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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 533 of 1999
(Against Acquittal)

WITH

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(Against Acquittal)

WITH

CRIMINAL APPEAL No. 486 of 1999
(Against Acquittal)

The State of Maharashtra

]..Appellant/Complainant.

Vs

Harishchandra Sadhuram Agarwal,
age 55 years, Vendor and Proprietor
of M/s Harischandra Sadhuram Agarwal,
Kirana Bhusar Shop, H.No. 98,
Yado Gopal Peth, Satara.

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]..Respondent.

(Orig. Accused).

Mr. J.P. Yagnik, APP for the Appellant in all appeals.

Mr. K.P. Shah, Advocate for the Respondent-Harishchandra in all appeals.

CORAM : SMT. BHARATI H.DANGRE, J.
RESERVED ON:- 20th November, 2017.
PRONOUNCED ON:-6th March, 2018.

JUDGMENT.

1 All the three appeals filed by the State of Maharashtra challenge the judgment of acquittal passed by the learned Additional Sessions Judge, Satara, (for short “the first Appellate Court”) thereby reversing the order passed by the trial Court holding the appellant-accused guilty for the offence under Section 7 (1) read with Section 16 of the Prevention of Food Adulteration Act. Since the present appeals involve a similar question of law and revolve around similar facts, they are disposed of by this common judgment.

2 In all Criminal Appeals, the accused Harischandra Agarwal vendor and proprietor of M/s Harishchandra Agarwal, Kirana Bhusar shop Yado Gopal Peth, Satara is charged for offence under Section 7 (i),(ia), (a) and (m) of the Prevention of Food Adulteration Act, 1954. The Food Inspector on visiting the shop of the accused on 23/9/1993 purchased the ground-nut oil, rapeseed oil from the packed tin in the shop and on following the procedure prescribed, forwarded the samples to the Public Analyst, State Public Health Pune on 24/9/1993. A report was received from the Public

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Analyst, reporting that the sample did not confirm to the prescribed standard as per Rules. After obtaining the necessary permission /consent in writing from the Joint Commissioner, Pune Division, Food and Drugs administration, Maharashtra State Pune, separate complaints were lodged in the competent court which took cognizance and the accused was put to trial for the offence under Section 16 (1) (a) of P.F.A. Act.

3 As per the case of the prosecution, the Food Inspector Shri K.A. Shintre visited the shop premises belonging to the accused M/s Harischandra Sadharam Agarwal, a Firm, belonging to the accused M/s Harischandra Sadharam Agarwal, a firm dealing in grocery articles on 23/9/1993 at about 15:30 hours. An inspection report was prepared by him and copy of the same was delivered to the accused. The complainant noticed that the accused had stored 135 oil tins (edible oil), 80 gunny bags of cereals for sale. During inspection, it was found that three packed tins of Gajraj brand imported refined rape-seed oil of 15 kilograms were kept for sale

along with other packed tins of various kinds of edible oil. Food Inspector, Shri Shintre purchased 450 grams of ground-nut oil from one of such oil tin for the purpose of sample of said imported refined rapeseed oil. Accused sold the complainant 450 grams of imported refined rapeseed oil from three packed tins for the purpose of test and analysis.

After following due procedure the notice was issued to the accused in Form No. VII and the samples were drawn in air tight containers by drawing necessary memorandum which was signed by the accused. The said samples were forwarded to the Public Analyst, Public Health Laboratory, Pune along with memorandum in Form No. VII and the report was received in Form No. III through the Supervisor (Food and Drugs Department), Satara,

The report of Analyst reveal that refined rapeseed oil purchased from the accused was adulterated. After following all the formalities as laid down in Prevention of Food Adulteration Act (for short "the PFA Act") the complainant submitted proposal in Form "A" along with relevant documents to the Joint Commissioner, Pune

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Division, Food and Drugs Administration (M.S.), Pune through Supervisor (Food), Satara and Asstt. Commissioner, Food and Drugs Administration Satara; with request for consent for prosecution. Consent for prosecution was received from the Joint Commissioner, Pune on 29/10/1994. Thereafter, the complainant filed complaint Exh.1 in the trial Court which was registered as R.C.C.No. 311/1994 for the offences referred to above. The complainant filed three different charge-sheets in the Court of J.M.F.C. which came to be registered as R.C.C. No.309/94, 310/94 and 311/94.

