

Nand Kishore Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-30-1997

Reported in : 1997CriLJ2471

Judge : M.A.A. Khan, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 2(1), 7, 7(1), 13(2), 13(3), 16, 16(1), 16(1-A), 23, 23(1-A), 24 and 24(2); Prevention of Food Adulteration Rules, 1955 - Rules 14, 17, 18; Code of Criminal Procedure (CrPC) - Sections 123, 262 to 265, 313, 397 and 465

Appeal No. : Criminal Revn. Petn. No. 24 of 1992

Appellant : Nand Kishore

Respondent : State of Rajasthan

Advocate for Def. : Sharda Pathak, Public Prosecutor

Advocate for Pet/Ap. : Bhanwar Bagri, Adv.

Judgement :

ORDER

M.A.A. Khan, J.

1. On Nov. 2, 1982 at about 8.30 a.m. in Indra Gandhi Nagar at Kota P.W. 1 Laxmi Chand Jain, the then Food Inspector, Kota, noticed Nand Kishore petitioner selling goat-milk from a 'Chari' (milk can) on his bicycle. After giving the requisite notice to the petitioner, the Food Inspector purchased 660 M.L. of goat-milk for Rs. 1.65 from the petitioner, prepared three samples therefrom, packed and sealed them according to the rules and sent one of the samples to the Public Analyst, Kota for analysis. The rest of the two samples were sent to the Local (Health) Authority. On analysis of the milk the Public Analyst found milk fat contents at 1.6% and Milk Solids non-fat contents at 5.14% as against the standard of 3.0% and 8.5% respectively prescribed for Rajasthan in the table below item No. A. 11. 01. 11 of the Prevention of Food Adulteration Rules, 1955 (the Rules). He, therefore, opined that the sample of cow milk was adulterated by reason of its contained about 40% of added water and abstraction of about 24% of original water. On receipt of the report of the Public Analyst, the Food Inspector sent a copy thereof to the petitioner and after obtaining the requisite sanction for prosecuting the petitioner from the Local (Health) Authority filed a complaint against the petitioner in the Court of the Chief Judicial Magistrate, Kota on 11-10-83. On 22-11-83 the petitioner, in exercise of his right Under Section 13(2) of the [Prevention of Food Adulteration Act, 1954](#) (the Act), required the learned Magistrate to get the other sample of the milk analysed by the Director, Central Food Laboratory, Ghaziabad (U.P.). The learned Magistrate called for the second sample from the Local (Health) Authority and after examining the seals and packing thereof and finding them intact sent the same to the Director. The Director, on analysis, found milk fat contents at 1.5% and milk solids non-fat at 5.2% and reported that the ample milk did not conform to the standard of goat milk prescribed for Rajasthan. On 27-8-84 the learned Magistrate informed the petitioner of the result of the analysis of milk by the Director and commenced the trial of the petitioner. On trial the learned Magistrate found the petitioner guilty of offence Under Section 7(1) of the Act, convicted him as such and sentenced him Under Section 16(1) of the Act to one year R.I. and fine of Rs. 2000/-. In appeal the learned Addl. Sessions Judge, Kota, partly accepting the appeal of the petitioner, reduced the sentence of imprisonment and fine to the minimum prescribed i.e. six months R.I. and fine of Rs. 1,000/-. Hence this petition Under Section 397, Cr. P.C. before this Court.

2. With the help of a catena of case-law, to be referred to and discussed shortly, Mr. Bhanwar Bagri, the learned counsel for the petitioner, vehemently urged that the trial of the petitioner stood vitiated by non-compliance of Rules 17 and 18 of the Rules as also by not putting the report of the Director to the petitioner in his examination Under Section 313, Cr. P.C. In the end as also in the alternative, Mr. Bagri prayed for release of the petitioner on probation in view of his being aged 17 years only at the time of commission of the offence and his facing the ordeal of a long trial.

