

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 4171 of 2012

Dipak Kedia @ Deepak Kedia

Versus

The State of West Bengal

For the Petitioner : Mr. Saryati Datta, Adv.
Mr. Sanjib Kumar Dan, Adv.
Mr. Chitrak Biswas, Adv.

For the State : Mr. Debasish Roy, Ld. PP
Ms. Faria Hossain, Ld. APP
Mr. Kunal Ganguly, Adv.

Heard on : 05.04.2024

Judgment on : 02.07.2024

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application has been filed by the petitioner under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 challenging the judgment and order dated 11.12.2012 passed by the learned Additional Sessions Judge, 2nd Court, Bankura in Criminal Appeal No. 2 of 2011 thereby affirmed the judgment and order of conviction passed by learned Chief Judicial Magistrate, Bankura on 14.12.2010 in Complaint Case No. 138C of 2004 under Section 16(1)A read with Section 7(1) of the Prevention of Food Adulteration Act and sentenced him to suffer rigorous imprisonment for 3 years and also to pay a fine of Rs. 5,000/- in default to suffer rigorous imprisonment for six months more.

2. The factual matrix of the instant case leading to filing of this application is as under: -

2a. The petitioner was an employee of an Oil Mill owned by Mahesh Sharma, since deceased. On 07.04.2004, the informant A.C.M.O.H., Bankura (Sadar) visited the commercial shop of Mahesh Sharma at Barjora, Bankura. The said Mahesh Sharma, being the sole proprietor of M/s. M.K. Oil & Flour Mill was carrying on the business of manufacturing Mustard Oil and selling the same through

his employee, Dipak Kedia, the petitioner herein. The said complainant had purchased mustard oil from the shop for testing. The Public Analyst declared the said oil as adulterated due to presence of rice bran oil in its report. Accordingly, a case was started against Mahesh Sharma, the owner and his employee, Dipak Kedia, the petitioner herein on the basis of written complaint by the A.C.M.O.H., local Health Authority of Bankura.

2b. On the basis of said complaint, accused persons were summoned by the learned Chief Judicial Magistrate, Bankura, where they were released on bail. The case of the petitioner is that there was no any adulteration on the mustard oil. As such, the accused persons made a prayer before the Learned Chief Judicial Magistrate to send the same sample of mustard oil to Central Food Laboratory for chemical examination. The report was received from the Central Food Laboratory where it was branded the oil adulterated though report varied and found anomalies with the report of Public Analyst. The Public Analyst's report showed Bellier Test Temperature as normal being 25.5C but the Central Food Laboratory revealed it was 28.3C. Not only that, the Public Analyst Report showed test for Rice Bran Oil as positive but the Central Food Laboratory Report categorically showed the same being negative and absent.

2c. During pendency of the said case, Mahesh Sharma, the owner of M/s. M.K. Oil & Flour Mill expired as such his case has been filed for ever but case continued with regards to the petitioner and finally the learned Court below, after appreciation of evidence, passed judgment holding the petitioner found guilty under Section 16(1)A of the Prevention of Food Adulteration Act read with Section 7(1) of the said Act and sentenced him to suffer rigorous imprisonment for 3 years and also to pay a fine of Rs. 5,000/- in default to suffer rigorous imprisonment for six months more. The said judgment and order had been challenged before the learned Additional Sessions Judge, 2nd Court, Bankura being Criminal Appeal No. 2 of 2011 but the said appeal has been dismissed on 11.12.2012 by the learned Judge and affirmed the conviction and sentenced. The appellant-petitioner was directed to surrender before the learned Trial Court within one month to server out the sentence.

2d. Being aggrieved by and dissatisfied with the said impugned judgment and order of dismissal passed by the learned Additional Sessions Judge, 2nd Court, Bankura, the present petitioner filed this revisional application challenging the said judgment and order as bad in law and praying for setting aside the judgment and order and prayed for acquittal. Hence, the instant revisional application has come up before this Bench for disposal.

SUBMISSION ON BEHALF OF THE PETITIONER:

3. Learned Advocates appearing on behalf of the Petitioner submitted that the petitioner was neither the manufacturer nor the owner of the said Oil Mill in question. Employer has expired. The present petitioner has been made a scapegoat since he was selling mustard oil under direction of his employer. Petitioner had neither any knowledge about the quality of the oil nor any *mens rea* for selling alleged adulterated oil.

3a. It is further submitted that the reports of Public Analyst and Central Food Laboratory are categorically different from one and another. There are several contradictions and anomalies. In view of such discrepancy, the judgment and order of conviction cannot be sustained and is liable to be set aside. The complainant without any reasonable ground seized the food article violating the Section 10(9) of the Act and as a result the whole process of prosecution has been vitiated.

3b. It is further submitted that the prosecution has been vitiated for non-compliance of provisions of Sections 12(2B), 13(2) and 13(4) of the Act read with Rule 4. Furthermore, the conviction is not sustainable due to non-compliance of the provisions of Section 313 of Criminal Procedure Code. In view of submissions, the learned

advocates pray for setting aside the judgment and order of conviction. Learned counsels also relied two judgments to support their contention as under:

- i. The State of Assam Versus Subkaran Agarwalla¹
- ii. Rattan Lal and etc. Versus State of H.P.²

SUBMISSION ON BEHALF OF THE STATE:

4. Learned Public Prosecutor submitted that at the instance of the accused persons themselves, a sample was sent to the Central Food Laboratory for chemical examination and the reports of both the Public Analyst and Central Food Laboratory are same and opined that the mustard oil was adulterated. Consequently, the prosecution has proved that the mustard oil which was sold by M/s. M.K. Oil & Flour Mill found adulterated. Accordingly, the judgment and order of conviction passed by the learned Trial Court is correct and may not be liable to be set aside. The prosecution has proved the case in positive against the present petitioner though he was only an employee but he was also involved in the said adulteration. Accordingly, the instant revisional application is liable to be dismissed.

¹ (1987) 1 Gauhati Law Reports 260;

² 1989 SCC OnLine HP 76 : 1991 Cri LJ 3302.

DISCUSSIONS, ANALYSIS AND CONCLUSION BY THIS COURT:

5. Having heard the submissions of the parties and on perusal of the materials available on the record, this Court finds A.C.M.O.H., Bankura (Sadar) collected sample by way of purchase of mustard oil from the Shop of M/s. M.K. Oil and Flour Mill at Barjora, Bankura during inspection and the sample was sent to Public Analyst at Calcutta after duly observing of essential formalities. After receiving the report from Public Analyst, it was found the mustard oil was adulterated one as such he started a case against Mahesh Sharma and Dipak Kedia. They were appeared before the Learned Chief Judicial Magistrate and released on bail. As they have challenged the report of Public Analyst, they prayed before the Court to send the same sample of mustard oil again to Central Food Laboratory for chemical examination. The said report was received in due course of time which also showed Mustared oil was adulterated. The case of the petitioner is that the report of Central Food Laboratory clearly specific that there was no rice bran oil in the mustard oil and the same was negative and absent. The Public Analyst Report showed Bellier Test Temperature as normal being 25.5C but the Central Food Laboratory revealed it was 28.3C. Both the reports are contradictory.

