

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 4 of 2000

**The Calcutta Municipal Corporation
-Vs-
Ram Murti Arora & Anr.**

For the Appellant : Mr. Nilanjan Chatterjee
Mr. Goutam Dinda
Mr. Anindyasundar Chatterjee

For the Respondent No. 2 : Ms. Devipriya Mitra

Heard on : 03.10.2023, 13.12.2023

Judgment on : 08.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 23rd March 1998 passed by the Learned Senior Municipal Magistrate and Metropolitan Magistrate, Calcutta in connection with the Case No. 19D of 1993 acquitting the opposite parties of a charge under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954.
2. The appellant challenging the legality and validity of the order dated March 23, 1998 passed by the Learned Senior Municipal Magistrate and Metropolitan Magistrate, Calcutta in connection with the Case No. 19D of 1993 acquitting the respondents of charge under Section 16(1)(a)(i) of the

Prevention of Food Adulteration Act, moved an application for Special Leave to appeal before the Hon'ble Court which was registered as CRM 4007 of 1999.

3. By an order dated March 23, 1998 passed in connection with CRM 4007 of 1999 the Hon'ble Justice was pleased to grant Special Leave to prefer appeal against the aforesaid order of acquittal.
4. The pursuant to the Special Leave granted by the Hon'ble High Court as aforesaid the appellant begs to prefer the appeal before the Hon'ble High Court.
5. The Learned Advocate for the appellant submitted that :-
 - i. The impugned order of acquittal is wholly illegal, erroneous, improper, being against the evidence and materials on record. The same has resulted in miscarriage of justice and the order of acquittal is liable to be set aside.
 - ii. The provisions of Section 13(2) of the Prevention of Food Adulteration 13(2) of the Prevention of Food Adulteration Act, read with the provisions of Rule 9A of the P.F.A. Rule framed there under only makes it obligatory on the part of the Local (Health) Authority to send the copy of the report of the Public Analyst to the accused vendor and such obligator being fulfilled there could be no violation of any statutory provisions is illegal and is liable to be quashed.
 - iii. The Learned Magistrate completely misread the Ext. 1 postal receipt and misunderstood the correct position.

- iv. In view of the facts, admittedly the accused appearing in court in response to summon in connection with the above-noted case never applied before the Court for getting the sample of article analyzed by the Central Food Laboratory and taking the plea that they did not receive the report of the Public Analyst, the accused persons are not legally entitled to raise any question of prejudice on the ground of deprivation of their right under Section 13(2) of the Prevention of Food Adulteration Act.
- v. The accused persons, in their examinations under Section 313 of Cr.P.C. never made any allegation of non-receipt of the report of the Public Analyst from the local (Health) Authority.
- vi. The evidence of PW-1 Siddharth Nandan, an Assistant attached to the office of the Local (Health) Authority that the report of the Public Analyst was duly sent to the accused persons under registered posts and proved the postal receipts and the A/D Card not being challenged by the accused, the impugned order of acquittal is illegal and is liable to be set aside.
- vii. The reading of Rule 9A in the context of Section 13(2) of the Act it is evident that non-compliance with the provisions of Rule 9A is not mandatory unless some prejudice has shown to be caused and in a case where the accused after appearing in the Court never challenged the report of the Public Analyst and nor applied for sending the sample of Food to the Central Food Laboratory and not having challenged the evidence of the officials of the Local (Health)

Authority as regards the section of sending the report of the analyst to the accused are not legally entitled to raise any question of denial of a right under Section 13(2) of the said Act.