3. The facts of the case, as narrated above, were not disputed before me. On examining the record of the two Courts below I have felt satisfied that the sworn testimonies of PW 1 Laxmi Chand Jain, Food Inspector and PW 2 Ram Charan, an independent witness were quite trustworthy and reliable and fully established the narrated facts. There are, therefore, no good reasons for this Court to disturb the concurrent findings of facts, as recorded by the two Courts below. Therefore, subject to the answer to the questions raised by Mr. Bagri, the conviction and sentence of the petitioner for offence Under Sections 7/16 of the Act, have to be upheld.

4. Now to Sake up the arguments of Mr. Bagri, in the order those were advanced before me, I find that Rules 17 and 18 of the Rules provide as Under:

Rule 17: Manner of despatching containers of samples.- The containers of the samples shall be despatched in the following manner, namely :

(a) The sealed contained of one part of the sample for analysis and a memorandum in Form VII shall be sent in a sealed packet to the Public Analyst immediately but not later than the succeeding working day by any suitable means.

(b) The scaled containers of the remaining two parts of the sample and to copies of the memoranda in Form VII shall be sent in a sealed packet to the Local (Health) Authority immediately but not later than the succeeding working day by any suitable means :

Provided that in the case of a sample of food which has been taken from container bearing Agmark seal, the memorandum in Form VII shall contain the following additional information namely :

(a) Grade.

(b) Agmark label No./Batch No.

(c) Name of packing station.

Section 18: Memorandum and impression of seal to be sent separately.- A copy of the memorandum and specimen impression of the seal used to seal the packet shall be sent, in a sealed packet separately to the Public Analyst by any suitable means immediately but not later than the succeeding working day.

Later than the succeeding working day. The purpose of both these rules is to provide safeguard to the accused against tampering with the samples taken from him to ensure a fair and impartial trial. Rule 17 mainly deals with the mode and manner of dispatching the sealed containers of the parts of the sample to the Public Analyst and the Local (Health) Authority within a specified period. It is a rule of procedure and time is not essence of the action of the Food Inspector. The obligation to send the samples to the Public Analyst and the Local (Health) Authority has been cast upon the Food Inspector by Section 11(3) of the Act and such obligation may make that part of the said provision mandatory. In so far as the time limit prescribed for sending the samples is concerned a deviation therefrom does not necessarily affect the discharge of the main obligation by the Food Inspector in the absence of specific evidence on prejudice to the accused and, therefore, that part of the said provision and the Rule 17 are simply directory in character and their non-compliance would not vitiate the trial.

5. Rule 18 also consists of two parts.

In the first part an obligation is cast on the Food Inspector to send a copy of the memorandum and specimen impression of the seal, used to seal the packet, in a sealed packets separately to the Public Analyst. By the nature of the obligation cast on the Food Inspector, this part of the Rule is mandatory in character. The

other part of the Rule requires the Food Inspector to discharge the mandatory obligation, which has been cast upon him by the first part, immediately but not later than the succeeding working day. Choice of means to be adopted in sending the memorandum and specimen impression of the seal has been left to the wisdom and discretion of the Food Inspector. The meanings of the word 'immediately', which would have normally been akin to 'at once' or 'forthwith' have been enlarged by suffixing the phrase 'but not later than the succeeding working day'. In this phrase too the attribute 'working' has been used to the noun 'day' which signifies that the succeeding day may vary from case to case because of closure of office of the Food Inspector/ Public Analyst on account of holiday or for some other like reason. This part of the rule is, therefore, directory and the strict non-compliance thereof would not vitiate the trial. This view, I think; is supported by the observations of the apex Court in *State of Kerala v. Allasery Mohd.* : 1978 CriLJ925 to the effect that failure to comply strictly with the statutory provisions by the Food Inspector would not vitiate the trial and conviction of the accused. Above all, there is ample authority to support the view that non-compliance of even the mandatory provisions does not vitiate the trial unless prejudice is shown to have been caused to the accused (see *State of Himachal Pradesh v. Prithi Chand* : 1996 CriLJ1354 .

