

Mohan Datt Vs. State of H.P.

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SooperKanoon Citation : sooperkanoon.com/889882

Court : Himachal Pradesh

Decided On : Aug-08-1986

Reported in : 1987CriLJ1677

Judge : R.S. Thakur, J.

Appellant : Mohan Datt

Respondent : State of H.P.

Judgement :

ORDER

R.S. Thakur, J.

1. This criminal revision petition , is directed against the order in appeal of the learned Sessions Judge, dated March 12,1985, whereby the appeal of the revisionist Mohan Datt (hereinafter called as the accused) against the order of the Chief Judicial Magistrate, Shimla, dated October 3,1983, was dismissed with the modification that the substantive sentence of imprisonment was reduced from ' one year to six months under Section 7 read with Section 16(l)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act). The learned Chief Judicial Magistrate vide the aforesaid order had convicted and sentenced the accused to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1000/- and in default to undergo further R.I. for three months.

2. The brief facts of the case are that on March 23, 1982, at about 9 a.m. when the Food Inspector, D. N. Kaushik was at Shogi in connection with his official duties, he found the accused in possession of about 6 kgs. of cow's milk meant for public sale. The said Food Inspector then after disclosing 'his identities served a notice upon the accused calling upon him to sell 660 mls. of milk, which was declared by the accused as that of cow, for the purposes of sampling and analysis. He accordingly took the milk from him on payment of price against a receipt and put the same into three clean and dry bottles in equal quantities and while doing so, observed the requisite codal formalities with regard to adding of preservative, proper stoppering, wrapping and sealing etc. Out of the three sample bottles so prepared, the Food Inspector sent one sample to the Public Analyst at Chandigarh, while the remaining two were sent to the Local (Health) Authority in accordance with the rules and procedure. The Public Analyst at Chandigarh then reported the results vide report Ex. PE, dated April 26, 1982 to the effect that the sample milk was adulterated as it was deficient in milk solids not fat by 7.0%.

3. On receipt of this report the Food Inspector launched the prosecution against the accused in the court, the intimation whereof was also duly given to the Local (Health) Authority. The Local (Health) Authority then in compliance with the rules and the procedure sent a copy of that report to the accused and also intimated him that he could get one of the sample bottles kept with the Local (Health) Authority tested by the Director, Central Food Laboratory, if he so desired, by applying to the Court concerned in this behalf within a period of ten days of the receipt of the intimation. The accused opted to exercise his right to get the sample analysed by the Director, Central Food Laboratory. The Director of Central Food Laboratory then vide his certificate dated September 13, 1982, also found that the sample milk was adulterated since it was deficient in milk solids not fat by 1.3% of the ' minimum prescribed standard. The trial Court on the receipt of this report proceeded to try the case for the aforesaid offence and found him guilty and convicted and sentenced him thereunder as stated earlier.

4. It transpires from the record that the accused in the trial Court had taken up the defence that the milk in question which was found to be in his possession by the Food Inspector at the time of taking the sample was not 6 kgs. but only 2 kgs.

which he had purchased in the Bazar at Shogi for his own consumption and not for sale. This plea of the accused, however, was repelled by the trial Court and this finding was also upheld in the appellate court and, I feel, rightly so.

5. The learned Counsel for the accused in the revision before this Court has not contested this aspect of the case. His plea, however, while assailing the judgments of the lower courts was twofold. In the first place he has contended that the deficiency of milk solids not fat found in the milk in question was of mere marginal and technical nature and as such ought to have been overlooked by the courts below as it did not amount to an offence within the purview of Section 16 read with Section 7 of the Act and thus could not have formed the basis of his conviction. The, learned Counsel has cited a number of .authorities in support of this contention.

6. The second contention set forth on behalf of the learned Counsel was that the trial court failed to comply with the requirements of the provisions of Sub-section (2-B) of Section 13(1) of the Act which are of mandatory character and this lapse on the part of the trial court has vitiated the entire trial.

7. The learned Assistant Advocate General on the other hand has controverted these contentions and supported the findings of the two courts below.