4 The learned Judicial Magistrate, First Class, Satara (for short trial Magistrate) framed charges against the accused for the offence under Section 16 (1) (a) (i) of the PFA Act as under :-

Charge was framed against accused Harischandra in R.C.C. Nos.311/1994, 309/1994 and 319/1994 (Exh.51) which reads as under:-

That you on 23/9/1993 at about
15:30 hours at 98, Yadogopal Peth, Satara

in the shop of M/s Harischandra Sadharam Agrawal, being the vendor and proprietor of said shop, have stored for sale and actually sold the imported refined rapeseed oil, edible ground-nut oil and edible ground-nut oil of Gajraj Triple Filtered ground-nut oil to the complainant K.A.Shintre, Food Inspector, Satara which was found to be adulterated and thereby contravened the provisions of Section 7 (i) read with Section 2 (ia)(a) and Section 7 (i) read with Section 2 (ia) (m) punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 and within my cognizance.

5 The accused pleaded not guilty and hence learned JMFC proceeded to record the evidence of the prosecution witnesses. The prosecution examined three witnesses and on consideration of the evidence of the witnesses arrived at a conclusion that the accused had contravened the provisions of Section 7 (i) read with section 2 (ia) (a) and (m) punishable under Section 16 of the PFA Act. The learned Magistrate recorded a finding that the prosecution has brought on record ample evidence to show that the imported refined rape-seed oil purchased by the Food Inspector from the accused was adulterated. The learned Trial Judge also recorded a finding that

though it was claimed by the accused that he had purchased the oil and had produced bill to that effect that it was purchased from M/s Rasul Mohamad and Co. Satara, however, the said bill reveals that it is not regarding “imported refined rape-seed oil” but it is only regarding rape-seed oil. Further, M/s Rasul Mohamad & Co. had informed the Food Inspector vide letter at Exh.41 that it did not supply imported refined rape-seed oil to the accused. The Magistrate also recorded a finding that the Food Inspector had complied with all the mandatory provisions and there is no infirmity in the procedure adopted by the Food Inspector. In the result, on conviction of the accused, the Magistrate sentenced the accused to undergo rigorous imprisonment for six months and to pay fine of Rs.2000/- and in default of payment of fine to undergo RI for six months. The substantive sentence passed in all three cases was directed to run concurrently.

6 Being aggrieved by the said judgments, the accused preferred appeals under Section 374 of Cr.PC. to the Court of Session

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at Satara. The thrust of contention in the appeal was that the learned Magistrate wrongly came to the conclusion that the prosecution has proved all the ingredients of the offence under section 7 (i) read with sections 2 (ia) (a) and 2 (ia) (m) punishable under Section 16 of the PFA Act and the learned Magistrate has erred in holding that the appellant had sold adulterated imported refined rapeseed oil. The sentence passed by the learned Magistrate was clamped as harsh and based on no evidence.

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The learned Additional Sessions Judge, Satara did not agree with the submission that the sample was not forwarded for testing immediately on next date, thereby resulting in violation of Section 11 (3) of the PFA Act of 1954. Further the argument in relation to non-compliance of Rule 18 of the PFA Rules, 1955 did not find favour with the learned Additional Sessions Judge. He also rejected the ground raised in respect of Section 19 (2) of the said Act.