- viii. When on analysis of Food articles the same is found to be adulterated the accused is liable for conviction under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act and in such case whether or not representative sample out of the entire stock was taken or not is wholly immaterial.
- ix. In the present case the article of food in question being “chilli powder”, the taking of representative sample by stirring to make the same homogeneous is not essential.
- x. The Learned Magistrate completely misread and misunderstood the true purport and effect of the decisions reported in 1991 Cri. L.J. 2912.
- xi. When the report of the Public Analyst, contained the necessary dates as regards the constituents of the article of Food in question and his conclusion and opinion is based thereupon, there cannot be any illegality or infirmity in such report and it is not at all essential for the Public Analyst to disclose in his report the mode and particulars of analysis nor the test applied, hence the impugned order is wholly illegal and is liable to be set aside.
- xii. The item No. 05.05.01 of Appendix ‘B’ which prescribes the standard of chilli powder not permitting the presence of coal tar dye and in the present case in the sample of food in question

namely, chilli powder on being analyzed having found to have contained such an unpermitted coal tar dye, is adulterated and the appellant is liable to be convicted under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act.

- xiii. There is nothing in the evidence on record which amounts to violation of the provisions of Section 11(1)(b) of the Prevention of Food Adulteration Act.
- xiv. The Learned Trial Court failed to consider that Section 10(7) of Prevention of Food Adulteration Act, 1954 relating to the evidence of sample witness is only directory and it is not the rule of law that the evidence of Food Inspector cannot be acted upon without corroboration to record on conviction. Hence the impugned order of acquittal is liable to be set aside.
- xv. The Food Inspector in his evidence before the Court having clearly stated that one part of the sample phial along with a copy of memo was put in an envelope and sealed and another copy of the memo and specimen impression of the seal was put in an envelope and sealed and both the sealed covers were sent to the Public Analyst immediately and there was nothing on record contrary to that and such evidence never be challenged there could be no violation of Rule 18 of the Prevention of Food Adulteration Act.

6. The Learned Advocate for the Opposite Party No. 2 submitted as follows:-

- i. The prosecution had failed to prove that the copy of the report of the public analyst was served upon the opposite parties according to the

provisions of section 13(2) of the Prevention of Food Adulteration Act, 1954 and the failure to produce the receipt of the intimation served upon the opposite parties is bad in law on behalf of the prosecution.

- ii. The Learned Court below rightly observed that the prosecution had failed to abide by the service of notice in compliance with Section 13(2) of the Prevention of Food Adulteration Act, 1954, supported by the Judgment vide (2015) 08 MAD CK 0053.
- iii. The Learned Judge below while acquitting the opposite parties made a crystal clear observation taking into view the judgments delivered in the citations reflected in Hon'ble Orissa High Court, 1989 CRI K.J. Aug at page 1613 & 1996 Hon'ble Supreme Court Cases at Page 75. Considering that "Sec. 13(2) confers a valuable right on the accused to prove his innocence by getting the sample tested by the central Food Laboratory. The requirement of S. 13(2) are mandatory. In order to satisfy the requirements of S. 13(2), which confers a valuable right on the accused to prove his evidence the Actual receipt has to be established by the prosecution S.13(2) provides for intimation to the accused about the availability of remedy to get the sample tested in the Central Food Laboratory.
- iv. It is to be noted that from the postal receipt evident from the deposition of PW-1 clearly depicts that the prosecution had failed to produce to show any acknowledgment or explanation that it was received by the opposite party no.2.

- v. Section 13(2) confers valuable right upon the opposite party no.2. to prove is innocence by getting the sample tested in the Central Food Laboratory which is mandatory as per law and this enshrined remedy is given to the opposite party as per law. Rule 9(A) clearly gives the opposite party no. 2 the right of getting the sampled re-examined in the Central Food Laboratory and hear the prosecution had mandatorily failed to comply with the provisions of Section 13(2) of Act which is fettered to the prosecution. The postal receipt which was shown as documentary evidence also does not prove that the report was sent by post to the opposite party which tantamount to non-compliance of mandatory provision under Section 13(2) of the Act.
- vi. The opposite parties never ever had received any copy of the report of the public analyst which is completely bad-in-law and more over the Learned Judge while acquitting the opposite parties made a clear observation that the postal receipt which was exhibited as Exhibit 1 does not bear full name and address of the accused seller and more over the prosecution had failed to prove the compliance of the mandatory statutory law in question and which is also supported from the evidence of PW-1 as well and reflected in judgment 1991 Cr. Law Journal Page 2700.
- vii. The Opposite Party No.2 in his argument states and submits that the Food Inspector who collected the alleged sample. he did not follow the method of quartering i.e. mixing up of the entire stock of the collected alleged 'chili powder' in a fresh container in equal proportions before

