

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 150 of 2000

The Calcutta Municipal Corporation

-Versus-

Asit Kumar Dutta

For the Appellant : **Ms. Sreyashee Biswas,
Ms. Puja Goswami.**

For the State : **Mr. Soumajit Chatterjee.**

Hearing concluded on : **17.09.2026**

Judgment On : **17.09.2026**

(In Court:-)

Prasenjit Biswas, J:-

1. The instant appeal has been filed by the appellant/Calcutta Municipal Corporation challenging the impugned judgment and order of acquittal dated 05.05.1998 passed by the learned Trial Court in connection with Case No. 40D of 1991.

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2. By passing the impugned judgment the accused was acquitted from the charge under Sections 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act.
3. The prosecution case, in brief, is that-

“On 28.10.1991 at about 1:30 p.m., Food Inspector, Sri D.L. Chatterjee (PW2), visited the spices shop of the respondent/accused, carrying on business under the name and style of “Anil Trading”, situated at 234/P/2, Maharshi Debendra Road, Calcutta-700007. At the time of inspection, the respondent disclosed himself to be the proprietor-cum-person-in-charge of the said shop. During such inspection, PW2 noticed approximately 25 kilograms of whole turmeric (Haldi) stored in a jute bag and exposed for sale for human consumption. PW2 suspected that the said article might not conform to the prescribed standard and, therefore, decided to draw a sample in accordance with the provisions of the Prevention of Food Adulteration Act and the Rules framed there under. For the purpose of ensuring the presence of an independent witness, PW4, Suresh Chandra Paul, was called to the shop. In his presence, PW2 served the requisite notice upon the respondent/accused and thereafter purchased 450 grams of whole turmeric from the stock for the purpose of analysis, upon payment of

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Rs.11.70 to the respondent. Thereafter, the sample so collected was divided into three equal parts, each of which was placed in a clean, dry and empty glass phial. The phials were thereafter properly corked and secured in accordance with the prescribed procedure. One part of the sample was forwarded to the Public Analyst for chemical examination. Upon analysis, the Public Analyst submitted his report indicating that the sample of whole turmeric failed to conform to the prescribed standard in respect of insect-damaged matter and was, accordingly, reported to be adulterated. Following receipt of the Public Analyst's report, the relevant papers and materials were placed before the competent authority for obtaining the requisite sanction for prosecution. Upon consideration of the materials, the competent authority accorded sanction to prosecute the respondent/accused. Consequently, a complaint was lodged against him and, upon cognizance being taken, the case proceeded against the respondent for the alleged commission of the offence punishable under Section 16(1)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954.”

- 4.** In support of its case, the prosecution examined four witnesses and relied upon a number of documents which were duly marked as exhibits. The respondent/accused, on the

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other hand, examined one witness, namely DW1, in support of his defence.

- 5.** Assailing the judgment and order of acquittal, Ms. Sreyashee Biswas, learned Advocate appearing for the appellant, submits that the learned Trial Court fell into serious error in acquitting the respondent/accused and the impugned judgment was rendered without proper appreciation of the oral and documentary evidence available on record. According to her, the evidence of PW2, read with the contemporaneous documents and the report of the Public Analyst, establishes the manner in which the sample was collected and the fact that the article kept in the shop was intended for sale for human consumption.
- 6.** It is further submitted that the Public Analyst's report constitutes a material piece of evidence in the prosecution case and that the analysis clearly records that the sample failed to conform to the prescribed standard with regard to insect-damaged matter and was therefore adulterated. Learned Advocate submits that the said report was not effectively challenged by the respondent/accused in accordance with the procedure contemplated under the statute. Although the respondent had the statutory opportunity to avail himself of the safeguards provided by law, including seeking appropriate action in relation to the sample

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and its analysis, no such step was taken. It is, therefore, contended that, in the absence of any substantive material impeaching the correctness of the Public Analyst's report, the learned Trial Court ought not to have discarded its evidentiary value without assigning cogent and legally sustainable reasons.

- 7.** Learned Advocate further submits that there is no material on record demonstrating that the Public Analyst's report was erroneous, unreliable or otherwise incapable of being acted upon. The respondent/accused did not adduce any convincing evidence to displace the findings recorded by the Public Analyst. It is argued that the mere existence of a defence cannot, by itself, neutralise the scientific report unless the defence is supported by some acceptable material or circumstance creating a genuine doubt regarding the manner of sampling, preservation, dispatch or analysis of the sample.
- 8.** It is also contended that the learned Trial Court failed to appreciate the statutory safeguards contained in Section 13(2) of the Prevention of Food Adulteration Act, 1954, read with Rule 9A of the Prevention of Food Adulteration Rules, relating to furnishing a copy of the Public Analyst's report to the accused and affording him the statutory opportunity available in respect thereof. According to the learned Advocate, the

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learned Trial Court misread Exhibit-1, being the postal receipt, and consequently arrived at an erroneous conclusion regarding compliance with the statutory requirement. The submission is that the documentary evidence, when considered along with the testimony of PW2, sufficiently establishes the steps taken by the prosecution authority for communicating the Public Analyst's report to the respondent.