8. Thus the first question that arises for determination of this Court is whether, assuming that the deficiency of milk solids not fat found in the milk in question was of a marginal and technical nature, no offence on the basis thereof was made out and the accused was entitled to acquittal? While considering the question, it would not be out of place to mention that the rulings cited at the bar by both the sides, bring out, in the first flush, into bold relief the fact that the law as construed by the High Courts in India' on this point is quite confusing. It is an undisputed fact that the minimum prescribed standard for Himachal Pradesh in respect of cow's milk is, fats 3.5% and milk solids not fat 8.5%. As per the report of the Director, Central Food Laboratory which is final, so far as the case in hand is concerned, the milk fat in the milk in question was found as 3.8% and milk solids not fat 7.2% and thus admittedly the fat contents were more by 0.3% while the milk solids not fat were deficient by 1.3%. As regards the authorities cited on behalf of the accused, it

would be proper to first take note of the Allahabad High Court Rulings. There the trend was set as far back as in 1968 when a single Judge of that High Court on March 11, 1968, decided a Criminal Revn. No. 1475 of 1966 to the effect that where the fat contents found in the milk is much higher than the minimum prescribed by the rules, the fact leads necessarily to the inference that no water has been added to the milk and that in such a case the mere circumstance that the non- . fatty solid contents were below the standard prescribed by the rules could only justify the inference that either the cow from which the milk was drawn was not given proper feeding or that the report of the public analyst was erroneous and it could not be inferred therefrom that the milk in question was wanting in purity. This ruling was then followed in another case of the same High Court in 1973 FAC 342 : (1973 Cri LJ 1413), Sultan Shah v. State of Uttar Pradesh. A doubt in this behalf, however, still persisted and the same was then set at rest by a Division Bench ruling in (1978) 1 FAC 160 (All), Kadam Singh Puran v. State wherein it was finally ruled that no doubt the report of the public analyst is evidence of the facts stated therein, but, the court enjoys discretion to rely thereon or not in particular set of circumstances and where the court entertains any doubt regarding the correctness of the report the benefit thereof must go to the accused. It was also observed that the existence of milk fat and non-fatty milk solids depends not only on proper feeding but also on the health of the animal from whose udders the milk was extracted and the quality of food given to the animal affects both quality and quantity of the milk produced by it. It was observed therein that if the sample is taken from a stored milk when the milk has cooled down, the fat contents come to the top and when the sample is taken without stirring the stored milk thoroughly, the fat contents in the sample would be higher and that it would not be a representative sample of the milk and as such the report of the public analyst based thereon is not free from doubt. On the basis of these findings the accused was acquitted since in that case the fat contents were much higher than the prescribed standard whereas it was deficient in milk solids not fat. This ruling was then followed in (1979) 2 FAC 47 (All), Dhani Ram v. State (1982) 1 FAC 199 (All), Satya Prakash v. State (1982) 1 FAC 300 : 1982 UPLT NOC 54, Nagar Swasth Adhikari v. Sahib Singh and (1979) 1 FAC 15 (All), Ram Swarup v. The State.

9. It is, however, interesting to note that a Full Bench of the same High Court in *Prem Das v. State and Anr.* connected revision, reported in : AIR1961 All590 had held : 'since in the instant case the percentage of non-fatty solids was less than the prescribed minimum for cow's milk, the mixture of cow milk and buffalo milk was adulterated within the meaning of Section 2(i)(l) and the accused was guilty under Section 16'. No notice, however, appears to have been taken of this Full Bench ruling in the subsequent Bench and single Judge decisions aforesaid till 1982 when a single Judge of that Court in (1982) 1 FAC 318 : 1982 All LJ 638, *State of U. P. v. Shyam Manohar* followed it and observed as follows:

When standards are prescribed by the Rules under the Act, a sample has to come up to those standards and any deficiency either in fatty solids or in non-fatty solids would amount to adulteration within the meaning of the Act and for that there can be no escape from the law. Even a margin of 0.3% in my view would not make the sample in this connection not adulterated.

In that case the deficiency in non-fatty solids was only marginal, that is 0.3% below the prescribed standard and it was argued before him on the basis of the authority of *Ram Swarup v. State* 1982 UPLT NOC 54 based on a Bench decision of the same Court *Kadam Singh Puran v. State*(1978-1 FAC 160) (*supra*) that since the fatty contents were already in the sample in question and it was deficient in non-fatty solids only marginally it did not necessarily mean that the sample in question was adulterated. The learned Judge, however, refused to follow the ratio in those judgments and preferred to follow the Full Bench decision in *Prem Dass* (1961 (2) Cri LJ 737) (All) (*supra*).

