swettening Agent.... Absent	Absent
Colour Permitted food colour Present.	Permitted food colour May be used.
Total Sugar 9.7% (expressed as Sucrose)	5% (Min.)

(The slip of Local Health Authority and the Signature of the vendor on the wrapper of the container were as per rules)

and I am of the opinion that the sample of Lahar Pepsi Sweetend Carbonated Beverages does not confirm to the provisions laid down under Prevention of Adulteration Act 1954 & is adulterated according to Rule 2(ia) (e) Definitions.

Signed this 8th day of January 1998

:Address:
Public Health Laboratory
SURAT.

Sd/- (illegible)
Public Analyst,
Surat Municipal Corporation Area,
SURAT”

ADULTERATION OFFENCES - STRICT LIABILITY

16. Adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti-social evil and for ensuring purity in the articles of food. (Ishar Das v. State of Punjab, AIR 1972 SC 1295 : (1972 Cri LJ 874)). The object and purpose of the Adulteration Act is to eliminate danger to human life and health from the sale of unwholesome articles of food. (Municipal Corpn. of Delhi v. Shiv Shanker, 1971 (1) SCC 442 : (1971 Cri LJ 680)). Strict adherence to the Prevention of Food Adulteration Act and the Rules framed thereunder is essential for safeguarding the interest of consumers of articles of food. Stringent laws will have no meaning if offenders could get away. (Dayal Singh v. State of Rajasthan (2004) 5 SCC 721 : (2004 Cri LJ 2100)). No chances can be taken by society with a man whose anti-social activities, in the guise of a respectable trader, jeopardise the health and well being of numerous innocent consumers. The adulterator is a social risk. It might be dangerous to leave him free to carry on his nefarious activities. Adulteration is an economic offence prompted by profit motive and is not likely to end itself easily to therapeutic treatment. (Prem Ballab v. State (Delhi Admn.) (1977) 1 SCC 173 : (AIR 1977 SC 56)).

17. In offences relating to food articles, strict liability is the rule. Nothing more than actus reus is needed where regulation of private activity in vulnerable areas like public health is intended. Social defence reasonably overpowers individual freedom. Section 7 of the Prevention of Food Adulteration Act casts an absolute obligation regardless of scienter, bad faith and mens rea. Food offences should be deterrently dealt with. When primary necessities of life are sold with spurious admixtures for making profit the only protection which a

common man, who otherwise is at the mercy of the vicious dealer, has is under the Prevention of Food Adulteration Act and the Court. If offenders could get away, the law would be brought into contempt (Krishan Gopal Sharma v. Govt. of N.C.T. of Delhi (1996) 4 SCC 513)).

18. In Murlidhar Meghraj Loya v. State of Maharashtra (1976) 3 SCC 684 : (1976 Cri LJ 1527), the Supreme Court held thus (para 5 of Cri LJ) :-

" It is trite that the social mission of food laws should inform the interpretative process so that the legal blow may fall on every adulterator. Any narrow and pedantic, literal and lexical construction likely to leave loopholes for this dangerous criminal tribe to sneak out of the meshes of the law should be discouraged. For the new criminal jurisprudence must depart from the old canons, which make indulgent presumptions and favoured constructions benefiting accused persons and defeating criminal statutes calculated to protect the public health and the nation's wealth. " (Emphasis supplied)

19. In Pyarali K. Tejani v. Mahadeo Ramchandra Dange (1974 Cri LJ 313) the Supreme Court held thus (para 11 of Cri LJ):-

" It is trite law that in food offences strict liability is the rule not merely under the Indian Act but all the world over. The principle has been explained in American Jurisprudence 2d Vol. 35, p. 864) thus

"Intent as element of offence :

The distribution of impure or adulterated food for consumption is an act perilous to human life and health, hence, a dangerous act, and cannot be made innocent and harmless by the want of knowledge or by the good faith of the seller; it is the act itself, not the intent, that determines the guilt, and the actual harm to the public is the same in one case as in the other. Thus, the seller of food is under the duty of ascertaining at his peril whether the article of food conforms to the standard fixed by the statute or ordinance, unless such statutes or ordinances, expressly or by implication, make intent an element of the offence."

