

(2006) 04 AP CK 0040

In the Andhra Pradesh High Court

Case No : Criminal Petition No"s. 1007 and 4325 of 2003, 3701 of 2004 and 3856 of 2005

Hyderabad Beverages Private Limited

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 18-04-2006

Acts Referred:

Central Insecticides Laboratory — Section 24, 24(3), 24(4)
Constitution of India, 1950 — Article 141
Criminal Procedure Code, 1973 (CrPC) — Section 482
Drugs and Cosmetics (Amendment) Act, 1964 — Section 26, 33B, 33O
Drugs and Cosmetics (Amendment) Act, 1982 — Section 18A, 2
Drugs and Cosmetics Act, 1940 — Section 15(3), 15(4), 25, 25(3), 25(4)
Evidence Act, 1872 — Section 114
Insecticides Act, 1968 — Section 21(1), 22, 22(5), 22(6), 24
Insecticides Rules, 1971 — Rule 19(1), 24, 24(3)
Penal Code, 1860 (IPC) — Section 272, 276
Prevention of Food Adulteration Act, 1954 — Section 10(1), 11, 11(1), 12, 13
Prevention of Food Adulteration Rules, 1955 — Rule 12, 12A, 14, 19, 2
Seeds Act, 1966 — Section 14(1), 15(2), 16(2), 19, 7
Seeds Rules, 1968 — Rule 21, 21(3), 21(4)

Citation : (2006) 2 ALT(Cri) 407 : (2006) CriLJ 3988

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : S. Niranjan Reddy, D. Krishna Murthy and V. Ravi Kiran Rao, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, J.—Common questions arise for consideration in Criminal Petition Nos. 4325 of 2003, 3701 of 2004, 3856 of 2005, and 1007 of 2003, as to whether delay, in furnishing a copy of the analyst report beyond the "Best Before" date or the expiry date of the shelf life of the product, could, by itself, be said to have resulted in the accused being denied the opportunity of sending the sample for analysis to the Central Food/ Seeds Laboratory, and in their suffering

prejudice thereby. While Crl. P. No. 4325 of 2003 and Crl. P. No. 1007 of 2003 arise under the Prevention of Food Adulteration Act. Crl. P. No. 3701 of 2004 and Crl. No. 3856 of 2005 arise under the Seeds Act.

Crl. P. No. 4325 of 2003:

3. This petition is filed to have the proceedings in C.C. No. 213 of 2003, on the file of the Judicial First Class Magistrate, Jangaon, quashed.

3. Allegations in the complaint, are that the Food Inspector took samples of Lehar 7-Up, Lehar Carbonated Water and Pepsi-Cola beverages from M/s. Sony Agencies, for analysis. A-1 is the proprietor of M/s, Sony Agencies who sold the sample of Lehar 7-Up, Lehar Carbonated Water and Pepsi-Cola beverages. A-2 is M/s. Hyderabad Beverages Private Limited who supplied Lehar 7-Up, Lehar Carbonated Water to A-1 under invoice 008 dated 19.4.2001 and 024 dated 30.4.2001. On an inspection conducted on 2.5.2001 five cases, each containing 24 bottles of 300 ml. Lehar 7-Up manufactured on 30.4.2001 and "best used within 6 months from the date of manufacture", were found. The Food Inspector purchased three sealed bottles of Lehar 7 Up and Lehar Carbonated Water and Pepsi-Cola and sent the sample for analysis on 2.5.2001. Notice in Form VII was issued to A-2. The Public Analyst, in his report submitted in Form VII on 6.6.2001, opined that the sample did not conform to the standards of total plate count and was therefore adulterated. With regards Lehar Carbonated Water and Pepsi, Analyst in his report dated 7.2.2001, opined that the sample did not conform to the standards of total plate count, that e-coli and yeast was present and the food product was therefore adulterated. Sanction for prosecution was sought on 3.8.2001 and was accorded on 7.10.2001. The complaint was filed on 22.4.2003.

4. Petitioner would contend that, since the shelf life of the product is six months from the date of manufacture on 30.4.2001 and the six months period expired on 30.10.2001, the complaint filed on 22.4.2003 was belated, and as they had been deprived of their right to have the sample sent for analysis to the Central Laboratory, before the shelf life of the product had expired, the complaint was liable to be quashed.

Crl. P. No. 1007 of 2003:

5. This petition is filed to quash the proceedings in C.C. No. 1095 of 2001 on the file of Judicial Magistrate of I Class, Medchal. On 24.3.1999, the Food Inspector conducted a raid on M/s. Vijaya Minerals Manufacturing Plant and purchased three one litre sealed bottles of Kavary Pure "N" Safe Water bottles. He served a notice in Form-VI and on 25.3.1999 the sample bottle, along with Form VIII, was sent to the public analyst for analysis. The remaining two parts were deposited with the Director and State Local (Health) Authority, A.P., Hyderabad.

6. The Public Analyst, in his report, opined that the sample contained moulds and was therefore adulterated. After receipt of the public analysts report, the Food In-

specter obtained particulars and thereafter submitted a detailed report to the Director, Institute of Preventive Medicine and the State Local (Health) Authority, A.P., Hyderabad. The Director accorded written consent for launching prosecution against the petitioners, vide letter dated 13.11.2001, and thereafter the complaint, dated 3.12.2001, was filed on 27.12.2001. The learned Magistrate took cognizance on 20.3.2002 and issued summons calling upon the petitioner to appear on 10.7.2002. On 20.7.2002, the accused were served copies of the charge-sheet and the public analyst's report. However, notice u/s 13(2) was served within ten days from 20.3.2002.

7. In the complaint filed, the petitioners herein are alleged to have committed offences under Sections 7(1) and 2(ia)(m) of the Prevention of Food Adulteration Act 1954 and Rule 50 of Prevention of Food Adulteration Rules, 1955, liable for punishment u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act 1954. Petitioners would contend that the Mineral Water was packed in the month of March 1999, that the label, affixed on the sample bottles, clearly Indicated "Use before six months from the date of manufacture" which meant that the contents of the bottle were required to be used within that period, that Explanation VIII under Rule 32 of the Prevention of Food Adulteration Rules was attracted and that no useful purpose would be served if the spare sample bottle was sent for analysis to the Central Food Laboratory, since the shelf life of the water bottle had already expired. Petitioners would contend that since the shelf life of the product or the "Best Before" date of the bottle had expired by the end of September 1999 itself, instituting criminal proceedings in December 2001 and serving on them a copy of the report of the public analyst in July 2002 was belated and had deprived the petitioners of their valuable right of sending the sample for analysis to the Central Food Laboratory.

Crl. P. No. 3701 of 2004:

8. In this petition, proceedings In C.C. No. 37 of 2004, on the file of the VIth Additional Munsif Magistrate, Guntur are sought to be quashed.

9. The complaint in C.C. No. 37 of 2004 was filed u/s 7(b) read with Section 19 of the Seeds Act, 1966. Allegations In the complaint are that, on 24.7.2003, the Seeds Inspector and Assistant Director of Agriculture (Regular) Guntur inspected the premises of the 1st accused firm and took samples of "Hybrid Maize NMH-2255" for germination test, after Issuing notice to the dealer in Form No. VI and VIII dated 24.7.2003. The said samples were sent for analysis on 24.7.2003. The analyst, in his report dated 22.8.2003, informed that the sample of Hybrid Maize NMH-2255 was sub-standard and that the germination percentage was only 84.5% as against the prescribed standard of 90%. A copy of the Seed Analyst report was served on the 1st accused on 29.8.2003. The accused were issued a show cause notice on 3.9.2003 and they submitted their explanation thereto on 30.9.2003. Summons was served on the accused, in the 3rd week of March 2004, calling upon them to appear before the learned Magistrate on 29.3.2004.

Crl. P. No. 3856 of 2005:

10. This petition is filed to have the proceedings in C.C. No. 703 of 2004, on the file of the VII Additional Munsif Magistrate, Guntur, quashed.

11. The allegations in the complaint are that, on 16.7.2003, the Seeds Inspector inspected the premises of the 1st petitioner firm and took two samples of Hybrid Maize NMH-2255 and Castor GCH-4 for germination test. The sample was sent for analysis on 16.7.2003. The Seed Analyst, in his report dated 16.8.2003, informed that the two samples of Hybrid Maize NMH-2255 and Castor GCH-4 were substandard and the germination percentage was lower than the prescribed standards. Copy of the Seed Analyst report was served on the 1st accused on 23.8.2003, certain records were seized, a complaint was lodged in December 2004 and summons, in C.C. 703 of 2004, were served on the petitioners on 16.12.2004 asking them to appear in the matter. Petitioners would refer to Clause XXXI of the General Seed Certification Standards where-under the validity period of the certificate issued in respect of a particular seed is 9 months from the date of testing the seed in the laboratory of the company. Petitioners would contend that Hybrid Maize NMH-2255 was tested in their laboratory on 3.4.2003 and Castor GCH-4 was tested on 25.6.2003 and that the validity period of nine months expired on 3.1.2004 and 25.3.2004 respectively. Petitioners would contend that though the Analyst's report was received by the Joint Director on 16.8.2003, the complaint was filed much later on 13.2.2004 and summons were served asking the petitioners to appear on 6.12.2004. Petitioners would contend that even by 13.2.2004, when the complaint was filed, the seed sample had lost its shelf life of nine months and, as the shelf life had expired, they could not ask the Court to send the samples to the Central Seed Laboratory for analysis as no useful purpose would be served in sending the samples for testing. Petitioners would contend that they have been denied their valuable right, u/s 16(2) of the Seeds-Act, to have the sample sent for analysis to the Central Laboratory.

