

GAHC010218312013



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./323/2013

BANWARILAL JALAN
S/O LT. MAHADEV PRASAD JALAN, S S ROAD, HAIBORGAON, NAGAON.

VERSUS

THE STATE OF ASSAM and ANR.

2:INSPECTOR

FOOD AND CIVIL SUPPLIES
NAGAON
ASSAM

Advocate for the Petitioner : MR.G N SAHEWALLA

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

JUDGMENT

Date : 19-07-2024

1. Heard Mr. G.N. Sahewalla, learned Sr. Counsel assisted by Ms. K. Sarma, learned counsel for the petitioner. Also heard Mr. K.K. Das, learned Addl. P.P. for the State respondents.
2. This revision petition has been filed under Section 379 read with Section 401 of the Code of Criminal Procedure, 1973 assailing the judgment and order dated 03.07.2013 passed by the learned Addl. Sessions Judge, Nagaon in Criminal Appeal No.2(N)/2011, dismissing the appeal and upholding the judgment and order dated 22.12.2010 passed by the learned Chief Judicial Magistrate in C.R. Case No.3531/2008, convicting the petitioner under Section 7 read with Sections 16/17 of the Prevention of Food Adulteration Act, 1954 (herein referred to as the 'Act, 1954') and sentencing him to suffer R.I. for 6 months and to pay fine of Rs.1000/-
3. The facts of the case are as follows-

The respondent No.2, Inspector of Food & Civil Supplies, Nagaon filed an offence report dated 22.12.2008 before the Chief Judicial Magistrate, Nagaon stating, *inter alia*, that on 20.11.2008, he carried out a combined raid at M/s Assam Oil and Atta Mill situated at S.S. Road, Haiborgaon, Nagaon in response to a direction from the Joint Director of Health Services, Nagaon regarding a reported case of adulteration and a number of police personnel including the Officer-in-Charge, Sadar P.S. went with him. After inspecting the mill, mustard

oil having been found to have been kept in insanitary condition in open drum, he collected sample from the said mustard oil for analysis. Thereafter, he requested Md. Muktar Ahmed, Sub Inspector of Haiborgaon T.O.P. and Md. Fakrul Islam, Inspector of FCS & CA, Nagaon to remain as witnesses and thereafter, he took two samples, one from a sealed tin and another from open drum and the samples were packed in accordance with law and sent to the Public Analyst and on receipt of the Public Analyst report regarding adulteration of the samples, he obtained the sanction of the authority concerned and thereafter, filed an offence report on the basis of which, C.R. Case No.3531/2008 was registered. Thereafter, charges under Section 7 read with Sections 16/17 of the Act, 1954 were framed and trial commenced. After conclusion of the trial and examination of the witnesses, the learned Chief Judicial Magistrate, Nagaon by judgment and order dated 22.12.2010 convicted the petitioner under Section 7 read with Sections 16/17 of the Act, 1954, and sentenced him to suffer R.I. for 6(six) months with fine of Rs.1000/-.

4. Aggrieved by the said judgment, the petitioner preferred an appeal before the learned Sessions Judge, Nagaon, which was registered as Criminal Appeal No. 2(N)/2011.

5. Thereafter, the aforesaid appeal was heard and the Appellate Court by judgment and order dated 03.07.2013 dismissed the appeal filed by the petitioner. Aggrieved by the aforesaid orders, the present revision petition has been filed.

6. Mr. G.N. Sahewalla, learned Sr. Counsel submits that under the provisions of sub-Section 7 of Section 10 of the Act, 1954, it is mandatory for the Food

Inspector to call for independent witnesses before taking any action under the provisions of Section 10 of the Act, 1954. In support of the aforesaid submission, he has cited the decision of the Apex Court in the case of ***Ram Labhaya Vs. Delhi Municipality***, reported in ***AIR 1974 SC at Page 789*** and the decision of this Court in the case of ***State of Assam Vs. Sumermal Jain***, reported in ***(1990) Volume 2 GLR at Page 99***. He further submits that it is evident from the evidence of the Food Inspector (PW1) and Md. Fakrul Islam, Inspector of FCS & CA, Nagaon (PW2) that after inspection, PW 1 requested one Md. Muktar Ahmed, who is the Sub Inspector of Haiborgaon T.O.P. and PW 2 who is the Inspector of FCS & CA, Nagaon to remain as witness while collecting samples/ seizure. He accordingly submits that it is apparent that PW1 has not made any endeavour to call for independent witnesses despite such witnesses being available in the location/neighbourhood and accordingly, non compliance of such mandatory prescription has vitiated the whole trial and therefore, the conviction is erroneous.