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The learned Additional Sessions Judge, however, reversed the finding of the learned Trial Magistrate only on a solitary ground

namely, the sanctioning authority did not apply its mind before giving sanction to prosecute. The argument which found favour with the learned Additional Sessions Judge was that the Food Inspector had taken samples of three different oils, in respect of which three different cases have been filed against the accused, however, sanction orders are stereotyped or cyclo-styled and name of oils are inserted later on in blank space kept for entering it. The Appellate Court was also impressed by the submission that no reason has been recorded by the Authority as to why in the interest of public, it is necessary to prosecute. After relying on the judgment in the case of **1988 CrLJ 356**, the learned Sessions Judge recorded a finding that the sanction order at Exh.48 which contains the sanction as contemplated under Section 20 of the PFA Act, the name of the oil is typed later on as colour and mode of type is quite distinct and different than rest of the contents of the order. The Appellate Court arrived at conclusion that report of Public Analyst did not reveal that there was any foreign substance in the oil nor there is any reference that the oil was in any way injurious to the health or not fit for human consumption. The

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Additional Sessions Judge recorded a finding that in view of stereotyped references made in the sanction order, which lacks reasons and is not legally sustainable and the prosecution stands vitiated. Resultantly, the learned Additional Sessions Judge set aside the order passed by the learned Magistrate and acquitted him.

9 Being aggrieved by the said judgment, the State of Maharashtra has preferred the present appeal.

10 I have heard the learned APP Mr. Yagnik appearing for the Appellant/State and Mr Shah representing the accused/respondent.

11 Mr. Yagnik, learned APP would argue that the learned Additional Sessions Judge has erred in recording a finding that the sanctioning authority has not applied its mind properly and arrived at a conclusion that the sanction accorded is vitiated in the absence of reasons being assigned. According to Mr. Yagnik, learned APP, if the point as regards sanction would have raised at the stage of trial, it

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would have been open for the prosecution to adduce sufficient evidence to dispel the said contention and according to Mr Yagnik, the learned Sessions Judge recorded the findings though the said point was not raised in the appeal memo.

12 Per contra, the learned Counsel Shri K.P.Shah appearing for the respondent/accused would emphasize on the use of language in Section 20 (1) and would submit that by virtue of the said mandatory provision of “written consent”, the intention of the legislature was clear and the power conferred on the authority to be exercised under Section 20 (1) ought to have been exercised in the manner provided therein and not otherwise. The learned Counsel relied on a judgment delivered by the learned Single Judge of this Court at Aurangabad Bench in the case of **State of Maharashtra vs. Rajendra Ghule**, reported in 2004 (12) LJSOFT 94, where the State of Maharashtra had challenged the acquittal of the respondent which was on the ground that there was no valid sanction and the learned Single Judge had concluded that the view taken by the trial Court is

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permissible and possible under the law while recording finding of acquittal and resultantly dismissed the appeal filed by the State. The learned counsel would also argue that the question of sanction/consent is mixed question of law and fact and it can be raised even at the stage of appeal and the learned Additional Sessions Judge has rightly considered the said point advanced by the appellant since it was going to the root of the matter.

13 With the assistance of the learned counsel for the parties, I have carefully perused the paper book and the authorities on which reliance has been placed. It is necessary to refer to the consent order granted under Section 20 of the PFA Act by the Joint Commissioner, Food and Drugs Administration Pune which is placed at Exh.40 of the paper book. It would be useful to reproduce the said consent accorded on 7/10/1994.

“I, U.R.Gotkhindikar, Joint
Commissioner, (Pune Division), Food and Drug
Administration Maharashtra State, Pune, after
perusing the Panchanama, the report of the

Public Analyst, Pune, bearing number 9323/971, dated 28/10/93 and relevant case papers in respect of the food article imported refined rapeseed oil bearing paper slip with code number STR No. II and serial number 28/93 of Local (Health) Authority and Chief Officer, Satara Municipal Council, Satara, have noticed that the said sample does not confirm to the standards of Prevention of Food Adulteration Act, 1954 and Rules thereunder, because Belliers Test is more than prescribed limit. Thus, the sample is adulterated within the meaning of Section 2 (ia) (a) and 2 (ia) (m) of Prevention of Food Adulteration Act, 1954 and rules thereunder. Therefore, I am of the opinion, that prima facie offence is disclosed in this case. Hence, after applying my mind I come to conclusion that this is a fit case for prosecution.”