10. Thus so far as the High Court of Allahabad is concerned, it appears that its views are conflicting on the legal proposition, namely, whether only marginal deficiency of any of the two constituents in the milk sample, (hat is, fatty and non-fatty substance amounted to an offence under Section 7 retion 7 read with Section 16 of the Act? Majority of the rulings reply this in the negative and only some in the affirmative despite the Full Bench decision of that court in the affirmative.

11. Then some other High Courts, namely, Rajasthan, Delhi and Punjab and Haryana have also answered this proposition in the negative as is reflected by the

following cases :-

(1979) 1 FAC 89, Parasram v. State of Rajasthan (1980) 2 FAC 145 (Delhi), M.C.D. v. Jawahar Lal 1972 FAC 309 (Punj), Municipal Committee Amritsar v. Karam Singh; 1974 FAC 432, Municipal Committee Amritsar v. Behari Lal (1975) FAC396: (1975 Crj LJ 1968) Municipal Committee Amritsar v. Jaswant Singh.

12. It appears that the ruling of some of the High Courts on this point drew sustenance from a two Judge ruling of the Supreme Court in 1973 FAC 375, Malwa Co-operative Milk Union Ltd., Indore v. Bihari Lai. Therein the facts were that the appellants co-operative society was carrying on the function of procuring and supplying milk to Indore City on a large scale and two samples were obtained from their milk which was that of buffalo and the results in the first sample were milk fat 6% solids not fat 7.9% in the second sample milk fat was 5.9% and solids not fat 7.7% whereas the standard prescribed was fat 5% and milk solids not fat 9%. On the basis of these statistics the Hon'ble Court then observed as follows ;-

It would, therefore, appear that the solids in the milk should be of the order of 14% minimum. In the samples they were almost 14% in the one case being only 1% less and in the other 4% less. The fat contents appears to be proportionately less. It is not clear whether the analyst was able to isolate the fat content so, successfully as not to have left room for this slight variation. The variation was thus, borderline. What generally extracted is cream and not the other solids.

The point at issue in that case, however, was entirely different. In that case the prosecution was launched against the Co-operative Society when the milk in question was found to be adulterated, but, during the course of the trial the State through the Public Prosecutor withdrew the cases against the Co-operative Society when the trial Judge recorded the order of acquittal and a revision against that order before the Sessions Judge by a third party was also rejected. The same third party then filed a second revision petition in the High Court wherein a single Judge accepted the revision petition, set aside the order of acquittal and ordered a retrial. The Supreme Court was then moved by the Co-operative Society in appeal against the order of the High Court and the question then before the Supreme Court was whether the order of the High Court in revision in the facts and the

circumstances of the case was sustainable to which the Supreme Court replied in the negative and while setting aside the order of High Court, the order of acquittal was Restore.

13. A three Judge Bench of the Supreme . Court then finally set this matter at rest in (1975) 1 FAC 271 : (1975 Cri LJ 928), Municipal Committee, Amritsar v. Hazara Singh, when it was observed :

It is plain from submission of counsel that the appellant's grievance is not so much against the acquittal as against a passing reference by the Sessions Court to an obiter observation of this Court in Malwa Cooperative Milk Union Ltd., Indore v. Behari Lai and Anr., 1973 FAC 375. Obviously, the Sessions Judge had concluded that a minor error in the chemical analysis might have occurred. He was perhaps not right in saying so. Anyway, a reading of this judgment shows that the mention of this Court's ruling (supra) was meant to fortify himself and not to apply the ratio of that case. Indeed, this Court's decision cited above discloses that Hidayatullah, J. (as he then was) was not laying down the law that minimal deficiencies in the milk components justified acquittal in food adulteration cases. The point that arose in that case was whether the High Court was justified in up/Setting an acquittal in revision, When the jurisdiction was invoked by a rival trader, the, alleged adulteration having been so negligible that the State had withdrawn the prosecution resulting in the acquittal. Certainly, the revisionsl power of the High Court is reserved for setting (aside) miscarriage of justice, not for being invoked by private prosecutors. Such was the ratio but, in the course of the judgment Hidayatullah . to drive home the point that the case itself was so mariginal, referred to the microscopic difference from the set standard. To distort that passage, tear it out of context and devise a new defence out of it in respect of food adulteration cases, is to be grossly unjust to the judgment.