12. Sri C. Padmanabha Reddy, learned Senior Counsel, Sri V. Ravikiran Rao and Sri D. Krishna Murthy, learned Counsel for the petitioners, would submit that since the shelf-life of the product had expired long before the complaint was filed in Court, the petitioners had lost their valuable right of sending the sample for testing, u/s 13(2) of the Prevention of Food Adulteration Act and Section 16(2) of the Seeds Act, to the Central Laboratory. They place reliance on State of Punjab Vs. National Organic Chemical Industries Ltd., ; Municipal Corporation of Delhi Vs. Ghisa Ram, ; Chetumal Vs. State of Madhya Pradesh and Anr, ; State of Haryana Vs. Unique Farmaid P. Ltd. Ors., ; Calcutta Municipal Corporation Vs. Pawan Kumar Saraf and Another, ; Matha Venkateswara Rao and Others Vs. State, ; Smt. Mallela Laxmi and Others Vs. State of Andhra Pradesh, ; Gupta Chemicals Private Ltd. v. State of Rajasthan 2002 (2) ALD (Cri) 571 ; Food Inspector, Div-III, Wrangle v. Balde Ramuloo 2004 (1) ALD (Cri) 804 ; Ahmed Dadabhai Advani Vs. State of Maharashtra, ; P. Chandrakanth v. State of A.P. 2002 (2) ALD Cri 113 ; S.S. Sujala v. State of A.P. rep. by Public Prosecutor, Food

Inspector, Krishnanagar, Kurnool District, Cri. P. No. 873 of 2002, D/- 8.3.2002 and Vivekananda Seeds v. The State rep., by the Asst. Director of Agriculture, Cri P. No. 972, and 1029 of 2005, dt. 8.3.2006.

13. The aforementioned judgments arise under the Prevention of Food Adulteration Act, (hereinafter referred to as PFA Act), the Seeds Act and the Insecticides Act. It is therefore convenient to refer to the relevant statutory provisions, the rules and the judgments under each of these enactments separately.

PREVENTION OF FOOD ADULTERATION ACT

14. Section 2(ia) of the Prevention of Food Adulteration Act, 1954 defines "adulterated" to mean:

(ia) "adulterated"?an article of food shall be deemed to be adulterated-

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(b) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof;

(c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof;

(d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof;

(e) if the article had been prepared, packed or kept under in sanitary conditions whereby it has become contaminated or injurious to health;

(f) if the article consists wholly or in part of any filthy, putrid, rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;

(g) if the article is obtained from a diseased animal;

(h) if the article contains any poisonous or other ingredient which renders it injurious to health;

(i) if the container of the article is composed whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health.

(j) if any colorings matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;

(k) If the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

(l) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability, which renders it injurious to health;

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health : Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.

Explanation?Where two or more articles of primary food are mixed together and the resultant article of food-

(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and

(b) is not injurious to health, then, such resultant article shall not be deemed to be adulterated within the meaning of this clause.

15. u/s 7, no person shall himself, or by any person on his behalf, manufacture for sale, or store, sell or distribute any adulterated food. Section 8 empowers the Central and State Governments to appoint Public Analysts. Section 11 prescribes the procedure to be followed by Food Inspectors while taking samples of food for analysis. Section 13 relates to the report of the Public Analyst. Under Sub-section (1) thereof, the Public Analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis. Under Sub-section (2), on receipt of the report of the result of the analysis under Sub-section (1), to the effect that the article of food is adulterated, the Local (Health) Authority shall, after institution of prosecution against the persons from whom the sample of the article of food was taken, and the person, if any, whose name, address and other particulars have been disclosed u/s 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person Or persons, as the case may be, informing such person or persons that, if it is so desired, either or both of them may make an application to the Court within a period of 10 days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory. Under Sub-section (2A), when an application is made to the Court under Sub-section (2) the Court shall require the local (Health) Authority to forward the part or parts of the sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the Court within a period of five days from the date of such requisition. Under Sub-section (2B), on receipt of the part or parts of the sample from the Local (Health) Authority, the Court shall after ascertaining that the mark and seal

are intact and not tampered with, dispatch the part 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. Under Sub-section (2D), until 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 before it in relation to the prosecution. Section 13(3) provides that the certificate issued by the Director of the Central Food Laboratory, under Sub-section (2B), shall supersede the report given by the public analyst under Sub-section (1). u/s 14, no manufacturer or distributor of, or dealer in any article of food shall sell such article to any vendor, unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor. Proviso thereunder prescribes that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of, or dealer in, such article to the vendor thereof shall be deemed to be a warranty. Section 14-A requires every vendor of an article of food, if so required, to disclose to the food inspect for the name, address and other particulars of the person from whom he purchased the article of food.

16. Rule 2(d) of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the "Rules"), defines "Form" to mean a Form set forth in Appendix A to the Rules. Rule 4 relates to analysis of food samples and reads thus:

Analysis of food samples:

(1)(a) Samples of food for analysis under Sub-section (2) of Section 13 of the Act 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.

(b) Samples of food for analysis under Sub-section (2) of Section 6 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 1-A 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 a package containing a sample for analysis the Director or an officer authorized by him, shall compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seals thereon.

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

(6) The fees payable in respect of such a certificate shall be "Rs. 1000" per sample of food analysed.

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

(8) The fee payable in respect of analysis of samples of imported food analysed in any designated laboratory shall be Rs. 3000 per sample payable by the importer.

17. Rule 5 provides that the standards of quality of the various articles of food specified in Appendix-B to the Rules are as defined in mat appendix. Rule 6 prescribes the qualification of a Public Analyst and Rule 7, which prescribes the duties of a Public Analyst, reads thus:

Duties of public analyst:

(1) On receipt of a package containing a sample for analysis from a Food Inspector or any other person the public analyst or an officer authorised by him shall compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seals thereon. Provided that in case sample container received by the public analyst is found to be in broken condition or unfit for analysis he shall within a period of seven days from the date of receipt of such sample inform the Local (Health) Authority about the same and send requisition to him for sending second part of the sample.

(2) The public analyst shall cause to be analysed such samples of articles of food as may be sent to him by Food Inspector or by any other person under the Act.

(3) The public analyst shall, within a period of (forty days) from the date of receipt of any sample for analysis, (send by registered post or by hand) to the Local (Health) Authority a report of the result of such analysis in Form III : Provided that where any such sample does not conform to the provisions of the Act or these rules, the public analyst shall (send by registered post or by hand) four copies of such report to the said Authority: Provided further that the public analyst shall forward a copy of such report also to the person who purchased an article of food and forwarded the same to him for analysis u/s 12 of the Act.

Note : In case of sample received under the proviso of Rule 7(1) or Rule 9-A, the period of forty days shall be counted from the date of receipt of the second part of the sample.

18. Rule 9-A relates to sending of samples by Local (Health) Authority, and reads thus:

9A. Sending of sample by Local (Health) Authority:

(a) Local (Health) Authority shall within a period of seven days of receipt of requisition for second part of the sample from public analyst under the proviso of Rule 7(1), send such sample to the public analyst.

(b) Local (Health) Authority, while sending second part of the sample under the provision of Sub-section (2-E) of Section 13 of the Act, shall do so within a period of 20 days from the date of receipt of the report from the first public analyst.

Rule 12 provides that the notice of intention to take sample for analysis should be given in Form VI. Rule 12-A relates to warranty and thereunder every manufacturer, distributor or dealer selling an article of food to a vendor shall give either separately or in the bill, cash memo or a label a warranty in Form VIA. Rule 14 prescribes the manner of sending the sample for analysis. Rule 22 relates to the quantity of the sample.

19. As noted above Appendix A contains the forms. Form II is the certificate of analysis by the Central Food Laboratory, under Rule 4(5) and reads as under:

Form II

(See Rule 4(5))

(Certificate of analysis by the Central Food Laboratory) Certificate No. ... Certified that the sample bearing number...purporting to be a sample of...was received on...with Memorandum No. ...dated... from...(name of the Court)...for analysis. The condition of seals on the container and the outer covering on receipt was as follows:

... I...(name of the Director)... found the sample to be...(category of the food sample)...falling under Item No. ...of Appendix B of Prevention of Food Adulteration Rules, 1955/proprietary food. The sample was in a condition fit for analysis and has been analysed on...(Give date of starting and completion of analysis)...and the result of its analysis is given below/was not in a condition fit for analysis for Reasons:

Analysis Report:

(i) Sample Description:

(ii) Physical Appearance:

(iii) Label:

Sr. Quality Name of Result Prescribed No. Method; Standards as per: Characteristics of test (a) Item A of Appendix "B" used (b) As per label declaration for proprietary foods (c) As per provisions of the Act and Rules, for both above. 1.

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Opinion

(Signature) Place: Director Date: Central Food Laboratory (Seal)

20. It is necessary to note that Form II was substituted by G.S.R. No. 530 (E) dated 29.7.2002 with effect from 29.1.2003, Under Form II the Central Food Laboratory is, among others, required to certify as to whether the sample was in a condition fit for analysis or was not fit for analysis. Where a sample is not in a condition fit for analysis, the reasons therefore are also required to be stated in the certificate.

21. In Ghisa Ram 1967 Cri LJ 939 the plea of the accused that he was denied his right of obtaining the report of the Director of the Central Food Laboratory, because of the delay by the Food Inspector in launching prosecution, was accepted by the Magistrate resulting in his acquittal. The Delhi Bench of the Punjab High Court upheld the order of the Magistrate against which the matter came up, by special leave, before the Supreme Court. It is in this context that the Supreme Court held thus (paras 7, 8 & 9 of Cri LJ):

...It appears to us that when a valuable right is conferred by Section 13(2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that that right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and, 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 is to be accepted by Court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein.