Therefore, in exercise of the authority, given to me under Section 20 of the Prevention of Food Adulteration Act, 1954 and Government Order, Medical Education and Drugs Department No. FDS.1088/4252/(127)/MED-6/dated 19th April, 1991, published in Maharashtra Government Gazette dated 9th May, 1991.

I hereby give my consent in the public interest for the prosecution of Shri Harichandra Sadhuram Agrawal, vendor and Proprietor of M/s Harichandra Sadhuram Agrawal Kirana Bhusar, shop, situated at H.No.98, Yadogopal Peth, A/p and Taluka Satara, doing business at the above said premises on or about 23/9/93 for an offence alleged to have been committed by him as regards stocking for sale and selling

adulterated food article imported refined rapeseed oil, in contravention of provision of Section 7 (i) read with section 2 (ia), (a) and 2 (ia), (m), punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 and rules thereunder.

The sample of the Food article imported refined rapeseed oil was taken by Shri K.A.Shintre, Food Inspector, Food and Drug Administration, Maharashtra State, Satara on 23/9/93, from the above said premises under the Prevention of Food Adulteration Act, 1954, and Rules thereunder.”

14 In the backdrop of the aforesaid facts, the point that falls for consideration in these appeals is whether finding recorded by the Additional Sessions Judge in the impugned judgment recording that sanction/consent is not legal and proper since it did not reflect the mind of the sanctioning authority and contains no reasons reflecting so. It would be necessary to make a reference to Section 20 (1) for answering the said issue. Section 20 (1) of the PFA Act reads thus :-

Section 20 (1) :-

Cognizance and trial of offences . --(1) No prosecution for an offence under this Act, not being an offence under section 14 or section 14A shall be

instituted except by, or with the written consent of the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government:

Provided that a prosecution for an offence under this Act may be instituted by a purchaser or recognised consumer association referred to in section 12, if he or it produces in court a copy of the report of the public analyst alongwith the complaint.

The significant word in the sub-Section (1) of Section 20 is “written consent”. The word “sanction” has a distinct connotation from the word “consent” and what is contemplated under Section 20 is “written consent”. When the legislature has advisedly used the word “consent” in contrast to the word “sanction” which is to be predominantly found in several legislations, as a basis for initiating the prosecution or another action, it cannot be said that the legislature intended to use it interchangeably. Several statutes employ the term “consent” like Section 31 of the Insecticides and Section 33 of the Drugs and Cosmetics Act, Section 7 of the Explosive and Substances Act and Section 20 of the Prevention of Food Adulteration Act. On consideration of phraseology used in the two set of

enactments, it is clear that the concept of “written consent” in all such enactments is to prevent frivolous prosecution against the accused and in order to ensure that before launching of the prosecution there is an authority which applies its mind to the relevant material placed before it and then accord such consent. The word “sanction” as we find employed in Section 197 of the Indian Penal Code is something more than a 'consent' and it is used by the Legislature in prosecution of offences which are more serious in nature where the Sanctioning Authority is expected to apply its mind and record reasoning before it accord sanction.

The word 'sanction' is defined in the Blacks Law Dictionary as “official approval or authorization”. The word “consent” is defined to mean “agreement”, “approval” or “permission” as to some act or purpose especially given voluntarily by a competent person; legally an effective assent. A comparison of these two terms would reveal that the sanction implies more serious deliberations of the issue as it involves greater responsibility whereas the word “consent” is in the form of a permission. The purport of Section 20

(1) is that the designated authority should satisfy itself about the existence of a prima facie case and record the reasons for arriving at such a conclusion and then accord sanction.

The concept of “written consent” is distinct and different from the concept of sanction. Inasmuch as sanction confers authority on the person in whose favour sanction is accorded to do a specific act, the order of sanction nonetheless must ex facie show that the sanctioning authority has applied its mind to the facts of the case and recorded reasons before according sanction. The same yardstick however cannot be applied to a written consent which implies only permission/agreement or concurrence with the authority seeking consent for prosecution.

