

(1974) 04 GUJ CK 0008
In the Gujarat High Court

Bhagwandas Gurnomal

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 26-04-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428, 540

Prevention of Food Adulteration Act, 1954 — Section 13(2), 13(2), 16(1)(a)(i), 16(1)(a)(i)

Prevention of Food Adulteration Rules, 1955 — Rule 4, 4(3)

Citation : (1975) 16 GLR 164

Hon'ble Judges : J.B. Mehta, J;B.K. Mehta, J

Bench : Division Bench

Judgement

J.B. Mehta, J.—This application has been referred to us by our learned brother Surti J. for answering the following four questions:

(1) Whether Sub-rule (3) of Rule 4 imposes a statutory obligation on the learned Magistrate to send to the Director of Central Food Laboratory, a copy of the memorandum along with the specimen of the seal of the food inspector used to seal the container or along with the seal of the Magistrate only?

(2) That if the Magistrate does not send the specimen impression of the seal used to seal the container by the food inspector as required by Rule (3), the certificate issued by the director should be made admissible in evidence or not?

(3) Whether at the appeal stage an opportunity should be given in case of this nature to the appellant-accused to canvass the point which is canvassed by Mr. Thakore before me.

(4) Whether any report should be called from the learned Magistrate informing this Court as to whether he had carried out the statutory requirement of Rule 4.

The accused had been convicted for the offence u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, hereinafter referred to as "the Act", and was sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. 1200/- in

default rigorous imprisonment for three months by the Metropolitan Magistrate. After the appeal was admitted, the accused gave an application, regarding the true interpretation of Rule 4 of the Prevention of Food Adulteration Rules, 1955, as to whether the learned Magistrate was bound to send specimen impression of the seal used by the Food Inspector while sending the container, as well as the specimen impression of the seal used by the learned Magistrate to seal the cover to the Director of Central Food Laboratory when the accused exercised his right u/s 13(2) for getting a certificate from the Magistrate which would supersede the report of the Public Analyst. Our learned Brother being of that view, in view of wide public importance of this matter, he has referred these four questions to the Division Bench and that is how this reference is before us.

2. Section 11 of the Act deals with the procedure to be followed by the Food Inspectors. In Clause (1) it provides that when a food inspector takes a sample of food for analysis, he shall-

(a) give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample.

(b) except in special cases provided by rules under this Act separate the sample then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permits, and

(c)(i) deliver one of the parts to the person from whom the sample has been taken;

(ii) send another part for analysis to the public analyst; and

(iii) retain the third part for production in case any legal proceedings are taken or for analysis by the Director of Central Food Laboratory under Sub-section (2) of Section 13, as the case may be.

(2) If the person from whom the sample has been taken declines to accept one of the parts the food inspector shall send intimation to the public analyst of such refusal and thereupon the public analyst receiving a sample for analysis shall divide it into two parts and shall seal or fasten up one of those parts and shall cause it, either upon receipt of the sample or when he delivers his report, to be delivered to the food inspector who shall retain it for production in case legal proceedings are taken.

(3) When a sample of any article of food is taken under Sub-section (1) or Sub-section (2) of Section 10, the food inspector shall send a sample of it in accordance with the rules for sampling to the public analyst for the local area concerned.

Section 13 deals with the report of public analyst. Clause (1) provides that the public analyst shall deliver in such form as may be prescribed, a report to the food inspector of the result of analysis of any article of food submitted to him for analysis. Section 13(2) which is material runs as under:

After the institution of a prosecution under this Act the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the Court for sending the part of the sample mentioned in Sub-clause (i) or Sub-clause (iii) of Clause (c) of Sub-section (1) of Section 11 to the Director of the Central Food Laboratory for a certificate and on receipt of the application the Court shall first ascertain that the mark and seal and fastening as provided in Clause (b) of Sub-section (1) of Section 11 are intact and may then despatch the part 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 sample specifying the result of his analysis.

Section 13(3) provides that the certificate issued by the Director under Sub-section (2) shall supersede the report given by the public analyst under Sub-section (1). Under Clause (4) where a certificate obtained from the Director of the Central Food Laboratory under Sub-section (2) is produced in any proceeding under the Act...it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis. Sub-section (5) which is material provides as under:

(5) Any document purporting to be a report signed by a public analyst, unless it has been superseded under Sub-section (3), or any document purporting to be a certificate signed by the Director of Central Food Laboratory may be used as evidence of the facts stated therein in any proceeding under this Act.