7. Mr. K.K. Das, learned Addl. P.P., on the other hand, submits that since the two persons who had accompanied the PW1 during inspection, one being from the Police Department and the other from the Department of Food, Civil Supplies and Consumer Affairs, the procedure prescribed under sub-Section 7 of Section 10 of the said Act, 1954, stands fully complied and therefore, the conviction ought not to be interfered with.

8. I have heard the parties at length and perused the materials available on record.

9. Section 10 of the said Act, 1954 is reproduced hereunder for ready

reference-

“10. Powers of food inspectors- *“(1) A food inspector shall have power-*

*(a) to take samples of any article of food from—
(i) any person selling such article;
(ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee;*

(iii) a consignee after delivery of any such article to him; and

(b) to send such sample for analysis to the public analyst for the local area within which such sample has been taken;

[(c) with the previous approval of the Local (Health) Authority having jurisdiction in the local area concerned, or with the previous approval of the Food (Health) Authority, to prohibit the sale of any article of food in the interest of public health.]

[Explanation.—For the purposes of sub-clause (iii) of clause (a), “consignee” does not include a person who purchases or receives any article of food for his own consumption.]

[(2) Any food inspector may enter and inspect any place where any article of food is manufactured, or stored for sale, or stored for the manufacture of any other article of food for sale, or exposed or exhibited for sale or where any adulterant is manufactured or kept, and take samples of such article of food or adulterant for analysis:

Provided that no sample of any article of food, being primary food, shall be taken under this sub-section if it is not intended for sale as such food.]

(3) Where any sample is taken under clause (a) of sub-section (1) or sub-section (2), its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

(4) If any article intended for food appears to any food inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe

custody of the vendor such article in order that it may be dealt with as hereinafter provided 2[and he shall, in either case, take a sample of such article and submit the same for analysis to a public analyst]:

[Provided that where the food inspector keeps such article in the safe custody of the vendor he may require the vendor to execute a bond for a sum of money equal to the value of such article with one or more sureties as the food inspector deems fit and the vendor shall execute the bond accordingly.]

[(4A) Where any article of food seized under sub-section (4) is of a perishable nature and the Local (Health) Authority is satisfied that such article of food is so deteriorated that it is unfit for human consumption, the said Authority may, after giving notice in writing to the vendor, cause the same to be destroyed.]

(5) The power conferred by this section includes power to break open any package in which any article of food may be contained or to break open the door of any premises where any article of food may be kept for sale:

[Provided that the power to break open the package or door shall be exercised only after the owner or any other person in charge of the package or, as the case may be, in occupation of the premises, if he is present therein, refuses to open the package or door on being called upon to do so, and in either case after recording the reasons for doing so:]

Provided further that the food inspector shall, in exercising the powers of entry upon, and inspection of any place under this section, follow, as far as may be, the provisions of the 6[Code of Criminal Procedure, 1973 (2 of 1974)] relating to the search or inspection of a place by a police officer executing a search warrant issued under that Code.

(6) [Any adulterant found in the possession of a manufacturer or distributor of, or dealer in, any article of food or in any of the premises occupied by him as such] and for the possession of which he is unable to account to the satisfaction of the food inspector, [and any books of account or other

documents found in his possession or control and which would be useful for, or relevant to, any investigation or proceeding under this Act, may be seized by the food inspector] and 3[a sample of such adulterant] submitted for analysis to a public analyst:

[Provided that no such books of account or other documents shall be seized by the food inspector except with the previous approval of the authority to which he is officially subordinate.]