15 Once it is clear that the purport of written consent is distinct from that sanction for prosecution, the rigors in the former being of a lesser degree than that of the latter and the exact parameters laid down for testing sanction may not be made applicable to order according consent. The learned Sessions Judge

while allowing the appeal on a solitary ground of infirmity in the consent accorded by the Joint Commissioner has observed that the sanctioning authority has found fault with the order granting consent on the ground that “the sanctioning authority should give reasons as to how and why it is necessary in the interest of public to prosecute the accused”. It appears that in the sanction order Exh.48 no reason has been given as to why it is in the public interest to grant sanction. Perusal of the order of sanction granting written consent which is at Exh.48 of the paper-book and which is reproduced above, reveals that the Joint Commissioner, Pune Division Pune, the Authority, has relied on the report of Public Analyst Pune and have carefully perused the panchnama and the relevant case papers in respect of the food articles namely imported refined rapeseed oil and noted that the report of Public Analyst opine that the sample do not confirm to the standard of PFA Act and Rules framed thereunder since the belliers test is more than prescribed limit. The authority relied on the opinion of the analysis that the sample is adulterated within the meaning of Section 2 (ia) (a)_ and 2(ia) (m) of the PFA Act, 1954.

Based on the said opinion of the analysis, the Joint Commissioner Pune expressed his prima facie opinion that the offence is disclosed in the case and it is a fit case for prosecution.

The PFA Act which has a definite connotation for the word “adulterated” as defined in Section 2 (ia) within the meaning of the Act “adulterated” means :

Section 2 (ia) :-

“adulterated” an article of food shall be deemed to be adulterated;

(m) if the quality or purity of the articles 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.

Thus, the adulterated article of food is deemed to be

“adulterated” if the article sold by the vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or its not of the nature, substance or quality which it purports or is represented to be. The article is also adulterated if the quality or purity of the articles falls below the prescribed standard and or its constituents are present in the quantities not within the prescribed limits of variability, but which renders it injurious to health;

Perusal of the report of Chemical Analyst in relation to the food article, namely imported refined rapeseed oil gives the percentage of the ingredients and based on this the public analyst holds that the sample did not confirm to the standard of imported refined rapeseed oil as per PFA Rules 1955. The Manual for Guidance of Local Licensing Authority and Food Inspector appointed under the PFA Rules published by the Government of Maharashtra in Chapter IX contains the provisions in relation to the various parameters and the prescribed standards. Perusal of the said Manual would reveal that butyro refractometer (B.R.) reading indicates only of a oil with lesser

B.R. reading and the parameters also include the Bellier test “turbidity temperature” is indicative of presence of foreign oil in the groundnut oil. The B.R. of a particular quality of oil is prescribed and whenever there is any other ingredient is mixed in the said oil, B.R. value will vary and reflect adulteration. Merely because the substance is not injurious to health may not be a criteria of determination whether it is adulterated or not. The Report of public Analyst clearly opines that the sample does not confirm to the standard of imported refined rapeseed oil as per PFA Rules. In the light of these facts, it becomes adulterated and the Prevention of Food Adulteration Act prohibits import of any such adulterated food and by virtue of Section 7, it prohibits manufacture for sale or store, sale or distribute of any such adulterated food which invites a penalty under Section 16 of the PFA Act. The finding recorded by Additional Sessions Judge that since the written consent from the Joint Commissioner, Pune do not contain reasons and did not reflect that there was adulteration of any foreign substance in the oil or that the oil was injurious to health would not vitiate consent. The written consent order records prima

facie satisfaction of the Joint Commissioner that the sample is adulterated within the meaning of Section 2 (ia) and 2(ia) (m) of the PFA Act, 1954 and therefore prima facie offence is disclosed in this case. Since he has formed an opinion in the aforesaid terms, he accords his consent for prosecution of the accused for offence alleged to have been committed by him as regards stock for sale and selling adulterated food article “imported refined rape-seed oil” which is in contravention of provision of Section 7 (i) read with Section 2 (ia), 2 (ia) (m) which is punishable under section 16 of the PFA Act. The finding recorded by the learned Additional Sessions Judge that since the written consent from the Joint Commissioner, Pune do not contain reasons and do not reflect that there was adulteration of any foreign substance in the oil or that the oil was injurious to health, would not vitiate the consent.