Nothing more than the actus reus is needed where regulation of private activity in vulnerable areas like public health is intended. In the words of Lord Wright in McLeod v. Buchanan (1940) 2 All ER 179) "intention to commit a breach of statute need not be shown. The breach in fact is enough." Social defence reasonably overpowers individual freedom to

injure, in special situations of strict liability. Section 7 casts an absolute obligation regardless of scienter, bad faith and mens rea. If you have sold any article of food contrary to any of the sub-sections of S.7, you are guilty. There is no more argument about it. The law denies the right of a dealer to rob the health of a supari consumer." (Emphasis supplied).

20. Under Section 13(2) of the P.F.A. Act, the accused is furnished a copy of the report of the public analyst and is given an opportunity to make an application to have the sample analyzed by the Central Laboratory.

21. Once such an option is exercised and the sample is analyzed by the Central Laboratory, the report of the Central Laboratory supersedes the earlier report of the public analyst. If the Central Laboratory finds the sample to be in accordance with the standards, and not deteriorated, no reliance can therefore be placed by the prosecution on the earlier report of the public analyst to contend that the accused is guilty of adulteration.

22. In the present case, it is not the case of the accused that they had not chosen to exercise the option under Section 13(2) of the P.F.A. Act to have the sample sent for analysis to the Central Laboratory on account of gross delay, as the same would have been nothing but an exercise in futility. On the contrary, the case of the accused is that they had exercised their right under Section 13(2) of the P.F.A. Act and had made an application to have the sample sent for analysis to the Central Laboratory and the Central Laboratory has also certified the sample to be adulterated. However, the report of the Central Laboratory should be ignored, as the sample could not be said to have been fit for analysis on account of gross delay in forwarding the same.

I am not impressed by this principal argument canvassed on behalf of the accused.

23. In cases where the delay on the part of the prosecution had resulted in

the sample, sent for analysis to the Central Food Laboratory, being rendered unfit for analysis, it would undoubtedly cause prejudice to the accused and would amount to denial of his valuable right under Section 13(2) of the Act. There could also be other cases where the delay on the part of the prosecution could be found to have caused prejudice. Whether or not delay in furnishing of the copy of the report of the public analyst has caused prejudice to the accused are matters, which can only be decided, on the basis of the evidence, by the trial Court, and not by this Court, in exercise of its inherent powers under Section 482 of the Code or writ jurisdiction under Article 226 of the Constitution.

24. In the present case, the Central Food Laboratory found the sample fit for analysis and after certifying the sample fit for analysis, it found the sample adulterated. Once there is a certificate of the Central Food Laboratory certifying that the sample was fit for analysis then the burden would shift on the accused to establish by leading cogent evidence that the sample had become unfit and the report of the Central Food Laboratory would have no evidentiary value. Whether a sample has, on expiry of its, "Best Before date or its shelf life, become unfit for analysis on account of its being decomposed, is a matter of evidence and not a matter of inference in the proceedings under Section 482 of the Cr.P.C. It is only when a sample is sent for analysis, can the Central Laboratory on examination certify whether or not the sample has been decomposed rendering it unfit for analysis.

25. In *Charanji Lal v. State of Punjab* (1984) 1 SCC 329 : (1984 Cri LJ 15), the Supreme Court held thus :- (Para 15 of Cri LJ)

".....Decomposition is not something which always takes place suddenly or immediately. It is a process which in some cases may be slow and in some cases quick. Decomposition cannot be noticed or ascertained by the Court when it inspects the part of the sample under sub-section (2-B) of Section 13 to ascertain whether the mark and seal or fastening are intact and the signature or thumb impression, as the case may be, not tampered with, before despatching that part to the Central Food Laboratory. Even with the mark and seal intact, and the signature or thumb impression, as the case may be, not tampered with, the sample

might have already decomposed or decomposing might have already commenced. Whether a sample has decomposed or not can only be ascertained when the sealed container is opened in the Central Food Laboratory for the purpose of analysis..... (Emphasis supplied)"