6. It was rightly pointed out that no public witnesses were present while collecting the sample. The sample which was sent to the Public Analyst was mixed up with some adulterated items i.e. rice bran oil by the prosecution himself at the time of sending the same but another container of the same sample which was kept in the Court could not be mixed with rice bran oil. As such, the Central Food Laboratory did not find any rice bran oil on the sample while testing the same, which creates serious doubt about the adulteration of mustered oil, which was collected by the official. There was a variation in the reports submitted by the Public Analyst and Central Food Laboratory. In one report it was found that the rice bran oil was mixed in the sample whereas the Central Food Laboratory did not find any rice bran oil in the same sample. Accordingly, both the reports are found some vital discrepancies which go to the root of the prosecution case and entire story of adulteration to mix up some substance of rice bran oil in the container found totally discrepancies.

7. From the perusal of evidence of P.W. 2, Arup Ranjan Mahanti, the Sub Divisional Food Inspector, he has deposed that on 07.04.2004 he inspected the oil mill named and styled M/s M.K. Oil & Flour Mill at Barjora, Bankura. During inspection he was accompanied by Panchanan Biswas, G.D.A. attached to the office of

the A.C.M.O.H., Bankura. Accused Dipak Kedia was present to sell the oil to the public. P.W. 2 disclosed his identity and inspected the stock of mustard oil for sale. P.W. 2 expressed his intention to purchase the mustard oil and prepared two copies of Form VI (Ext. 4). One copy of the same was handed over to the accused who made an endorsement regarding its receipt. P.W. 2 purchased 750 gm of mustard oil for Rs. 38/- only. The accused issued a money receipt (Ext. 5). P.W. 2 has further stated that he divided 750 gm of mustard oil in three equal parts and each part was kept in a clean and dry bottle. Each bottle was duly lid and sealed. Four copies of label were prepared and one each was pasted and sealed each mustard oil bottle. Thereafter, each bottle was wrapped with thick brown paper and paper slips of local health authority was affixed. Accused put his signature on paper slips and brown papers. Each bottle was then tied with thick and strong thread and it was again sealed at four sides on the bottle i.e. back, bottom and either side. P.W. 2 along with Panchanan Biswas returned to the office with collected sample and papers. He prepared five copies of memorandum in Form VII with specimen seal which was also used in sealing the sample jars. One sample jar with one memorandum in Form VII (Ext. 4) with specimen seal was kept in a sealed packed addressed to Public Analysis. In another packet a copy of Ext. 4 was kept tagged, sealed and

addressed to Public Analysis. Both packets were dispatched to Public Analyst. P.W. 2 further deposed that he sent two sample food bottles, Memorandum in Form VII with his other reports to the A.C.M.O.H. Sadar, Bankura. His evidence further reveals that on 31.05.2004 office of the A.C.M.O.H., Bankura received the report of public Analyst (Ext. 1). On the basis of this report, the A.C.M.O.H. sent the same to accused through registered post with A/D (Ext. 3 series) and after observing legal formalities, the A.C.M.O.H. lodged a written complaint (Ext. 2).

8. During cross-examination, he admitted there was no public witness at the time of purchasing sample because the Mill is situated in an isolated place.

9. P.W. 3, Panchanan Biswas who accompanied P.W. 2 at the time of visiting the shop room of accused corroborated the testimony of P.W. 2 regarding collection of said sample. However, the report of Public Analyst under the Government of West Bengal and the report of Central Food Laboratory did not match and both the reports were varied with each other. In one report it was found mustard oil contained rice bran oil whereas in another report it was found mustard oil did not contain rice bran oil. Bellier Turbidity Temperature test was also different from one and another. However,

learned Chief Judicial Magistrate, Bankura in her decision pointed out that according to statutory mandate of Section 13(3) of Prevention of Food Adulteration Act with amendment issued by the Directorate of Central Food Laboratory, as per statute given by the Public Analyst under Sub-section (1) by way of amendment of the Act and the document purporting a certificate signed by the Directorate of Central Food Laboratory shall be final and conclusive evidence of the fact therein and as such the Learned Chief Judicial Magistrate, Bankura has believed the genuineness and authenticity of the certificate issued by the Central Food Laboratory and according to her, the accused was storing and selling the adulterated mustard oil to the public and as such he was found guilty for the offence punishable under Section 16(1)A of the Prevention of Food Adulteration Act. The same view was also taken by the learned Additional Sessions Judge, 2nd Court, Bankura and affirmed the said conviction order passed by the learned Chief Judicial Magistrate, Bankura in Case No. 138Cof 2004 and directed the petitioner to surrender before the Learned Trial Court within one month to serve out the sentence.

10. As per the report of the Public Analyst, the petitioner/convict has committed an offence under Section 16(1)A read with Section 7(1) of the Prevention of Food Adulteration Act for manufacturing and selling the adulterated mustard oil. But subsequently, accused

persons themselves challenged the said report and further prayed before the learned Magistrate to send the sample to the Central Food Laboratory for further chemical examination where it was found the mustard oil did not contain rice bran oil. The percentage of Bellier test was also found different. In view of the judgments passed by both the Courts below, the report of Public Analyst became non-est. when the report is non-est, it cannot be charged that the accused person is guilty of an offence for adulteration. In the instant case in hand, the report of the Directorate of the Central Food Laboratory was relied by both the Courts below but when meticulously perusal of report, it reveals that the sample description mentioned in the report as "The sample of mustard oil was received in a glass bottle was found without manufacturer's label."

11. Secondly, test of Rice Bran Oil was not found in such mustard oil. Apart from that, the Central Food Laboratory found absent of Halphen's Test, Test for Argemone Oil, Hexabromide Test, Test for castor oil, Test for Mineral oil, Test for HCN, Test for oil soluble colour, Test for Rice Bran Oil and Baudouin's Test. Finally, it was found only Bellier Turbidity Temperature (Acetic Acid Method) is 28.3°C whereas prescribed standard should be 23.0-27.5°C.

12. The report of Public Analyst, West Bengal Public Health Laboratory shows Bellier Turbidity Temperature is 25.5°C, which is within the prescribed standard and normal.

13. All these vital contradictions and anomalies found while testing the alleged adulterated mustard oil by the two laboratories. Even if, report of Central Food Laboratory only be considered then also it cannot be relied upon surely that mustard oil, collected from the shop, is adulterated one because the sample of mustard oil was received in a glass bottle was found without manufacturer's label by the Central Food Laboratory. All these facts create doubt about the collection of sample and the adulteration. Accordingly, it appears prosecution fails to prove the case of adulteration beyond reasonable doubt and where doubt creates, benefit goes in favour of the accused/petitioner, who was merely an employee.