(7) Where the food inspector takes any action under clause (a) of sub-section (1), sub-section (2), sub-section (4) or sub-section (6), he shall 9[call one or more persons to be present at the time when such action is taken and take his or their signatures].

[(7A) Where any books of account or other documents are seized under sub-section (6), the food inspector shall within a period not exceeding thirty days from the date of seizure, return the same to the person from whom they were seized after copies thereof or extracts therefrom as certified by that person in such manner as may be prescribed have been taken:

Provided that where such person refuses to so certify, and a prosecution has been instituted against him under this Act, such books of account or other documents shall be returned to him only after copies thereof or extracts therefrom as certified by the court have been taken.

(7B) When any adulterant is seized under sub-section (6), the burden of proving that such adulterant is not meant for purposes of adulteration shall be on the person from whose possession such adulterant was seized.]

(8) Any food inspector may exercise the powers of a police officer 10[under section 42 of the Code of Criminal Procedure, 1973 (2 of 1974)] for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or an article of food is seized.

(9) Any food inspector exercising powers under this Act or under the rules made thereunder who—

(a) vexatiously and without any reasonable grounds of suspicion seizes any article of food 11[or adulterant]; or

(b) commits any other act to the injury of any person without having reason to believe that such act is necessary for the execution of his duty,

shall be guilty of an offence under this Act and shall be punishable for such offence [with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees].”

10. Reading of the aforesaid sub-Section 7 of Section 10 of the Act, 1954, indicates that when a Food Inspector conducts inspection and takes samples of any article or food into custody for analysis, he has to call one or more persons to be present at such time.

11. Pertinent that the Apex Court in the case of ***Ram Labhaya(supra)*** held that the one or more persons mentioned in sub-Section 7 of Section 10 of the Act, 1954, must mean one or more independent persons. Paragraph 3, 4, 5 and 6 of the aforesaid judgment of the Apex Court are reproduced hereunder for ready reference-

“3. Great reliance was placed by counsel for the appellant of the circumstance that as required by Section 10(7) of the Act the Food Inspector did not take the sample in the presence of independent persons. It is urged that Section 10(7) is mandatory and its contravention would vitiate the conviction.

4. Section 10(7) provides:

“Where the Food Inspector takes any action under clause (a) of sub-section (1), sub-section (2), sub-section (4) or sub-section (6), he shall, call one or more persons to be present at the time when such action is taken and take his or their signatures.”

There can be no doubt that “one or more persons” must mean one or more independent persons. The legislative history of sub-section (7) further shows

that at the least, the Food Inspector ought to try and secure the presence of one or more independent persons when he takes action under any of the provisions mentioned in the sub-section. Prior to its amendment by Act 49 of 1964, sub-section (7) ran thus:

“Where the Food Inspector takes any action under clause (a) of sub-section (1) ... he shall, as far as possible call not less than two persons to be present at the time when such action is taken and take their signatures.”

By the amendment of 1964, the words "as far as possible" were deleted. This deletion naturally lends plausibility to the contention that the provisions of Section 10(7) are mandatory and it has been so held in Food Inspector, Corporation of Calicut v. Vincent [ILR (1966) 2 Ker 551] and Ram Sarup Tara Chand v. State [AIR 1965 Punj 366 : 1965 (2) Cri LJ 406 : 67 Punj LR 425] .

5. *We are of the opinion, particularly in view of the legislative history of Section 10(7), that while taking action under any of the provisions mentioned in the sub-section, the Food Inspector must call one or more independent persons to be present at the time when such action is taken. We are, however, unable to agree that regardless of all circumstances, the non-presence of one or more independent persons at the relevant time would vitiate the trial or conviction. The obligation which Section 10(7) casts on the Food Inspector is to "call" one or more persons to be present when he takes action. The facts in the instant case show that the Food Inspector did call the neighbouring shopkeepers to witness the taking of the sample but none was willing to cooperate. He could not certainly compel their presence. In such circumstances, the prosecution was relieved of its obligation to cite independent witnesses. In Babu Lal Hargovindas v. State of Gujarat [(1971) 1 SCC 767 : 1971 SCC (Cri) 337 : 1971 Supp SCR 53] it was held by this Court after noticing that Section 10(7) was amended in 1964, that non-compliance with it would not vitiate the trial and since the Food Inspector was not in the position of an accomplice his evidence alone, if believed, can sustain the conviction. The Court observed that this ought not to be understood as minimising the need to comply with the salutary provision in Section 10(7) which was enacted as a safeguard against possible allegations of excesses or unfair practices by the Food Inspector.*