26. In *T. V. Usman v. Food Inspector, Tellicherry Municipality* AIR 1994 SC 1818 samples of six packets of pan supari were sent for analysis to the Public Analyst, who opined that the sample contained Sacharin, an artificial sweetener, and was thus adulterated. Both the vendor and the manufacturer were acquitted by the Magistrate, on the ground that Rule 7(3) was violated inasmuch as the Local (Health) Authority had received the Form III report beyond 45 days. The learned Magistrate also held that Rule 9(a) was not properly complied with. On appeal the Kerala High Court, while confirming the acquittal of the manufacturer, convicted the vendor. The Kerala High Court held that Rule 7(3) was not mandatory and non-compliance thereof needed to be considered only if prejudice was established. Following the judgment of the Supreme Court in *Tulsiram* (1984 Cri LJ 1731), the Kerala High Court held that Rule 9(a) was also not mandatory, but was directory. On appeal, the Supreme Court held thus : (At Pp. 1821-22, para 14 of AIR)

"In Rule 7(3) no doubt the expression "shall" is used but it must be borne in mind that the Rule deals with stages prior to launching the prosecution and it is also clear that by the date of receipt of the report of the Public Analyst the case is not yet instituted in the Court and it is only on the basis of this report of the Public Analyst that the concerned authority has to take a decision whether to institute a prosecution or not. There is no time limit prescribed within which the prosecution has to be instituted and when there is no such limit prescribed then there is no valid reason for holding the period of 45 days as mandatory. Of course that does not mean that the Public Analyst can ignore the time limit prescribed under the Rules. He must in all cases try to comply with the time limit. But if there is some delay, in a given case, there is no reason to hold that the very report is void and on that basis to hold that even prosecution cannot be launched. May be, in a given case, if there is inordinate delay, the Court may not attach any value to the report but merely because the time limit is prescribed, it cannot be said that even a slight delay would render the report void or inadmissible in law. In this context it must be noted that Rule 7(3) is only a procedural provision meant to speed up the process of investigation on the basis of which the prosecution has to be launched. No doubt, sub-sec. (2) of S. 13 of the Act confers valuable right on the accused

under which provision the accused can make an application to the Court within a period of 10 days from the receipt of copy of the report of Public Analyst to get the samples of food analysed in the Central Food Laboratory and in case the sample is found by the said Central Food Laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied. This would constitute prejudice to the accused entitling him to acquittal but mere delay as such will not per se be fatal to the prosecution case even in cases where the sample continues to remain fit for analysis in spite of the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay. Therefore it must be shown that the delay has led to the denial of right conferred under Section 13 (2) and that depends on the facts of each case and violation of the time limit given in sub-rule (3) of Rule 7 by itself cannot be a ground for the prosecution case being thrown out (Emphasis supplied)."

27. I may quote with profit a very exhaustive decision rendered by the learned Single Judge of the Andhra Pradesh High Court on the subject in the case of M/s Hyderabad Beverages Private Limited etc. Vs. State of A.P. 2006 Criminal Law Journal 3988.

"70. In Ajit Prasad Ramakishan Singh (1972 Cri LJ 1026), the Supreme Court, following its earlier judgment in Sukhmal Gupta, held that it was wrong for Courts to decide, without any data, that the sample would decompose and become incapable of analysis and that no useful purpose would be served in sending the sample for analysis to the Director, when there was no evidence that the sample had so deteriorated at the time of service of summons as to be incapable of being analysed. In the absence of evidence, that the sample has so deteriorated as to be incapable of analysis, such a presumption would not be justified.

71. An enquiry, as to whether the sample has decomposed, whether it is fit or unfit for analysis etc., is a statutory function required to be discharged by the Central Food laboratory and not for this Court, in proceedings under Section 482, Cr.P.C. to presume that every case of delay in furnishing a copy of the Public Analyst's report, beyond the shelf life of the product, would either result in the sample becoming decomposed or cause prejudice to the accused.

72. As held by the Apex Court in Ajit Prasad Ramkishan Singh (1972 Cri LJ 1026), Sukhmal Gupta, Charanji Lal (1984 Cri LJ 15) and T. V. Usman and this Court in G. S. Prasad (2003 Cri LJ (NOC) 231) and Gangaiahnaidu Rama Krishna unless it is shown that the sample has been

rendered unfit for analysis and the reasons therefor are on account of the delay in sending the sample for analysis and thereby prejudice has been caused to the accused entitling them to acquittal, mere delay in furnishing the report of the public analyst to the accused would not, by itself, be fatal to the case of the prosecution.