taking the sample for the said test as laid down by the statute and more over by not doing so as evident from the deposition of PW2 the analysis of the sample became worthless. The prosecution failed to prove that the article collected was unfit for human consumption. The prosecution had failed to prove that the collection food sample was done in a homogeneous manner and it was not a represented sample and therefore the public analyst report lost its importance which was also evident from the Judgment laid down in the High Court of Himachal Pradesh (2007) 06 SHI CK 0004.

- viii. Section 11 (1)(b) of the prevention of food Adulteration Act, 1954, precisely stated when a Food Inspector took sample of Food for analysis, he should except in special cases provided by rules under the act follow the rule of quatrain which he did not comply.
- ix. The prosecution had failed to examine Praveen Kumar Agarwal in whose presence the alleged sample was taken and it cast a doubt on behalf of the prosecution and was contradictory to Section 10(7) of the P.F.A. Act, 1954.
- x. More over as per provisions of Rule 18 of the P.F.A. Rule 1955, a copy of Memorandum and specimen impression of the seal used to seal the packet should be sent in a sealed packet separately to the public Analyst.
- xi. However, in the instant case there was nothing in Ext. 8 (Laboratory peon Book entry) and in the evidence of the Food Inspector (PW-2) by

which it could be stated that the prosecution duly complied with the mandatory provisions of Rule 18 of the P.F.A. Rules, 1955,

- xii. Nobody was affected by the alleged chili powder which had been kept in kitchen and not for sale in the alleged sweet shop of 162/164, M.G. Road, Kolkata – 700007 nor the alleged sample which was allegedly collected from the said shop was sent on the same date for analysis test and therefore the delay caused thereto creates doubt on the prosecution which is also evident from the Judgment of Madras High Court (Madurai Bench) (2015) 08 MAD CK 0053.
- xiii. The Learned Magistrate, Senior Municipal Magistrate and Metropolitan with the Case No. 19D of 1993 had rightfully acquitted the opposite parties of the said charge after observing the flaws of the prosecution.

7. It was further submitted that :-

- a. Section 13(2) of Prevention of Food Adulteration Act and Rule 9A of the Prevention of Food Adulteration Act were not complied with. Copy of the report of the Public Analyst was not served upon the respondents/accused persons as such the respondents/accused persons did not get any opportunity to test the sample from the Director, Central Food Laboratory.
- b. Sample of chillies powder taken by Food Inspector C.M.C. was not representative sample in nature.

- c. Report of the Public Analyst did not disclose that the sample in question was analyzed by the Public Analyst chemically or by way of adopting analytical process.
 - d. Copy of the memorandum and specimen impression of the seal used to seal the packet of the sample was not sent in separately to the Public Analyst as per Rule 18 of Prevention of Food Adulteration Rules, 1955.
8. Submission in respect of the above points of the case in question upon analyzing the facts as well as the documents/evidences on record and judgments delivered by the Hon'ble Supreme Court and different Hon'ble High Courts :-
- a. According to Section 13(2) of the Prevention of Food Adulteration Act, 1954 accused has a right to get the sample tested from the Director, Central Food Laboratory and the report of the C.F.L. suppressed the report of the Public Analyst.
- Firstly it was evident from the postal receipts (vide Ext.-1) and from the evidence of the PW-1 that a copy of the report of Public Analyst along with a letter of the Local Health Authority and C.M.H.O. were sent to both the accused-seller and proprietor on 26.09.03 and acknowledgment bore the signature of the person.
- Secondly in the absence of any application under Section 13(2) of the Prevention of Food Adulteration Act for availing the right to get the sample tested by the Director of Central Food Laboratory the respondents/accused cannot complain that they have been