6. *As stated earlier the Food Inspector was unable to secure the presence of independent persons and was therefore driven to take sample in presence of the members of his staff only. It is easy enough to understand that shopkeepers may feel bound by fraternal ties but no court can countenance a conspiracy to keep out*

independent witnesses in a bid of defeat the working laws."

12. Pertinent also that this Court in the case of ***Sumermal Jain(supra)***, while following the aforesaid decision of the Apex Court, held that sub-Section 7 of Section 10 of the Act, 1954, is mandatory in so far as it relates to the duty of the Food Inspector to call one or more independent persons to be present at the time of taking samples etc. Paragraph 8 of the aforesaid judgment is reproduced herein below for ready reference-

"8. I may now deal with the next ground of acquittal that is Violation of Section 10(7) of the Act. The contention is that the Food Inspector did not call one or more independent persons to be present at the time of taking the sample which is a mandatory requirement of Section 10(7) of the Act. Section 10 deals with the power of the food Inspector in the matter of taking sample, of articles of food for analysis. Sub-section (7) thereof provides:

(7) Where the food inspector takes any action under Clause (a) of Sub-section (1), Sub-section (2), Sub-section (4) or Sub-section (6), he shall call one or more persons to be present as the time when such action is taken and take his or their signatures.

This provision came up for interpretation before the Supreme Court in Shri Ram Labhaya Vs. Municipal Corporation of Delhi and Another, wherein on Consideration of the language of this provision in the background of its legislative history, it was observed that there could be no doubt that "one or more persons" must mean one or more independent persons. It was held:

We are of the opinion, particularly in view of the legislative history of Section, 10(7), that while raking action under any of the provisions mentioned in the sub-section, the Food Inspector must call one or more independent persons to present at the time when such action is taken.

The Supreme Court, however, did not agree with the general proposition that regardless of all circumstances, the non-presence of one or more independent persons at the relevant time would vitiate the trial conviction. On the facts of that case, it was observed.

The obligation which Section 10(7) casts on the Food Inspector is to "call" one

or more persons to be present when he takes action. The facts in the instant case show that the Food Inspector did call the neighboring shop-keepers to witness the taking of the sample but none was willing to co-operate. He could not certainly compel their presence. In such circumstances, the prosecution was relieved of its obligation to cite independent witnesses.

The Supreme Court also referred to its earlier decision in [Mansoor and Others Vs. State of Madhya Pradesh](#), wherein it was held that non-compliance with Section 10(7) would not vitiate the trial and since the Food inspector was not in the position of an accomplice his evidence, alone, if believed, can sustain the conviction. Referring to the object and purpose of Section 10(7), it was observed in Babulal Hagovindas Supra:

These provision are enacted to safeguard against any possible allegations of excesses or resort to unfair means either by the police Officers or by the Food Inspectors under the Act This being the object it is in the interests of the prosecuting authorities concerned to comply with the provisions of the Act, the non-compliance of which may in some cases result in their testimony being rejected. While this is so we are not to be understood as in any way minimising the need to comply with the aforesaid salutary provisions.