73. As held in *T. V. Usman (AIR 1994 SC 1818)*, there is no time limit prescribed for launching prosecution. It is relevant to note that a time limit is prescribed, under Section 9-A of the P.F.A. Act, for sending the second sample for analysis to the Public Analyst, a time limit of 10 days was prescribed under Rule 9(j), prior to its omission with effect from 4-1-1977, for supplying a copy of the report of the public analyst, Rule 22 provides that the quantity of food to be sent for analysis must be as prescribed in the table to the rule and Rule 7(3) requires the Public Analyst to submit his report within 45 days. All these statutory provisions were held in *Tulsiram (1984 Cri LJ 1731)*, *Dalchand v. Municipal Corporation, Bhopal AIR 1983 SC 303 : (1983 Cri LJ 448)*, *State of Kerala v. Alassery Mohammed, (1978) 2 SCC 386 : (1978 Cri LJ 925)* and *T. V. Usman (AIR 1974 SC 1818)*, to be directory and not mandatory. When no time limit is prescribed under the Act for launching prosecution and certain statutory provisions and rules, wherein time-limit is prescribed, were held to be directory and not mandatory, it cannot be said that mere delay in furnishing a copy of the report of the public analyst to the accused, by itself and without any thing more, is fatal to the prosecution.

74. On what basis can Courts presume that expiry of the "best before" date or expiry of the shelf-life of the product would, by itself, and without anything more, result in rendering the sample unfit for analysis? The shelf life of products vary from one to the other. While in certain cases the shelf life may be as small as one week, in certain others the shelf life could be as long as a few years. Similarly, the delay in making available a copy of the report of the public analyst may also vary. The delay could range from a period of a few days, after the expiry of the shelf life or the "Best Before" date, to even a few years. Can the same yardstick be applied in all cases to hold that the delay in making available a copy of the public analyst report, beyond the shelf life of the product, has caused prejudice to the accused and denied him his valuable right under Section 13(2)? Even in cases where the report of the public analyst is made available within time, the accused may not exercise his right to have the sample sent for analysis to the Central Laboratory. In such cases, the report of the public analyst is required to be accepted. Can a different yardstick be applied to cases, where despite a copy of the report of the public analyst being furnished immediately after the shelf life of the product has expired and the accused does not exercise his right to have the sample sent for analysis to the Central Laboratory, to hold that delay by itself has caused prejudice to the accused? Answers, thereto, have necessarily to be in the negative.

75. *Negligence of officials in discharging their functions, and in not promptly furnishing a copy of the report of the public analyst to the accused, must not result in offenders involved in adulteration of the food/seed being permitted to go scot free, unless prejudice is established. Legitimate prosecution should not be scuttled on mere technicalities, in the absence of any proof of prejudice to the accused.*

76. *In Dalchand (1983 Cri LJ 448), the Supreme Court held thus :-*

".....It is well to remember that quite often many rules, though couched in language which appears to be imperative, are no more than mere instructions to those entrusted with the task of discharging statutory duties for public benefit. The negligence of those to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute....." (Emphasis supplied)

77. *Since the eventual test is one of prejudice, which is to be established, on the facts and circumstances of each case, by way of evidence adduced before the learned Magistrate, it is not for this Court, under Section 482, Cr.P.C. to infer or presume that even in case of delay, say of a few days, beyond the shelf life of the product, and in the absence of reasonable explanation for the delay in furnishing a copy of the report of the Public Analyst, the accused is prejudiced and his right, under Section 13(2) of the P.F.A. Act and Section 16(2) of the Seeds Act, is violated.*

78. *In exercise of its jurisdiction under Section 482, Cr.P.C. this Court does not take upon itself the task of examining the evidence or to record an independent finding that the delay in furnishing a copy of the public analyst's report has resulted in prejudice to the accused. Whether the delay is insignificant or inordinate, whether the delay is attributable to lapses of the prosecution in making available a copy of the public analyst's report, whether on account of the delay in making the report available, the right of the accused under Section 13(2) of the P.F.A. Act or Section 16(2) of the Seeds Act has been rendered illusory as the sample sent to the Central Laboratory is found unfit for analysis due to decomposition by passage of time or for any other reason attributed to lapses on the part of the prosecution, whether inordinate delay in sending the sample for analysis has, by passage of time, rendered the sample "adulterated" are all matters to be examined by the learned Magistrate, in the facts and circumstances of each case, on the basis of the evidence adduced. Delay, by itself and without anything more, cannot form the basis for the High Court, in*

exercise of its jurisdiction under Section 482, Cr.P.C. to quash the criminal proceedings."