In the same Judgment it was further observed:

The standard fixed under the Act is one that is certain. If it is varied to any extent, the certainty of a general standards would be replaced by the vagaries of a fluctuating standard. The disadvantages of the resulting predictability, uncertainty and impossibility of arriving at fair and consistent decisions are great.

It is apparent that the standard inter alia, for cow milk has been prescribed by a Committee known as the Central Committee for Food Standard constituted by the Central Government in consonance with the provisions of Section 3 of the Act and sub-clause (i-a) read with sub-clause (1) and (m) of Section 2 thereof clearly lay down that an article of food shall be deemed to be adulterated if the quality or purity of the article falls below the prescribed minimum standard or its constituents are present in quantities not within the prescribed limits of variability, whether the same renders it .injurious to health or not.

14. A Full Bench of the Punjab and Haryana High Court then in (1976) 2 FAC 44 : (1976 Cri LJ 1648), State of Punjab v. Teja Singh then reviewed all its previous D.B. judgments as also cited supra and overruled them and the other single Bench judgments which had followed those Division Bench rulings in view of the ruling of the Supreme Court in Hazara Singh (1975 Cri LJ 928) (supra) and answered in the negative the relevant question the learned judges had formulated earlier for determination, namely, whether a negligible or a marginal deviation from the prescribed standard laid down by the Act can be ignored and acquittal recorded on that basis and cited the following observation of the Supreme Court in Hazara Singh's case in support of their view :

Food pollution, even if it be only to the slightest extent, if continued in practice, would adversely affect the health of every man, woman and child in the country. Hence even marginal or border-line variations of the prescribed standards under the Act are matters of serious concern for all and as public interests are involved in them, the maxim De Minimis Non Curat Lex. Law does not concern itself about trifles, does not apply to them.

14A. Thus having regard to the unequivocal and authoritative verdict of the Hon'ble Supreme Court in Municipal Committee, Amritsar v. Hazara Singh (1975 Cri LJ 928) (supra), there remains no doubt whatsoever that the contents of the milk in question must conform strictly to the minimum standard prescribed under the Act. Any deviation therefrom on the pleas, a) that the report of the public analyst may be defective for want of proper analysis, or b) that if the milk fats are more than the prescribed standard, then even if the milk solids not fat are

marginally below the minimum prescribed standard, that factor would not render the milk in question as adulterated, especially if the aggregate of the two components approximates to the aggregate of the prescribed standard, is no longer permissible under law. Such an attempt would be exposed to 'vagaries of fluctuating standard' resulting in 'unpredictability, uncertainty and impossibility of arriving at fair and consistent decision'.

15. It may also be pointed out that Sub-section (3) of the Section 13 of the Act envisages that in case the accused exercises his choice to get the second sample, lying with the Local (Health) Authority, analysed, after the prosecution has been launched against him on the basis of the adverse report by the Public Analyst, by the Director, Central Food Laboratory, under Sub-section (2) thereof, the certificate issued by the Director of the Central Food Laboratory, under Sub-section (2B) thereof, shall supersede the report given by public analyst under Sub-section (1) thereof. Sub-section (5) of the same Section then, in no uncertain terms, lays down that the report of the public analyst or the certificate, in case the report is superseded by the certificate issued by the Director of Central Food Laboratory under Sub-section (3) of the Act, as the case may be, is to be used as evidence of the facts stated therein in the proceedings under the Act, which shall be final and conclusive. Having regard to these provisions, the courts, in my opinion, are precluded from casting any suspicious eye on such report. Of course, in case the court concerned entertains any doubt on the report, it is open to it to, *ex debito justitiae*, either *suo motu* or at the instance of any of the parties to the proceedings, call the officer concerned who has submitted the report or certificate, as a witness to get the doubt cleared. But without resorting to this, it is not open to the court to have resort to presumption that the public analyst or the Director of Central Food Laboratory, as the case may be, may not have been able to properly analyse the components of the article of food concerned or to observe that the milk in question may not have been a representative sample or the animal from whose udder the milk in question was extracted, may not be having proper feeding or maintenance or it may not be of proper age. That would amount to importing extraneous matters while construing the relevant provisions in this behalf of the Act and thus entering the zone of judicial arbitrariness and despotism.