6. In the instant case PW 1 Laxmi Chand Jain, Food Inspector had stated on oath that he had packed and sealed the samples as per requirement of the relevant rules. He had further stated that he had sent one of the sealed container of sample milk along with the memorandum and specimen impression of the seal, used to seal the samples, separately in sealed cover to the Public Analyst. The witness was not cross-examined at all on such assertions by him. The recitals in the report of the Public Analyst, which now stand superseded by the report of the Director, Central Food Laboratory, Ghaziabad, clearly supported the statement of the Food Inspector. The Director, in his report, has specifically mentioned of the intact condition of seals on the part of sample sent to him. These facts stand controverted by no evidence to the contrary at all. No case of non-compliance of either of the two rules and the provisions in the Act relating thereto is made out what to speak of any prejudice allegedly having been caused to the petitioner. The argument of Mr. Bagri is dismissed.

7. In the case of Local Health Authority, Tonk v. Mewa Lal 1990 (2) RLR 69, the trial Court had found it as a matter of fact that the Food Inspector had not used clean bottles for keeping the sample of Gur and not but seal on them. It was on such facts that this Court had taken the view that since mandatory provisions contained in Rules 14, 17 and 18 of the Rules were not complied with the judgment and order of the accused were required to be disturbed. The facts in the present case, as narrated above, are quite dissimilar from those in Mewa Lai's case (supra). The ratio of that decision, therefore, affords no help to the petitioner herein.

8. The other limb of the argument of Mr. Bagri relates to the non-putting of the report of the Director, Central Food Laboratory to the petitioner in his examination Under Section 313, Cr. P.C. It is a fact that the report of the Director was not put to the petitioner Under Section 313, Cr. P.C. though the report of the Public Analyst was put to him. It may be an inadvertent mistake on the part of the learned Magistrate to have put the report of the Public Analyst which had been superseded by the report of the Director and not the Director's certificate, to the petitioner Under Section 313, Cr.P.C. Anyway, after giving thoughtful consideration to the point agitated before me I am of the opinion that the mere act of the trial Magistrate of not putting the report of the Director to the petitioner, in his examination Under Section 313, Cr.P.C. does not go beyond the scope and sphere of an irregularity curable Under Section 465, Cr.P.C. and since such an irregularity has caused no prejudice to the petitioner, his trial is not vitiated.

9. Much before the offence was committed and the learned Magistrate put the petitioner in this case to trial of an offence punishable Under Section 16(1) of the Act, Section 16A had been inserted w.e.f. 1 -4-76 by Amendment Act No. 34 of 1976. The object behind bringing Section 16A on the statute Book was that cases involving food adulteration should be tried and offenders punished as quickly as possibly by holding summary trial as per procedure laid down in Sections 262 to 265, Cr.P.C., in so far as those may be made applicable. In summary trials, as laid down in Section 262, Cr.P.C., the procedure prescribed for trial of summons case is to be followed. Anyway, Section 263, Cr.P.C. speaks of the record required to be maintained in a case tried summarily and Section 264 mandates that in every

case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding. Summary trial, in fact, implies speedy disposal of the case, preferably at once without loss of time and that is why Section 264 requires that substance of evidence is to be recorded at the time when evidence is given in the Court. The record of the case, as is required to be maintained the proceedings in such cases as per provision of Section 263, in Clause (f), does not seem to lay too much stress on the detailed examination of the accused as is indicated by the use of the word 'if any' in brackets. Though the provisions contained in the second Proviso to Section 16A empower the Magistrate to adopt the lengthy procedure of a warrant case in the trial of offences Under the Act yet that exception does not minimise the relevancy and expediency of ordinarily trying such offences summarily as mandated in the principle provision. Being aware of the non-technical procedure of the summary trial, the Legislature, in its wisdom, thought it fit to direct the trial of the offences Under Section 16(1) as a summary case and that shows the anxiety of the Legislature that the offenders against the Act be not only speedily tried but also the functioning of the Act be felt by the consumer public of food articles. For, as was observed by the Supreme Court in *State of Kerala v. Allasserry Mohd.* : 1978 CriLJ925 , the object of the Act is to obtain the conviction of a person dealing in adulterated food. The right of an accused to fair and impartial trial has to be appreciated in the background of not only the gravity of the offences and object of the act but also in the context of the imperatives of social defence necessitating the speedy disposal of the cases, involving such offences, through the mode of summary trials.