28. The learned Single Judge in para 103 of the report summed up as under :-

103. 1. *Since the object and purpose of the PFA Act is to eliminate danger to human life and health from the sale of unwholesome articles of food, strict adherence to the PFA Act and the rules made thereunder is essential. In offences relating to food articles, strict liability is the rule.*

2. *The report of the public analyst, under Section 13 (1) of the PFA Act and Section 16(1) of the Seeds Act, forms the basis for institution of prosecution for adulteration offences. This report, prima facie, indicates that the accused have sold adulterated food/seed.*

3. *The option given for analysis to the Central Laboratory, is to enable them to ascertain the correctness or otherwise of the findings of the public analyst. This valuable right, under Section 13(2) of the PFA Act and Section 16(2) of Seeds Act, if denied, would cause prejudice to the accused.*

4. *Denial of the right of the accused, under Section 13(2) of the PFA Act and Section 16(2) of the Seeds Act, would arise only when the accused have applied to the Court to have the sample sent for analysis to the Central Laboratory. Failure to exercise this option or to make an application to the Court, requesting that the sample be sent for analysis to the Central Laboratory, would disentitle the accused from contending that they have been denied their right under Section 13(2) of the PFA Act and Section 16(2) of the Seeds Act. (Babulal Hargovindas (1971 Cri LJ 1075), Sukhmal Gupta, Jagdish Prasad, (1972 Cri LJ 1309), Ajit Prasad Ramkishan Singh (1972 Cri LJ 1026), Prabhu (1994 AIR SCW 2649), Tulsiram (1984 Cri LJ 1731), G. S. Prasad (2003 Cri LJ NOC 231), and Gangaiahnaidu Rama Krishna.*

5. *"Best Before date", under Rule 32 of the PFA Rules, merely requires the manufacturer to indicate the period during which the product would remain fully marketable and retain its specific qualities. Explanation VIII (i) thereunder provides that beyond the "Best Before date", the food may still be perfectly satisfactory.*

6. *Expiry of the "Best Before" date or the shelf life of the product would only enable a manufacturer to disclaim liability regarding the marketability and the specific qualities of the product. Expiry of the shelf*

life would not automatically render the sample unfit for analysis.

7. *The "Best Before" date would vary from one article to another. Similarly the extent of delay in furnishing a copy of the report of the public analyst to the accused would vary from one case to another.*

8. *Rule 4(5) of the Prevention of Food Adulteration Rules, read with Form II of Appendix-A thereof, requires the Central Laboratory to certify as to whether the sample sent to it for analysis is fit for analysis or not and in case it is found unfit for analysis to certify the reasons therefor.*

9. *The PFA Act and the Rules made thereunder cast a duty on the Central Laboratory to certify whether or not the sample is fit for analysis.*

10. *Whether the sample is fit for analysis or has decomposed to such an extent as to render it incapable of analysis are all matters to be examined by the Central Laboratory.*

11. *It is only if the Central Laboratory certifies that the sample is unfit for analysis and this has resulted due to the delay on the part of the prosecution to furnish a copy of the report of the public analyst to the accused, can the accused be said to have suffered prejudice. (Ajit Prasad Ramkishan Singh (1972 Cri LJ 1026), Sukhmal Gupta, Charanji Lal (1984 Cri LJ 15), T. V. Usman (AIR 1994 SC 1818), G. S. Prasad (2003 Cri LJ NOC 231) and Gangaiahnaidu Ramakrishna).*

12. *If the sample has not been sent for analysis to the Central Laboratory and the Central Laboratory has not certified that the sample has decomposed, rendering it unfit for analysis, mere delay in furnishing the report of the public analyst to the accused cannot, by itself, be said to have caused prejudice to the accused.*