deprived of their right to have the sample analysed by the Director of C.F.L. That view was taken by a bench of Three Hon'ble Judges of the Hon'ble Supreme Court in the case of ***Ajit Prosad Ramkrishan Singh Vs. The State of Maharashtra reported in 1972 SC pages 1631 to 1634 (paragraph 6)***. That conclusion was arrived at by the Hon'ble Supreme Court following an earlier decision of the Hon'ble Supreme Court in the case of ***Babulal Nargovindas Vs. The State of Gujrat reported in AIR 1971 SC page 1277***. In this case the respondents/accused persons getting summons of the court entered appearance before the Learned Court below but they did not show any endeavor to make any application under Section 13(2) of the Prevention of Food Adulteration Act with a prayer for sending the sample of chillies powder to the Director of Central Food Laboratory for further testing. Therefore question of prejudice of the respondents/accused persons does not and/or cannot arise in the above facts and circumstances of the case.

The Hon'ble Division Bench of the Delhi High Court was pleased to arrive at the same conclusion in the case of N.D.M.C. Petitioner Vs. Mangat Ram Duggal reported in 1993 CRILJ pages 2022 to 2025 in paragraph 4 of the said judgment. The above referred two judgments of the Hon'ble Supreme Court was followed by the Hon'ble Delhi High Court while dealing with the said issue. Moreover Rule 9A of the Prevention of Food Adulteration Rules

framed in regard to service of the report of Public Analyst upon the accused is directory that view was taken by a Full Bench comprising of the Hon'ble Judges of the Guwahati High Court in the case of Ratanlal Agarwala Jorhat Vs. State of Assam reported in 1993 CRILJ pages 2447 to 2757 (Relevant paragraphs 12, 17 and 26). The view of the Hon'ble Full Bench was also that when no request was made by the accused for analyzing the sample by Director Central Food Adulteration the accused could not be in position to show himself prejudiced and therefore order of conviction was not set aside by the Hon'ble Court.

It may noted in this connection that the Learned Prosecutor while arguing in the matter before the Learned Magistrate referred the said judgment 1993 CRILJ page 2747 but unfortunately that judgment was not dealt with by the Learned Magistrate while dealing with the said issues.

Since the respondents/accused persons did not file any application under Section 13(2) of the Prevention of Food Adulteration Act 1954 in spite of getting chance of making it before the Learned Court immediately after their appearance there, they cannot claim themselves prejudiced even if the presumption of the Learned Court below was that report of the Public Analyst was not properly served upon them and for which they were deprived to exercise their right to get the sample of chilli powder analyzed from the Director of Central Food Laboratory.

Therefore the case referred by the defence counsel reported in 1989 CRILJ pages 1613 to 1616 and 1991 CRILJ pages 2700 to 2703 before the Learned Court below do not help the respondents/accused persons to substantiate their case and to show themselves innocent and prejudiced.

The case referred by the Learned Magistrate as 1996 Supreme Court case page 75 was a wrong description. Supreme Court cases journal always publishes in different volume number. As the reporting was not mentioned in the judgment as such it could not be located.

- b. The case of the respondents/accused persons was further that sample of chilli powder taken by the Food Inspector CMC was not a representative sample.

Firstly chilli powder is not a liquid substance, so stirring of it is not required for making it homogenous prior to taking up the sample. Stirring is necessary only in case of taking of sample of milk or curd etc.

Secondly a bench of five Hon'ble Judges of the Hon'ble Supreme Court in the case of ***State of Kerala Vs. Alassary Mahammad reported in AIR 1978 page 931*** was pleased to hold that – If the Food sold to the Inspector if proved to be adulterated it is immaterial whether the sample purchased by him is a representative sample or not of the entire stock in possession of the person. A person who stores or sells such sample is liable to be

punished under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act.

The above judgment of the Hon'ble Supreme Court applies in full force in this case.