10. What has been stated above is not meant in any way, to minimise the importance and necessity of examining the accused Under Section 313, Cr.P.C. Section 313, Cr.P.C. is an important and statutory provision and is not to be stirred over. Its purpose is to give the accused an opportunity of explaining any circumstances which incriminates him and is intended to be made the basis of his conviction. An incriminating circumstances may be put to the accused at any stage, of the proceedings. But, at the same time, a conviction is not to be set aside for non-compliance with this provision on an accused's merely showing that he was not fully examined as required by Section 313, Cr.P.C. He must show that

such non-compliance has materially prejudiced him in his defence. That is the purpose of Section 465, Cr.P.C. which makes failure of justice as the only ground for holding an irregularity as not curable. Even such a failure is to be judged with reference to the conduct of the accused of taking or not taking objection against the irregularity at an earlier stage of proceedings. The observations made by the apex Court in the case of *Allascry Mohd.* (supra) are pertinent in the context of non-compliance of statutory provisions by the authorities concerned.

11. In the instant case the report of the Director was not put to the petitioner when he was examined Under Section 313, Cr.P.C. The report of the Public Analyst was certainly put to him. But as mandated by Sub-section (3) of Section 13, the report of the Public Analyst stood superseded by the report of the Director. There can be no dispute to the position that the report of the Director ought to have been put to the petitioner in his examination Under Section 313, Cr.P.C. By not putting the report to him Under Section 313, Cr.P.C. an irregularity in the trial was committed. The question, however, is whether the petitioner was prejudiced in his defence by such irregularity and failure of justice has occasioned thereby.,

12. In the scheme of the Act the sample and the report of Public Analyst lay down the 'foundation for prosecution' for substantive offences. In view of this importance of the sample and the report of the Public Analyst very specific and detailed provisions. (some of which are mandatory and the non-compliance of which may even result in failure of prosecution, dealing with the mode and manner of sampling and scaling and calling for the report of the Public Analyst have been made in the Act and the Rules. To safeguard the interest of the accused and to ensure a fair and impartial trial it has been made obligatory Under Section 13(2) on the part of the Local (Health) Authority to deliver a copy of the report of the Public Analyst to the accused, informing him as well of his right to get another sample analysed by the Central Food Laboratory, if so advised. In case the accused opts to get the other sample analysed by the Central Food Laboratory it has been made obligatory on the part of the Court to so send the other sample for analysis by the Director of the Central Food Laboratory Section 13(2D), in no uncertain language, mandates that until the receipt of the certificate of the result of the analysis from the Director of the Central Food Laboratory, the Court shall not

continue with the proceedings pending before it, relating to the prosecution. It is thus clear that Section 13(2D) creates a bar to the continuance of the proceedings for the prosecution of the accused until the receipt of the certificate from the Director Central Food Laboratory. In other words, if after the receipt of the certificate from the Director Central Food Laboratory the proceedings are commenced and continued such commencement and continuation of the proceedings must give and would amount to giving sufficient information to the accused of the fact that the report of the Director, Central Food Laboratory has approved of the sample as being adulterated. Since the proceedings are to continue after the receipt of the certificate from the Director, Central Food Laboratory, the accused has every opportunity to meet such adverse evidence through the cross-examination of prosecution witnesses or through evidence which he may bring on record in his defence. In appreciating the effect of Section 13(2D), on the failure on the part of the Court to put the certificate of the Director to the accused in his examination Under Section 313, Cr.P.C. it is required to be kept in mind that that adverse evidence was brought or came on the record of the case in consequence of the exercise of his right Under Section 13(2) of the Act and he may reasonably be expected of knowing the result of such exercise. Viewed thus, it may be concluded that the failure of not putting the incriminating circumstances appearing against him in the certificate of the Director, Central Food Laboratory, to the accused in his examination Under Section 313, Cr.P.C. is an irregularity causing no prejudice to him in his defence and no failure of justice in the case. Such an irregularity stands clearly cured by Section 465, Cr.P.C. and saved by the decision of the apex Court in the case of *Alasserry Mohd.* (supra) wherein the following principle was extracted with approval from the Seventh Edition of *Caries on Statute Law* :-

It is the duty of Courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed...That in each case you must look to the subject matter, consider the importance of the provision and the relation of that provision to the general object intended to be secured by the Act and upon the review of the case in that aspect decide whether the enactment is what is called imperative or only directory.