The proviso enacts that any document purporting to be a certificate signed by the Director of Central Food Laboratory shall be final and conclusive evidence of the facts stated therein. The vires of Section 13(5) proviso which makes a certificate of the Director of Central Food Laboratory final and conclusive evidence of the facts stated therein has been upheld as not violating Articles 14, 19 and 21 of the Constitution in *Mohanlal v. Virchand* 2 G.L.R. 735. This relevant scheme has now been explained in various decisions of the Supreme Court. In *Mangaldas Raghavji Ruparel and Another Vs. The State of Maharashtra and Another*, their Lordships pointed out that Section 13(5) clearly makes a report of the public analyst admissible in evidence but it is for the Court of fact to consider it and to attach to it what value it can. Under Sub-section (2) of Section 13, the accused vendor or the complainant on payment of the prescribed fee can apply to the Court for sending a sample of the allegedly adulterated commodity taken u/s 11 to the Director of Central Food Laboratory for a certificate. This certificate would supersede the report of the public analyst. This certificate is made admissible under Sub-section (5) and is given finality in respect of the facts contained therein by the proviso of that sub-section. The certificate of the public analyst is not made conclusive only means that the Court of fact is free to act on the certificate or not, as it thinks fit. In *Municipal Corporation of Delhi Vs. Ghisa Ram*, , their Lordships further pointed out that the provision of Sections 13(3) and (5) are applicable when in fact analysis of the sample sent to the Director of

the Central Food Laboratory is made by him on that basis. If for any reason, no certificate is issued, the report given by the public analyst does not cease to be evidence of the facts contained in it and does not become ineffective merely because it could have been superseded by the certificate issued by the Director of the Central Food Laboratory. Their Lordships pointed out that when there is no certificate issued by the Director of Central Food Laboratory, no question can arise of the certificate becoming final and conclusive evidence of the facts contained in it. Their Lordships pointed out that when a valuable right is conferred by Section 13(2) on the vendor to have a sample given to him analysed by the Director of Central Food Laboratory, it is to be expected that the prosecution would proceed in such manner that that right would not be denied to the accused. The right is a valuable one because the certificate of the Director is treated as conclusive evidence of its contents. Obviously, the right has been given to the vendor in order that for his satisfaction and proper defence he should be able to have the sample kept in his charge analysed by a greater expert whose certificate has to be accepted by the Court as conclusive evidence. In a case where there is a denial of his right on account of deliberate conduct of the prosecution e.g. delay in prosecution as a result of which the sample is highly decomposed and could not be analysed, the vendor in his trial would be seriously prejudiced and it would not be proper to uphold the conviction on the basis of report of the public analyst even though that report continued to be evidence in the case of the facts contained therein. Therefore, if that right given to the vendor was not denied due to the conduct of the prosecution, their Lordships pointed out that different consideration would arise if the rights gets frustrated for the reason for which the prosecution was not responsible. Finally, in *Ram Dayal Vs. Municipal Corporation of Delhi and Another*, , their Lordships further pointed out that where certificates are not made final and conclusive evidence of the facts stated therein, it would be open to the party, against whom the certificates are declared to be sufficient evidence, either to rebut the facts stated therein by his own or other evidence or to require the expert to be produced for cross-examination which a higher Court is bound to consider on merits for granting or rejecting it. There is no presumption that the contents are true or correct though such certificate is evidence without formal proof. In any case, where there is evidence to the contrary, the Court is bound to consider that evidence along with such certificates, with or without the evidence of the expert and the Court would come to its own conclusion. Their Lordships pointed out that Section 13(2) has given a right both the accused as well as the complainant on payment of a prescribed fee to apply to the Court after the prosecution has been instituted to send a part of the sample preserved as required under Clause (1) or Sub-clause (iii) of Clause (c) of Section 11 to the Director of the Central Food Laboratory for a certificate, and the Court is bound to send it under its seal to the said Director who has to submit a report within one month from the date of its receipt. This certificate under Sub-section (3) supersedes the public analyst's report and is conclusive and final under Sub-section (5). But nothing contained in this Sub-section relating to certificate of the Central Food Laboratory in any way