14. The larger Bench of Hon'ble Himachal Pradesh High Court held in Rattan Lal's case as, inter alia, as under: -

"1. Criminal Revision No. 20 of 1985 (Rattan Lal v. State of Himachal Pradesh) was filed in this Court on April 4, 1985. Rattan Lal was convicted by the Chief Judicial Magistrate, Bilaspur, under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (for brief "the Act") by judgment and order dated November 17, 1984. He was sentenced to undergo rigorous imprisonment for six months and pay a fine of Rs. 1,000/-. The offence found proved against him was of selling adulterated cow milk

to the Food Inspector. In appeal, the conviction was upheld by the learned Sessions Judge, Shimla, on March 22, 1985. The sentence awarded to the petitioner was also upheld.

2. The sample of milk was found to be adulterated by the Public Analyst on account of the fact that the milk fat was found to be only 2.6% which was deficient by 29% than the minimum prescribed standard. One part of the sample was also sent, as per the request of the petitioner, to the Central Food Laboratory. It was found to be adulterated, inasmuch as, it had only 2.6% fat and solids (Nonfat 6.6%.) The contents of fat were found to be the same as had been found by the Public Analyst. There was, however, a difference in the result of the analysis by the two authorities in regard to milk solids non-fat. The Public analyst had found the solids non-fat to be 9.6%. The petitioner has taken several grounds in the memorandum of revision. One of the grounds is that the variation to the extent to 3.0% of milk solid non-fats in the two reports showed that the sample of milk was not a representative sample. The revision was heard in part by one of us (V.P. Bhatnagar, J.). On March 28, 1989, one of the submissions made was that after the receipt of the report from the Director, Central Food Laboratory, a fresh sanction for the prosecution was necessary to be obtained and, inasmuch as, it had not been obtained, the whole proceedings were vitiated. This question had already been referred for consideration by a larger Bench in Criminal Revision No. 104 of 1986 (Meher Chand v. State). The case, therefore, was directed to be heard along with that revision petition.

3. In Criminal Revision No. 104 of 1986 (Meher Chand v. State), the facts are these:

The Government Food Inspector visited the business premises of petitioner Mehar Chand, who was running a Karyana shop, on October 26, 1982 and purchased a sample of hard-boiled sugar confectionery from Mehar Chand, who had 5 Kgs. thereof in his possession. Out of the 900 gms. of hard-boiled sugar confectionery purchased by the Food Inspector, three samples were prepared. On analysis by the Public Analyst, the sample was found to contain an orange coal tar-dye, other than the prescribed one, rendering the sample to be adulterated. The petitioner was prosecuted. He

requested that the opinion of the Director, Central Food Laboratory be also obtained. Second part of the sample was sent to the Director. The report of the Director showed that the sample was adulterated, though for different reasons. The Director found that it contained ash insoluble in dilute HCl more than the maximum prescribed limit. It also contained mineral oil.

4. The Chief Judicial Magistrate, Hamirpur, who tried the case, convicted Mehar Chand for an offence under Section 16(1 A) (i) of the Act. He was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 2,000/-. This was by an order of May 20, 1985.

5.

6. One of the submissions, which had been made before the learned Sessions Judge, was that a fresh consent for the prosecution of Mehar Chand was necessary after the receipt of the report of the Director, which held the sample to be adulterated on grounds entirely different from those on which the Public Analyst had held it to be adulterated. The argument was not accepted. To quote the words of the learned Sessions Judge "....In the present case, the report of the Director, Central Food Laboratory is dated 19-3-83. After the receipt of this report, the Food Inspector was fully authorised to file the complaint and he did not require any written consent of the Chief Medical Officer.....".The decision of this Court in *Voltas Limited v. The Food Inspector Chamba*, ILR (1985) Him Pra 796 was distinguished by the Sessions Judge on the ground that the complaint in *Voltas* case was returned to the Food Inspector as the initial complaint was filed by him on 14-7-1983 and after the opinion of the Director, Central Food Laboratory dated 19-8-1983, the Food Inspector could file a fresh complaint only with the written consent of the Chief Medical Officer in view of the Government notification mentioned therein. In the case of petitioner, Mehar Chand, the position was entirely different.

7. The case of Mehar Chand was heard by R.S. Thakur, J. He found it difficult to agree with the view taken by another learned single Judge (V.P. Gupta, J.) in the case of *M/s. Voltas Limited*. Consequently, by a detailed order dated May 22, 1987, he directed

the matter to be placed before the Chief Justice for appropriate orders being passed for the reconsideration of the decision in M/s. Voltas Limited. Thereafter, two of us (V.P. Bhatnagar and Bhawani Singh, JJ.) heard the matter on May 11, 1989, and passed the following order: --

"Heard. We are of the view that the questions raised in Reference Order dated May 22, 1987, by a learned single Judge are of considerable importance. The reasons which necessitated the making of the Reference have been elaborately stated in that order. We direct that this case be placed before the Hon'ble Chief Justice for constituting a Full Bench for hearing the Reference in question."

8. Thereafter, both the cases were listed before this Full Bench and were heard on June 2, 1989.

9. The question which merits decision is this : Can the Court proceed with a case in which it had taken cognizance of the offence on the basis of a complaint instituted with a valid written consent under Section 20(1) of the Act in respect of sample of food found to be adulterated by the Public Analyst for certain reasons, without there being a fresh written consent, in regard to the nature of adulteration, later found in the sample by the Director of Central Food Laboratory, which is different from that found earlier by the Public Analyst.

10.

11.

12. The prevention of Food Adulteration Act, 1954, had been enacted as "An Act to make provision for the prevention of adulteration of Food". Section 2 is the definition section in which 'food' has been defined in Sub-section (v) to mean 'any article used as food or drink for human consumption other than drugs and water'. It also includes the articles mentioned in Clause (a), (b) and (c). An article of food is deemed to be adulterated in the circumstances enumerated in Clause (ia), which contains the definition of the word 'adulterated'. Sub-section (viii) defines 'Local (Health) Authority' to mean an officer appointed by the Central Government or the State Government, by notification in the official Gazette, to be in charge of

Health administration in such area with such designation as may be specified therein. Section 4 provides for the establishment of Central Food Laboratories by the Central Government. It also enables the Central Government to make rules prescribing the functions etc. of the Laboratory. Section 7 says that no person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute any adulterated food or any article of food the sale of which is for the time being prohibited by the Health Authority in the interest of public health or any article of food in contravention of any other provision of the Act or of any rule made thereunder. The Central as well as the State Government have been authorised to appoint Public Analysts having prescribed qualifications for local areas assigned to them by these Governments. Section 8 provides for appointment of Food Inspectors by the Central Government while Section 10 provides for the powers of the Food Inspector. Section 11 deals with the procedure to be followed by the Food Inspectors. It enjoins that when the Food Inspector takes a sample of food for analysis, he would divide the same into three parts except in special cases provided by the rules and send one of them for analysis to the Public Analyst. The remaining two parts are to be sent to the Local (Health) Authority. Section 12 permits a purchaser of any article of food to have it analysed by the Public Analyst. The purchaser has to inform the vendor, at the time of purchase, of his intention to have the article so analysed. Certain procedural safeguards, which are to be observed by the Public Analyst, are also to be observed by the purchaser in such a case.