We are not to be understood as laying down that, in every case where the right of the vendor to have his sample tested by the Director of the Central Food Laboratory is frustrated, the vendor cannot be convicted on the basis of the report of the Public Analyst. We consider that the principle must, however, be applied to cases where the conduct of the prosecution has resulted in the denial to the vendor of any opportunity to exercise this right. Different considerations may arise if the right gets frustrated for reasons for which the prosecution is not responsible.

...It may be presumed that some delay in the analysis by the Public Analyst and in his sending his report to the prosecution is bound to occur. Such delay could always be envisaged by the prosecution, and consequently the elementary

precaution of adding a preservative to the sample which was given to the respondent should necessarily have been taken by the Food Inspector. If such a precaution had been taken, the sample with the respondent would have been available for analysis by the Director of the Central Food Laboratory for a period of four months which would have expired about the 20th of January, 1962. The report of the Public Analyst having been sent on 23.10.1961 to the prosecution, the prosecution could have been launched well in time to enable the respondent to exercise his right u/s 13(2) of the Act with but being handicapped by the deterioration of his sample. The prosecution, on the other hand, committed inordinate delay in launching the prosecution when they filed the complaint on 23.5.1962, and no explanation is forthcoming why the complaint in Court was filed about seven months after the report of the Public Analyst had been issued by him. This is, therefore, clearly a case where the respondent was deprived of the opportunity of exercising his right to have his sample examined by the Director of the Central Food Laboratory by the conduct of the prosecution. In such a case, we think that the respondent is entitled to claim that his conviction is vitiated by this circumstance of denial of this valuable right guaranteed by the Act, as a result of the conduct of the prosecution....

22. In Chetumal 1981 Cri LJ 1009, an objection was taken by the accused that the certificate of the Director, Central Food Laboratory should be excluded from consideration as the Director had reported that the "specific impression seal" sent to him did not tally with the seal of the container in which the sample of oil was sent to him. The trial Court held that the report of the Director should not be taken into account, but, however relied on the Public Analyst's report and convicted the accused. The conviction and sentence was confirmed by the District and Sessions Judge in appeal and by the High Court in revision. When the matter was further carried in appeal, the Supreme Court held thus (para 2 of Cri LJ):

...It is clear that the conviction cannot stand. u/s 13(3) of the Prevention of Food Adulteration Act, the report of the Public Analyst stood superseded by the certificate issued by the Director of the Central Food Laboratory. Having been so superseded, the report of the Public Analyst could not, therefore, be relied upon to base a conviction. The certificate of the Director of the Central Food Laboratory having been excluded from consideration because of the tampering at the seals, there was really no evidence before the Court on the basis of which the appellant could be convicted. The Court could not fall back on the report of the Public Analyst as it had been superseded. The only method of challenging the report of the Public Analyst was by having the sample tested by the Director of the Central Food Laboratory. In the present case the appellant was deprived of the opportunity to which he was entitled for no fault of his. It was not, therefore, open to the Court to fall back upon the report of the Public Analyst to convict the appellant....

23. In Ahmed Dadabhai Advani 1991 Cri LJ 1418, the report of the Public Analyst, to the effect that the oil was adulterated, was furnished to the accused

long after It was actually received, and the Supreme Court held thus (para 3 of Cri LJ):

...The learned Magistrate had, therefore, taken the view that there was undue delay in forwarding the copy of the report to the appellant as required by Rule 9-A. The High Court thereafter invoked Section 114(a) of the Evidence Act and came to the conclusion it must be taken to have been received in due course. Rule 9-A uses the word "immediately" replacing the words within ten days. This expression has to be appreciated in the context of the facts and circumstances of each case bearing in mind the purpose for furnishing the report. The report is dated September 1, 1978. Yet the filing of the complaint was delayed up to April 26, 1979. But the copy of the report was despatched on July 11, 1979 and must have been received within a couple of days. Keeping in view the objective of the requirement to furnish a copy of the report to the accused, we think, having regard to the delay which had already taken place, it was incumbent on the part of the Local Health Authority to have promptly sent the copy which it failed to do. We therefore, find it difficult to agree with the line of reasoning adopted by the High Court. We think that the High Court was not justified in interfering with the order of acquittal in the above circumstances. We, therefore, set aside the conviction recorded by the High Court and restore the order of the trial Court....

24. In Pawan Kumar Saraf 1999 Cri LJ 1125, the Director of the Central Food Laboratory certified that the food article conformed to the standards prescribed. Since the Magistrate declined to discharge the accused, the High Court was moved in revision and the prosecution was quashed. The contention of the Calcutta Municipal Corporation, before the Supreme Court, was that since the certificate was silent about the other standards of quality specified in Item A.04 of Appendix B of the Prevention of Food Adulteration Rules, it must be presumed that the Director of the Central Food Laboratory had not conducted those tests with the sample and hence the certificate could not be acted upon. It is in this context that the Supreme Court held thus (paras 8, 14 and 15 of Cri LJ):

...If the certificate issued by the Director of Central Food Laboratory did not contain anything about those three elements it only means that the sample did not contain even a wee bit of those elements when analysis was made in the laboratory....

Thus the legal impact of a certificate of the Director of Central Food Laboratory is threefold. It annuls or replaces the report of the Public Analyst, it gains finality regarding the quality and standard of the food article involved in the case and it becomes Irrefutable so far as the facts stated therein are concerned....

...If the argument of the learned Counsel for the Corporation is upheld and the certificate of the Director of Central Food Laboratory is sidelined as pleaded by him, the consequence is that there will not be anything surviving to show the quality of standard of the food articles involved in the case. Even that apart, the accused will be deprived of his statutory right to disprove the report of the Public

Analyst....

25. P. Chandrakanth was a revision filed against an order of conviction of the petitioner for offences u/s 10(1)(a)(i), 7(11) and 2(ix)(a)(e) of the Prevention of Food Adulteration Act. This Court held thus:

...The Prevention of Food Adulteration Act is made with an object to prevent the adulteration to the maximum extent possible and in that context heavy penalties are Imposed for the offences under the Act and the offenders are dealt with seriously but at the same time the Courts also shall see that the interests of the accused are also safeguarded when once the prosecution has not explained the delay in not issuing the notice till 2.9.1994. Admittedly, the petitioner has lost valuable right conferred u/s 13(11) of the Act, Of course it is true that the petitioner has not chosen to give any reply to notice dated 2.9.1994: and requested the Court to send the other; sample to another analyst. Even if he has not availed the opportunity, in view of the fact that the prosecution has not explained the delay, it is not necessary for this Court to go into, that aspect....

26. In Balde Ramuloo, on the basis of the evidence on record, the learned Judicial First Class Magistrate, Jangaon found that the Food Inspector had contravened Section 13(2) of the Act and Rule 19 and 22 of the Rules and, therefore, acquitted the accused. Against the said order, the State approached this Court by Way of an appeal. In this context, this Court held thus:

...In the case on hand, the Food Inspector collected the samples on 20.12.1995, the Public Analyst sent the report on 31.6.1996. A complaint came to be presented before the Magistrate on 6.5.1996. The Local (Health) Authority sent notice u/s 13(2) of the Act on 23.7.1997. Whenever there is an infraction of Rule 9(B) of the Rules, the authorities have to offer reasons for the same. Admittedly, there is a delay of about one year two months in furnishing the copy of the report of the Public Analyst in compliance with R. 9(B) of the Rules to the accused/respondent. A single Judge of our High Court has considered the aspect of delay In furnishing the Public Analyst report in P. Chandrakanth v. State of A.P. 2002 (2) ALD (Cri) 113 , and held that in view of the long delay in sending the Public Analyst report the accused lost a valuable right in getting the sample analysed by the Central Food Laboratory. Admittedly, there is delay of 14 months in furnishing copy of the Public Analyst report to the accused/respondent after filing the complaint before the Magistrate. No reasons have been offered by the authorities for such abnormal delay. Prejudice to the accused/respondent is to be inferred in the absence of any reasonable explanation by the concerned authorities; for the abnormal delay in sending the copy of the Public Analyst report. In the absence of any reasonable explanation by the appellant/complainant for the abnormal delay in sending the Public Analyst report to the respondent/accused in compliance with Rule 9(B) of the Rules prejudice to the respondent/accused is to be inferred. In view of the above discussion, I find that this is not a fit case to interfere with the Judgment; of acquittal recorded by learned Judicial Magistrate of First Class, Jangaon in C.C. 268/96....

27. In Basu Gangadhar 2005 Cri LJ 1584, the learned Magistrate acquitted the accused holding that there was undue delay in launching prosecution and that the delay was untenable. Against the acquittal, the Food Inspector came in appeal and this Court held thus:

... In the light of the reasons recorded by the learned Magistrate at para 18 and in the light of other findings recorded by the learned Magistrate at the preceding paras, it is no doubt true that the evidence of P.W. 1, the Food Inspector alone is available and it may be sufficient, but however, the fact remains that P.W. 2 did not support the version of the prosecution and taking all the facts and circumstances into consideration, the learned Magistrate had recorded that the delay in launching prosecution had caused prejudice to the respondent/accused and had recorded an acquittal.

In the light of the findings recorded by the learned Magistrate in detail, this Court is of the considered opinion that the said findings are well considered findings, which need not be disturbed by the appellate Court and the said findings are hereby confirmed....

SEEDS ACT:

28. u/s 14(1)(a)(b) of the Seeds Act, the Seed Inspector may take samples of any seed for analysis by the Seed Analyst of that area. Section 15 prescribes the procedure to be followed by the Seed Inspector and Section 16 relates to the report of the Seed Analyst.