limits the right of the accused u/s 257, Cr.P.C. to require a public analyst to be produced. The Court may reject the prayer for good and sufficient reasons such as for instance whether it is made for the purposes of vexation or delay or for defeating the ends of justice. From this interpretation of the scheme of Section 13 read with Section 11 it is clear that Section 13(2) confers a right both on the complainant and the accused vendor to get the sample analysed by higher authorities, the Director of the Central Food Laboratory whose certificate would supersede the report of the public analyst given u/s 13(1). If the Director does not issue a certificate or certificate cannot be obtained for reasons for which the prosecution is not responsible, it would not supersede the public analyst's report. It would be final and conclusive evidence only when the certificate is issued as required by this Section and when it supersedes the public analyst report. That is why this provision must be interpreted strictly in view of this special scheme by providing a special safeguard and when the Legislature makes the certificate of the Director not only final but conclusive evidence of the facts stated therein. The report of the public analyst is not to have such an effect as well the Director's certificate which has that finality and is also conclusive evidence of the facts stated therein. Therefore, in the light of this relevant safeguard, this provision would have to be interpreted as a mandatory requirement and if it is not followed as required by those relevant provisions the certificate would not supersede the analyst's report, so as to have that finality and to be that conclusive evidence as envisaged in the proviso to Section 13(5). The real question which arises before us however is as to the assumption made by the learned Single Judge as to whether the learned Magistrate is required to send to the Director, Central Food Laboratory, the specimen of the seal of the food inspector. That assumes that the Court would not be putting its own seal on the container. Section 13(2) makes it incumbent on the Court to ascertain first that the mark and seal or fastening as provided in Section 11(1)(b) were intact. After the Court is satisfied of this, it is required to despatch the other part of the sample for analysis to the Director, Central Food Laboratory under its own seal. Therefore, what is to be despatched under the seal of the Court to the Director of the Central Food Laboratory for analysis is a part of the sample which is delivered to the vendor u/s 11(1)(c)(i) or which is retained with the complainant u/s 11(1)(c)(iii). If what is to be sent under the seal of the Court is a part of the sample, it is obvious that what Section 13(2) envisages is the container being sealed by the Court. This is a mandatory requirement and Section 13(2) itself shows that the statutory safeguard may be availed of by both the parties and, therefore, Rule 4 would have to be interpreted in a manner which is consistent with this mandatory requirement of Section 13(2) itself. Section 13(2) further enacts that this part of the sample with the Court seal shall be despatched to the Director, Central Food Laboratory who in his turn would send a certificate to the Court in the prescribed form. It is only when the certificate is issued in the prescribed form by the Director that such certificate supersedes a public analyst's report u/s 13(3). When we turn to the prescribed form II of the certificate to be issued by the Director, it provides in Clause (2) that the

condition of the seal on the container and the outer cover on receipt were intact. And, therefore, the prescribed form itself provides that the Director must certify the condition of the seals both on the container and the outer cover. Therefore, Section 13(2) when read with the prescribed form could be capable of the only interpretation that the sample part along with the container and the outer cover has to be despatched to the Director under the Court seal and when such a sample part under the Court seal is received by the Director, he has to examine the condition of the seals both on the container and on the outer cover. There is the in built guarantee in Section 13(2) as the Court has to first ascertain that the mark and seal or fastening up as provided by Section 11(1)(b) when the sample was first marked, sealed or fastened up there and then on the spot by the Food Inspector were intact. It is only when the Court is satisfied that the mark and seal or fastening up were intact that the Court seals that sample part delivered to the vendor or retained with the complainant and despatches it for analysis to the Director. Therefore, the expression "despatch the part of the sample under its own seal" would mean in this context of Section 13(2) that the Court must apply its seal both to the container and the outer cover. In this context we would now turn to Rule 4 which runs as under:

4. Analysis of food samples. (1) Samples of food for analysis whether under Sub-section (2) of Section 13 of the Act or under Clause (a) of Rule 3 shall be sent either through a messenger or by registered post in a sealed packet, enclosed together with a memorandum in Form I in an outer cover addressed to the Director.

(2) The container as well as the outer covering of the packet shall be marked with a distinguishing number.

(3) A copy of the memorandum and a specimen impression of the seal used to seal the container and the cover shall be sent separately by registered post to the Director.

(4) On receipt of the packet, it shall be opened either by the Director or by an officer authorised in writing in that behalf by the Director, who shall record the condition of the seal on the container.

(5) After test on analysis, the certificate thereon shall be supplied forthwith to the sender in Form II.

(6) The fees payable in respect of such a certificate shall be Rs. 40 per sample of food analysed.

(7) Certificates issued under those rules by the Laboratory shall be signed by Director.