- 9.** Learned Advocate also draws the attention of the Court to the evidence of PW2, the Food Inspector, who categorically stated that the sample was collected in accordance with the prescribed procedure and that the respective portions were properly packed and sent for analysis in sealed covers. It is submitted that his evidence on this material aspect has not been materially shaken in cross-examination. There is also no cogent evidence on record demonstrating any tampering with the sample or any defect in the sealing and dispatch process. In such circumstances, it is argued that the finding of the learned Trial Court regarding alleged non-compliance with the statutory requirement relating to sealing and dispatch of the sample cannot be sustained merely on the basis of conjecture or an erroneous appreciation of the documentary evidence.
- 10.** The learned Advocate, therefore, submits that the impugned judgment and order of acquittal suffers from misappreciation of evidence, erroneous construction of the statutory provisions

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and material irregularity in the assessment of the prosecution case. According to her, the learned Trial Court failed to consider the evidence of the Food Inspector in its proper perspective and did not attach due significance to the Public Analyst's report and the surrounding documentary evidence. It is accordingly contended that the reasons assigned for recording the acquittal are not supported by the evidence available on record and that such erroneous appreciation of the material evidence has resulted in failure of justice.

- 11.** In the circumstances, learned Advocate appearing for the appellant prays that the impugned judgment and order of acquittal be interfered with and set aside and that the appeal be allowed in accordance with law.
- 12.** Mr. Soumajit Chatterjee, learned Advocate appearing for the respondent/accused, submits that there is no cogent or convincing material on record warranting interference with the findings and conclusions arrived at by the learned Trial Court in the impugned judgment and order of acquittal. According to him, the learned Trial Court, upon proper appreciation of the evidence adduced by the parties, rightly extended the benefit of doubt to the respondent/accused and acquitted him of the charge.
- 13.** Mr. Chatterjee, learned Advocate submits that the mandatory safeguards contemplated under Section 13(2) of the

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Prevention of Food Adulteration Act, 1954 was not duly complied with in the present case. It is contended that non-compliance with such statutory safeguards assumes significance, particularly when the accused is entitled to avail himself of the statutory right to challenge the report of the Public Analyst by having the sample examined by the Central Food Laboratory, where the circumstances so permit. According to the learned Advocate, failure to establish due compliance with the statutory requirement has caused serious prejudice to the respondent and, therefore, the benefit of such deficiency must necessarily go in his favour.

- 14.** In support of such submission, learned Advocate has drawn the attention of this Court to the evidence of PW4. It is submitted that, in his cross-examination, PW4 stated that the sample was taken from a bag of whole turmeric (Haldi) which was not kept at the sale counter of the shop of the respondent/accused. According to the learned Advocate, this admission assumes considerable significance because the prosecution was required to establish that the particular article from which the sample was collected was, at the relevant time, stored or exposed for sale for human consumption. The fact that the concerned bag was not kept at the sale counter, according to the defence, creates a reasonable doubt as to whether the particular stock from

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which the sample was collected was actually intended for sale to consumers.

- 15.** Learned Advocate has further referred to the evidence of PW2, the Food Inspector, and submits that PW2 himself admitted that whole turmeric is an agricultural product and that there were other bags containing whole turmeric lying in the shop, including the particular bag from which the sample was drawn. It is argued that these circumstances, when considered together with the evidence of PW4, lend support to the specific defence taken by the respondent/accused that the particular bag from which the sample was collected was not part of the stock displayed or offered for sale to the consuming public.
- 16.** It is the specific case of the respondent/accused that the article from which the sample was taken was an unprocessed agricultural product and had not been processed, prepared or otherwise made ready for sale to consumers. Learned Advocate submits that the prosecution evidence itself does not conclusively establish that the particular stock contained in the bag was exposed or intended for sale for human consumption at the relevant point of time. According to him, the mere presence of a quantity of whole turmeric inside the premises of a trading establishment cannot, by itself and without further evidence, establish that such particular stock

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was being offered for sale within the meaning of the statutory provision.