16 The written consent records prima facie satisfaction of the Joint Commissioner that the sample is adulterated within the meaning of Section 2 (ia) and 2 (ia) (m) of the said P.F.A. Act, 1954 and therefore prima facie offence is disclosed in this case. Since he

has formed an opinion in the aforesaid terms, he accords his consent for prosecution of the accused for offence alleged to have been committed by him as regards stock for sale and selling adulterated food article “imported refined rapeseed oil” which is in contravention of provision of Section 7 (i) read with section 2 (ia), 2 (ia) (m) which is punishable under section 16 of the PFA.Act. In my opinion, the consent order did not suffer from any infirmity as it is within the parameters of recording a prima facie offence being made out without weighing the pros and cons and as to whether the case would end in acquittal or conviction or whether the adulteration was abnormal or marginal etc. It is not for the sanctioning authority to weigh and consider the pros and cons of the case before granting sanction. The Authority granting consent should record a prima facie case for prosecution of offence under the Act which according to him is made out and therefore the consent cannot be said to be improper because it do not record as to whether it is in public interest to accord such consent. The sanction order stating that the Authority had perused the public analyst report and the relevant papers before

coming to the conclusion that it was a fit case for the prosecution of the accused under section 7 (i) read with section 16 since it clearly reflects that the authority had applied his mind to the case. Since consent differs from sanction, the parameters applicable to an order granting sanction need not be made applicable to an order granting consent. It is sufficient compliance if the written consent by the concerned authority ex facie shows material placed before the authority which was considered by him before according written consent. The detail reasons for granting written consent are not necessary and cannot be tested by the Court, since whether the material is “adulterated” or not is based on an expert opinion by applying the known tests. Thus, it would suffice if the written consent by the concerned authority expressly shows that the material which was placed before it comprising of the report of public analyst and the report of Local (Health) Authority wherein the nature of adulteration is specified and this attracts the provisions of Food Adulteration Act and the view is expressed by the Authority that he is of the opinion that the accused should be prosecuted, this is sufficient

compliance of Section 20.

The above conclusion is fortified by the observation by the Hon'ble Apex Court in the case of **State of Bombay Vs. Purshottam Kanhaiyalal** reported in AIR 1961 SC 1, where it is held thus :-

13. "The learned Counsel for the appellant-State challenged the correctness of this construction. He referred us to the analogy of the decisions rendered on [s. 197](#) of the Criminal Procedure Code where it has been held that " the sanction " referred to need not name the person who could institute the prosecution. We consider it unnecessary to canvass the relative scope of the language of [s. 197](#) of the Criminal Procedure Code and of [s. 20\(1\)](#) of the Prevention of Food Adulteration Act. We prefer to rest our decision on the terms of [s. 20\(1\)](#) itself. To start with, the Statute does not in terms prescribe that the complainant shall be named in the " written consent ". The only question, therefore, is whether such a limitation or condition could be gathered as a necessary intendment of the provision. In the first place, the reason of the rule could not suggest or imply such a condition. The rule has undoubtedly been designed to prevent the launching of frivolous or harassing prosecutions against traders. It therefore provides that the complaint should be filed, either by a named or specified authority or with the written consent of such authority. To read

by implication that before granting a written consent, the authority competent to initiate a prosecution should apply its mind to the facts of the case and satisfy itself that a prima facie case exists for the alleged offender being put up before a Court appears reasonable, but the further implication that the complainant must be named in the written consent does not, in our opinion, follow. In the present case, the Analyst's Report was before the Chief Officer of the Municipality and it was after considering that report and the connected documents that the written consent or sanction was given.”