13. In the instant case the certificate of the Director, Central Food Laboratory was received on 27-8-84 and after mentioning the fact of such certificate being adverse to the interest of the petitioner, the learned Magistrate ordered for the continuance of the proceedings for his prosecution. At no stage of the proceedings the petitioner raised any objection against the certificate of the Director as not having brought to his notice or knowledge. On such facts it has to be held that no prejudice was caused to the petitioner in his defence and no failure of justice occasioned to him by not putting the contents of the certificate to him in his examination Under Section 313, Cr. P.C.

14. A similar question appears to have been raised before this Court in some cases. In the case of Jagdish Prasad v. State of Raj. 1988 (1) RLR 976, this question was raised with reference to the decisions of the apex Court in the cases of Hate Singh Bhagat Singh v. State of Madhya Bharat : AIR 1953 SC468 , Shamu Balu Changale v. State of Maharashtra : 1976 CriLJ492 , Harijain Mehta Jesha v. State of Gujarat : 1979 CriLJ1137 and Sharad Birdichand Sardar v. State of Maharashtra : 1984 CriLJ1738 , Machander v. Hyderabad State : 1955 CriLJ1644 , Baldev Kishan v. State of Punjab (1987 (2) All Cri LR 681), Subhash Chand v. State of Haryana 1988 FAJ 11, Vijay Kumar v. State of Punjab (1985) 1 All Cri LR 98. After considering all the cases Choptra, J. decided the issue in para 12 of the report in the following words:-

I have considered the rival submissions made at the bar, Sharad Birdhichan Sarda's case (supra) : 1984 CriLJ1738 relates to an offence which has been committed against an individual. The adulteration in food articles is an offence against the society, it is pertinent to note that all the authorities that have been cited regarding P.F.A. case relate to only one High Court i.e. Punjab & Haryana High Court. In cases of such offences committed against the society, I am not ready to accept this submission as a blanket to the accused in his statement recorded Under Section 313, Cr.P.C., should be acquitted. However, looking to the peculiar facts and circumstances of his particular case where this point was raised before the learned first appellate Court, who has overlooked to weigh it properly and the accused has to come to this Court for redressal of his grievance and further looking to the fact that the agency of trial has been faced by him since 23-

6-83. I do not deem it just and proper to remand the case back to the learned lower Court for retrial and feel that the accused deserves acquittal because the crucial aspect of the case has not been put to him in his statement Under Section 313, Cr. P.C.

15. From the observations made by his Lordship it is clear that he did not feel inclined to accept it as a blanket proposition that in all cases, particularly involving offences committed against society at large, the accused be acquitted on the mere ground of an important question having not been put to him in his examination Under Section 313, Cr.P.C. The other cases, namely *Municipal Council, Kota v. Harak Chand* 1989 (1) RLR 831 and *Mool Chand v. State of Rajasthan* 1996 (3) WLC (Raj) 274, relied upon by Mr. Bagri, were decided, on the basis of the ratio *decide-decidi* of *Jagdish Prasad's case* (1988 (1) RLR 976 (*supra*)). It may be noted that in *Jagdish Prasad's case* (*supra*) this Court had categorically negated the proposition that the mere non-putting of an important question to the accused in his examination Under Section 313, Cr.P.C. would be fatal / to his prosecution and conviction for an offence committed against the society at large. The purpose of examining an accused Under Section 313, Cr.P.C. is to put the incriminating circumstances, appearing in evidence brought on the record, of the case, to him so as to give him an opportunity to explain such circumstance. If by virtue of the very nature of the offence and the statutory provisions regulating the procedure of bringing such incriminating circumstance on the record, in which procedure there has been his own active participation due to the exercise of his statutory right, the proceedings for his prosecution have commenced after informing him of the result of his active participation in collecting that incriminating circumstances, the accused knew such incriminating evidence and had opportunity to meet such evidence at his trial, the mere act of not putting such evidence to him in his examination Under Section 313, Cr.P.C. would not cause him such prejudice as may cause the failure of the entire prosecution case. The cited cases, therefore, afford no help to the petitioner. The argument advanced is accordingly rejected.