16. It must be presumed that the Central Committee for food standards appointed under Section 3 of the Act, in its wisdom, has taken all these aforesaid factors into consideration while laying down the minimum standards for the milk in a particular area or region of different animals.

17. In view of the foregoing discussion, the contention put forward on behalf of the learned Counsel for the accused falls to the ground and I have no hesitation in answering the question in hand, in the negative. That is to say that assuming that the milk in question was marginally deficient in milk solids not fat and had a bit of fat contents more than the prescribed standard, it still retains the vice of being 'adulterated article of food' and thus squarely falls within the mischief of Section 16 read with Section 7 of the Act and the findings on this point of the two courts below are unquestionable.

18. The second question that now arises is whether the trial Court has failed to carry out the directions set out in Sub-section (2-B) of Section 13 of the Act and if so whether they are mandatory in nature, the non-compliance whereof vitiates the trial? The relevant provisions of Section 13 (2-B) of the Act in this behalf may be reproduced as under:

On receipt of the part or parts of the sample from the Local (Health) Authority under Sub-section (2-A) the court shall first ascertain that the mark and seal of fastening as provided in Clause (b) of Sub-section (1) of Section 11 are intact and the signature or thumb impression, as the case may be, is not tampered with, and despatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis.

19. These provisions in short lay down that in case, after the public analyst has delivered his report to the Local (Health) Authority, it is revealed in the report that the article of food in question is adulterated then after launching of the prosecution against the person from whom the sample in question was taken, the Local (Health) Authority is imperatively required to forward in a prescribed manner a copy of the report of the result of analysis to such person and also inform him that

if he so desires, he may make an application to the court within a period of ten days from the date of the receipt of the report to get the sample article of the food kept by the Local (Health) Authority analysed by the Central Food Laboratory. When such an application is made by the person concerned the court has to requisition the sample kept by the Local (Health) Authority concerned and the said authority is duty bound to produce the sample in question in the court within a period of five days of the receipt of such requisition. On receipt of the sample from the said authority the Court is enjoined to ascertain that (a) mark and seal or fastening as prescribed under the Act are intact, (b) the signatures or thumb impression, as the case may be, on the said sample of the person concerned is not tampered with and (c) thereafter to despatch the same under its own seal to the Director of the Central Food Laboratory who then is required to send a certificate to the court concerned in a prescribed form within a period of one month from the date of the receipt of the sample specifying the result of the analysis.

20. It is clear from the record of the case that after the public analyst at Chandigarh had sent his report to the Local (Health) Authority with the finding that the milk in question was adulterated the prosecution was launched against the accused and thereafter a copy of the report of the public analyst was forwarded to the accused along with the intimation that, if he so desires, he could apply to the court concerned within a period of ten days that the sample retained by the Local (Health) Authority be sent for analysis to the Director of the Central Food Laboratory. The accused also in response, applied to the trial court that the sample in custody of the Local (Health) Authority be sent to the Director Central Food Laboratory for analysis which application was presented by the accused in person on July 5, 1982 and the court passed an order that the Local (Health) Authority should produce the same in the court on July 9, 1982. This sample was ultimately produced in the court on July 14, 1982 since the same could not be produced earlier for want of proper particulars and on that date the court has recorded that the accused as well as his counsel Shri S. V. Sharma, Advocate, were present and in their presence the court examined the sample and recorded as follows:

Applicant'14-7-82 : Present : with Sh. S. V. Sharma, and Sanitary Inspector K.R. Dalta. Sanitary Inspector has brought one part of the sample. It is duly sealed and packed and the seals are intact. It be sent to the Director Central Food Laboratory, Gaziabad in accordance with the rules.

Sd/- C. J. M. Shimla.

14-7-1982.

It is clear from this that the trial court while acting under the provisions of Sub-section (2B) of Section 13 of the Act, has only mentioned that the seals on the sample were intact and the sample was properly packed but has not made any mention that the signature on the same is not tampered with. It is, of course, conceded that the sample was remitted to the Director Central Food Laboratory under the seal of the Court concerned. The question is whether this omission on the part, of the Court in not recording that the signature of the accused on the sample package was not in any way tampered with, has resulted in the disobedience of a mandatory provisions of law or merely a directory one. It is a clear law that the violation of a mandatory provision of law is an illegality which must vitiate the trial but that is not so in the case of a provision which is merely directory. The directory provision, however, is capable of assuming the mandatory form in case it is proved on record that by violating the same the accused was prejudiced in his defence and his trial was materially affected.