The Hon'ble Apex Court in the case of **The State of Maharashtra Vs. Janardan Narwankar 1978 Cr.LJ 811** considered the import of Section 20 and while considering the argument canvassed on behalf of the respondent that there is a distinction between written consent as contemplated u/s 20 and as contemplated u/s 197 of Cr.P.C. observed thus in paragraph 54 as under :

54. “Besides, it must be remembered that Under [Section 20](#) of the Prevention of Food Adulteration Act only consent of the Commissioner is necessary and not sanction. There is obvious difference between 'consent' and 'sanction'. 'Consent' implies mere concurrence or agreement whereas 'sanction' confers authority on the person in whose favour sanction is granted. Therefore, the considerations applicable in

the case of 'sanction' would, in my opinion, not be applicable to a case where mere consent is required.”

Further, in case of **Dhiam Singh vs. Municipal Board Saharanpur & Anr**, reported in **AIR 1970 S.C. 318**, the Hon'ble Apex Court specifically held that under Section 20 of the PFA Act, there is no question of applying one's mind to the facts of the case before the institution of the complaint arises as the authority to be conferred under that provision can be conferred long before a particular offence has taken place.

17 The finding recorded by the learned Additional Sessions Judge that the order granting consent is cyclostyled and there is no application of mind by the authority is, in my view, wholly erroneous. Perusal of the consent order passed by the Joint Commissioner Pune Division reflects the fact that the Joint Commissioner referred to the report of the Public Analyst in respect of the food article preferred for testing. Perusal of the report of the Public Analyst in all three cases certified that the sample forwarded to the Public Analyst appointed under the provisions of the P.F.A.Act so analysed and the result of the

analysis was tendered. Perusal of the said reports which are on record would reveal that each sample is tested for its iodine value, **saponal/unsaponal** value and with respect to its refracto reading. The report of the Public Analyst based on the said reading concludes that the sample forwarded to it does not confirm to the standard of ground-nut oil/imported refined rapeseed oil as per the PFA Rules, 1954. The Joint Commissioner Food and Drugs Administration relies on the said report of an expert who has certified that the said sample is adulterated and records a finding that in view of the finding by the expert that it is “adulterated” invokes the provision in the PFA Act where the term “adulterated” is assigned a specific meaning under Section 2 (I) (ia) and by virtue of the said definition article of food shall be deemed to be adulterated, if it falls within any of the clauses (a) to (m) of clause (ia). The Joint Commissioner found clause (a) and clause (m) attracted in the present case and he was satisfied that the article is deemed to be “adulterated” on the said count and, therefore, an offence under the PFA Act is disclosed. He, therefore, recorded a opinion that the accused person needs to be prosecuted

for the said offence. There is nothing more which is required to be done on the part of the said authority who has to accord his written consent before launching the prosecution. It is not the stage where the Joint Commissioner is expected to analyse the possibility of commission of an offence or analyse sufficiency of evidence to sustain a conviction.

18 The Apex Court in case of **Suresh H. Rajput Vs. Bhartiben Pravinbhai Soni & ors** reported in **A.I.R. 1996 S.C. 2883** where a validity of consent accorded u/s 20 of the Act is questioned on the ground that order of sanction was cyclostyled order and there was no application of mind on the part of the authority to the facts constituting the offence rejected the said argument in para 7 and para 8 of the said judgment. In paragraph 11 the Hon'ble Court observed thus :

“The question that emerges is whether the sanction is in accordance with law. The learned Magistrate held that the sanction was a cyclostyled order and that the authority did not apply its mind to the facts constituting the offence and that, therefore, the grant of sanction is invalid in law. We find it difficult to give acceptance to the reasoning of the learned

Magistrate. Unfortunately, the learned single Judge of the High Court did not apply his mind nor adverted to any of the material questions. He merely concurred with the view expressed by the Magistrate in a cryptic order. In fact, on merits, the learned Magistrate has held that the prosecution had established the offence. All that was held was that the sanction was not in accordance with Section 20 (1) of the Act.