(Emphasis supplied)

From these observations of the Supreme Court it is clear that the object of Section 10(7) is safeguarding the interest of the person from whom the sample is taken by the Food Inspector for analysis. The object of the legislature in this matter appears to be that the Courts may not have to rely solely on the evidence of the Food Inspector but may have also the statements and evidence of independent and impartial persons as to the taking of the sample and the circumstances under which it was taken. It is intended to obtain as reliable evidence as possible and exclude the possibility of any concoction or malpractice of any kind. It is manifest that the object of this provision would be defeated if the Inspector while visiting the shop carried with him his own peon or any other subordinate to witness the taking of the sample and takes the sample in his presence even without "calling" an independent witness. From reading of Section 10(7) of the Act, it is clear that the provision is mandatory in so far as relates to the duty of the Food Inspector to "call" one or more independent persons to be present at the time of taking the sample etc. Therefore, the minimum that he has to do is to satisfy the Court that all sincere efforts had

been made by him to secure the (sic) of one or more independent witnesses and if he fails to do so, that Court would be careful, cautious and circumspect in dealing with his evidence in regard to the taking of sample etc. The requirement of calling one or more independent witness is not an idle formed but an important safeguard to the citizens. This salutary requirement should be faithfully complied with. It must be remembered that though non-compliance with this requirement might not affect the legality of the action as such, it would have a serious effect on the weight of the evidence. It may weaken and sometimes even destroy the evidence."

13. Reading of the aforesaid decisions abundantly clarifies that it is mandatory for the Food Inspector to call for independent witnesses before taking samples etc. Therefore, it is imperative for the Food Inspector to make an endeavour to call for independent witnesses before taking samples etc. for analysis. Non calling of independent witnesses when available will create doubts, which will seriously impact the case of the prosecution, thereby vitiating the trial.

14. In the present case, it appears that PW 1 during examination deposed that during inspection he observed that the stock of mustard oil was kept in insanitary condition in open drums and upon suspicion of contamination as well as adulteration, he expressed his intention of collecting samples of such mustard oil and accordingly, he requested Md. Muktar Ahmed, Sub Inspector of Haiborgaon T.O.P. and Md. Fakrul Islam, Inspector of FCS & CA, Nagaon (PW 2), who accompanied him during such inspection in the mill to remain as witnesses of sampling and seizure works.

15. PW 2 during examination deposed that he went to the place of occurrence lately and that initially, everybody together inspected the articles and thereafter, seized the same and the bottles were of plastic. He further deposed that he does not remember how many samples were taken and further does not

remember how the samples were taken and furthermore, he does not remember as to how the samples were first kept.

16. Md. Muktar Ahmed, Sub Inspector of Haiborgaon T.O.P., who is said to be one of the other witnesses for the subject sampling and seizure work was not examined by the prosecution.

17. The Appellate Court upon appreciating the available evidence came to a finding that there was no lapse committed by the PW 1 at the time of taking samples and as such, was of the view that the Trial Court rightly held that no prejudice was caused to the petitioner while samples were taken by the PW 1(Food Inspector).

18. On perusal of the judgment of the Trial Court, it appears that the Trial Court after taking into consideration the decision of this Court in the case of ***Golap Chand Prasad Gupta and Anr. Vs. State of Assam***, reported in ***2004 (3) GLT 206*** held that the evidence of a Food Inspector has, however, to be tested on its own merits and if found acceptable, there is no legal impediment on the part of the Court to rely on the same. Accordingly, the learned Trial Court held that the prosecution has successfully established the evidence against the accused and thereafter, convicted the accused for the offence alleged.

19. What transpires from the above is that there is no evidence whatsoever to show that the Food Inspector called for any independent witnesses before taking samples of the subject articles. In fact, it is established that the said Food Inspector was accompanied by one Police Officer, who was not examined in the matter and one Inspector of FCS and Consumer Affairs, Nagaon (PW 2), who

were requested to remain as witnesses to the collection of sample/seizure. Though Mr. K.K. Das, learned Addl. P.P. has argued before this Court that the said two officers present along with the Food Inspector shows that the provisions of sub-Section 7 of Section 10 of the Act, 1954 is complied, the same appears to be a fallacy.

20. Independent witnesses merely means independent of sources which are likely to be tainted. Since the two Officers are Officers of the State Government i.e. of the same source, they cannot be ruled out likely to be tainted and therefore, they do not fall within the ambit of "Independent Witnesses" as contemplated under sub-Section 7 of Section 10 of the Act, 1954. Reference in this regard is made to the decision of the Apex Court in ***Rameshwar vs. State of Rajasthan*** reported in ***(1951) SCC Online SC 83***. Therefore, in the present case, the said two Officers who were present while taking the samples of the subject articles by the PW1 (Food Inspector) are not independent witnesses.