The case referred by the defence counsel 1991 CRILJ page 2912 Prakash Chand Jain Vs. State of West Bengal and another is not applicable here because the fact of that case is not identical as to the fact of this case. In that case Food Article was cumin whole and there was an admission of the Food Inspector that there could not be proper sampling unless the contents at different layers were mixed up or stirred as evident from paragraphs 14 of the said judgment but in this case there was no such admission of the Food Inspector C.M.C. while adducing evidence before the Court of the Learned Magistrate.

- c. It was evident that Food Inspector C.M.C. purchased 450 grams of chilli powder at a price of Rs. 35/- from the respondent no. 2/accused persons and there was no denial and dispute of it. Therefore it was the duty of the respondent no. 2/seller to sale pure and good food articles/chilli powder to the buyer/Food Inspector of the C.M.C. In case of selling bad and adulterated food article to the seller/Food Inspector latches and liabilities should come on the shoulder of the respondent no. 2 who introduced himself as the seller-cum person in charge of the business. Section

7 of the Prevention of Food Adulteration Act clearly prohibits storing and selling of adulterated Food.

- d. The defence counsel further submitted before Court of the Learned Magistrate that the Court should not place any reliance upon the report of Public Analyst as it was not disclosed that the sample was analyzed chemically or by way of adopting analytical process.

In the case of ***Mangaldas Raghavji & another vs. State of Maharashtra & another reported in AIR 1966 S.C. (pages 121-135)*** a bench of five Hon'ble Judges of the Hon'ble Supreme Court was of the view that report of the Public Analyst was sufficient to arrive at the conclusion that the Food Article was adulterated there is no need to state how calculation were made in arriving at such conclusion (paragraph 11 of the said judgment).

That decision of the Hon'ble Supreme Court is very much applicable in this case as such the finding of the Learned Magistrate on this point was not proper and lawful

- e. The defence counsel also submitted before the Learned Court below that the copy of the memorandum and specimen impression of the seal used to seal the packet of the sample was not sent separately to the Public Analyst as per Rule 18 of the Prevention of Food Adulteration Rules 1944.

It is very much evident from the deposition of S.K. Basu Food Inspector C.M.C. that Rule 18 of the Prevention of Food

Adulteration Rules was duly followed at the time of sending sample of the Public Analyst.

Relevant portion of his deposition are enumerated below for kind consideration of this Hon'ble Court.

"Then, I prepared four copies memorandum form, then I put one part of the sample glass phial along with a memo. Form in envelope and sealed. In a separate envelop I placed one memo Form bearing the specimen impression of my sealed and scaled. After due entry in the peon book those two sealed envelopes were sent to the Public Analyst and one of the Asst. Analyst Mr B. Paramanick received the said envelopes on putting his signature in the peon book, and I know his signature. This the peon book, which is written by me and the signature of Mr. B. Paramanick is there. I know his signature is marked Ext. 8"

The above deposition of the Food Inspector was not considered by the Learned Magistrate while dealing with the issue and thus the finding of the Learned Magistrate was not lawful and proper.

It may noted in this connection that the Hon'ble Supreme Court in the case of State of U.P. Vs. Hanif reported in 1992 CRILJ pages 1429 to 1432 held that the evidence of the Food Inspector is to be tested on its own its own merits and if found acceptable the court would be entitled to accept and rely on to prove prosecution case. In this case the factum of the very purchase was not put in question and no personal allegation was made against the Food Inspector. In such a case the evidence of Food Inspector was fit for

acceptance before the Learned Court below to prove the case of the prosecution. Unfortunately that was not done in the instant case.