29. Sections 15 and 16 reads thus:

15. Procedure to be followed by Seed Inspectors:

(1) Whenever a Seed Inspector intends to take sample of any seed of any notified kind or variety for analysis, he shall,

(a) give notice In writing, then and there, of such intention to the person from whom he intends to take sample;

(b) except in special cases provided by rules made under this Act, take three representative samples in the prescribed manner and mark and seal or fasten up each sample in such manner as its nature permits.

(2) When sample of any seed of any notified kind or variety are taken under Sub-section (1), the Seed Inspector shall,

(a) deliver one sample to the person from whom it has been taken;

(b) send in the prescribed manner another sample for analysis to the Seed Analyst for the area within which such sample has been taken; and

(c) retain the remaining sample In the prescribed manner for production in case any legal proceedings are taken or for analysis by the Central Seed Laboratory under Sub-section (2) of Section 16, as the case may be.

(3) If the person from whom the samples have been taken refuses to accept one of the samples, the Seed Inspector shall send intimation to the Seed Analyst of such refusal and thereupon the Seed Analyst receiving the 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 Seed Inspector who shall retain it for production in case legal proceedings are taken.

(4) Where a Seed Inspector takes any action under Clause (c) of Sub-section (1) of Section 14,

(a) he shall use all dispatch in ascertaining whether or not the seed contravenes any of the provisions, of Section 7 and if it is ascertained that the seed does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, take such action as may be necessary for the return of the stock of the seed seized;

(b) if he seizes the stock of the seed, he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof;

(c) without prejudice to the institution of any prosecution, if the alleged offence is such that the defect may be removed by the possessor of the seed, he shall, on being satisfied that the defect has been so removed, forthwith revoke the order passed under the said clause.

(5) Where a Seed Inspector seizes any record, register, document or any other material object under Clause (d) of Sub-section (1) of Section 14, he shall, as soon as may be, inform a Magistrate and take his orders as to the custody thereof.

16. Report of Seed Analyst:

(1) the Seed Analyst shall, as soon as may be after the receipt of the sample under Sub-section (2) of Section 15, analyse the sample at the State Seed Laboratory and deliver, in such form as may be prescribed, one copy of the report of the result of the analysis to the Seed Inspector and another copy thereof to the person from whom the sample, has been taken.

(2) 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 any of the samples mentioned in Clause (a) or Clause (c) of Sub-section (2) of Section 15 to the Central Seed Laboratory for its report and on receipt of the application, the Court shall first ascertain that the mark and the seal or fastening as provided in Clause (b) of Sub-section (1) of Section 15 are intact and may then dispatch the sample under its own seal to the Central Seed Laboratory which shall thereupon send its report to the Court in the prescribed form within one month from the date of receipt of the sample, specifying the result of the analysis.

(3) The report sent by the Central Seed Laboratory under Sub-section (2) shall supersede the report given by the Seed Analyst under Sub-section (1).

(4) Where the report sent by the Central Seed Laboratory under Sub-section (2) is produced in any proceedings u/s 19, it shall not be necessary in such proceedings to produce any sample or part thereof taken for analysis.

30. Rule 21 of the Seeds Rules, 1968 prescribes the duties of a Seed Analyst and reads as under:

On receipt of a sample for analysis the Seed Analyst shall first ascertain that the mark and the seal or fastening as provided in Clause (b) of Sub-section (1) of Section 15 are intact and shall note the condition of the seals thereon.

(2) The Seed Analyst shall analyse the samples in accordance with the procedure laid down in the Seed Testing Manual published by the Indian Council of Agricultural Research as amended from time to time.

(3) The Seed Analyst shall deliver in Form VII, a copy of the report of the result of analysis to the persons specified; in Sub-section (1) of Section 16, as soon as may be but not later than 30 days from the date of receipt of samples sent by the Seed Inspector under Sub-section (2) of the Section 15.

(4) The Seed Analyst shall from time to time forward to the State Government the reports giving the result of analytical work done by him.

31. Rule 24 prescribes the manner of taking samples. Rule 33 relates to the analysis of the sample. Rule 35 prescribes that the Form of the Analyst Report shall be delivered in Form VII.

Form VII reads as under:

FORM VII

Certificate of test and/or analysis by the Seed Analyst Certified that the sample(s) bearing number...purporting to be a sample of...received on...Memorandum No...dated... from...has/have been tested/analysed and that the result/ results of such test(s) analysis is/are as stated below.

2. The condition of the seals on the packet and the outer covering on receipt was as follows:

...

Place... Seed Analyst Date... Central Laboratory

32. In Matha Venkateswara Rao 2002 Cri LJ 2891, a sample of paddy seed was drawn and, on analysis, was held not to conform to the standards prescribed. This Court held that since prosecution was launched after expiry of the shelf life of the seed, the valuable right to have the seed sent for analysis to the Central Food Laboratory was lost. This Court held (para 6 of Cri LJ):

...That apart since the shelf life of the seeds whose samples were drawn was only till 2.2.2001, launching of prosecution beyond 2.2.2001 negated the valuable right of the petitioner to seek analysis by Central Laboratory, for no fault of theirs. For that reason also the prosecution is liable to be quashed....

33. In *Mallella Laxmi* 2003 Cri LJ 638. A sample of seed, when sent for analysis, was found to be substandard and this Court held as under paras 12, 13 and 14:

...It is clear from the principles laid down in the aforesaid decisions that mere delay on the part of the Seed Analyst per se would not be fatal to the prosecution unless it is shown that the sample became unfit for analysis by the Central Seed Laboratory. It is clear from the provisions of Section 16 of the Act that the right of the accused to make an application to the Court for sending the samples for analysis arises only when the prosecution is instituted. In the instant case, the sample was taken on 5.7.2000 and the copy of the report was served on the accused on 31.7.2000. Mere service of notice will not give rise to any right to the petitioners to ask the Court to get it analysed by the Central Seed Laboratory....

It is mainly contended that the shelf life of the seed expired on 28.2.2001 and hence the sample has become unfit for analysis by the Central Seed Laboratory and it caused prejudice to the petitioners....

...Prima facie, the shelf life certificate issued by the manufacturer has to be taken into consideration in the absence of any other material placed by the complainant or the averments made to that effect in the complaint. If that is taken into consideration, the shelf life of the seed expired long back.

It is clear from Section 16 of the Act that the petitioners had the right to send the sample for analysis to the Central Seed Laboratory. It is a statutory right conferred on the petitioners, which cannot be deprived. Deprivation of the said right would certainly cause prejudice since the valuable right to get the sample analysed is lost. I am of the considered view that the shelf life of the seed has expired and there is no purpose in continuing the prosecution as it amounts to abuse of process of the Court as adumbrated by the Supreme Court in the aforesaid decisions. The department itself has to be blamed for the sorry state of affairs for launching the prosecution belatedly and sleeping over the matter. When once prejudice be caused to the petitioners, they are certainly entitled to invoke the inherent powers of this Court. Hence, I disagree with the contentions advanced by the learned Public Prosecutor. Since the shelf life of the seed has expired, the question of sending the same to Central Seed Laboratory for analysis does not arise and the petitioners are certainly to seek quashing of the proceedings....

34. In *M/s. Vivekananda Seeds*, it was contended before this Court that, unless Section 15(2) of the Seeds Act read with Rule 21(3) of the Seeds Rules, the Seed Analyst was bound to deliver a copy of his analysis report to the Seed Inspector and to the person from whom the sample was lifted within 30 days from the date

of receipt of the sample, that this provision was included for the purpose of giving an opportunity to the accused, If aggrieved, to send the sample for retesting to the Central Seeds Laboratory and that an application for a second test had to be made by the accused to the Court after the complaint was filed. The petitioner contended that, because of the delay in filing the complaint, the mark and seal fastened on the sample may be spoilt and the seed could degenerate rendering the right of the accused, to have the second test, illusory. It is in this context that this Court, following the earlier decisions in *Mallela Laxmi* 2003 Cri LJ 638 and *Matha Venkateswara Rao* 2002 Cri LJ 2891, held that the prosecution in these cases could not be proceeded with and, by order dated 8.3.2006, quashed the proceedings.

ADULTERATION OFFENCES ? STRICT LIABILITY

35. Adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been enacted with the aim of eradicating that antisocial evil and for ensuring purity in the articles of food. *Ishar Das Vs. The State of Punjab*, . The object and purpose of the Adulteration Act is to eliminate danger to human life and health from the sale of unwholesome articles of food. *Municipal Corporation of Delhi Vs. Shiv Shanker*, . Strict adherence to the Prevention of Food Adulteration Act and the Rules framed thereunder is essential for safeguarding the interest of consumers of articles of food. Stringent laws will have no meaning if offenders could get away. *Dayal Singh Vs. State of Rajasthan*, . No chances can be taken by society with a man whose anti-social activities, in the guise of a respectable trader, jeopardize the health and well being of numerous innocent consumers. The adulterator is a social risk. It might be dangerous to leave him free to carry on his nefarious activities. Adulteration is an economic offence prompted by profit motive and is not likely to end itself easily to therapeutic treatment. *Prem Ballab and Another Vs. The State (Delhi Admn.)*, .

36. In offences relating to food articles, strict liability is the rule. Nothing more than *actus reus* is needed where regulation of private activity In vulnerable areas like public health is Intended. Social defence reasonably overpowers individual freedom. Section 7 of the Prevention of Food Adulteration Act casts an absolute obligation regardless of *scienter*, bad faith and *mens rea*. Food offences should be deterrent dealt with. When primary necessities of life are sold with spurious admixtures for making profit the only protection which a common man, who otherwise is at the mercy of the vicious dealer, has is under the Prevention of Food Adulteration Act and the Court. If offenders could get away, the law would be brought into contempt *Krishan Gopal Sharma and Another Vs. Govt. of N.C.T. of Delhi*, .