13. Section 13 relates to the report of the Public Analyst. The report of the result of the analysis of any article of food made by him is to be submitted by the Public Analyst in a prescribed form to the Local (Health) Authority. A copy of the report of the analysis is to be forwarded by the Local (Health) Authority to the person or persons from whom the sample of article of food was taken, after the institution of prosecution against them, informing them that they may make an application to the Court, if it is so desired, to get the sample of the article of food analysed by the Central Laboratory. When a request is made to the Court, where the prosecution is pending, the Local (Health) Authority is under an obligation to

forward the sample to the Court on requisition by it. The Court will then send the sample to the Director of Central Food Laboratory and shall not continue with the proceedings pending before it in relation to the prosecution until the receipt of the certificate of the result of the analysis from the Director. The certificate issued by the Director of the Central Food Laboratory shall supersede the report given by the Public Analyst. The report shall be final and conclusive evidence of the facts stated therein. Section 16 enumerates the offences and the penalties therefor. Section 20, which deals with the cognizance and trial of offences, says:

"20. Cognizance and trial of offences. -- (1) No prosecution for an offence under this Act, not being an offence under Section 14 or Section 14-A 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 referred to in Section 12, if he produces in Court a copy of the report of the public analyst along with the complaint.

(2) No Court inferior to that of a Metropolitan Magistrate or of a Judicial Magistrate of the first class shall try any offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under Sub-section (1-AA) of Section 16 shall be cognizable and non-bailable."

14. Section 22-A enables the Central Government to give such directions as it may deem necessary to a State Government regarding the carrying into execution of all or any of the provisions of the Act and provides that the State Government shall comply with such directions. Section 23 enables the Central Government to make rules to carry out the provisions of the Act. In Sub-section (1 A), it is provided that the rules may provide for all or any of the matters mentioned in various clauses of this sub-section. Section 24 empowers the State Government to make rules for giving effect to the

provisions of the Act in matters not falling within the purview of Section 23.

15. A look at Section 20 shows that a prosecution for an offence under the Act (except for an offence under Sections 14 and 14-A) cannot be instituted except by, or with the written consent of, the Central or the State Government or a person authorised in that behalf, by general or special order by the Central Government or the State Government. This is clear from Sub-section (1) of Section 20. Thus, the prosecution may be instituted by the Central Government or by the State Government. In that event, no written consent is contemplated. Where, however, the prosecution is initiated by a complaint filed by someone other than the Central or the State Government itself, there should be a written consent for such prosecution either by the Central Government or the State Government or by a person authorised in this behalf by the Central or the State Government by general or special order.

16. Normally, the complaint for initiating the prosecution is filed by the Food Inspector. In that eventuality there has to be written consent, for the initiation of the prosecution, of the Central or the State Government or of a person authorised in that behalf by the Central or the State Government. Of course, a purchaser can also initiate a prosecution by instituting a complaint on production of a copy of the report of the Public Analyst in the Court along with the complaint.

17. The provision for a 'written consent' by the authorities contemplated by Section 20(1) was enacted as a safeguard against irresponsible and frivolous initiation of proceedings against the person from whom a sample of food is collected. The provision is "intended to safeguard the liberty of a citizen against a vexatious or unreasonable prosecution. The law puts a brake on such prosecutions by authorising a responsible officer of the Government to apply his mind cogently and intelligently to satisfy himself that the facts warrant a prosecution....." (Lachham Singh v. State, 1979 FAJ 23 : (1979 Cri LJ NOC 2) (All). As observed by the Supreme Court in State of Bombay v. Parshottam Kanaiyalal, AIR 1961 SC 1 : (1961 (1) Cri LJ 170) (in paragraph 13) : "..... 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".

18. And, in *A.K. Roy v. State of Punjab* (1986) 3 FAC 66 : (1986 Cri LJ 2037) (SC). (In paragraph 9) (of (1986) 1 FAC) : (Para 11 of 1986 Cri LJ) that :-- "..... The terms of Section 20(1) of the Act do not postulate further delegation by the person so authorised; he can only give his consent in writing when he is satisfied that a prima facie case exists in the facts of a particular case and records his reasons for the launching of such prosecution in the public interest."

19. The Supreme Court, which said in *Isher Das v. State of Punjab* AIR 1972 SC 1295 : (1972 Cri LJ 874) (Para 10) that :-- "Adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti-social evil and for ensuring purity in the article of food....."

20. Sounded a note of caution in *Pyarali K. Tejani v. MahadeoRamchandraDange*, AIR 1974 SC 228 : (1974 Cri LJ 313), when, speaking through Krishna Iyer, J. a constitution Bench of the Court observed (in para 23) that :-- "We are not unmindful of the possibilities of village victuallers and tiny grocers being victimised by dubious enforcement officials which may exacerbate when punishment become harsher, and the marginal hardships caused by stern sentences on unsophisticated small dealers."

21. It is obvious that to avoid victimisation of a suspected offender by 'dubious enforcement officials' the salutary provision of a written consent by the designated authorities mentioned in it was contemplated by the Legislature when it enacted Section 20(1).

22. The importance of the provision relating to sanction, in the context of the prosecution of a government servant, was considered by the Supreme Court in *Mohd. Iqbal Ahmed v. State of Andhra*

Pradesh, AIR 1979 SC 677 : (1979 Cri LJ 633). What was said in para 3 of the report was that :

"The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to Government servants against frivolous prosecution and must, therefore, be strictly complied with before any prosecution can be launched against the public servant concerned....."

23. The word 'written consent' used by the Legislature in Section 20(1) of the Act should bear a similar interpretation. The Imperial Dictionary of the English Language, by John Ogilvie (New Edition 1904) defines 'consent' as meaning 'to grant; to allow; to assent to; a voluntary accordance with what is done or proposed to be done by another.....'. In Bouvier's Law Dictionary, Baldwin's Century Edition, 1948, 'consent to' means 'approve of. In the Dictionary of English Law by Earl Jowitt 'consent' has been defined (at page 455) as 'an act of reason accompanied with deliberation'.

24.

25. The language in which Section 20(1) is couched merits another look at this stage. It says that "no prosecution for an offence under this Act.... shall be instituted except by, or with the written consent of,a person authorised in this behalfby the Central Government or the State Government". Prosecution for "an offence under the Act can be instituted only with the written consent of a person authorised in that behalf by the Central or the State Government. The words "for an offence under this Act" used in Sub-section (1) of Section 20 provide the clue to the answer for finding which this Bench has been constituted. They are the key words used by the Legislature.

26.