9. A circumspection of the prosecution witnesses revealed as follows:-

- i. PW-1 in his deposition stated he was an Assistant to the L(H)A & C.M.O.H. of the C.M.C. On 26.05.1993 they sent a copy of the Public Analyst's report along with a forwarding letter of the L(H)A & C.M.O.H. by registered post with A/D to the accused Narendra Kumar Arora, seller, Ram Murti Arora, proprietor of 162-164, M.G. Road, Calcutta-7. The initial postal receipt, marked as Ext. 1. The postal A/D card marked Ext. 2. The copy of the forwarding letter filled up by one of the Assistant of the L(H)A & C.M.O.H. Sri Malay Kr. Das, and PW-1 knew his handwriting. The forwarding letter was marked Ext. 3.
- ii. During cross-examination, before charge, PW-1 stated the letter had been sent both to the proprietor and the seller and the A/D card bore the signature of a single person. However, he could not state specifically as to who actually received the said letter. PW-1, after charge, stated to have received a report of Public Analyst on 31.03.1993. On last 19.05.1993 they received intimation from Food Inspector regarding filing of the case.
- iii. PW-2 in his deposition stated on 05.03.1993 at about 5.00 p.m. he visited one sweet meat and snack shop situated at 162-164, M.G. Road, Calcutta-7. The name and style of that shop was M/s. Punjab Quality Sweets. During his visit he found one person, who disclosed his name as Narendra Kr. Arora and also disclosed that he was the seller-cum-

person-in-charge of that shop. PW-2 disclosed his identity and purpose of visit to him. PW-2 identified Narendra Kr. Arora in Court. On enquiry it was learnt from Narendra Kr. Arora that his father Ram Murti Arora was the proprietor of that shop. PW-2 inspected the said shop and found in their kitchen about 1½ kgs. of chilli powder, which was stored at their kitchen and it was being kept there for preparation of different types of snacks. PW-2 suspected that chilli powder to be of substandard quality and intended to draw one sample. He called on local witness named Praveen Kr. Agarwala of 162-164, M.G. Road, Calcutta-7. In his presence PW-2 prepared a notice in Form No. VI and duly served the same upon the accused. The copy of the said notice Form, duly filled up and signed by PW-2, also signed by the sample witness Praveen and the said Form was duly received by the seller/accused Narendra Kr. Arora after putting his endorsement and signature on it. It was marked as Ext. 4.

PW-2 then purchased 450 gms. of chilli powder from the said stock at a price of Rs.35/- and he paid the price in cash to the accused seller Narendra Kr. Arora and an endorsement with his signature was obtained on the reverse side of the fourth-part of the sample coupon on acceptance of price. It was marked Ext. 5.

PW-2, thereafter, divided the said 450 gms. of chilli powder into three equal parts and poured each part in three clean, dry and empty sample glass phials and corked those phials separately. After that he filled up four parts of the Sample Coupon Form and obtained signature of the

sample witness in each part and then labelled each part of the sample phial at the neck of each closed sample phials and put a seal mark on them. The remaining fourth part of the sample coupon form, written and signed by PW-2 and it also bore the signature of the local witness. The fourth part of sample coupon form was marked Ext. 6.

PW-2, thereafter, wrapped each sample phials separately by means of brown paper and the ends of the paper were neatly folded in and pasted with gum. PW-2 pasted the paper slip bearing code and serial number along with the signature of the L(H)A in each sample phial from top to bottom and he obtained the signature of the accused vendor in such fashion which covered the paper slip and the brown paper. PW-2 subsequently tied each glass phial separately by means of red tape cross-wisely and then he put four distinct seal marks on the top, one at the bottom and two on either side, covering the knots.

Thereafter, PW-2 filled up the seizure memo in Form No. IV. He seized and sealed 1 kg. of chilli powder and kept the said seized stock in the safe custody of the accused seller. The copy of seizure memo in Form No. IV, which was written and signed by him and it bore the signature of sample witness and there was endorsement with signature of the accused vendor Mr. Arora, marked Ext. 7.

PW-2 further prepared four copies of Memorandum Form. He put one part of the sample glass phial along with a Memo. Form in enveloped sealed. In a separate envelope he placed one Memo. Form bearing the specimen impression of his seal. After due entry in the peon book those

sealed envelopes were sent to the Public Analyst and one of the Assistant Analyst Mr. D. Paramanick received the said envelopes on putting his signature in the peon book, PW-2 knew his signature. The peon book, which was written by PW-2 and the signature of Mr. D. Paramanick was there. He knew his signature which was marked as Ext. 8.

