

**Bhagwan Dass Vs. the State**

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**Court :** Allahabad

**Decided On :** Jun-19-1998

**Reported in :** 1998CriLJ4219

**Judge :** P.K. Jain, J.

**Acts :** [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 7, 12, 13(2), 13(3), 14, 14A, 16, 20 and 20(1); Code of Criminal Procedure (CrPC) , 1974 - Sections 197 and 433

**Appeal No. :** Criminal Revn. No. 344 of 1984

**Appellant :** Bhagwan Dass

**Respondent :** The State

**Advocate for Def. :** Ghosh, A.G.A.

**Advocate for Pet/Ap. :** V.C. Tiwary and ;V.P. Srivastava, Advs.

**Judgement :**

ORDER

**P.K. Jain, J.**

1. Revisionist Bhagwan Das son of Sri Suraj Bali Prasad was convicted by the trial Court under Sections 7/16 of the Prevention of Food Adulteration Act vide

judgment and order dated 21 -9-82 and was awarded sentence of 6 months' R.I. and fine of Rs. 1,000/- and in default of payment of fine to undergo further imprisonment for 3 months. Criminal Appeal No. 156 of 1982 preferred by the revisionist was dismissed by the appellate Court by the III Addl. Sessions Judge, Azamgarh vide judgment and order dated 24th January, 1984.

2. Judgments and order of both the Courts below have been challenged in this revision mainly on the ground that sanction under Section 20(1) of the prevention of Food Adulteration Act was granted by the Competent authority on the basis of the report of the Public Analyst and after a copy of it alongwith the notice as required under Section 13(2) of the Act was served upon the revisionist he got the sample analysed by Director Central Food Laboratory. In the first report of the Public Analyst besides the sample having been found sub-standard and not according to the prescribed standard, 36% of linseed oil was found to be mixed in the sample whereas the Director Central Food Laboratory only found the sample to be not in accordance with the standard as provided by the Rules and no mixture of linseed oil was found in the sample and according to the Director Central Food Laboratory the sample was adulterated under Section 2(ia)(m).

3. The submission of the learned counsel for the revisionist is that the sanction was granted by the competent authority on the basis of the report of the Director of Central Food Laboratory and there was vital difference in the two reports. Therefore, fresh sanction was necessary for prosecuting and convicting the revisionist. In addition to the above argument it is further submitted that the offence was committed in the year 1980 and it is now about 18 years. The revisionist has already been in jail for about 3 months. Therefore, considering the above facts the order of sentence may be modified to the period already undergone and fine as may be awarded by this Court.

4. I have heard Sri V.P. Srivastava, learned counsel appearing for the revisionist and Shri Ghosh, learned A.G.A. for the State.

5. In support of his submission on the first ground Sri V.P. Srivastava has relied upon a decision of the full bench of the Himachal Pradesh High Court in Rattan Pal v. State of M.P., 1991 Cri LJ 3302 whereas Sri Ghosh has placed reliance on a

decision of the Division Bench of the Gujarat High Court in the State of Gujarat v. Ambalal Maganlal 1978 Cri LJ 1036.

6. Sub-section (1) of Section 20 of the Act reads as follows.

(1) No prosecution for an offence under this Act, not being an offence under Section 14 or Section 14A, shall be instituted except by, or with the written consent of, the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government.

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

A bare look at the above provisions of law shows that no prosecution can be launched for contravention of the provisions of Prevention of Food Adulteration Act except, by or with the written consent of the Central Government or the State Government or the person authorised in this behalf by general or special order by the State or the Central Government as the case may be. It is now well settled that grant of sanction or giving of consent as contained in Section 20(I) is not a mere formality and the competent authority before giving written consent is required to apply its mind to the facts of the case and thereafter come to a conclusion whether it is a fit case or not in which consent may be given or not. In State of Bombay v. Purshottam Kanaiyalal AIR 1961 SC 1 the Apex Court held that '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.' In another case of Mohd. Iqbal Ahmed v. State of Andhra Pradesh AIR 1979 SC 677 the Apex Court while considering the question of grant of sanction under Section 197 Cr.P.C. observed' 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....