It is seen that the analysis report which was placed before the local (Health) authority and the other pertinent material in connection therewith have been placed before the sanctioning authority. After going through the material, sanction was granted for laying the prosecution. At that stage, it was not for the sanctioning authority to weigh pros and cons and then to find whether the case could end in conviction or acquittal or the adulteration was abnormal or marginal etc. All these are not matters for the sanctioning authority to weigh and to consider the pros and cons of the case before granting sanction to lay prosecution against the respondents.”

It would be appropriate to make a reference to a decision by the learned Single Judge of this Court (Hon'ble Justice A.M. Khanwilkar) in the case of State of Maharashtra Vs. Popat Shah, 2004 Cr.LJ 2780, while dealing with the similar situation an appeal

against the order acquitting the respondents of the offence punishable under Section 16 read with Section 17 of the PFA Act exhaustively dealt with contours of Section 20 of the PFA Act. The Hon'ble Court observed thus:-

23. “The next question therefore is, whether the consent in the present case discloses the application of mind? We have already adverted to the order passed by the Joint Commissioner while according consent under [Section 20](#) of the Act, which has been proved as Exhibit 36. The existence of the said document has therefore been established in evidence. That means the existence or grant of consent as required by [Section 20](#) of the Act stands established. On bare reading of the document, as is placed, on record, in my opinion, it clearly discloses application of mind by the concerned authority. It makes reference to the fact that the authority has gone through the Public Analyst Report as well as other relevant case papers placed before him before recording its satisfaction.

19 In the light of the aforesaid judgment, when the facts of the present case are examined, I am of the view that the consent accorded by the Joint Commissioner is based on existence of the

material and it discloses application of mind by the concerned authority. It makes reference to the facts that the Authority has gone through the Public Analyst report as well as the relevant case papers placed before him before recording his satisfaction resulting into according of a consent. However, the Sessions Court has taken the issue and dealt it in a manner which is contrary to the settled position of law and therefore it is not sustainable in the eyes of law. The learned Additional Sessions Judge did not otherwise find any fault with the case of the prosecution and repelled each and every ground raised by the counsel for the appellant, alleging non-compliance of the procedural aspect under the PFA Act. The learned Additional Sessions erred in applying the parameters of a sanction to the requisite consent required under Section 20 (1) of the P.F.A. Act, 1954.

20 Resultantly, the order passed by the learned II Additional Sessions Judge, Satara in Regular Criminal Appeal Nos. 93/1996, 92/1996 and 311/1994 dated 29/5/1999 are not sustainable and

are liable to be set aside and are accordingly set aside. Hence, the following order :-

-:ORDER:-

(i) Cr.Appeal Nos.533/199, 534/1999 and 486 of 1999 are hereby allowed;

(ii) The order passed by the learned II Additional Sessions Judge, Satara in Regular Criminal Appeal Nos. 92/1996, 93/1996, and 311/1994 dated 29/5/1999 is set aside;

(iii) The order passed by the learned Chief Judicial Magistrate, (CJM), Satara in Regular Criminal Case No. 309/1994, 310/1994 and 311/1994 dated 25th November, 1996 is maintained and the conviction of the accused Harischandra Sadharam Agrawal, vendor and proprietor of M/s Harischandra Sadharam Agrawal, Kirana Bhusar Shop, Satara under section 7 (i) read with sections 2 (ia) (a) and 2 (ia) (m) punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 is upheld. The accused to undergo the sentence of

imprisonment imposed by the learned C.J.M. by order dated 25/11/1996.

(iv) Accused to surrender before the Court of learned CJM, Satara within a period of four weeks from today. The bail bonds/surety bonds furnished pending this appeal by the appellant, shall stand cancelled on expiry of the period to surrender;

(v) Registry is directed to forward copy of this judgment and order to the Learned C.J.M. Satara and to the City Police Station, Satara for necessary compliance; and

(vi) An authenticated copy of this judgment be supplied by the Facilitation Centre, High Court, Appellate Side, Bombay to the appellant, free of costs forthwith.

(BHARATI H.DANGRE, J)