3. This rule which specifically deals with the analysis of food samples when the party exercised its right under special provision of Section 13(2) of the Act or when under Rule 8 the specified authority authorised by the Central Government sends such sample for analysis. Rule 4(1) provides that such sample for analysis

would be sent through a messenger or by registered post in sealed packet with the memorandum in Form I in outer cover addressed to the Director. Sub-clause (2) only provides for marking of distinguishing number both on the container and the outer cover of the packet. Rule 4(3), which is material for our purpose and which has to be construed, in terms provides that a copy of the memorandum and a specimen impression of the seal used to seal the container and the cover shall be sent separately by registered post to the Director. If, therefore, Section 13(2) itself provides that the food sample part shall be despatched under its own seal, it is obvious that under Rule 4(3), the Court would have to send along with a copy of the memorandum a specimen impression of the seal used by the Court to seal the container and the outer cover. That is why Rule 4(4) provides that on receipt of the packet, it shall be opened either by the Director or by an officer authorised who shall record the condition of the seal on the container. Rule 4(4) has intrinsic evidence that essentially, it is the condition of the inner seal on the container which is considered as substantial requirement of Rule 4, because it is the container which contains sample part sent for analysis to the Director, and the outer covering only carries the additional paper seal. The outer covering may be damaged in transit by registered post or may be lost or tampered with. And that is why essentially the inner seal on the container itself is required to be specifically examined and its condition noted by the Director under Rule 4(4). That is why the prescribed form requires the Director in Clause (2) to note the condition of the seal on the container and the outer covering at the time of receipt.

4. The seal of the Food Inspector which was on the sample as required u/s 11(1) (b) had to be ascertained to be intact by the Court and the Court had to perform a further duty of despatching this sample part under its own seal and, therefore, the Court must put its additional seal, both on the container and the cover and its specimen impression of that seal had to be sent under Rule 4(3) as contemplated by Section 13(2). The seal of the Food Inspector, which was originally on the container, once it is found intact, has served its purpose. It would not have served the further purpose for compliance with this mandatory safeguard u/s 13(2) which casts a duty on the Court to despatch a part of the sample under its own seal for analysis to the Director and where this right is given not only to the accused but also to the complainant. It is hardly conceivable that the legislature would have contemplated a sample to be sent through the Court without the Court's seal on the container itself, but only under the complainant's seal. When statutory provision wants a thing to be done under the Court's seal, it is Impossible to construe that mandatory provision as being intended to be complied with by only a party's seal. Justice must also appear to be done, and, therefore, the only interpretation that can be put on the mandatory provision of Section 13 (2) and the relevant Rule 4(3) is that the Court's seal has to be applied both to the container and the paper cover and it is the specimen impression of the court seal which has to be sent separately by registered post to the Director along with a copy of the memorandum under Rule

4(3). That is why even the memorandum in Form I in terms provides that a copy thereof and a specimen impression of the seal used on the container and the cover by the Court shall be sent separately by registered post. That seal is clearly Court's seal within the meaning of Section 13(2) and Rule 4(3).

5. Mr. Patel however vehemently argued that it would be an empty formality that the container should be again sealed for the Food Inspector's seal on the container is found to be intact by the Court. We cannot forget that the seal is a party's seal and when the legislature requires a sample to be analysed by higher authorities it must be sent under the Court's seal and it cannot be a compliance with this mandatory requirement, if it is sent merely under the party's seal. Mr. Patel next argued that the provision is purely directory. When the certificate of the Director who is higher authority is given such a statutory effect as of superseding original report of the public analyst and when under the proviso to Section 13(5) it is made final and conclusive evidence of the facts stated therein, this relevant mandatory requirement of the Court's seal both on the container and the outer cover must be taken to be a mandatory requirement. The Director is required to send a certificate in the prescribed form after recording the condition of the seal on the container, and this duty is only to be discharged by him after this specimen impression of the Court's seal is sent to him, which must be applied as stated in the memorandum both on the container and the outer cover. Such requirement could never be held to be a directory requirement in view of the consequences envisaged by the Legislature, which would ensue on the certificate being issued by the Director. Therefore, our reply to question No. 1 must be in the negative that the specimen of the seal of the Food Inspector has not to be sent by the Court to the Director, Central Food Laboratory. In that view of the matter, question No. 2 does not arise for our answer. Mr. Patel also tried to make a distinction between the language of Rule 4 and the prescribed form II and the language used by the Legislature in Rule 7(1) and the prescribed form III. It is true that so far as public analyst is concerned, in Rule 7(1) a specific duty is cast that on receipt of the package containing sample for analysis, he shall compare seals on the container and the outer cover, received separately and shall note the condition of the seal and that is why even the form is amended prescribing this specific duty. Merely because this duty is not specifically mentioned in Rule 4, it would hardly make any difference. The form No. 1 of the memorandum of letter to be sent to the Director requires that a copy of the memorandum and the specimen impression of the seal used to seal the container and the cover are to be sent by the Court separately by registered post and under Form No. II, the Director has to record the condition of the seal on the other cover on receipt of the package through the Court. Mr. Patel also tried to point out the difficulties as to applying the Court's seal over the seal of the Food Inspector on the container. That would only mean another container would have to be used like a cloth bag for putting in the sealed container which had the original seal intact of the Food Inspector, at the time when the sample was taken u/s 11(b). That would still remain the inner Court seal on the