7. The word 'written consent' used under Section 20(1) of the Act has been held to bear a similar interpretation. Basically, thus, the giving of a sanction implies application of mind by the authority concerned to the facts of a case: It involves mental exercise similar to the one which is involved in according consent. It follows, therefore, that the object of a provision for a written consent before a prosecution can be launched against an offender under the Act is akin to the one like the provision for there being a sanction as a pre-condition for prosecuting a public servant.

8. Under the scheme as contained in the Food Adulteration Act after Public Analyst report is received showing adulteration of the sample of article of food the entire papers are placed before the sanctioning authority who after going through the material before it makes up its mind whether there is case for which consent to prosecute may be granted or not. Such sanction is granted on certain set of facts including the report of the Public Analyst. However, under Section 13(2) of the Act the accused has a right to apply to the Court concerned to direct the Local Health authority to forward the part or parts of the sample kept by the said authority to the Director of Central Food Laboratory for analysis whereupon the sample kept with the Local Health authority is sent to the Director of Central Food Laboratory who is required to send the result of the sample to the Court. In case the result differs between the two reports viz. the report of the Public Analyst and the report of the Director of Central Food Laboratory, in view of the provisions contained in Sub-section (3) of Section 13 of the Act the certificate issued by the Central Food Laboratory shall supersede the report of the Public Analyst under Sub-section (1). An argument is often raised that the Sanctioning authority under Section 20(1) had granted consent to prosecute on the basis of the material which was before it viz. report of the Public Analyst and once the report of the Public Analyst is superseded the written consent given by the competent authority becomes a waste paper as the report of the Director of Central Food Laboratory which supersedes the report of the Public Analyst was not before the Competent Authority and could not be considered by the Competent Authority.

9. There are divergent decisions of the various High Courts on the question whether a fresh written consent of the Competent Authority is needed after the report of the Public Analyst is superseded by the report of the Director of Central Food Laboratory. So far as the cases in which the Director of Central Food Laboratory reports that the sample of food was not adulterated as against the report of the Public Analyst, are concerned there could not be any controversy since in that case by accepting the report of the director Central Food Laboratory, the accused has to be acquitted. The controversy arises when there is difference with regard to nature of adulteration in the report of the Public Analyst and the report of Director Central Food Laboratory. So far as this Court is concerned, in the case reported in (1979) 1 FAC 246, Municipal Board Jaunpur v. Raghunandan Ram this Court has taken the view that 'precise ground on which the prosecution is launched should be stated clearly in the complaint and since the ground mentioned in the complaint was negatived by the report of the Director, the bottom was knocked out of the prosecution case and conviction on the ground mentioned in the complaint could not be up-held.' That was a case in which the Public Analyst reported that the sample of asafoetida was adulterated inasmuch as its total ash content was 36.10 per cent as against the maximum of 15 per cent permissible under the rules. The report of the Director Central Food Laboratory, however, showed that the total ash content in the sample was only 4.5 per cent i.e. far less than the prescribed maximum of 15 per cent, nevertheless the sample was adulterated for a different reason, i.e. the alcoholic content was only 5.7 per cent as against the minimum of 25 per cent required by the rules. It was in these circumstances the Court observed as follows :---

Bearing in mind that liability eventually was sought to be fastened on the respondent on an entirely different ground not mentioned in the complaint, we feel that the conviction of the respondent on the ground, that the alcoholic contents was not up to the minimum prescribed could not have been sustained. In the end, 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 negatived by the report of the Director, the bottom was knocked out of the prosecution case, as stated in the complaint.

10. This decision of the Division Bench of the Allahabad High Court was followed in a number of decisions of various High Courts. In *N. S. Jain v. State of Punjab* (1987) 1 FAC 127 a single Judge of the Punjab and Haryana High Court held 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 Butyro refractometer 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 Butyro refractometer 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.