- 17.** Learned Advocate has also sought to cast doubt upon the evidentiary value of the Public Analyst's report, which has been exhibited in the present case. It is submitted that the report merely records that the sample did not conform to the prescribed standard in respect of insect-damaged matter and was, therefore, reported to be adulterated, but does not disclose adequate reasons or particulars explaining the basis upon which such conclusion was reached. According to the learned Advocate, when the report is examined in the context of the nature of the article, the manner in which the sample was collected and the other surrounding circumstances, the conclusion recorded therein could not have been treated as conclusive without properly addressing the defence objections.
- 18.** The learned Advocate further submits that the alleged non-compliance with Section 13(2) of the Prevention of Food Adulteration Act constitutes a substantial infirmity in the prosecution case. It is contended that the statutory obligation to furnish a copy of the Public Analyst's report to the accused seller was not duly discharged. According to the respondent, he did not receive any copy of the Public Analyst's report and, consequently, was deprived of the opportunity contemplated

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by law to exercise his statutory right in respect of the sample and the analysis thereof.

- 19.** In this connection, learned Advocate submits that the burden was upon the prosecution to establish, by reliable evidence, that the Public Analyst's report was duly sent to and received by the respondent/accused. Mere production of a postal receipt, according to him, does not conclusively establish actual service or receipt of the report by the accused. It is argued that there is no satisfactory evidence on record demonstrating that the alleged communication containing the Public Analyst's report was actually received by the respondent. Such failure, according to the defence, assumes significance because the right available to the accused under Section 13(2) is intended to provide a meaningful opportunity to challenge the Public Analyst's findings.
- 20.** It is, therefore, submitted that the aforesaid circumstances, taken cumulatively, create a reasonable doubt regarding the prosecution's compliance with the mandatory statutory procedure as well as regarding the foundational fact that the sampled article was actually exposed or intended for sale for human consumption. Learned Advocate accordingly submits that the learned Trial Court was justified in extending the benefit of doubt to the respondent/accused.

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- 21.** In conclusion, Mr. Chatterjee, learned Advocate submits that the impugned judgment and order of acquittal is based upon a proper and reasonable appreciation of the evidence and that no perversity, illegality or material irregularity has been demonstrated which would justify appellate interference. He, therefore, prays that the findings recorded by the learned Trial Court be allowed to stand and that the appeal preferred by the prosecution/appellant be dismissed.
- 22.** I have considered the rival submissions advanced by the learned Advocates appearing for the respective parties and have carefully scrutinised the oral and documentary evidence available on record.
- 23.** It is the case of the prosecution that on 28.10.1991 at about 1:30 p.m., PW2, the Food Inspector, visited the spice shop of the respondent/accused. During such inspection, PW2 purchased 450 grams of whole turmeric (Haldi) from the stock kept in the shop as a sample, upon payment of the prescribed price to the respondent/accused. After complying with the formalities prescribed under the Prevention of Food Adulteration Act, 1954 and the Rules framed there under, PW2 divided the sample into three equal parts and placed each part in a clean, dry and empty glass phial, which was thereafter tightly corked. One part of the sample was forwarded to the Public Analyst for examination. The Public

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Analyst submitted his report, which was subsequently produced before the learned Trial Court and marked as Exhibit-10.

- 24.** The principal question which arises for consideration is whether the prosecution has established due compliance with the mandatory statutory safeguards governing the communication of the Public Analyst's report to the respondent/accused and the preservation and dispatch of the sample, and whether the evidence relating to the very nature of the stock from which the sample was collected is sufficient to sustain the prosecution case.
- 25.** At this juncture, the provision contained in Section 13(2) of the Prevention of Food Adulteration Act, 1954, assumes considerable importance. The said provision contemplated that, upon receipt of a report of analysis under Section 13(1) indicating that the article of food was adulterated and after institution of prosecution, the Local (Health) Authority was required to forward, in the prescribed manner, a copy of the report of the result of analysis to the person from whom the sample had been taken. The provision further contemplated that such person was to be informed of his right, within the prescribed period from the date of receipt of the report, to make an application before the Court for having the sample

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kept by the Local (Health) Authority analysed by the Central Food Laboratory.

- 26.** Thus, the statutory requirement was not a mere procedural formality. It was intended to afford the accused a meaningful opportunity to challenge the opinion of the Public Analyst by exercising the statutory right available to him in respect of the second sample. Consequently, the prosecution was required to establish, by satisfactory evidence that the report was duly forwarded to and communicated to the respondent/accused in the manner prescribed by law.
- 27.** In the present case, although it has been contended on behalf of the appellant that a copy of the Public Analyst's report was duly sent to the respondent/accused, no satisfactory documentary evidence has been produced to establish that the said report was actually received by him. In particular, no Acknowledgement Card or other reliable proof of service has been brought on record to demonstrate that the respondent/accused had received a copy of the report.
- 28.** The deficiency assumes greater significance when the evidence of PW2, the Food Inspector, is considered. During cross-examination, PW2 stated that he could not say whether any enquiry had been made with the postal authority regarding non-receipt of the Acknowledgment Due Card (A/D Card). He further stated that he had no knowledge as to

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whether the report of the Public Analyst had actually been served upon the respondent/accused. Thus, the testimony of the prosecution's own witness does not establish actual service of the report upon the respondent/accused. On the contrary, such evidence leaves the question of service wholly uncertain.