21. A Constitution Bench of the Supreme Court has in depth considered this question in 1978 Cri LJ 925 ; AIR 1978 SC 933, State of Kerala v. Allasserry Mohammed and a number of other appeals decided by the same judgment. Therein the Food Inspector had remitted for analysis less than the prescribed quantity of sample. The same court in its earlier decision in : 1975 CriLJ254 Rajaldas G. Pamnani v. State of Maharashtra, had set aside the conviction of the accused on the ground that the public analyst did not have the quantities mentioned in the rules for analysis and that its non-compliance with the quantity as prescribe^ by the rules has resulted in the violation of the provisions of the statute. This Constitution Bench was then actually constituted to examine the correctness of this ruling.

22. The learned Judges of the Constitution Bench then in that case held that Rule 22 framed under the Act was directory and not mandatory that is to say, that even if the quantity of sample remitted for analysis is less than what is prescribed under Section 11 and Rule 22 of the Act, the same would not result in any penal consequences in case the public analyst finds the quantity sufficient for the purposes of proper analysis and that merely because the word 'shall' has been used in Sub-section (3) of Section 11 and under Rule 22 of the Act, would not make it imperative for the Food Inspector to send the quantity of the sample strictly in accordance with the prescribed rules. Their Lordships, however have hastened to add that the fact that the rule is directory and not mandatory does not, however, mean that it is open to the Food Inspector to violate the rules. It was also observed in that case that when the sample is sent in short quantity for analysis the result may be threefold, namely, a) it may not be found sufficient for the purposes of analysis and in that case the matter would end there and then or b) the court may not find the result received in case of short quantity sample beyond doubt for one reason or the other and c) the quantity though short but he found sufficient for purpose of analysis and the result found satisfactory by the court in all respect. In the case of (a) and (b) the result would be the acquittal of the accused.

23. But in case there is no such frustration of the object of having the report of the public analyst and the report is found to be trustworthy and beyond any doubt, then in that case, it will endanger public health to acquit the offenders on technical grounds of not strictly complying with the requirements qua the quantity as laid down under the rules, which would be without any substance. In view of this, their Lordships overruled the decision in Pamnani's case : 1975 CriLJ254 .

24. The Supreme Court then again had an occasion to consider as to how the nature of a particular provision has to be construed, i.e., whether the same is mandatory or directory, in : 1983 CriLJ448 Dalchand v. Municipal Corporation Bhopal. Therein the provisions of Rule 9(j) which have now been amended and incorporated in Rule 9A of the Act, had come in for such construction before their Lordships. Rule 9(j) before its amendment read as follows :

To send by registered post a copy of the report received in Form III from the Public Analyst to the person from whom the sample was taken within ten days of the receipt of the said report. However, in case the sample conforms to the provisions of the Act or Rules made thereunder then the person may be informed of the same and the report need not be sent.

Rule 9A of the Act is also substantially the same except that instead of sending the copy of the report to the person from whom the sample was taken within ten days, it is required to be sent 'immediately' on the receipt thereof. The question in the ruling cited supra was whether the provision of the requirement in the old Rule 9(j) to send the sample within 'ten days' of the receipt was mandatory or directory in nature and while holding the same as directory it was observed that the period of 'ten days' prescribed in the Rules was merely directory incorporated with a view to sending the copy of the report to the person concerned with all despatch and expedition and giving the party sufficient time to challenge the said report by exercising his right to challenge the report of the public analyst by requesting the court concerned to send the other sample in the possession of the Local (Health) Authority to the Director of the Central Food Laboratory. His Lordship in that case has succinctly laid down as to what criteria/considerations should weigh with the courts while arriving at the conclusion as to whether a particular provision was mandatory or directory in nature in the following terms:

There are no ready tests or invariable formulae to determine whether a provision is mandatory or directory. The broad purpose of the statute is important. The object of the particular provision must be considered. The link between the two is most important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not, determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of. It is well to remember that quite often many rules, though couched in language which appears to be imperative, are no more than mere instructions to those entrusted

with the task of discharging statutory duties for public benefit. The negligence of those to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute. It is as well to realise that every prescription of a period within which an act must be done, is not the prescription of a period of limitation with painful consequences if the act is not done within that period. Rule 9(j) of the Prevention of Food Adulteration Act, as it then stood, merely instructed the Food Inspector to send by registered post copy of the Public Analyst's report to the person from whom the sample was taken within 10 days of the receipt of the Report. Quite obviously the period of 10 days was not a period of limitation within which an action was to be initiated or on the expiry of which a vested right accrued. The period of 10 days was prescribed with a view to expedition and with the object of giving sufficient time to the person from whom the sample was taken to make such arrangements as he might like to challenge the Report of the Public Analyst, for example, by making a request to the Magistrate to send the other sample to the Director of the Central Food Laboratory for analysis. Where the effect of non-compliance with the rule was such as to wholly deprive the right of the person to challenge the Public Analyst's Report by obtaining the report of the Director of the Central Food Laboratory, there might be just cause for complaint, as prejudice would then be writ large. Where no prejudice was caused there could be no cause for complaint. I am clearly of the view that R. 9(j) of the Prevention of Food Adulteration Rules was directory and not mandatory. The decisions in *Public Prosecutor v. Murli Dhar* 1977 Cri LJ 1634 (Andh Pra) and *Bhola Nath v. State* 1977 Cri LJ 154 (Cal) to the extent that they hold that R. 9(j) was mandatory are not good law.

25. On the same analogy the Supreme Court even with regard to; the provisions of Rule 9A in 1984 Cri LJ 1731 : AIR 1985 SC 299, *Tulsiram v. State of Madhya Pradesh*, ruled that the word 'immediately' inserted in that rule instead of a period of 'ten days' as was prescribed in Rule 9(j) before its amendment, for sending the report of the Public Analyst to the person concerned, was also directory in nature and in the context the expression 'immediately' is only meant to be as 'reasonable despatch and promptitude' and no more.

26. Thus the sum and substance of these rulings appears to be that since the Act and the Rules framed thereunder have been brought on the statute book to achieve a laudable purpose of great public interest, namely, to promote the public health by safeguarding it from the ruthless adulterators, the provisions thereof should be construed in a manner which may further its aims and objects and not frustrate them. Thus where the Act and the Rules lay down certain formalities to be observed so as to determine whether a particular article of food is free from adulteration, then if in carrying out those formalities there is some minor lapse on the part of the authorities concerned, but there is substantial compliance thereof, the minor lapse should not be allowed to frustrate the object of the Act itself unless it is shown that the strict non-compliance of any of such formalities has resulted in prejudice to the accused.

27. Now in the light of the law reflected in the foregoing authorities, I have no doubt in my mind that on the facts and in the circumstances of the case in hand, the minor lapse or omission on the part of the learned Chief Judicial Magistrate in not recording in his order of July 14, 1984 that 'the signature on the sample was not tampered with' while sending the same to the Director of Central Food Laboratory, should be construed as non-observance of a directory and not mandatory direction since no prejudice has been caused to the accused by this omission. As I have already observed, the accused as well as his counsel Shri S. V. Sharma, Advocate, were both present on July 14, 1982 and it was in their presence that the sample bottle was examined by the Court concerned when it was observed that the same was duly 'sealed and packed' and 'the seals were intact'. In such a situation had there been any tampering with the signature of the accused on the bottle he or his counsel would easily have brought it to the notice of the Court and it, therefore, must be presumed that there was no such tampering with the signature on the sample bottle when it was remitted to the Director, Central Food Laboratory. The provisions of Section 13(2-B) of the Act were thus substantially complied with by the court concerned and the accused cannot be allowed to make a grouse on this score at this stage which plea in these circumstances becomes merely a technical one.

28. In support of the contention that the provisions of Sub-section (2-B) of Section 13 of the Act are mandatory in character, the learned Counsel for the accused has cited a ruling of Bombay High Court (1983) 1 FAC 9, State of Maharashtra v. Dhyani Deo Ramchandra Patil, wherein a single Judge of that court has held:

The duty cast by the above provisions on the court is onerous and the court is required to comply with these provisions both in letter and spirit. The use of the expression 'court shall first ascertain' indicates the task assigned to the court. The court is required to act on its own to see that the following acts and things have been done or complied with: (1) that the mark and the seal of fastening is intact; (2) the signature or thumb impression is not tampered with and (3) to despatch the sample under its own seal to the Director of the Central Food Laboratory. We notice that under Sub-section (2B) of Section 13, the Food Inspector is required to put, mark and seal on the three parts of the sample or fasten each part in such a manner as its nature permits and secondly to take the signature or thumb impression of the person from whom such sample has been taken. While doing so, the inspector is required to bear in mind Rule 16, which provides for the manner of packing and sealing the samples and requires all samples of food sent for analysis to be packed, fastened and sealed in the manner laid down therein. What is required of the court under Sub-section (2B) is to see that when the sample comes to it for being forwarded to the Director of Central Food Laboratory, the part received by the court bears the mark and the seal of fastening of the part of the sample is intact and the signature or the thumb impression is not tampered with. If the court fails to ascertain the above requirements as laid down in Sub-section (2B), the sanctity of the sample sought to be forwarded to the Director of Central Food Laboratory is not undermined but vitiated as the duty cast on the court is mandatory.

29. According to the learned Judge the aforesaid observations of the Court must be recorded in the covering letter which is sent by the Court along with the sample in question to the Director of Central Food Laboratory.

30. The facts in this authority are easily distinguishable from those obtaining in the case in hand. In that case there was nothing on the record to show that the Court

while remitting the sample to the Director, Central Food Laboratory had in any manner complied with the provisions of Sub-section (2B) of Section 13 of the Act, that is to say. as to whether there was an application of the mind by the Court in view of those provisions of the Act. In the instant case, the record of the Court concerned clearly shows that the trial Court not only undertook this exercise of sending the sample bottle to the Director, Central Food Laboratory in the presence of the accused and his counsel but also recorded observations that the sample was properly packed and the seals thereon were intact. Thus, as I have already observed, there was substantial compliance on the part of the Court with regard to the aforesaid provisions of the Act.

31. I would also respectfully not entirely agree with the observations of the learned Judge in the case cited above, namely, that the provisions of Sub-section (2B) of Section 13 of the Act are mandatory in character. It may be so in that particular case when the record was completely silent as to whether the trial Court concerned complied with the said provisions of the Act before remitting the sample to the quarter concerned. They would, however, lose the imperative nature in case like the one in question wherein the record shows not only the application of mind on the part of the Court but also that this exercise was taken up by the Court in the presence Of the accused and his counsel. In such a situation, in view of the aforesaid rulings of the Supreme Court, it appears that these provisions of Sub-section (2B) of Section 13 are directory in nature and if substantially complied with, a small lapse in this behalf cannot be allowed to frustrate the very object of the Act itself.

32. Having regard to the provisions of Section 13 of the Act it would be apparent that the very idea behind the provision of Sub-section (2B) thereof is that when the accused exercises the right to get the sample analysed by the Director of Central Food Laboratory and applies to the Court in this behalf then in case the Court, thereafter, on its own, undertakes the exercise of sending the sample, as desired by the accused, without associating either the accused or his counsel in this process of sending, a duty is cast upon the Court to ascertain that the sample that was being sent was the same which was taken from the accused and that it has not been tampered with in any manner. In other words the Court applies its mind

to this aspect of the question itself before sending the sample and it should not be a mechanical act on the part of his office alone. But, in my opinion, when the Court associates the accused and or his counsel while taking up this exercise, there is substantial compliance with these provisions and it is not necessary for the Court to make a mention in the covering letter sent by the Court along with the sample to the Director, Central Food Laboratory of the various factors as set out in the Bombay ruling (supra) namely, that the seals were intact, fastening was proper and the signature or thumb impression thereon was not in any way tampered with. It would, in my opinion, suffice in case the record of the Court shows that there has been substantial compliance with these provisions of Section 13 of the Act. I would, however, hasten to add that, as the Supreme Court has also observed in some of the authorities cited above, that does not mean that the Court should abjure from complying with the provisions of this section. It would rather be in the fitness of things if the Court concerned while undertaking this exercise of sending a sample to the Director of Central Food Laboratory, records in writing that the fastening and the seals on the sample were intact and the signature or thumb impression thereon was not tampered With arid should send the same under its own Seal.

33. In view of the above discussion the revision petition fails and the Same is dismissed while the order of the learned Sessions Judge dated March 12, 1985 in appeal upholding the order of the Chief Judicial Magistrate dated October 3, 1983 is affirmed.