11. The Gauhati High Court following the Division Bench decision of the Allahabad High Court in *Raghunandan Ram* (1979 (1) FAC 246) (supra) held in the case of *State of Assam v. Subkaran Agarwala* (1987) 1 FAC 99 (Gauhati), that the accused, who had been called upon to meet the case of adulteration in 'Dhania' 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.

12. A Division Bench of the Gujarat High Court, however, in *State of Gujarat v. Ambala Maganlal* 1978 Cri LJ 1036 held 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. It was observed by the Court that if the trial 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.' The above decision of the Division Bench of the Gujarat High Court was approved by the Full Bench of the same Court in *Prahladbhai Ambalal Patel v. State of Gujarat* 1984 Cri LJ 1642 by observing that the decision of the Division Bench brought out the correct legal position pertaining to prosecution of accused under the Act. It was observed by the Full Bench that '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.

13. The Delhi High Court while dealing with a similar question in the case of Municipal Corporation of Delhi v. Bishan Sarup (1984) 1 FAC 169 (2) observed in paragraph 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'. That case related to a sample of Ghee. The Public Analyst had found it to be adulterated due to O. 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 Butyro-refractometer reading in excess of the prescribed limit.

14. A single Judge of the Patna High Court in Atama Ram Poddar v. State of Bihar (1984) FAC 120 observed in the judgment 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.'

15. That was a case in which 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.

16. The Himachal Pradesh High Court, however, in a full bench decision *Rattan Lal v. State of H.P.* 1991 Cri LJ 3302 took a different view. It observed in paragraph 50 of the Judgment that '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 nature of adulteration of the sample as found by the Public analyst and by the Director. Thereafter, after discussing some of the provisions of the Prevention of Food Adulteration Act and some other decisions, the Court held as follows (Paras 69, 70 and 71 of Cri LJ) :-

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 species 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.

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(I) 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.



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.

17. It may be observed that the revisionist has filed a supplementary affidavit appending therewith copies of the report of the Public Analyst and the report of the Director Central Food Laboratory. So far as the Butyro-refractometer reading at 40 °C saponification value, Iodine value and free fatty acid as oleic acid were concerned there was no material difference between the two reports. The material difference related to the mixture of the foreign material viz., the linseed oil. According to the report of the Public Analyst the sample contained 36% of linseed oil whereas the Director Central Food Laboratory did not find any foreign material in the sample of the oil. The sample, was however, found to be adulterated under Section 2(ia)(m) of the Act.

18. There cannot be doubt about the legal position that a single Judge of the same High Court is bound to follow the Division Bench decision of the same High Court. However, the Division Bench decision of this Court in *Municipal Board, Jaunpur v. Raghunandan Ram* (1979 (1) FAC 246) (supra) is slightly different on facts as in that case according to the report of the Public Analyst the sample contained 36.10% ash content as against the maximum of 15% whereas the Director Central Food Laboratory found the ash content within the prescribed limit of 15%. The Director Central Food Laboratory found the sample to be adulterated for other reason namely, that the sample contained 5.7% alcoholic contents as against the minimum of 25% required. There was no charge against accused in respect of deficiency in the sample in alcoholic content nor the complaint was filed in respect of deficiency in alcoholic content and it was in these circumstances that the Court held that the conviction cannot be sustained. The question of obtaining fresh sanction was not specifically dealt with by the Court. In the instant case before me as already pointed out above, according to the report of the Public Analyst the sample was adulterated for two reasons firstly having 36% linseed oil and being not in accordance with the prescribed standard. The Director Central Food Laboratory did not find any foreign oil and only found the sample adulterated being not in conformity with the prescribed standard. In the instant case, therefore, part