21. In terms of the ratio of the decision of the Apex Court in the case of ***Ram Labhaya(supra)*** and the decision of this Court in the case of ***Sumermal Jain(supra)***, the mandate of sub-Section 7 of Section 10 of the Act, 1954, requires the Food Inspector to make an endeavour to call for independent witnesses. In the present case, the Food Inspector could have called the neighbouring shop keepers to witness the taking of the samples, but the materials available on record indicates that the Food Inspector did not even made an endeavour to have their presence. Therefore, there is a gross contravention and violation of the mandatory safeguards of taking samples as provided under sub-Section 7 of Section 10 of the Act, 1954.

22. Pertinent that in the case of ***Golap Chand Prasad Gupta (supra)***,

which was relied upon by the Trial Court, it appears that in that case there were evidence to show that the Food Inspector called some nearby persons of the locality to witness the taking of samples of food article in question, but none of them agreed to become witnesses. Therefore, the aforesaid decision is of no relevance to the facts of the instant case.

23. The next question that falls for determination is whether non-fulfilment of the mandatory provisions contained in sub- Section 7 of Section 10 of the Act, 1954 is fatal to the prosecution case.

24. Pertinent to refer to the decision of the Punjab and Haryana High Court in ***Amar Singh @ Kabu vs. State of Haryana***, reported in ***2008 4 CriCC 653***. Paragraph 9 of the aforesaid judgment is reproduced hereunder for ready reference:

“9. The counsel for the appellant, at the very outset, submitted that no independent witness was joined by the Investigating Officer, despite availability, at the time of effecting the alleged recovery from the accused. He further contended that even no effort was made, by the Investigating Officer to join an independent witness, as a result whereof, a doubt was cast on the prosecution case. The submission of the counsel for the appellant, in this regard appears to be correct. Yoginder Singh Nehra, DSP, PW5, stated during the course of cross-examination that the public witnesses were tried to be joined by the Investigating Officer, but they showed their unwillingness. He further stated that the names of the public witnesses who refused to join the police party, were not recorded and no action was taken against them. Varinder Singh, ASI during the course of cross-examination, stated that there were several shops near the police station, Jhansa. The shops were open at that time. He further stated that the Investigating Officer did not join any public witness, during the course of investigation, from those shops. Sham Lal, Sub Inspector, PW7, during the course of cross-examination, stated that there were several shops, in front of Police Station, Jhansa. He further stated that there was also a bus stop, in front of the Gate of Police Station, Jhansa. He further stated that he did not join any independent witness, from the nearby shops. From the conjoint reading of the evidence of the aforesaid witnesses, one thing becomes very much clear, that no genuine, sincere and real