37. In *Murlidhar Meghraj Loya and Another Vs. State of Maharashtra and Others*, , the Supreme Court held thus (para 5 of Cri LJ)

...It is trite that the social mission of food laws should inform the interpretative

process so that the legal blow may fall on every adulterator. Any narrow and pedantic, literal and literal construction likely to leave loopholes for this dangerous criminal tribe to sneak out of the meshes of the law should be discouraged. For the new criminal jurisprudence must depart from the old canons, which make Indulgent presumptions and favoured constructions benefiting accused persons and defeating criminal jurisprudence calculated to protect the public health and the nation's wealth....

(Emphasis supplied)

38. In *Pyarali K. Tejani Vs. Mahadeo Ramchandra Dange and Others*, the Supreme Court held thus (para 11 of Cri LJ):

...It is trite law that in food of fences strict liability is the rule not merely under the Indian Act but all the world over. The principle has been explained In American Jurisprudence 2d Vol. 35, p. 864) thus

Intent as element of offence:

The distribution of impure or adulterated food for consumption is an act perilous to human life and health hence a dangerous act, and cannot be made Innocent and harmless by the want of knowledge or by the good faith of the seller: It is the act itself, not the intent, that determines the guilt, and the actual harm to the public is the same in one case as in the other. Thus, the seller of food is under the duty of ascertaining at his peril whether the article of food conforms to the standard fixed by the statute or ordinance, unless such statutes or ordinances, expressly or by implication, make intent an element of the offence.

Nothing more than the actus reus is needed where regulation of private activity in vulnerable areas like public health Is Intended. In the words of Lord Wright in *McLeod v. Buchanan* (1940) 2 All ER 179 "intention to commit a breach of statute need not be shown. The breach in fact is enough." Social defence reasonably overpowers Individual freedom to injure, in special situations of strict liability. Section 7 casts an absolute obligation regardless of scienter, bad faith and mens rea. If you have sold any article of food contrary to any of the subsections 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....

(Emphasis supplied).

39. Similarly, the Seeds Act has been enacted to regulate the quality of certain seeds for sale and thereby ensure that only seeds of the prescribed standard are made available for agricultural purposes. The laudatory object of both these enactments cannot be permitted to be defeated by unscrupulous manufacturers/distributors/vendors who resort to adulteration which not only affect the health of the general public, and the farmers, but also impact, adversely, agricultural production.

Section 13(2) of the Prevention of Food Adulteration Act and Section 16(2) of the

Seeds Act:? Failure of the accused to make an application to the Court to send the sample for analysis to the Central Laboratory?consequences thereof:

40. u/s 13(1) of the P.F.A. Act and Section 16(1) of the Seeds Act, the Public Analyst is required to submit a report of his analysis of the article of food/seed. It is only if the food/seed is, in the opinion of the analyst, adulterated/substandard, would prosecution be instituted against the offenders. The basis for launching prosecution, both under the P.F.A. Act and the Seeds Act, is the report of the Public Analyst opining that the food/seed is adulterated or is sub-standard.

41. u/s 13(2) of the P.F.A. Act, and Section 16(2) of the Seeds Act, the accused is furnished a copy of the report of Public Analyst and is given an opportunity to make an application to have the sample analysed by the Central Laboratory. Once such an option is exercised and the sample is analysed by the Central Laboratory, the report of the Central Laboratory supersedes the earlier report of the Public Analyst. If the Central Laboratory finds the sample to be in accordance with the standards, and not adulterated, no reliance can thereafter be placed by the prosecution on the earlier report of the Public Analyst to contend that the accused is guilty of adulteration.

42. Is it open for an accused, who chooses not to exercise the option u/s 13(2) of the P.F.A. Act and Section 16(2) of the Seeds Act and does not make an application to have the sample sent for analysis to the Central Laboratory, to contend that the delay in making available a copy of the report of the Public Analyst has caused him prejudice?

43. One cannot loose sight of the fact that, since the report of the Public Analyst, opining that the sample is adulterated, forms the basis for institution of prosecution against the accused, prima facie, the food/ seed is adulterated. The opportunity given to the accused, u/s 13(2) of the P.F.A. Act and Section 16(2) of the Seeds Act, to have these samples analysed by the Central Laboratory, is to enable the accused to have a second opinion and ascertain the correctness or otherwise of the findings of the Public Analyst.

44. In Babu Lal Hargovindas Vs. The State of Gujarat, , the Supreme Court held thus (para 6):

...There is also in our view no justification for holding that the accused had no opportunity for sending the sample in his custody to the Director Central Food Laboratory u/s 13(2) because he made no application to the Court for sending it. It does not avail him at this stage to say that over four months had elapsed from the time the samples were taken to the time when the complaint was filed and consequently the sample had deteriorated and could not be analysed. The decision of this Court in Municipal Corporation of Delhi Vs. Ghisa Ram, , has no application to the facts of this case. In that case the sample of the vendor had in fact been sent to the Director of the Central Food Laboratory on his application but the Director had reported that the sample had become highly decomposed and could not be analysed. It is also evident from that case that the Food

Inspector had not taken the precaution of adding the preservative. It appears from page 120 of the report that the elementary precaution of adding preservative to the sample which was given to the respondent should necessarily have been taken by the Food Inspector, that if such precaution had been taken, the sample with the respondent would have been available for analysis by the Director of the Central Food Laboratory and since the valuable right given to the vendor by Section 13(2) could not be of, the conviction was bad. No such defence is available to the appellant in this case because not only is there evidence that the preservative formalin was added but the appellant had not even made an application to send the sample to the Director of Central Food Laboratory....

(Emphasis supplied)

45. In Jagdish Prasad alias Jagdish Prasad Gupta Vs. State of West Bengal, , the Supreme Court held thus (para 9 of Cri LJ)

...under Section 13(5) of the Act 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 the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under the Act or under Sections 272 to 276 of the Indian Penal Code. Under the proviso to that sub-section any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein. If the report of the Public Analyst was not Satisfactory, it was open to the appellant to have made an application for the sample which was in his possession to be sent to the Director of the Central Food Laboratory for examination. If he had made such an application and sent the sample u/s 13(2) the certificate granted by the Director of the Central Food Laboratory would have superseded the report given by the Public Analyst. This he has not done....

(Emphasis supplied)

46. In Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra, , the Supreme Court held thus (para 6 of Cri LJ):

...In this appeal, counsel for the appellant contended that the appellant was deprived of his right to have the sample analysed by the Director on account of the delay in the service of summons. He said that the appellant was acquitted by the Magistrate because the Magistrate found that on account of the delay it would be a futile exercise to have sent the sample for analysis to the Director and as the laches of the complainant was the reason for the delay in the service of summons and the proximate cause of the appellant losing his right to get the part of the sample delivered to the vendor analysed by the Director, the appellant was entitled to be acquitted. He relied on the decision of this Court in Municipal Corporation of Delhi Vs. Ghisa Ram, to support his contention. We do not think that the case would in any way assist the appellant. In that case, the

part of the sample delivered to the vendor had been sent to the Director on the application of the vendor but, the Director reported that the sample had become highly decomposed and could not be analysed. It was not disputed in that case that the Food Inspector had not taken the precaution of adding the necessary preservative to the sample. So the Court held that the valuable right given to the vendor u/s 13(2) of the Act could not be available of and that the conviction was bad. In the present case, the appellant never applied to the Court to have the, part of the sample with him analysed by the Director. Section 13(2) of the Act states:

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 or 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 the sample, specifying the result of analysis.

It Is clear from the sub-section that the appellant should have made an application after paying the prescribed fee if he wanted the part of the sample available with him to be sent to the Director for analysis. If he had made the application after paying the prescribed fee, the Magistrate would have had no option but to send the part of the sample for analysis by the Director. If in pursuance of the application the part of the sample was sent to the Director and he had reported that the part of the sample was Incapable of analysis for the reason that It was decomposed, the appellant could perhaps, have contended that he was deprived of his right to have the sample analysed by the Director on account of the laches of the complainant and that he should be acquitted. But, since the appellant never applied u/s 13(2) of the Act, he cannot complain that he has been deprived of any right....