27. Section 2(ia) provides that an article of food shall be deemed to be "adulterated" in the following circumstances : "(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature substance or quality which it purports or is represented to be; (b) if

the article contains any other substance which affects, or if the article is so processed as to affect injuriously the nature, substance or quality thereof; (c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof; (d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof; (e) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health; (f) if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animals or vegetable substance or is insect infested or is otherwise unfit for human consumption; (g) if the article is obtained from a diseased animal; (h) if the article contains any poisonous or other ingredient which renders it injurious to health; (i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health; (j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits or variability; (k) if the article contains any prohibited preservative in excess of the prescribed limits; (l) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, which renders it injurious to health; (m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health; Provided that, where the quality or purity of the article, being primary food has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause. Explanation....."

28. Coming then to Section 16 we find it stated in Sub-section (1), in the context of sale etc. of an article of food which is adulterated, that subject to the provisions of Sub-section (1-A) if any person -- (a)

whether by himself or by any other person on his behalf, imports into India or manufacture for sale, or stores, sells or distributes any article of food -- (i) which is adulterated within the meaning of Sub-clause (m) of Clause (ia) of Section 2 or misbranded within the meaning of Clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by any order of the Food (Health) Authority; (ii) other than an article of food referred to in Sub-clause (i), in contravention of any of the provisions of this Act or of any rule made thereunder; or (b) to (g)....." shall, in addition to the penalty to which he may be liable under the provisions of Section 6 be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees : Provided that --"

29. Sub-section (1-A) then says that : "if any person whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores, sells or distributes,-- (i) any article of food which is adulterated within the meaning of any of the Sub-clauses (e) to (1) (both inclusive) of Clause (ia) of Section 2; or (ii) he shall..... be punishable with imprisonment which shall not be less than one year but which may extend to six years and with fine which shall not be less than two thousand rupees : Provided....."

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34. The offence for which penalty is provided in Section 16, amongst others, consists of sale of an article of food which is adulterated within the meaning of Clause (m) of Section 2(ia) or is adulterated within the meaning of Clauses (e) to (1) of that sub-section.

35. Written consent for initiating prosecution is to be accorded by the appropriate authority for the sale of an adulterated article of food as contemplated by these provisions. The authority is, therefore, required to examine the circumstances of a case, before giving its consent for the prosecution of an offender, with reference to the offence alleged to have been committed by him. Adulteration is the genus. Adulteration of a particular nature found in an article of food, exposed for sale or sold by an offender is the specie of the offence which is allegedly committed by the offender for which he is to be brought to trial according to the scheme of the Act and the Rules.

36. The report submitted by the Public Analyst may reveal that the article of food was adulterated on account of its variation from the prescribed standard by reason of presence or absence of some specific object in it. When deciding upon the grant of consent for the prosecution of the offender, the authority is to apply its mind on the basis of the sample being adulterated for that particular reason. The presence or absence from the sample of such of the contents, as may be contemplated by the entry relating to a particular article of food in Appendix-B, may be the reason for declaring it to be adulterated. The consent for the prosecution of the offender would be founded upon the adulteration of the sample on that account.

37.

38. There may be cases where the Director may find the sample to be adulterated for the presence or absence of contents for which it had been found to be adulterated by the Public Analyst, though there might be some difference in the quantity or percentage of the contents in the two reports. In that case too, we feel, it would be an unnecessary exercise on the part of the authority, which had granted consent for the prosecution of the offender, to re-examine the matter with a view to decide whether the prosecution of the offender should continue or not. Of course, the quantitative difference of the contents should not be such which may have the effect of changing the nature of the offence, that is, the deficiency or addition of the percentage of any pre-existing content of the sample, from the one found on analysis by the Public Analyst, should not be such, when the sample is later examined by the Director, as to result in a qualitative

difference in the nature of adulteration so as to bring the offence into some other species altogether.

39. A consent for prosecution is to be given in respect of a particular offence committed by the alleged offender. This has been interpreted to mean that where the consent is based upon an adulteration of a particular nature found by the Public Analyst, it would not enure for the benefit of the prosecution in respect of a different kind of adulteration found by the Director in the sample. For example in *State of Maharashtra v. Nuzamuddin Haji Mohamed Kasam*, 1979 Cri LJ 274, a sample of a drink named 'Real Falsa' was found to be adulterated by the Public Analyst as containing prohibited colour. The sample was found to be adulterated by the Director for a different reason as containing saccharin beyond the prescribed limitation. A single Judge of the Bombay High Court felt that the charge on the basis of the report of the Director could not be framed unless consent from the appropriate authority was obtained afresh. Ultimately, the view taken was that the complaint should be returned to the complainant for appropriate action after the receipt of the report of the Director.

40. In *Municipal Board, Jaunpur v. Raghunandan Ram*, (1979) 1 FAC 246, a Division Bench of the Allahabad High Court ruled that the respondent could not be convicted where the Public Analyst found the sample of asafoetida to be adulterated as its total ash content was 36.10 per cent as against the maximum of 15 per cent permissible under the rules but the Director found that the total ash content was only 4.5 per cent (far less than the prescribed maximum) but the same was adulterated for a different reason, namely, that the alcoholic content was only 5.7 per cent as against the minimum of 25 per cent required. The Bench upheld the order of acquittal passed by the court below. To borrow the words of the Bench (in para 4) : "In our opinion, however, the order of acquittal of the respondent is justified on the short ground that in the complaint, on the basis of which proceedings were initiated against the respondent the only ground taken was the report of the Public Analyst with regard to the ash content..... This was the basis on which the Magistrate took cognizance of the case.... this was the case which the respondent was called upon by the Magistrate to meet. This ground, however, failed in

view of the Director's report..... liability eventually was sought to be fastened on the respondent on an entirely different ground..... that the alcoholic content was not up to the minimum prescribed..... we may point out that Section 20 contemplates that the precise ground on which prosecution is launched should be stated clearly in the complaint, and since the ground mentioned in the present complaint was negated by the report of the Director, the bottom was knocked out of the prosecution case, as stated in the complaint."

41. Following the view taken by the Allahabad High Court in the aforesaid case, as also the one taken by V.P. Gupta, J. in *M/s. Voltas Ltd.* (ILR(1985) Him Pra 79.6), a single Judge of the Punjab and Haryana High Court held in *N.S. Jain v. State of Punjab*, (1987) 1 FAC 127 that a complaint filed on the basis of the report of the Public Analyst which said that the sample of Ghee was adulterated because in it the Butyrefractometer reading was 39.20 against the minimum prescribed standard of 40°C could not be made the basis for continuing with the prosecution where the report of the Central Food Laboratory indicated that the Butyrefractometer reading was 40°C conforming to the minimum prescribed standard but the sample was adulterated on account of the presence of five dead insects and suspended non-fatty particles of curd.