effort was made to join an independent witness. Had any effort been made to join an independent witness and he had refused to join the investigation, his name would have been recorded in the ruqa or other documents. However, this factum was not recorded in any document. Since the minimum stringent punishment, is provided for the offences, punishable under the Act, and according to the provisions of Section 51 of the Act, the provisions of the Code of Criminal Procedure, relating to search, seizure and arrest shall apply to the extent the same are not inconsistent with the provisions of the Act. It was imperative, on the part of the Investigating Officer, to join an independent witness, at the time of the alleged search and seizure or at least to make a genuine, sincere and real effort to join such a witness. The search and seizure before an independent witness, would have imparted much more authenticity, and creditworthiness to the proceedings, so conducted. It would have also verily strengthened the prosecution case. The said safeguard was also intended to avoid criticism of arbitrary and high handed action, against the authorized Officer. In other words, the Legislature, in its wisdom, considered it necessary to provide such a statutory safeguard, to lend credibility to the procedure, relating to search and seizure, keeping in view the severe punishment, prescribed under the Act. That being so, it was imperative for the authorized Officer to follow the reasonable, fair and just procedure, as envisaged by the statute, and failure to do so, must be viewed with suspicion. The legitimacy of judicial procedure, may come under cloud, if the Court is seen to condone acts of violation of statutory safeguards, committed by the authorized officer, during search and seizure operation and may also undermine respect of law. That cannot be permitted. In the instant case, the alleged recovery being minor, now falling within the ambit of non-commercial quantity and chances of plantation of the same, against the accused, could not be ruled out, it became the bounden duty of the Investigating Officer, to observe all the safeguards, provided under the Act, at the time of search and seizure. It is, no doubt true that in the absence of corroboration, through an independent source, the evidence of the official witnesses, cannot be disbelieved and distrusted, blind-foldedly, if the same is found to be creditworthy. However when the evidence of the official witnesses is found to be not cogent, convincing, reliable and trustworthy, then on account of non-corroboration thereof, through an independent source, certainly a doubt is cast, on the prosecution story. The evidence of the official witnesses, in the instant case, does not inspire confidence, in the mind of the Court. In this view of the matter, non-corroboration of the evidence of official witnesses, through an independent source, certainly makes the case of the prosecution suspect. In *State of Punjab v. Bhupinder Singh*, 2001(1) RCR (Crl.) 356 a Division Bench of this Court, held the case of the prosecution, to be doubtful, on account of non-joining of an independent witness, though the recovery was effected, from a busy locality. In *State of Punjab v. Ram Chand*, 2001(1) RCR(Crl.) 817, a Division Bench of this Court, held that it was imperative to join an independent

witness, to vouchsafe the fair investigation. On account of non-joining of an independent witness, it was held that the accused was entitled to be given the benefit of doubt. The principle of law laid down, in the aforesaid authorities, is fully applicable, to the facts of the instant case. On account of non-joining of an independent witness, at the time of the alleged search and seizure, the case of the prosecution, became highly doubtful. The trial Court failed to take into consideration, this aspect of the matter, as a result whereof, miscarriage of justice occasioned."

25. Thus, in the present case, non-calling of independent witnesses, at the time of taking samples, despite the same being available in the place of occasion, makes the case of the prosecution highly doubtful.

26. Pertinent to refer to the decision of the Apex Court in the case of ***Chunna Alias Mehtab vs. State of M.P.*** with ***Muhammad Sharif vs. State of M.P.***, reported in ***(2002) 9 SCC 363***, wherein the Apex Court has held that non-compliance with the mandatory provisions of the statute vitiates the trial. Paragraph 2 of the aforesaid judgment is reproduced hereunder for ready reference:

"2. It is not in dispute that the entry in search of the premises in question took place between sunset and sunrise at 3.00 a.m. This being the position, the proviso to Section 42 of the Narcotic Drugs and Psychotropic Substances Act was applicable and it is admitted that before the entry for effecting search of the building neither any search warrant or authorisation was obtained nor were the grounds for possible plea that if opportunity for obtaining search warrant or authorisation is accorded the evidence will escape indicated. In other words, there has been a non-compliance with the provisions of the proviso to Section 42 and therefore, the trial stood vitiated."

27. In the present case, the mandatory provisions of law in so far as it relates to the duty of the Food Inspector to call one or more independent person to be present at the time of taking the samples, etc. as provided under sub-section 7 of Section 10 of the Act, 1954, has not been followed. Thus, non compliance of the said mandatory provisions vitiates the entire trial.

28. As such, the conviction order as well as the Appellate Court's order

upholding the said conviction is palpably erroneous and manifestly illegal.

29. Resultantly, the judgment and order dated 03.07.2013 passed by the learned Addl. Sessions Judge, Nagaon in Criminal Appeal No.2(N)/2011, and the judgment and order, dated 22.12.2010 passed by the Chief Judicial Magistrate in C.R. Case No.3531/2008, convicting the petitioner under Section 7 read with Section 16/17 of the Act, 1954 are set aside and quashed. Bail bonds executed shall accordingly stand discharged.

30. The revision petition stands accordingly allowed and disposed of.

JUDGE

Comparing Assistant