(Emphasis supplied)

47. In *Tulsiram Vs. State of Madhya Pradesh*, , the Food Inspector filed a complaint in the Court of the Judicial Magistrate of I Class on the basis of the report of the public analyst. A copy of the said report, as required under Rule 9-A of the Prevention of Food Adulteration Rules, was forwarded to the accused much later. The accused did not make any application to the trial Court to have one of the samples sent to the Central Food Laboratory for further analysis. He was convicted by the Magistrate u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act. Both his appeals to the Sessions Judge and the revision petition to the High Court were rejected. Before the Supreme Court it was contended that since Rule 9-A of the Prevention of Food Adulteration Rules, which was substituted for the

earlier Rule 9(i), required the Local (Health) Authority, immediately after the institution of the prosecution, to forward a copy of the report of the public analyst to the person from whom the sample was taken, Rule 9-A showed that it brooked no delay and that the delay in forwarding the report vitiated the prosecution. In this context the Supreme Court held thus : (Para 7)

The first thing to be noticed is that Rule 9-A carefully refrains from mentioning any definite limit of time such as that found in old Rule 9(j) which gave rise to the controversy whether the rule was mandatory or directory, and Instead uses the general expression "immediately". The Local (Health) Authority is now required to forward to that person from whom die sample was taken in the manner prescribed, a copy of the report of the Public Analyst immediately after title institution of the prosecution. While prescribing the manner in which the report may be forwarded the opening words of Rule 9-A "The Local (Health) Authority shall (immediately) after the institution of prosecution forward" (bracket supplied), are borrowed verbatim from Section 13(2) with the word "immediately" inserted in between. The rule making authority could never have intended to amend the statute by super adding the word "immediately" as indeed it was not competent to do. Rule 9-A has to be inter prated so as to keep it in true with and within the bounds of Section 13(2). The departure from the previous rule by refraining from mentioning a definite period to time as was done in the old rule makes it evident that the expression "immediately" is used to convey a sense of continuity rather than a sense of urgency. It is not to be understood to mean the very next instant, the very next hour; that very day or the very next day. It must be construed in its setting. It is no use turning to dictionaries. Dictionaries give variegated meanings to words. What meaning is to be adopted depends on the context. Rule 9-A is made in the context of the amended. Section 13(2) which provides for the forwarding of the Public Analyst's report to the person from whom the sample was taken after the institution of prosecution and enables that person to apply to the Court to have analysed by the Central Food Laboratory the sample kept with the Local (Health) Authority. In the context the expression "immediately" is only meant to convey "reasonable despatch and promptitude" and no more. The idea is to avoid dilatoriness on the part of official-dom and prevention of unnecessary harassment to the accused. But the idea is not to penalise the prosecution and to provide a technical defence. First to construe "immediately" as meaning "at once" or "forthwith" and next to hold delay to be fatal to the prosecution would perhaps be to make Rule 9-A ultra vires Section 13(2). We do not think it is permissible to interpret Rule 9-A in such a way. The real question is was the Public Analyst's report sent to the accused sufficiently early to enable him is properly defend himself by giving him an opportunity at the outset to apply to the Court to send one of the samples to the Central Food Laboratory for analysts. If after receiving the Public Analyst's report he never sought to apply to the Court to have the sample sent to the Central Food Laboratory. 88 in the Present case, he may not be heard to complain of the delay in the receipt of the report by him, unless, of course, he is

able to establish some other prejudice. Our conclusions on this question are: The expression "immediately" in Rule 9-A is intended to convey a sense of continuity rather than urgency. What must be done is to forward the report at the earliest opportunity, so as to facilitate the exercise of the statutory right u/s 13(2) in good and sufficient time before the prosecution commences leading evidence. Non-compliance with Rule 9-A is not fatal. It is a question of prejudice. Applying these principles, we find no merit in the submissions based on Rule 9-A....

(Emphasis supplied)

48. In *Prabhu v. State of Rajasthan* 1994 Supp (2) SCC 177 : AIR 1994 SCW 2649, the Supreme Court held thus : (At P. 2651 of AIR SCW)

...This Court considering the language of Section 13(2) in *Babu Lal Hargovindas Vs. The State of Gujarat*, held that the "accused had an opportunity to make an application to the Court for sending the sample to the Central Food Laboratory for analysis. He did not avail the same. Therefore, it was no longer open to him to contend that he had no opportunity to send the sample in his custody to the Director, Central Food Laboratory u/s 13(2), since he did not make any application to the Court for sending it. This view was followed in *Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra*, . In *Tulsiram Vs. State of Madhya Pradesh*, this Court held that Rule 9-A is directory and if after receiving the Public Analyst's report, the accused does not apply to the Court to have the sample sent to the Central Food Laboratory, he may not be heard to complain about delay in receipt of the report by him, unless he is able to establish some other prejudice to him....

...The decision of this Court in *Municipal Corporation of Delhi Vs. Ghisa Ram*, was based on the fact that the sample had, in fact, been sent to the Director who returned the same saying that the sample had become highly decomposed and could not be analysed; as the Food Inspector had not taken the precaution of adding the preservative. This decision was distinguished in *Babu Lal Hargovindas*....

Thus, it is settled law that the appellant has a right u/s 13(2) to avail of sending the sample in the custody of the Court for analysis by the Central Food Laboratory after the prosecution was laid or immediately after notice was received by him in the case, by making an application to the Court. The duty of the prosecution to send the report is governed by Rule 9-A of the Rules. After 4.1.1977, the word "immediately" was used replacing the words "within ten days" in this rule. The decision of this Court in *Ahmed Dadabhai Advani Vs. State of Maharashtra*, relied on by the appellant does not help him. Therein, the report was stated to have been despatched on 13.6.1974. But, In fact it was despatched on 11.7.1979. The report was of 1.9.1978. The Magistrate on the basis of those facts held that it must have been received in due course and there was delay in launching prosecution. Since the acquittal ordered by the Magistrate was interfered with by the High Court, this Court stated that the High Court was

not Justified in Interfering with the same. The fact of non-availing of the remedy u/s 13(2) had not been considered by this Court. Therefore, the ratio in Ahmed D. Advani case does not run counter to the consistent law laid by this Court in the above cases that despite non-avallment of the remedy u/s 13(2), prejudice could be Inferred....

...Under these circumstances and following the consistent law laid by this Court, we are of the considered view that since admittedly the appellant had not availed of the remedy u/s 13(2) to send the sample of the article of food for analysis by the Central Food Laboratory. It cannot be held that the appellant suffered prejudice on account of delay in laying the prosecution....

(Emphasis supplied).

49. The consistent view of the Apex Court, as is clear from the aforesaid judgments, is that in the absence of any request by the accused, and an application made by him to the Court, to have the sample sent for analysis to the Central Laboratory, no prejudice can be inferred. An accused, who does not even make an application to the Court, as required u/s 13(2) of the P.F.A. Act and Section 16(2) of the Seeds Act, to have the sample sent for analysis to the Central Food Laboratory, cannot be heard to say that he has suffered prejudice.

50. Now to the judgments relied upon by the petitioners and other judgments in this regard.

51. In Ghisa Ram 1967 Cri LJ 939, the accused exercised his right u/s 13(2) of the Prevention of Food Adulteration Act and the sample was sent, for analysis, to the Central Food Laboratory which found the sample not fit for analysis. It is in this context that the Supreme Court held that the delay in launching prosecution and the consequent delay in sending the sample for analysis had resulted in decomposition of the sample rendering it unfit for analysis and that the delay had, therefore, resulted in denial of right of the accused u/s 13(2) of the Prevention of Food Adulteration Act. In cases where the delay on the part of the prosecution had resulted in the sample, sent for analysis to the Central Food Laboratory, being rendered unfit for analysis, it would undoubtedly cause prejudice to the accused and would amount to denial of his valuable right u/s 13(2) of the Act. There could also be other cases where the delay on the part of the prosecution could be found to have caused prejudice. Whether or not delay in furnishing a copy of the report of the public analyst has caused prejudice to the accused are matters which can only be decided, on the basis of evidence, by the learned Magistrate and not for this Court, in exercise of its jurisdiction u/s 482 Cr.P.C. to presume. In Babu Lal Hargovindas Vs. The State of Gujarat, , Sukhmal Gupta v. Corporation of Calcutta Judgment of the Supreme Court in Cri. Appeal No. 161 of 1966 dated 3.5.1968 and Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra, , the earlier judgment in Municipal Corporation of Delhi Vs. Ghisa Ram, was held inapplicable where the accused never applied to the Court to have the sample analysed by the Central Laboratory.

52. In Ahmed Dadabhai Advani Vs. State of Maharashtra, , the High Court had set aside the order of acquittal by the criminal Court and had convicted the accused. On being approached, by way of special leave, the Supreme Court found that the learned Magistrate, on the basis of evidence, had taken a view that there was undue delay in forwarding the copy of the Public Analyst's report to the accused as required under Rule 9-A and that the High Court invoking jurisdiction u/s 114(a) of the Evidence Act had come to the conclusion that it must be taken to have been received in due course. The Supreme Court held that the expression "immediately" in Rule 9-A had to be appreciated, in the context of the fact? and circumstances of each case, bearing in mind the purpose of furnishing the report. While it is always open to the accused, on the basis of the evidence on record, to satisfy the Magistrate that the delay in furnishing a copy of the report of the Public Analyst had caused prejudice to them, such a presumption ought not to be drawn or prejudice inferred, merely on the ground of delay, in proceedings u/s 482 Cr.P.C. This judgment, in Ahmed Dadabhai Advani Vs. State of Maharashtra, was held in Prabhu AIR 1994 SCW 2649, as not to run counter to the consistent law laid down by the Supreme Court that no, prejudice could be inferred where the accused does not avail the remedy u/s 13(2) of the P.F.A. Act.

53. In Chetumal Vs. State of Madhya Pradesh and Anr, the question whether delay, in sending the sample for analysis to the Central Food Laboratory, had caused prejudice to the accused or not, did not arise for consideration. The question which arose therein was as to whether tampering of the seals of the packet in which the sample was sent to the Central Food Laboratory would necessitate "exclusion of the said report from consideration. It is in this context that the Supreme Court held that the appellant was deprived of the opportunity to which he was entitled for no fault of his. The judgment in Chetumal, therefore, has no application to the present cases.

54. In Calcutta Municipal Corporation Vs. Pawan Kumar Saraf and Another, , the question which arose for consideration was as to whether the certificate of analysis issued by the Central Food Laboratory was complete as the results of certain tests were not indicated therein. In the said case, the Central Food Laboratory had certified that the food article contained in the sample conformed to the standards prescribed. The Calcutta Municipal Corporation, which had instituted the prosecution, contended that this certificate was required to be ignored since results of certain tests had not been indicated in the report. The Supreme Court rejected this contention holding that the report of the Central Food Laboratory superseded the report of the Public Analyst and if this argument, of the Calcutta Municipal Corporation, was upheld and the certificate of the Central Laboratory sidelined, the consequence was that there would not be anything surviving to show the quality or the standards of food article involved in the case and that apart, the accused would be deprived of his statutory right to disprove the report of the public analyst. The judgment In Pawan Kumar Sharaf, therefore, has no application to the present cases.