42. The Gauhati High Court followed the view taken by the Division Bench of the Allahabad High Court in *Raghunandan Ram* (1979 (1) FAC 246) and the Bombay High Court in *Nizamuddin* (1979 Cri LJ 274). A single Judge held in *State of Assam v. Subkaran Agarwalla* (1987) 1 FAC 99 (Gauh), that the accused, who had been called upon to meet the case of adulteration in "Dhanias" on account of the presence of approximately 30% of foreign pulse and millit starch by the Public Analyst, could not be convicted on the basis of the report of the Director which found the sample to be adulterated under a different sub-section of Section 2(ia) Clause (m) as it was not within the prescribed limits of standards.

43. These decisions support the view that we have taken on the question that a prosecution initiated on the basis of adulteration of one kind found by the Public Analyst in the sample examined by him

cannot be justified on the basis of adulteration of a different nature revealed by the report of the Director of the Central Food Laboratory.

44. We may notice some decisions which seem to take a different view. A Division Bench of the Gujarat High Court held in *State/ of Gujarat v. AmbalaMaganlal*, 1978 Cri LJ 1036, that even where the nature of adulteration found by the Director of the Central Food Laboratory is different from the one found earlier by the Public Analyst, the prosecution of the offender can be continued without obtaining fresh written consent. In para 4 the learned Judges observed that if the Court had already framed charge on the basis of deficiency discovered by the Public Analyst, it could amend the charge suitably, disclosing the nature of the adulteration found by the Director. Further, that : ".....once the written consent to prosecution is given by any of thecompetent authorities..... the institution of prosecution should be regarded as if it is by that authority. No further question as regards the validity of written consent as a result of subsequent event would arise in such a case, where cognizance of offence is taken by the Court."

45. In the succeeding para 5 they also observed that : ".....the certificate of the Director is only evidence of the offence in the case though conclusive in nature. The consent, once effectively given cannot become invalid, or the cognizance of offence taken upon a valid consent cannot be vitiated merely because the evidence by which the offence is sought to be proved changes as a result of a subsequent event."

46. The view of the Division Bench was approved by a Full Bench of the Gujarat High Court in *Prahladbhai Ambalal Patel v. State of Gujarat*, 1984 Cri LJ 1642) by observing (in para 26) that the decision of the Division Bench brought out the correct legal position pertaining to prosecution of accused under the Act. We may observe that the only question which had been referred for the decision of the Full Bench in *Prahladbhai Ambalal Patel* was : "Whether, after the report of the public analyst gets superseded by the certificate of the Director, Central Food Laboratory who examines the part of the sample of food article collected under the relevant provisions of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as

the Act), it is open to the accused to plead that if there is any variance between the aforesaid two reports, the prosecution must explain the said variance or otherwise fail."

This is found stated in the opening paragraph of the judgment.

47. The Delhi High court dealt with a similar question in *Municipal Corporation of Delhi v. ShriBishanSarup* (1984) 1 FAC 169 (2). The case related to a sample of Ghee. The Public Analyst had found it to be adulterated due to 0.12 excess in the moisture percentage. The Director, however, found the moisture contents within the prescribed limit. He, however, found the Reichert value to be lower and the Butyrefractometer reading in excess of the prescribed limit. The trial Magistrate had convicted the accused. The Addl. Sessions Judge acquitted him in view of the variance in the two reports. An appeal against the order of acquittal was taken to the High Court. The learned Judge of the High Court recorded a finding (in para 10 of the judgment) that : "On an examination of the record we are of the view that it is possible that the various tests performed by the Public Analyst and the Director gave different results because of defective sampling."

48. In the very next paragraph they noticed the submission made on behalf of the Municipal Corporation to the effect that the report of the Director obliterated the report of the Public Analyst so that it was not permissible to look at the report of the Public Analyst. They said that there was no doubt that Under Section 13(3) the report of the Director superseded the report of the Public Analyst but on the peculiar facts of that case it could not be said that the sample was adulterated. Also, that the Addl. Sessions Judge had given benefit of doubt to the accused and they found no sufficient reason to interfere with the order of acquittal. After this the learned Judges observed that they did not agree with the observation of the Addl. Sessions Judge that there was no complaint or a trial on the facts found by the Director, the conviction was vitiated. Also, (in para 13) that :-- ".....the Director found the sample to be adulterated for reasons different to the one given by the Public Analyst would not render the prosecution instituted on the basis of the report of the Public Analyst invalid."

49. It is obvious that these observations were in the nature of obiter.

50. In *Atma Ram Poddar v. State of Bihar* (1984) 1 FAC 120 a single Judge of the Patna High Court was dealing with a sample of Mustard oil. The Public Analyst had found the sample to be adulterated with sesam oil and linseed oil. The Director, however, found that there was no foreign substance of food in the sample. He found the sample to be covered Under Section 2(ia) Clause (m) of the Act. The argument made on behalf of the accused was that the sanction for the prosecution was on the basis of the report of the Public Analyst and there was no sanction for prosecution on the basis of the report of the Director. As such, the prosecution was not valid. The learned Judge observed (in para 6 of the report) that : "With regard to the absence of valid sanction..... the admitted facts are that the sanction was given on the basis of the opinion of the Public Analyst and no fresh sanction was accorded after the receipt of the opinion of the Director. In the case of *State of Gujarat v. Ambalal Maganlal*, (1978) 2 FAC 53 : (1978 Cri LJ 1036), a Bench of the Gujarat High Court under similar facts stated that once the consent was effectively given it could not become invalid merely because the analysis by which offence was sought to be proved i.e., the report of the Public Analyst changes as a result of subsequent event, i.e. the opinion of the Director. I respectfully agree with the legal proposition laid down in that case. It must be held that it is not necessary to give a fresh consent after the receipt of the opinion of the Director and the petitioner can be prosecuted on the basis of the consent already given on the basis of the opinion of the Public Analyst."

51. Our attention was also drawn to two decisions of the Bombay High Court by learned single Judges.

52. In *MukundUkhaShimpi v. PremjiDurgarai Shah* (1982) 2 FAC 88, the trial Magistrate had acquitted the accused on the ground that no offence was disclosed on the basis of the report of the Public Analyst who had found that the sample was not adulterated and it was only after the receipt of the report from the Central Food Laboratory at Calcutta that the sample was found to be adulterated. The Magistrate felt that it was necessary for the Chief Officer of the

Municipal Council to grant fresh sanction and for the Food Inspector to file a fresh case and that it was not possible to continue the prosecution which was launched earlier. The learned Judge of the Bombay High Court felt that this was a fallacious ground. This is what he observed (in para 5) : ".....The institution of the prosecutionwas in no manner defective. The report from Calcutta was obtained by the complainant merely as a piece of evidence to support the prosecution case. The trial Magistrate was clearly in error in assuming that the offence could be said to have been committed only when the report was received from Calcutta. As mentioned hereinabove, the offence is complete as soon as the vendor sells an article of food, which according to the complainant was adulterated. Whether the claim of the complainant is correct or not is to be determined by competent Court and commission of an offence is not made dependent on the report of the Public Analyst or one received from the laboratory at Calcutta. The institution of the criminal case before the Magistrate after obtaining the permission of the Chief Officer was perfectly in order and it was not necessary for the Food Inspector to secure a fresh approval from the Chief Officer after the receipt of the report from Calcutta....."