- 29.** In these circumstances, it cannot safely be held that the statutory requirement contemplated under Section 13(2) of the Prevention of Food Adulteration Act stood duly complied with. The absence of proof regarding communication of the Public Analyst's Report assumes significance because non-communication of the report may deprive the accused of the statutory opportunity to have the counterpart sample examined by the Central Food Laboratory. Such an opportunity is of substantive importance to the defence and cannot be treated as an inconsequential procedural requirement.
- 30.** There is yet another infirmity in the prosecution case concerning the manner in which the sample was forwarded for analysis. Exhibit-6, being the relevant peon book entry, indicates that the copy of the memorandum and specimen impression of the seal used for sealing the sample packet was not shown to have been sent to the Public Analyst in a sealed packet in the manner contemplated by the Rules. The

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prosecution has not been able to satisfactorily explain this discrepancy or demonstrate compliance with the mandatory requirement contained in the Prevention of Food Adulteration Rules, 1955. The requirement relating to proper sealing and transmission of the memorandum and specimen impression of the seal is intended to safeguard the identity and integrity of the sample and to rule out the possibility of tampering or substitution. Any unexplained failure in this regard, therefore, cannot lightly be brushed aside.

- 31.** The evidence relating to the nature and location of the stock from which the sample was collected also requires consideration. PW4, Suresh Chandra Paul, stated in his cross-examination that the whole turmeric from which the sample was taken was not kept at the sale counter of the shop of the respondent/accused. This circumstance assumes relevance because, in order to establish the offence alleged against the respondent, the prosecution was required to establish that the article in question was stored or exposed for sale for human consumption.
- 32.** The defence case is that the particular whole turmeric from which the sample was drawn was an unprocessed agricultural product, kept inside the shop premises and not intended or offered for sale to the general public in the condition in which it was found. This defence cannot be considered in isolation.

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It receives some support from the evidence of PW2 himself, who stated in cross-examination that whole turmeric is an agricultural product and that, at the relevant time, there were other bags of whole turmeric in the shop, including the bag from which the sample was taken.

- 33.** The evidence of DW1 also requires consideration in this context. DW1 stated that PW2 took the sample of whole turmeric from a jute bag. Although the witness was subjected to cross-examination and denied the suggestion that the sample taken from the said bag was not kept for sale, his evidence nevertheless has to be assessed along with the prosecution evidence regarding the location and nature of the stock. The evidence of PW4 that the concerned stock was not kept at the sale counter, coupled with the admission of PW2 regarding the agricultural nature of whole turmeric and the presence of other bags of such material, creates a circumstance which the prosecution was required to explain satisfactorily.
- 34.** It is true that the Public Analyst, in Exhibit-10, reported that the sample did not conform to the prescribed standard in respect of insect-damaged matter and was adulterated. However, the evidentiary value of such report has to be considered in the context of the statutory safeguards surrounding the collection, sealing, dispatch and subsequent

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communication of the report. Where the prosecution fails to establish compliance with material safeguards which are intended to preserve the integrity of the sample and to afford the accused a statutory opportunity to challenge the analysis, the report cannot, by itself, be treated as sufficient to cure those foundational deficiencies.

- 35.** Upon an overall consideration of the evidence, it appears that the prosecution has failed to satisfactorily establish compliance with the requirements of Section 13(2) of the Prevention of Food Adulteration Act, read with Rule 9-A of the Prevention of Food Adulteration Rules. The prosecution has also failed to satisfactorily explain the deficiency arising from Exhibit-6 with regard to compliance with Rule 18 of the Rules. These deficiencies assume significance when considered alongside the evidence regarding the nature and location of the stock from which the sample was collected.
- 36.** In an appeal against acquittal, the evidence must be examined with due regard to the fact that the respondent has already secured an order of acquittal from the learned Trial Court. Where the view taken by the learned Trial Court is reasonably possible on the evidence available on record and the prosecution case suffers from the aforesaid material deficiencies, interference with the order of acquittal would not

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be justified merely because another view of the evidence may also be conceivable.

37. Upon careful scrutiny of the entire evidence and materials on record, I find that the learned Trial Court's conclusion does not suffer from any such perversity, illegality or material irregularity as would warrant appellate interference. The deficiencies in proving compliance with the statutory safeguards, coupled with the circumstances surrounding the stock from which the sample was drawn, are sufficient to sustain the benefit of doubt extended by the learned Trial Court to the respondent/accused.
38. Accordingly, the instant appeal fails.
39. The appeal is, accordingly, **dismissed**.
40. The judgment and order of acquittal passed by the learned Trial Court dated 05.05.1998 in Case No. 40D of 1991 is hereby affirmed.
41. Let a copy of this judgment allowed with the Trial Court Records be sent down to the Trial Court immediately.
42. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)