16. The grounds of attack against conviction of the petitioner for offence Under Section 7/16 of the Act having failed he must get his due. Mr. Bagri, however, urged that the age of the petitioner at the time of commission of the offence in this

case and the ordeal of long litigation faced by him should not attract even the minimum sentence provided for the offence. It was pointed out that all along this Court has taken a lenient view in awarding punishment in such delayed cases. Shelter under the kindly and protective umbrella of the Probation of Offenders Act has thus been prayed for the petitioner with reference to a catena of case law on the point. I was reminded that in Phool Chand's case (S.B. Cr. Rev. Petition No. 155 of 1991) decided on 26-7-96 I myself have taken such a view.

17. It is true that in Phool Chand's case (supra) I myself had, relying on several decisions of this Court extended the benefit of probationary measure to an accused found selling adulterated milk. But on study of the relevant provisions in the Act relating to punishment in such cases and on taking due note of the consistent approach of the apex Court on the aspect of punishments for offences under the Act. I feel that there is no heroism in sticking to one's wrong view which overlooks the right of the people at large for safeguard against food adulteration vis-a-vis the right and interest of an individual to life and liberty despite his being declared an offender under the Act. I think it is never too late to improve over one's wrong views. In this behalf the pertinent observations made by Bhagwali, J. of the Supreme Court (as his Lordship then was) in the case of Distributors Baroda Pvt. Ltd. v. Union of India : [1985]155ITR120(SC) provide strength and courage to me to record a departure from my earlier view in Phool Chand's case (supra).

18. It needs no emphasis that the Act is a piece of social welfare legislation enacted for the solution of a human problem namely the evil of food adulteration which imperils the health of community at large and is assuming alarming proportions. Its object is, as stated earlier, 'to obtain the conviction of a person who deals in adulterated food.' It has, therefore, necessarily to be approached from the point of view of suppressing the mischief which it aims at doing away with and to further the social interest it purports to promote. In dealing with the offences under the Act Courts are, therefore, not expected to function in vacuo but as parts of a society which is trying, by enacted laws, to solve its problems and achieve social concord and peaceful adjustment so as to further the moral and material progress of the community as a whole, (see Dinesh Chandra Jamnadass Gandhi v. State of Gujarat : 1989 CriLJ889 . The imperatives of social defence, therefore, attract

strict liability for food offences. In the cases of strict liability for social defence over powers individual freedom to injure others and 'acties reus' outweighs 'animus'. To borrow the words of Krishna Iyer, J. of Supreme Court in Pyarali K. Tejani's case : 1974 CriLJ313 . 'Section 1 casts an absolute obligation regardless of scienter, bad faith and mens rea If you have sold an article of food contrary to any of the Sub-sections of Section 7, you are guilty. There is no more argument about it. The law denies the right of a dealer to rob the health of a supari consumer.' Therefore, to curb the offence against the Act the offender shall have to be visited with strict liability.

