

**Mahim Middy Vs. State**

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**Court :** Orissa

**Decided On :** Jan-30-1992

**Reported in :** 73(1992)CLT649; 1992(II)OLR154

**Judge :** A. Pasayat, J.

**Acts :** [Prevention of Food Adulteration Act, 1954](#) - Sections 2 and 16(1);  
Prevention of Food Adulteration Rules, 1955 - Rule 18; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 313

**Appeal No. :** Criminal Revision No. 125 of 1985

**Appellant :** Mahim Middy

**Respondent :** State

**Advocate for Def. :** Addl. Standing Counsel

**Advocate for Pet/Ap. :** D. Nayak, B.C. Ray and D.P. Dhal

**Disposition :** Application allowed

**Judgement :**

**A. Pasayat, J.**

1. On the allegation that he had exposed for sale bread, which was adulterated within the meaning of Section 2(i) of the [Prevention of Food Adulteration Act, 1954](#)

(in short 'the Act') for human consumption, thereby attracting imposition of penalty in terms of Section 16(1) thereof, petitioner faced trial

2. Sans phrase, background facts as presented by the prosecution are as follows :

The Food Inspector (PW 1) attached to the Chief District Medical Officer, Keonjhar went to the business premises of one Nazrul Midday on 10-4-1982. In the absence of the said Nazrul Midday who was the owner of the bakery, the petitioner was conducting business transactions. Bread weighing 1500 grams was purchased by the Food Inspector on the suspicion that the said food article exposed for sale was adulterated, and unfit for human consumption. The sample collected was sent to the Public Analyst, who opined that the sample of food article collected indicated adulteration. The petitioner disputed that the copy of the report of public analyst was not supplied to him. But the prosecution relied on certain postal receipts in support of its stand that the document in question was supplied to the petitioner. This controversy loses teeth in view of the admission by the petitioner, in his statement Under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code') that the report of public, analyst was received for him. On evaluation of evidence and on consideration of the documents. the Chief Judicial Magistrate, Keonjhar found the petitioner guilty, convicted him Under Section 16(1) of the Act, and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000/- in default to undergo rigorous imprisonment for one month more.

In appeal the learned Sessions Judge, Keonjhar affirmed the conviction and the sentence.

3. Though several points were raised by Mr. D. P. Dhal, learned counsel for the petitioner, main plank of his attack was that there has been non-compliance of the requirements of Rule 18 of the Prevention of Food Adulteration Rules, 1954 (in short 'the Rules'). It was urged that the said Rule mandates for despatch of document referred therein and the impressions of seals collected in separate registered- packets, which was not done in the instant case. The submission is legally on terra firma. The prosecution must establish that documents referred to in Rule 18 and the impressions of seals are to be sent by separate registered

packets. In the absence of acceptable proof, it has to be held that the accused is entitled to acquittal. The provisions of Rule 18 have been held to be mandatory in State of Maharashtra v. Rajkaran : 1938 SCC (Crl.) 47. This view has also been followed by this Court in 'Srinivas Pradhan v. State of Orissa 70(1990) CLT 164 and in Prafulla Kumar Mohanty v. 'State of Orissa : 1991 (II) OLR 260. In the facts of the present case, I find that the Food Inspector (PW 1) has stated as follows :

'Ext. 3 is the memorandum describing the specimen seal and Ext. 3/1 is the postal receipt which have been filed in case No. 2 (C) CC 47/82 as memorandum of specimen impression seals used in different samples are sent together...'

Though the exhibit in question is not available in the records of the trial Court, it is submitted that the same forms part of the records of 2 (C) CC. No. 47 of 1982. In view of the position of law indicated in the case of Rajkaran (supra) by the Supreme Court, and as held by this Court in Srinivas Pradhan's case (supra) and Prafulla Kumar Mohanty's case (supra) there can be no scope for any doubt that there has been non- compliance of the statutory mandate of Rule 18 of the Rules.

4. To add to the vulnerability of the prosecution, I find that the statement of the accused was recorded Under Section 313 of the Code in a slipshod manner. In a case involving adulteration of food article, non- indication of the inculpatory material in its relevant aspect deprived the accused to furnish a proper reply. Recording of statement of the accused is not an empty formality, this aspect has been highlighted in Nidhi Sahu v. State, 70 (1990) CUT 558. and Prafulla Kumar Mohanty's case (supra). In the instant case the question asked to the accused lacked material particulars, and even the two questions which have some relevance to the question of adulteration are to the following effect:

6. The evidence of PW 1 discloses that he sent one bottle to the public analyst for examination and the public analyst after examination opined the same to be adulterated. What do you say ?

xx xx xx

9. The evidence of PWs 1, 2 and 3 discloses that you were manufacturing bread at Orissa Bakery, Keonjhar which was found to be adulterated for human consumption. What do you say ?'

5. In the above premises, the conviction and sentence as awarded by the learned Chief Judicial Magistrate, and affirmed by the learned Sessions Judge, Keonjhar cannot be maintained, and they are set aside. I direct acquittal of the petitioner.

The revision application is allowed. Bail-bond be discharged.

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