PW-2 placed the remaining two sample phials along with two copies of the Memo. Form in a big envelope and sealed, and the big envelope along with the sample taken report was sent to the L(H)A and one of the Assistant Sri Siddhartha Nandan, on behalf of the L(H)A received the same putting his signature on the peon book and PW-2 knew his signature. The peon book, prepared by PW-2 and there was a signature of Sri Nandan, which PW-2 knew. The peon book was marked Ext. 9.

The whole procedure of sample taking was done in presence of the sample witness Praveen Kr. Agarwala.

PW-2 received the report of the Public Analyst subsequently along with the forwarding note of the L(H)A. The forwarding note which he received from the L(H)A and it bore the signature of Dr. S.K. Ghosh, L(H)A & C.M.O.H., which PW-2 knew. The report of the Public Analyst where the Public Analyst opined that the sample of chilli powder was highly adulterated and there was the signature of Sankar Prasad Debnath, Public Analyst and PW-2 knew his signature. It was marked Ext. 10. The Public Analyst's report was marked Ext. 11.

Later on, PW-2 placed all the relevant paper and document before the consenting authority relating to that sample, along with his forwarding note for his verification and written permission to launch the prosecution against the accused persons. That was the forwarding note. It was marked as Ext. 12 and that was the consent with signature of the consenting authority, Dr. S.K. Ghosh. It was marked as Ext. 12/1.

After obtaining the written consent from the consenting authority, PW-2 prepared the petition of complaint and it was placed before the L(H)A & C.M.O.H. Dr. S.K. Ghosh for obtaining his consent. PW-2 filled up and signed the petition of complaint and the consenting authority Dr. S.K. Ghosh, L(H)A & C.M.O.H. also consented and signed the petition of complaint. The petition of complaint was marked Ext. 13 and the consent along with signature of Dr. S.K. Ghosh which PW-2 knew was marked Ext. 13/1.

Thereafter, PW-2 filed the petition of complaint before the Learned Court against the proprietor Ram Murti Arora and the vendor-cum-person in-charge Narendra Kumar Arora all of M/s. Punjab Quality Sweets of 162-164, M.G. Road, Calcutta-7 and in the petition of complaint the accused persons were prosecuted under Section 16(1) (a) (i) read with Section 7 of the Prevention of Food Adulteration Act, 1954.

- iv. During cross-examination PW-2 stated that he went to the shop of the accused at about 5.00 p.m. and the operation continued for about 1½ hrs. The sample witness was present there for the whole period of operation. So far he remembered the sample witness was an owner of a

shop. The shop of the accused deals with the business of sweets and snacks (kachuri and singara etc.). PW-2 prepared the sample from the kitchen which was kept in a Tin. The accused told him that he had used the chilli powder kept in the kitchen of the shop for preparation of snacks, however there was no written declaration in that regard. PW-2 had collected no sample of snacks in which the chilli powder had been used. PW-2 poured the sample of chilli powder from the Tin container in the three glass sample phials directly. Those three glass sample phials were supplies to him by the corresponding department of the C.M.C. The concerned department preserved the document regarding supply of sample glass phials to him, however no such document was with at time of cross-examination. The radius of the sample phial was about 2” inches. PW-2 had received those sample glass phials in sealed condition. The colour of the chilli powder attracted his attention and as such he selected the said article for check up. The colour of the chilli powder was extra bright.

- v. During cross-examination PW-2, after charge, further stated that sample phials were kept in his office custody before sending the same to the Public Analyst and the L(H)A. He had no documentary evidence to show that the sample phials were clean, dry and empty. He received the sample phials tied with cork. There was no provision in the Prevention of Food Adulteration Act to take the sample as was representative manner.