19. In the case of Isher Dass v. State of Punjab : 1972 CriLJ874 , the apex Court appears to have considered the question of. desirability of extending the protective wings of the Probation of Offenders Act to the offenders under the Act. Their Lordships though observed that 'the beneficial provisions should receive wide interpretation and should not be read in restricted sense.' Yet, taking note of the menace posed to public health by adulteration of food articles and the object of the Act to eradicate evil, their Lordships cautioned that 'in view of the above object of the Act and the intention of the Legislature as revealed by the fact that a minimum sentence for a period of six months and a fine of Rs. 1,000/- has been prescribed, the Courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above 21 years of age, found guilty of offence under the Prevention of Food Adulteration Act. . . . 'Stressing upon the same caution their Lordships reiterated in Pyareli K. Tejani's case : 1974 CriLJ313 (supra) that 'the kindly application of the probation principle is negated by the imperatives of social defence and the improbabilities of moral proselytisation. No chances can be taken by society with a man whose anti-social operation, designed as a respectable trade, imperil numerous innocents. He is a security risk. Secondly these economic offences, committed by white collared criminals are unlikely to be dissuaded by the gentle probationary process. Neither casual provocation nor motive against particular persons but planned profit making from number of consumers furnishes the incentive - now easily humanised by the therapeutic probationary measure...In the current Indian Current Conditions the probationary movement has not yet attained sufficient strength to correct these intractables. May be under more developed conditions a different approach may have to be

made. For the present we cannot accede to the invitation to let off the accused on probation.' It is a matter of common knowledge and experience that since the days of the above pronouncement by their Lordships conditions have rather deteriorated instead of getting improved. Innocent children and infirm and diseased aged persons are being fed upon 'synthetic milk' and preparations thereof which are benefit of any nutritative value whatsoever, supplied by the distributors of adulterated milk charging the price for pure commodity. Should we - the Judges - who are very much part of the same society for whose benefit the Act was enacted approve of and/or condone the regulation of the nefarious private activity in a vulnerable area like public health and leave the legacy of the evil of adulteration to our posterity? No, no, never, Courts must therefore, give the true meanings to the legislative intent and will expressed in Section 16(1) of the Act and to the judicial pronouncement that 'the normal minimum is six months in jail and a thousand rupees fine. We find no good reason to depart from the proposition that generally food offences must be deterrently dealt with' made in Pyareli K. Tajani's case (1994 Cri LJ 313) (supra). For, 'Law is a living organism' its ability depends on 'its vitality and ability to serve as sustaining pillar of society' (Dr. D.C. Sharma v. C.J.L : 1996 CriLJ3274 and 'justice means justice between both the parties and the interest of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice' (See State Bank of Patiala S.K. Sharma : (1996)IILLJ296SC . Otherwise 'the Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual but also against the society to which the criminal and victim belong. The punishment awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should respond to the society's cry for justice against the Criminal' (Vide Rajiv v. Slate of Rajasthan : AIR 1996 SC787 .

20. Coming now to the specific provision in the Act relating to penalties, the relevant part of Section 16(1) provides as Under :--

Section 16(1): Subject to the provisions of Sub-section (1-A), if any person.-

(a) whether by himself or by another person on his behalf, imparts into India or manufactures for sale, or stores, sells or distribute, any article of food....

(i) which is adulterated within the meaning of Sub-clause (m) of Clause (i-a) of Section 2 or mis-branded 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 an order of Food (Health) Authority :

(ii) other than an article of food referred to in sub-sec, (a) in contravention of any of the provisions of this Act or of any rule made thereunder; or

(b) to (g)....

he 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 -

(i) if the offence is Under Sub-Clause (i) of Clause (a) and is with respect to an article of food being primary food, which is adulterated due to human agency or is with respect to an article of food which is misbranded within the meaning of sub-Clause (k) of Clause (ix) of Section 2; or

(ii) if the offence is Under Clause (ii) of Clause (a) but not being an offence with respect to the contravention of any rule made Under Clause (a) or Clause (b) of Sub-section (1-A) of Section 23 or Under Clause (b) of Sub-Clause (2) of Section 24, the Court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which shall not be less than three months but which may extend to two years and with fine which shall not be less than five hundred rupees :

Provided further that if the offence is Under Sub-clause (g) of Sub-section (1-A) of Section 23 or Under Clause (b) of Sub-section (2) of Section 24, the Court may, for adequate and special reasons to be mentioned in the judgment, imposes a

sentence of imprisonment for a term which may extend to three months and with fine which shall not be less than five hundred rupees.