container and over and above that, the outer cover would also be sealed by the Court. That is why provisions in part V for sealing, fastening and despatching of sample could be clearly followed by all authorities who have to despatch such sealed samples. Therefore, there is no substance in any of the contention of Mr. Patel that this is a directory requirement or that the sample part need not have the Court's seal and that there would be sufficient compliance if the Court despatches the sample bearing only the Food Inspector's seal on the container by sealing merely the outer cover. Therefore, in view of our answer to question No. 1, question No. 2 does not arise for answer.

6. As regards Questions Nos. 3 and 4, the matter is really one for admission of additional evidence in the appeal. That question would have to be decided as per the settled principles in that connection. In *Raghunadan v. State of U.P.* AIR 1964 S.C. 463 at page 468 their Lordships pointed out that whatever be the nature of the offence or action of the accused as revealed by the evidence, the accused are entitled to a fair trial, which a well considered judgment dealing satisfactorily with all points would evidence. If on an important question, both the parties had omitted to lead proper evidence, even consideration of fairness of the trial would make it imperative for the Court to exercise such powers under Sections 540 and 428 of the Code of Criminal Procedure. In the present case, the question of interpretation of Section 13(2) and the relevant Rule 4(3) is settled for the first time by this Court. The parties could not have known as to whether the container was sent by the Court under its own seal or on the seal of the Food Inspector alone. This fact is sought to be elicited by getting report from the Magistrate. It is only after the mandatory requirement of the sample portain being sent under Court's seal being found to have been duly observed that the certificate of the Director would supersede the Public Analyst's report and it would be conclusive evidence of the facts stated therein. So far as the prosecution is concerned, if the said mandatory requirement is not found to have been observed, the report of the Public Analyst could still be relied upon by the prosecution. So far as the accused is concerned, the question would arise whether the certificate supersedes report so as to have necessary finality and so as to become conclusive evidence of the facts stated therein. When such a statutory presumption is created, the Court would have to consider whether in the interest of justice and for securing a fair trial to the accused, this report of the Magistrate should be called for to ascertain whether he had carried out statutory requirement of Rule 4 read in the light of Section 13(2) as explained by us. On such a point of law, on a request made for additional evidence, being it could surely be permitted even at the appellate stage. Mr. Patel in this connection vehemently relied upon the decision in *Kashi Kunhe v. Ramkrishna* Criminal Appeal No. 29 of 1968 decided by the Supreme Court on December 2, 1968, where their Lordships had held that if the High Court relied on the presumption that official acts must be presumed to have been regularly performed, and had assumed on that basis that as under rule? Public Analyst must have compared specimen impression received by him with the seal on the container, the

requirement of Rule 18 must be deemed to have been fulfilled. That is only a presumption of regularity of official acts. That decision would not answer the problem before us as to whether the Court should exercise its discretion in appropriate case to take additional evidence to find out whether the relevant Rule 4(3) was duly fulfilled when read in the light of Section 13(2) as explained by us. Besides, in this particular case, Mr. Thakore has pointed out that even the analysis of the public analyst and of the Director differ so considerably that in the interest of justice to satisfy the Court as to the identity of the sample which had been sent for analysis, this additional evidence should be permitted. That would be a relevant consideration and it could be open to the court to consider this request for additional evidence on its merits, after taking into account the normal presumption u/s 114 as to the regularity of official acts. Therefore, this material question for permitting additional evidence must be left to the decision of the appellate Court on merits of each individual case as per the settled principles.

7. So far as the facts of the present case are concerned, as we have earlier pointed out, it would be appropriate to exercise its powers by calling for the report from the Magistrate as to whether he had complied with the relevant requirement of Rule 4(3) when read with Section 13(2) as explained by us. Therefore, our answer to questions Nos. 3 and 4 is as stated by us.

8. In the view of the matter, this matter shall now go back to the learned Single Judge for disposal in the light of the aforesaid four answers which we have given to the four questions posed to us.