53. We may also mention that the Food Inspector had obtained permission from the Chief Officer to prosecute the accused even though the report of the Public Analyst was that the sample was genuine and not adulterated. It was after the complaint had been lodged that the Food Inspector moved the Magistrate to forward one of the sealed samples to the Director Central Food Laboratory.

54. In *State of Maharashtra v. DhyandeoRamchandraPatil* (1983) 1 FAC 9, another single Judge of the Bombay High Court held that it was not necessary to obtain fresh sanction after the receipt of the report of the Director. It was a case where a sample of buffalo milk was found adulterated by the Public Analyst on the ground that it contained 43.33% added water and did not conform to the standard of the buffalo milk. The Director of the Central Food Laboratory, however, found that the sample was adulterated for a different reason. The learned Judge negatived the submission that the prosecution was vitiated for want of fresh sanction because the authority concerned had not applied its mind in respect of the report

of the Director of the Central Food Laboratory. In para 8 it was observed that : ".....There is no warrant for the view that a fresh sanction to prosecute is required after the receipt of the report from the Central Food Laboratory. This piece of evidence is made available only in case an accused exercises his right to get the article of food reanalysed by a different laboratory. This does not affect or alter the basis of the prosecution for which the sanction was granted."

55.

56. The contention that whenever there is a variance between the report of the Public Analyst and that of the Director of the Central Food Laboratory in regard to the nature of adulteration, the prosecution could not be continued without obtaining a fresh written consent from the appropriate authority, as a bald proposition of law, does not find support from any of the decisions cited before us. The question, we feel, is to be determined having regard to the difference in the nature of adulteration of the sample as found by the Public Analyst and by the Director,

57. We may reiterate what we have said in the earlier part of the judgment. We are clearly of opinion, that where the report of the Director finds the sample to be adulterated for a reason, though different from the one found by the Public Analyst, which does not alter the nature of the offence in the sense of bringing about a change of specie for which it is punishable Under Section 16 of the Act, there is no necessity of seeking a fresh written consent for continuance of the proceedings against the offender. Where, however, the difference in the two reports is such that it results in altering the basic nature of the offence, in the sense of the specie thereof, for which the consent was obtained earlier on the basis of the report of the Public Analyst, the complainant must bring the facts found by the Director to the notice of the appropriate authority for a decision whether the offender deserved to be prosecuted or not.

58. We are not impressed by the submission made by Shri M.S. Guleria, learned Assistant Advocate General, that consent having been given for instituting the proceedings on the basis of the report of the Public Analyst, which found the sample to be adulterated, no fresh consideration of that question was called for at all as the offence

with which the offender was charged was one of the sale etc. of an adulterated article of food. Also, that the report of the Director being only a piece of evidence, like the report of the Public Analyst, in support of the case of the prosecution against the offender, the change noticed by the Director would only provide evidence of the guilt of the offender and no more. The report of the Director would supersede that of the Public Analyst. The only difference, after the receipt of the report of the Director, for the prosecution would be that it would not be able to rely upon the report of the Public Analyst, as a piece of evidence in support of its case against the offender and would have to content itself with the report of the Director.

59. The acceptance of the submission of the learned Asstt. Advocate General would result, as it were, in negating the very object of the provision for obtaining a written consent from one of the authorities mentioned in Section 20(1). We have noticed earlier, with reference to some pronouncements by the Supreme Court, that the object of incorporating the provision for a written consent in Section 20(1) of the Act was to prevent the launching of frivolous or harassing prosecution against the traders and that the persons authorised can only give his consent in writing when he is satisfied that the launching of the prosecution was in public interest. Also, that the grant of sanction was not an idle formality. It implied the necessity of application of mind on the part of the authority, competent to grant the written consent, for its satisfaction that a *prima facie* case existed for the alleged offender to be put up before a Court and that it was reasonable, in the circumstances, to direct that he be tried by the Court.

60. The object aforesaid pre-supposes a consciousness on the part of the Legislature that it was not necessary, even where a sample was found to be adulterated, to prosecute the alleged offender. The instances where it may not be expedient to prosecute him, in spite of the sample being found to be adulterated, can be myriad. Some of these circumstances were outlined by the learned counsel for the petitioners before us. We have noticed them earlier in this judgment. Those circumstances were placed before us by the learned counsel on the basis of some of the provisions of the Act itself and also on the basis of some judicial pronouncements.

61.

62. Section 13(2-E) which reads thus : "(2-E) If, after considering the report, if any, of the food inspector or otherwise, the Local (Health) Authority is of the opinion that the report delivered by the public analyst under Sub-section (1) is erroneous, the said Authority shall forward one of the parts of the sample kept by it to any other public analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the article of food is adulterated, the provisions of Sub-sections (2) to (2-D) shall, so far as may be apply." is a pointer to the fact that it is not necessary, for an authority contemplated by Section 20(1) to accord written consent for the prosecution of an alleged offender as a matter of course. It is not necessary that the Local (Health) Authority must always treat the report regarding the adulteration made by the Public Analyst to be sacrosanct. It can look into its correctness or otherwise. If it feels that the report is erroneous, it can seek fresh information from another Public Analyst. This power must be conceded, by necessary implication, to the authority competent to grant written consent Under Section 20(1). Obviously, the Act does not contemplate the grant of written consent for the prosecution of an offender as a matter of routine. There is no justification for holding" that the consent must be presumed to be available for continuance of the proceedings against an alleged offender even in a case where the subsequent report of the Director shows that the nature of adulteration was so trivial that it would not be in public interest to continue with the prosecution instituted on the basis of a consent given after consideration of the report of the Public Analyst. If that be so, a fresh look on the question whether the prosecution should be continued or not is called for by the appropriate authority after the receipt of the report of the Director.

63. There may be a procedural flaw committed in the collection, storage or examination of the sample on the ground whereof the prosecution was liable to fail. There might be a case where it is found that on the defects noticed by the Director in his report the article of food could not be characterised to be adulterated for the reason that the variance from the prescribed standards was of a minimal nature which, on account of some judicial decision, could not lead to a

successful prosecution of the offender. There may have come into existence a direction of the Central Government that prosecution be not launched in cases where adulteration was found only to that extent. An instance of this nature is to be found in the decision of a learned single Judge of this Court in *Brooke Bond India Limited v. State of H.P.* ILR (1984) Him Pra 76 : (1984 Cri LJ 1201). In that case, sample of tea was found to conform to the standard laid down for it but traces of iron filings were detected which were not shown to affect injuriously the nature, substance or quality of tea. The Central Government had directed the State Governments that no prosecution be launched under the Act in cases where samples of tea were containing iron filings up to a tolerance limit of 250 parts per million in quantity. In the case of this nature it would not be unreasonable to hold that after the report of the Director, pointing to a defect of that nature, the prosecution launched on the basis of written consent given on consideration of the report of the Public Analyst should not be permitted to continue without re-examining the question whether it should be allowed to go on.