Sub-clause (m) of Clause (1-A) of Section 2, referred to in Section 16(1)(a)(i) reads as Under:-

if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities nor within the prescribed limits of variability but which does not render it injurious to health. 'Primary food', referred to in the Proviso (i) to Section 16(1) and defined in Clause (xii-a) of Section 2 means any article of food, being a produce of agriculture or horticulture in its natural form.

21. A plain reading of the punishment clause in the Act along with the proviso discloses that the mandate of the Legislature is to award minimum punishment for six months imprisonment and a fine of Rs. 1,000/- for all offences under the Act and an exception to this general rule can be made only if the offence is in respect to the article of food which is adulterated Under Section 2(1)(i) and falls Under Section 16(1)(a)(i) or is misbranded with the nature mentioned in Section 2(ix)(k) or is one Under Section 16(1)(a)(ii) not covered by Section 16(1)(a)(i) but has been imported or manufactured for sale or stored, sold or distributed in contravention of any provision of the Act or rules made there under. In the case of making departure from the general rule the Court is required to record in its judgment the adequate and special reasons justifying infliction of sentence less than the minimum prescribed. In that case too, a sentence of imprisonment for a term less than three months and fine less than 500/- rupees cannot be imposed. This statement is required to be read in the mandate contained in the Proviso which mandate permits upward imposition of sentence up to two years. The use of the expression 'but which may extend to two years' after the expression 'impose sentence of imprisonment for a term which shall not be less than three months' denies discretion to the Court to be further lenient in the matter of imposition of sentence less than three months imprisonment despite recording special and adequate reasons in the judgment. This restriction on the discretion of the Court is required to be read in the context that violation of food laws is a widely spread phenomenon and a social crime of such magnitude in which a few get richer by

unlawful means at the cost of consumer public at large and their nefarious activities involve the element of cheating by abstraction of genuine stuff by dubious means and substituting the same by inferior or sub standard stuff to their individual gains and to the injury and damage to the health of the community at large. Their adulterous net spreads wide day in day out and although, seemingly their activities may appear to pinch one individual at one time but repetition of such activity several times a day and continuance for years together imperils the health of large number of people. Therefore, where the statute restricts the exercise of the discretionary power of the Court in awarding minimum sentence that power should be exercised within the limits prescribed by the statute.

22. In view of the above discussion the ratio deci-den-di of the decision of this Court in the cases of Ganga Ram v. State of Rajasthan 1988 Cri LR (Raj) 723, Shankar Lal v. State of Rajasthan 1981 Raj Cri C 244, Ram Sukh v. State of Raj. 1990 (1) RLR 659, Ram Charan v. State of Raj. 1990 (1) Raj LR 25, Mool Chand v. State of Raj. (1996) 3 WLC 274 and my own judgment in Phool Chand's case (supra) do not help the petitioner in this case. Almost in all the above mentioned cases the offences were committed before the amendment brought about in the Act by Amendment Act No. 34 of 1976. The argument of Mr. Bagri that the petitioner was aged 17 years at the time of commission of offence in this case is borne out of no material on record. The statement sheets of charge framed and of the examination recorded Under Section 123. Cr.P.C. do not mention his age and there is no material on record to treat the petitioner below 21 years of age at the time of commission of offence so as to attract the provisions of 20-AA of the Act to his advantage. I find no case for application of that provision.

23. However, the facts that the offence was committed in the year 1982 and since the petitioner has been facing the ordeal of the litigation since then and that he comes from the low strata of society and is loaded with the burden of domestic obligations towards his family, go to make adequate and special reasons to impose sentence less than the minimum prescribed.

24. In the result while maintaining the conviction of the petitioner for the offence Under Section 7/16 of the Act the sentence awarded to him is reduced to three

months R.I. and Rs. 500/- as fine or one month R.I. in default of payment of fine. With this modification in sentence this petition is dismissed.

25. The petitioner shall surrender to his bail bonds. The Courts below shall take steps to see that the petitioner serves out the remaining part of his sentence as already reduced in appeal.

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