of the report of the Public Analyst as it related to conforming of the sample with the prescribed standards was confirmed by the Director of Central Food Laboratory. The Judgments of the Courts below, though make a reference regarding the difference in the report of the Public Analyst and the report of the Director Central Food Laboratory but do not deal with the controversy in question nor it is clearly stated as for what type of adulteration the revisionist was convicted and sentenced, However, the fact remains that the factum of the sample being not in conformity with the prescribed standard was described in the complaint and was stated in the judgments, it is apparent that the revisionist was tried for commission of two types of adulteration viz. mixture of linseed oil as also the sample not conforming to the prescribed standard. Once the report of the public Analyst is superseded by the report of the Director Central Food Laboratory, the charge of adulteration on ground of mixture of 36% of Unseed oil fails to ground. However, the charge of adulteration on the other ground, i.e. the sample not being in conformity to the prescribed standard remains and for that also there was a valid sanction. In my view, therefore, on the charge of adulteration of the sample not being in conformity with the prescribed standard the prosecution of the revisionist on the basis of the written consent can be sustained and it would not become invalid due to not obtaining a fresh sanction. The view taken by me in this case is not inconsistent with the view taken by the Division Bench of this Court in *Municipal Board Jaunpur v. Raghunandan Ram* (1979 (1) FAC 246) (supra) and is supported by the view taken by the full Bench decision of the Himachal Pradesh High Court in *Rattan Lal v. State of H.P.* (1991 Cri LJ 3302) (supra).

19. So far as the merits of the revision are concerned no other point is pressed before this Court. On the question of sentence, however, the learned counsel for the revisionist contends that the revisionist has already suffered imprisonment for about 3 months since in view of the order dated 5-11-97 passed by this Court cancelling the bail of the revisionist, the revisionist surrendered before the Court concerned on 18-2-98 and since then he has been in jail. It is submitted that the offence had taken place in the year 1980 and the revisionist has already suffered mental torture due to the protracted trial which includes the proceeding in revision. Learned A.G.A. contends that minimum sentence is provided by law under the Prevention of Food Adulteration Act and the Court has no power to award lesser

sentence than a minimum provided by the statute. The submission of the learned A.G.A. is substantiated by the same decisions of the Apex Court. In a latest decision of the Apex Court reported in (1997) 9 SCC 101, N. Sukumaran Nair v. Food Inspector the Apex Court appears to have endorsed this view. In that case although the offence had taken place in the year 1984 and the appellant was awarded minimum sentence of imprisonment for 6 months and fine of Rs. 1,000/-, the Apex Court instead of reducing the sentence awarded by the trial Court observed that 'under Clause (d) of Section 433 of the Code of Criminal Procedure, 'the appropriate government' is empowered to commute the sentence of simple imprisonment for fine. We think that this would be an appropriate case for commutation of sentence where almost a decade has gone by. We, therefore, direct the appellant to deposit in the trial Court a sum of Rs. 6,000/- as fine in commutation of the sentence of six months' simple imprisonment within a period of six weeks from today and intimate to the appropriate Government that such fine has been deposited. On deposit of such fine, the State Government may formalise the matter by passing appropriate orders under Clause (d) of Section 433 of the Code of Criminal Procedure.'

20. In the instant case as already pointed out above the offence was committed around 18 years back and the revisionist has already suffered imprisonment for more than 4 months it would be appropriate that the appropriate government may commute the sentence awarded to the revisionist to sentence of imprisonment already undergone and fine of Rs. 2,000/-. This Court, therefore, direct the revisionist to deposit in the trial Court a sum of Rs. 1,000/- as fine in commutation of the sentence of imprisonment within a period of six weeks from today and intimate to the appropriate government that such fine has been deposited. On the deposit of the fine the revisionist shall be released from jail and the State Government on intimation of deposit of the fine would pass appropriate orders under Clause (d) of Section 433 of the Code of Criminal Procedure taking into consideration the facts stated above.

21. In the light of the foregoing discussions the revision is disposed of with the directions as aforesaid.

22. Copy of this judgment shall be handed over to the learned Additional Government Advocate within a week for its communication to and follow-up action by the appropriate Government. The office is also directed to send a copy of this judgment within 3 days to the Sessions Judge and C.J.M. concerned for information and follow-up action by them. On deposit of the amount of fine the revisionist shall be released forthwith.

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