55. Now the Judgments under the Seeds Act.

56. In *G.S. Prasad v. State* 2002 (1) ALT (Cri) 231 : 2003 Cri LJ 231, the Seeds Inspector drew paddy Seed samples from the stock stored by the Agricultural Market Committee. The sample was sent for analysis and the Analyst opined that the sample of paddy was misbranded. On a complaint being lodged, with the judicial Magistrate of 1st Class, petitions were filed u/s 482, Cr.P.C. before this Court. The main contention advanced was that, u/s 15(2) of the Seeds Act read with Rule 21(3) of the Seeds Rules, a copy of the Analyst report must be made available within 30 days from the date on which the sample is received, and that the delay in serving a copy of the report, beyond the period prescribed under Rule 21, had resulted in denial of opportunity to the accused to send the samples for retesting by the Central Seed Laboratory. In this context this Court held thus:

...The question that falls for consideration is as to whether Rule 21(3) of the Rules is mandatory in its nature? Whether the prosecution would get vitiated on account of non-compliance of the same?

...The Supreme Court in *T.V. Usman Vs. Food Inspector, Tellicherry Municipality, Tellicherry*, while considering Rule 7(3) of the Prevention of Food Adulteration Rules, which requires a copy of the report of the result of analysis to be provided to Local Health Authority within a period of 45 days, held the same to be directory and not mandatory....

...The law declared by the Supreme Court is absolutely clear. Mere delay will not per se be fatal to the prosecution case unless It is shown that the delay has led to the denial of the right conferred u/s 16 (2) of the Act. Whether the delay in receipt of the copy of the report of the Analyst has led to the denial of right conferred under Sub-section (2) of Section 16 of the Act depends upon the facts of each case. Mere violation of the time limit given in Sub-rule (3) of Rule 21 of the Rules by itself cannot be a ground for the prosecution case being thrown out....

In the circumstances, there is absolutely no difficulty whatsoever to hold that Rule 21 (3) of the Rules is a procedural provision meant to speed up the process of the Investigation on the basis of which prosecution has to be launched. It is equally important to notice that neither Section 15 nor Section 16 of the Act requires the Analyst of the State Seed Laboratory to analyze the sample and deliver the same, in such form as may be prescribed, within a particular time limit as such. Section 16(1) of the Act mandates that the Seed Analyst shall, as soon as may be after the receipt of the sample; under Sub-section (2) of Section 15 analyse the sample at the State Seed Inspector and another copy thereof to the person from whom the sample has been taken. It is Rule 21(3) which prescribes the time limit for delivering a copy of the report of the result of analysis in form VII to the Seed Inspector as well as to the person from whom the sample has been taken. Rule 21 of the Rules prescribes the duties of a Seed Analyst. It is procedural in nature. It prescribes the procedure for making the

analysis. Mere violation of rule, which provides the procedure, would not render the very prosecution launched illegal. It would be interesting to notice that Sub-rule (4) of Rule 21 says that the Seed Analyst shall from time to time forward to the State Government the reports giving the result of analyst work done by him. Does it mean that if the Seed Analyst fails to forward to the State Government the reports as provided for under Sub-rule (4) of Rule 21 would also get the prosecution vitiated....

...It Is thus clear that unless it is shown that the sample became unfit for analysis by the Central Seed Laboratory on account of the delay and the same has caused prejudice to the accused entitling them to acquittal, mere delay on the part of the Seed Analyst In sending the report per se would not be fatal to the case of the prosecution.

We have already noticed that there is absolutely nothing In any one of these petitions to show that the petitioners/accused Intended to send the samples for further analysis by the Central Seed Laboratory and they were prevented from doing on account of the fact that the samples became unfit for such analysis. The whole of the case of the petitioners-accused is rested upon the contention that Rule 21 is mandatory and non-compliance thereof would automatically vitiate the prosecution. The contention is devoid of any merit....

(Emphasis supplied)

57. In Smt. Mallela Laxmi and Others Vs. State of Andhra Pradesh, , this Court, considering the earlier Judgments of this Court in G.S. Prasad 2003 Cri LJ 231 and the judgment of the Supreme Court in State of Haryana Vs. Unique Farmaid P. Ltd. Ors., and National Organic Chemical Industries Ltd., held that since the shelf life of the seed had expired there was no purpose in continuing the prosecution as it amounted to an abuse of process of Court.

BEST BEFORE : EXPIRY OF THE SHELF LIFE OF THE PRODUCT:

58. Would expiry of the "Best Before" date of the food article, under the P.F.A. Act, or expiry of shelf-life of the seed under the Seeds Act, make any difference and require a departure from the consistent view of the Supreme Court, in Babu Lal Hargovindas Vs. The State of Gujarat, , Jagdish Prasad alias Jagdish Prasad Gupta Vs. State of West Bengal, , Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra, , Sukhmal Gupta and Prabhu, that no prejudice can be inferred where the accused does not even request or make an application to the Court to have the sample sent for analysis to the Central Laboratory.

59. In this context, it is necessary to refer to the statutory provisions In this regard under the P.F.A. Rules. Rule 32 requires the package of food to carry a label and under Clause (1) thereunder, the month and year In capital letters up to which the product is best for consumption in the following manner.

BEST BEFORE... MONTHS AND YEAR OR BEST BEFORE... MONTHS FROM PACKAGING OR BEST BEFORE... MONTHS FROM MANUFACTURE OR BEST

BEFORE UP TO MONTH AND YEAR... OR BEST BEFORE WITHIN...MONTHS FROM THE DATE OF PACKAGING/MANUFACTURE Provided that in case of wholesale packages the particulars under Clauses (b), (f), (g), (h) and this clause need not be specified : Provided further that in case of package or bottle containing sterilized or Ultra High Temperature treated milk, soya milk, flavored milk, any package containing bread, dhokla, bhelpuri, plza, doughnuts, khoa, paneer, or any uncanned package of fruits, vegetable, meat, fish or any other like commodity, the declaration be made as follows:

BEST BEFORE...DATE/MONTH/YEAR BEST BEFORE...DATE/MONTH/YEAR OR BEST BEFORE...DAYS FROM PACKAGING OR BEST BEFORE...DAYS FROM MANUFACTURE OR BEST BEFORE UP TO...DATE/MONTH/YEAR OR BEST BEFORE WITHIN...DAYS FROM THE DATE OF PACKAGING/MANUFACTURE

60. It is necessary to note that Clause (1) of Rule 32 was inserted by G.S.R. 537 (E) dated 13.6.2000 with effect from 1.9.2000. Explanation VIII to Rule 32 reads thus:

Explanation VIII:

(i) "Beat-Before" means the date which signifies the end of the period under any stated storage conditions during which the product will remain fully marketable and will retain any specific qualities for which tacit or express claims have been made. However, provided that beyond the date the food may still be perfectly satisfactory.

(ii) In addition to the date of best before, any special conditions for the storage of the food shall be declared on the label if the validity of the date depends on such storage.

61. All that the prescription of "Best Before", under Rule 32(i) and Explanation VII there under entail is that, till the end of the period "Best Before", the manufacturer certifies that the product will remain fully marketable and will retain its specific qualities. This requirement is an additional precaution to consumers informing them that It is safe for them to consume the food article before the "Best Before" date. Expiry of the "Best Before" date, as is clear from Explanation VIII itself, does not mean that beyond that date the food is not satisfactory. The only obligation cast on the manufacturer is to ensure that under the stated storage conditions, the product retains its marketability and its specific qualities before the "Best Before" date. The rules do not provide, by legal fiction, that after the "Best Before" date or the expiry of the shelf life of the product, the food decomposes and is rendered unfit for analysis, or even that the food becomes adulterated. It is not for Courts to read something more than what has specifically been provided In these statutory provisions.

62. u/s 16(1)(a)(1) of the PFA Act, a person who manufactures for sale or stores, sells or distributes any article of food which is adulterated, within the meaning of Sub-clause (m) of Clause (ia) of Section 2 or is misbranded within the meaning

of Clause (ix) of the section or the sale of which is prohibited under any of the provisions of the Food Adulteration Act or any rule made thereunder, is liable for punishment. u/s 7 no person shall himself, or by any person on his behalf, manufacture for sale or store, sell or distribute any adulterated food or any misbranded food. u/s 2(1)(a), adulterated food not only includes an article whose quality or purity is below the prescribed standards, but also includes an article of food which contains , any other substance which affects injuriously the nature and substance and quality thereof. An article of food may be deemed to be adulterated under more than one clause of Section 2(1). P Prem Ballab and Another Vs. The State (Delhi Admn.), . Thus a person can be punished u/s 16 not only where the article of food is found not to be of the prescribed standard but also if it contains any other substance or an inferior or cheaper substance, which affects injuriously the nature, substance or quality of the article of food. While it may be contended that, on expiry of the "Best Before" date, the specific qualities of the product can no longer be guaranteed by the manufacturer, would the expiry of the shelf life of the product or the "Best Before" date result In the sample containing any other article, which affects Injuriously the nature, substance and quality thereof, thereby rendering it adulterated? The answer thereto can only be in the negative.