- vi. PW-3 in his deposition stated that he had brought the T.P. Demand Register for the year 1992-93, corresponding entry was at page no. 944, Ward No. 42 of the C.M.C. The name of the party was Ram Murti Arora, owner of Punjabi Quality Sweets, situated at 162-164, M.G. Raod, Calcutta and the nature of the business of the accused is – sweet-meat, confectionary & Eating-House Keeper. The accused had made payment for the year 1992-93, and the entry in that regard was the hand-writing of A. Basu Roy Chowdhury, Inspector of the Licence Department, and he was acquainted with his signature and handwriting. The entry in the T.P. Demand Register was marked Ext. 14. He had also brought with him the certified copy of the aforesaid entry, duly attested by their Deputy Licence Officer, Sri C.R. Sarkar, he was also acquainted with his signature and handwriting and it was also marked as Ext. 14.
- vii. During cross-examination PW-3 he had not visited the spot personally where the accused's shop was situated. The T.P. Demand Register noted entry upto March, 1993. He had no personal knowledge regarding the case. He had deposed in the case on the basis of the T.P. Demad Register which he had brought in Court for the case.
- viii. DW-1 in his deposition stated that he was one of the accused persons in the case. They had a sweet-meat & snacks shop at premises no. 162-164, M.G. Road, Calcutta-7. They used 'Garam Mashala' for preparation of 'Kachuri', 'Singara', 'Nimki' etc. The chilli powder from which the sample was taken was kept at their kitchen of their shop for use of preparation of food of their employees. Number of their employees was

twenty. They never used any chilli powder for preparation of food articles like 'Kachuri', 'Singara', 'Nimki' etc. They gave sample of chilli powder to the Food Inspector as he disclosed that he might lodge a G.D., if they would not give any sample of chilli powder to him. They did not use chilli powder in any food article like 'Kachuri', 'Singara', 'Nimki' etc.

ix. During cross-examination DW-1 stated they also prepared 'Chana Batar' at their shop in question.

10. The sample of chilli powder was seized by the complainant on 05.03.1993.

The public analyst report was dated 31st of March, 1993. The notice under Section 13(2) of the Prevention of Food Adulteration Act, 1954 dated 25th of May, 1993 was issued on 26th of May, 1993 by registered post with AD.

11. PW-1 stated that the copy of such notice through a forwarding letter marked Exhibit 1 bore the AD card. However did not specifically mentioned as to who actually received the said letter. The petition of complaint was filed on 19.05.1993. The summons was issued against the accused persons fixing the next date of appearance on 23.06.1993. The accused persons appeared before the Court on 16th of August 1993 and obtained bail.

12. It is evident from the Lower Court records that the opposite parties did not get any opportunity to retest the sample under Section 13(2) of the 1954 Act for lack of information. The appellants could have exercised possible means to serve the notice on the concerned person and ensure that the notice was received by the opposite parties or their representatives as the exercise was not accomplished by the appellants. Moreover, there had been a

considerable delay of nearly two months of more and above to send the report of the public analyst to the opposite parties who in case would have been adequately served with the notice apply for retesting of the sample to the Central Forensic Laboratory nearly beyond a period of three months with regard to the sample chilli powder which being a perishable commodity would have undergone changes in its constituents. There was a delay of over two months to initiate the proceedings against the accused persons curbing their right under Section 13(2) of the aforesaid Act as the ingredients comprising the chilli powder would have decayed in its natural course owing to its perishability. Moreover, the appellant did not endeavour to investigate or initiate query with regard to the retailer or marketer of the chilli powder or the source from where the chilli powder was obtained and its further use. The chilli powder as a condiment or a spice cannot be consumed as a food in isolation but used in preparation of sample food products.

13. The prosecution did not prove that the food, eatables or delicacies if at all prepared utilizing the chilli powder was precarious for human consumption. Moreover, the prosecution failed to prove that the chilli powder was utilized for any purposes as enumerated under the definition of food as defined under Section 2(v) of the Act.
14. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.
15. Accordingly, the criminal appeal being CRA 4 of 2000 stands disposed of.
16. There is no order as to costs.

17. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
18. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)