64. There may be a case where the standards may have been prescribed for a particular article of food which may not be sufficiently publicised or become known to the traders. In such a case, as a policy decision, it may be decided not to prosecute the traders for sometime. If the Director, differing from the Public Analyst about the nature of adulteration, finds the sample to be adulterated as not conforming to the recently laid down standards, it would be unjust to permit the prosecution to be continued against the offender without a fresh consideration by the appropriate authority of the question whether it should be allowed to go on. The desirability and propriety of launching prosecution is one of the factors which has to be kept in mind by the authority giving written consent for prosecution. The policy decision of the State Government, which is competent Under Section 20(1) to launch a prosecution itself, may be a factor which cannot be ignored by the authority while considering the question of grant of written consent. The defect found in the sample by the Director may be such as may be covered by a policy decision not to prosecute an offender for the adulteration of a

particular nature in respect whereof the standards were not well known to the traders at the relevant time.

65. It is not possible to give any exhaustive list of the circumstances, consequent upon the nature of adulteration found by the Director, where the question of continuance or otherwise of the prosecution may have to be considered afresh. We have only noticed some illustrative grounds calling for a re-consideration of the matter after the receipt of the report of the Director.

66. The submission that the report of the Director supersedes that of the Public Analyst will also not be of much help to the learned Asstt. Advocate General. The supersession cannot be deemed to have taken place with effect from the date of the report of the Public Analyst on the basis whereof written consent for the prosecution was initially granted. Once the report of the Director is available, the report of the Public Analyst cannot be looked into for any purpose. It shall stand replaced by the report of the Director. The law in the respect was rightly stated by a Full Bench of the Kerala High Court in *Mathukutty v. State of Kerala* (1987) 2 FAC 293 : (1988 Cri LJ 898) when it said that (at p. 903 of Cri LJ) : "even if there is a wide variation between Director's certificate and Analyst's report, the former supersedes the latter and the superseded report cannot be revived for any purpose."

67. The statement represents the true scope of Section 13(3) of the Act. It, however, does not mean that supersession will be deemed to have taken place from the date of the report of the Public Analyst so as to sustain the continuance of the prosecution instituted on the basis of a written consent given on consideration of the report of the Public Analyst. If such a deemed provision was intended, the Legislature could have said so. Admittedly, it has not done so. The obliteration of the report of the Public Analyst will be deemed to have taken effect only from the date when the report of the Director came into existence and not from any earlier date.

68. The decision in *Chetumal v. State of Madhya Pradesh*, AIR 1981 SC 1387 : (1981 Cri LJ 1009) is hardly of any assistance to the learned Asstt. Advocate General. That was a case where the certificate of the Director of the Central Food Laboratory to the effect that the

sample was adulterated was excluded from consideration by the trial court on the ground that "the specimen impression of seal" did not tally with the seal of the container in which the sample had been sent to the Director. The trial Court sustained the objection but relied upon the report of the Public Analyst and convicted Chetumal. The conviction was upheld by the Sessions Judge as well as by the High Court. The Supreme Court set aside the conviction with the following observations (para 2) : ".....Under Section 13(3) of the Prevention of Food Adulteration Act, the report of the Public Analyst stood superseded by the certificate issued by the Director of the Central Food Laboratory. Having been so superseded, the report of the Public Analyst could not, therefore, be relied upon to base a conviction. The certificate of the Director of the Central Food Laboratory having been excluded from consideration because of the tampering of the seals, there was really no evidence before the Court on the basis of which the appellant could be Convicted. The Court could not fall back on the report of the Public Analyst as it had been superseded."

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77. In our view the premise aforesaid is not correct in law as would be clear from the discussion made by us above. As a bald proposition of law we find ourselves unable to subscribe to the view that irrespective of the variations in the report of the. Public Analyst and the certificate of the Director, for whatever reasons, no fresh written consent by the appropriate authority is needed after the certificate of the Director and that the prosecution instituted on the basis of the

consent obtained on consideration of the report of the Public Analyst can be continued against the offender.

78. In the ultimate analysis We may state the law in the following words : Where the variation in the contents of the report of the Public Analyst and the certificate of the Director, Central Food Laboratory, is of a nature which does not alter the specie of the offence for which the offender is being prosecuted on the basis of a written consent given by the appropriate authority Under Section 20(1) of the Act on consideration of the contents of the report of the Public Analyst, no fresh consideration of that question or necessity for obtaining a written consent afresh, after the receipt of the report of the Director, arises in the case. The prosecution can be continued on the basis of the written consent already obtained on the basis of the report of the Public Analyst.

79. But where the nature of the difference in the report of the Public Analyst and the certificate -of the Director, Central Food Laboratory, is such that it completely alters the specie of the offence, in the sense of altering the nature of adulteration for which prosecution was initially launched, fresh application of mind on the part of the appropriate authority, envisaged by Section 20(1) of the Act, to the facts and circumstances of the case, in the light of the findings of the Director, is necessary before the prosecution against the offender can be continued any further.

80. Also, where a fresh look at the question of continuance of the proceedings becomes necessary due to supervening circumstances, some of which have been noticed by us earlier by way of illustrations and corresponding conclusions.

81. Of course, the answer aforesaid is only relevant where the report, both by the Public Analyst and the Director, reveal commission of an offence under the Act. It is obvious that where the result of the findings of the Director is such that no offence can be said to have been committed under the Act by the person from whom the sample of food was taken, the proceedings against him have to fail.”

15. In view of the discussion above and judgements relied by the Petitioner, this court of the opinion that the Prosecution is unable to prove its case beyond reasonable doubt against the present petitioner, who was only an employee of the firm M/S M.K. Oil & Flour Mill, where from mustard oil was collected. The report of Central Food Laboratory cannot be fully relied upon because the sample of mustard oil was received in a glass bottle was found without manufacturer's label. There is no sufficient evidence brought before the Court on the basis of which the petitioner can be convicted.

16. Accordingly, **CRR 4171 of 2012** is, thus, allowed. Connected applications, if any, are also, thus, disposed of.

17. The judgment and order dated 11.12.2012 passed by the learned Additional Sessions Judge, 2nd Court, Bankura in Criminal Appeal No. 2 of 2011 thereby affirming the judgment and order of conviction passed by learned Chief Judicial Magistrate, Bankura on 14.12.2010 in Complaint Case No. 138C of 2004 is hereby set aside. Petitioner is acquitted from the charge under Section 16(1) A read with Section 7(1) of the Prevention of Food Adulteration Act. He is also discharged from his bail bonds forthwith.

18. Let a copy of this judgment be sent to the learned Courts below for information and taking necessary action in accordance with law.

19. Lower Court Records, if any, is to be returned to the learned Court below immediately.

20. Interim order, if any, stands vacated.

21. Parties shall act on the server copies of this order uploaded on the website of this Court.

22. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)