13. *Power under Section 482, Cr. P. C. is to be exercised sparingly, with circumspection, and in the rarest of rare cases. This power is not to be used to stifle legitimate prosecution. Inherent powers under Section 482, Cr. P. C. do not confer arbitrary jurisdiction on the High Court to act according to whim or caprice.*

14. *In proceedings under Section 482, Cr. P. C. the High Court does not take upon itself the task of appreciating the evidence on record or to record an independent finding that the delay in furnishing a copy of the report of the public analyst has resulted in prejudice to the accused.*

15. *Whether delay, in furnishing a copy of the report of the public analyst, has resulted in prejudice to the accused and whether the prosecution has furnished a satisfactory explanation for the delay, are all*

matters of evidence, to be examined by the trial Court and not for this Court to infer in proceedings under Section 482, Cr. P.C.

16. *Section 24(3) and (4) of the Insecticides Act is in pari materia with the provisions of Section 15(3) and (4) of the Drugs and Cosmetics Act. Under Section 24(3) of the Insecticides Act and Section 25(3) of the Drugs and Cosmetics Act, on receipt of the report of the public analyst the person from whom the sample has been taken, or any other person concerned, is required, within 28 days of receipt of a copy of the report, to notify in writing, the Inspector or the Court, of his intention to adduce evidence in contraversion of the report.*

17. *In National Organics Chemical Industries Limited, Unique Farmaid (P) Ltd. (2000 Cri LJ 2692), and Gupta Chemicals, the accused had, under Section 24(3) of the Insecticides Act, notified their intention of adducing evidence in contraversion of the report of the public analyst.*

18. *In Brijlal Mittal (1998 Cri LJ 3287) the Supreme Court held that, in cases where the accused has not intimated his intention to adduce evidence in contraversion of the report of the public analyst the delay, in filing the complaint after the expiry of the shelf life of the product, could not be made a ground to quash the prosecution.*

19. *In cases where the accused have not even requested or made an application to the Court to have the sample sent for analysis to the Central Laboratory, delay in furnishing a copy of the report of the public analyst, beyond the shelf life of the product, cannot be made a ground to quash the prosecution.*

20. *There is no provision similar to Section 24(3) and (4) of the Insecticides Act, either under the Prevention of Food Adulteration Act or the Seeds Act, requiring the accused to notify his intention to adduce evidence in contraversion of the report of the public analyst.*

21. *Where two statutes are not in pari materia, the decision rendered on a provision in one enactment would not constitute a binding precedent to interpret a provision in another enactment. (Babu Khan (AIR 2001 SC 1740) and N. R. Vairamani (AIR 2004 SC 4778))."*

29. I am in respectful agreement with the view taken by the learned Single Judge of the Andhra Pradesh High Court and I propose to follow the same. The learned Single Judge also considered the provisions of the Insecticides Act as also relied upon in the present case by Mr. Raju, the learned advocate appearing for the accused, where it has been held that the provisions of the P.F.A. and the

Seeds Act are not in *pari-materia* with the provisions of the Insecticides Act.

30. The reliance on the decision of the Supreme Court in the case of Girishbhai (supra) is also of no avail to the accused. The decision was rendered in the facts of that case. The most important distinguishing feature of that case is that since the report had been served on the appellant only on 17th July, 1989 by which time the sample of curd had deteriorated. The Court took the view that any further examination of such sample had become meaningless, thereby depriving of the valuable right conferred upon him by Section 13(2) of the Act.

31. As noted above, in the present case the right had been exercised and the Central Food Laboratory found the sample to be fit for analysis and only thereafter the Central Food Laboratory certified that the sample was adulterated.

32. It appears that the applicants of the Criminal Misc. Application No. 1822 of 2002 had filed an application for discharge in the Court of the learned Magistrate, vide application Exh.67. The discharge application was ordered to be rejected vide order dated 21.4.2001. Being dissatisfied, the applicants had challenged the order before the Sessions Court, by filing Criminal Revision Application No. 56/01. The revision application was also ordered to be rejected vide order dated 28.1.2002. Such order passed by the Revisional Court was never challenged before this Court. However, straight way the present application was filed, praying for quashing of the criminal proceedings.

33. In the result, both these petitions fail and are ordered to be rejected. Rule stands discharged. Ad-interim relief granted earlier stands vacated forthwith.

(J.B.PARDIWALA, J.)

Mohandas