63. In New Gayathri Wines Vs. Deputy Commissioner of Prohibition and Excise and Another, , Criminal Petitions were filed, u/s 482 Cr.P.C. to quash proceedings In different calendar cases for offences under Sections 2(ia)(1) and 7 of the Prevention of Food Adulteration Act punishable u/s 16 of the Act and the Rules. The grounds to quash the prosecution centered around the rights conferred on the accused u/s 13(2) of the Act. Since a copy of the Public Analyst was made available after expiry of the shelf life of the product i.e., after the "best before date", the right conferred u/s 13(2) was contended to have become illusory, frustrated and lost. In this context, this Court held thus:

...Best before means that in all weathers it is to be used before six months. It is only recommendatory but not mandatory. Therefore, it cannot be said that the shelf life of the said beverage expires after the date of best before. Shelf life means the time for which a stored thing remains usable....

...The Public Analyst in all the cases after analyzing the sample bottle opined that the samples are adulterated, as they do not conform to the norms prescribed to the standards of quality. Therefore, I am of the opinion that it is for the accused to question the said reports or lead evidence before the Courts below as to how prejudiced has been caused to them either because of the delay In launching the prosecution or for any other reasons....

...The contention of the learned senior counsel for the petitioners that the manufacturers have mentioned the shelf life of the product on the label of the product and that the period of the shelf life Is over and therefore, prejudice has been caused to them in launching prosecution after the period of the shelf life cannot be accepted as I are of the opinion that the article of food is meant for

the human consumption and there is no evidence adduced to show that the sample has become unfit for analysis. Merely because the best before period prescribed by them is over it cannot be said that the said article of food is not adulterated....

...The other contention that the beverages require preservatives to be added and in the absence of any preservatives, the food article is not fit for analysis after expiry of the best before dated also cannot be accepted as the shelf life as certified under the Insecticides Act is different from that of the best before under the Prevention of Food Adulteration Act. Even according to the petitioners it is not their case that the said food article is not fit for human consumption. According to Rule 32(1) of the Rules read with Explanation VIII (i) best before means the date which signifies the end of the period under any stated storage conditions during which the product will remain fully marketable and will retain any specific qualities for which tacit or express claims have been made. However, provided that beyond that date the food may still be perfectly satisfactory, which means the best before date only signifies that the said food article contains specific qualities In all circumstances of any weather cold, dry or rainy weather. Therefore, there is no prohibition for human consumption even after the best before, if that be so, the only question that arises for consideration Is as to whether the said food article is adulterated or not.

Without adducing any evidence and without availing the opportunity u/s 13(2) of the Act for sending the second sample to the Central Food Laboratory it cannot be said that the shelf life of the said food article has expired. The said rule prescribing best before is not mandatory to make use of the said food item before the date of the best before, but it is only recommendatory or directory. The best before is only as guaranteed period for carrying specific qualities In all weathers for that particular period. Therefore, it cannot be said that the shelf life of the said beverages have been expired....

(Emphasis supplied)

64. Chinna Venkata Narasimha Rao v. State of A.P. Judgment in CrI. P. No. 1396 of 2002 dated 17.4.2002 is also a case which arose u/s 482 Cr.P.C. This Court, after taking into consideration Explanation VIII (1) of Rule 32 of the Prevention of Food Adulteration Rules, held that since the bottles offered for sale contained a notice that they are best before 12 months from the date of manufacture and since the complaint showed the date of manufacture as February, 2000, it was clear that the product would remain fully marketable and retain its specific qualities before the end of February, 2001. This Court held that since the prosecution was launched on 16.11.2001, long, after February 2001, before which period the sample taken would have been "best for use", and since the reasons for the delay was not even stated in the complaint, the petitioner had lost the valuable right to seek examination of the sample for a second time to the Central Food Laboratory and, following the judgment of the Supreme Court in State of Haryana Vs. Unique Farmaid P. Ltd. Ors., , held that the valuable right

conferred on the accused to have the sample tested by the Central Food Laboratory was lost and, as prejudice was caused, the accused was entitled to acquittal.

65. In S.S. Sujala, a sample of mineral water was found adulterated by the public analyst and though the shelf life of the water bottle was only six months and though the public analyst report was received on 20.9.1999, it was not served on the petitioner till 20.2.2002. This Court held that the petitioner had lost his valuable right to send the sample for analysis to the Central Food Laboratory and thereby prejudice had been caused to him.

66. Whether the sample remains fit for analysis or has become unfit can only be ascertained when it is, in fact, sent for analysis to Central Food Laboratory and it is certified as to whether the sample is fit or unfit for analysis. Rule 4(5) of the Prevention of Food Adulteration Rules, read with Form II of Appendix A thereof, requires the Central Food laboratory to certify, in its report, as to whether the sample of the Food sent for analysis is fit or unfit for analysis and the reasons therefor. Whether a sample has, on expiry of its "Best Before" date or its shelf life; become unfit for analysis on account of its being decomposed is a matter of evidence and not a matter of inference in proceedings u/s 482 Cr.P.C. It is only when a sample is sent for analysis, can the Central Laboratory on examination certify whether or not the sample has decomposed rendering it unfit for analysis.

67. In Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra, . Para 7, the Supreme Court held thus:

...The learned Magistrate was wrong in thinking that no useful purpose would be served by sending the sample for analysis by the Director. It was not for the Magistrate to decide without any data that the sample would be decomposed and was incapable of being analysed. The Food Inspector had sworn as PW 1 that he had added eight drops of formalin to each part of the sample. Though under the rules he should have added 16 drops to each part, there is no reason to think that the sample became decomposed by the time the summons was served for that reason. There was no evidence before the Magistrate that for the reason that the prescribed quantity of formalin was not added to each part, the part of the sample delivered to the vendor was incapable of being analysed by the Director. Nor did the Magistrate rely on that circumstance for his conclusion that the sample would have become decomposed. The appellant could have summoned the Public Analyst and examined him if he was serious in his present contention that since the prescribed quantity of formalin was not added, the part of the sample would have become decomposed by the time the summons was served, and no useful purpose would have been served by sending the sample for analysis by the Director. There was therefore, no evidence that the part of the sample available with the appellant had so deteriorated at the time the summons was served as to be incapable of being analysed. In Sukhmal Gupta v. Corporation of Calcutta Cri. A. No. 161 of 1966 decided on May 3rd 1968, Sikri. J., as he then was, speaking for the Court said:

...it was held by this Court in *Municipal Corporation of Delhi Vs. Ghisa Ram*, , that Section 13(2) of the Act confers a valuable right to have the sample given to him analysed by the Director of the Central Food Laboratory but "the -reason why the conviction cannot be sustained is that the accused is prejudiced in his defence and is denied a valuable right of defending himself solely due to the deliberate acts of the prosecution". In this case no prejudice of the defence has been shown. It has not been established on the record that the sample of tea which was available with the appellant had deteriorated by the time the summons was received. He never utilised the right u/s 13(2) of the Act of sending the sample to the Director of Central Food Laboratory....

(Emphasis supplied)

68. In *Charanji Lal Vs. State of Punjab*, , the Supreme Court held thus :? (Para 15 of Cri LJ)

...Decomposition is not something which always takes place suddenly or immediately. It is a process which in some cases may be slow and in some cases quick. Decomposition cannot be noticed or ascertained by the Court when it inspects the part of the sample under Sub-section (2-B) of Section 13 to ascertain whether the mark and seal or fastening are intact and the signature or thumb Impression, as the case may be, not tampered with, before dispatching that part to the Central Food Laboratory. Even with the mark and seal intact, and the signature or thumb impression, as the case may be, not tampered with, the sample might have already decomposed or decomposing might have already commenced. Whether a sample has decomposed or not can only be ascertained when the sealed container is opened In the Central Food Laboratory for the purpose of analysis....

(Emphasis supplied)

69. In *T.V. Usman Vs. Food Inspector, Tellicherry Municipality, Tellicherry*, samples of six packets of pan supart were sent for analysis to the Public Analyst, who opined that the sample contained Sacharin, an artificial sweetener, and was thus adulterated. Both the vendor and the manufacturer were acquitted by the Magistrate, on the ground that Rule 7(3) was violated inasmuch as the Local (Health) Authority had received the Form III report beyond 45 days. The learned Magistrate also held that Rule 9(a) was not properly complied with. On appeal the Kerala High Court, while confirming the acquittal of the manufacturer, convicted the vendor. The Kerala High Court held that Rule 7(3) was not mandatory and non-compliance thereof needed to be considered only if prejudice was established. Following the Judgment of the Supreme Court in *Tulsiram Vs. State of Madhya Pradesh*, , the Kerala High Court held that Rule 9(a) was also not mandatory, but was directory. On appeal, the Supreme Court held thus : (At Pp. 1821-22, para 14 of AIR)

In Rule 7(3) no doubt the expression "shall" is used but it must be borne in mind that the Rule deals with stages prior to launching the prosecution and it is also

clear that by the date of receipt of the report of the Public Analyst the case is not yet instituted in the Court and it is only on the basis of this report of the Public Analyst that the concerned authority has to take a decision whether to institute a prosecution or not. There is no time limit prescribed within which the prosecution has to be instituted and when there is no such limit prescribed then there is no valid reason for holding the period of 45 days as mandatory of course that does not mean that the Public Analyst can ignore the time limit prescribed under the Rules. He must in all cases try to comply with the time limit. But if there is some delay, in a given case, there is no reason to, hold that the very report is void and on that basis to hold that even prosecution cannot be launched. May be, in a given case, if there is inordinate delay, the Court may not attach any value to the report but merely because the time limit is prescribed, it cannot be said that even a slight delay would render the report void or Inadmissible in law. In this context it must be noted that Rule 7(3) is only a procedural provision meant to speed up the process of investigation on the basis of which the prosecution has to be launched. No doubt, Sub-section (2) of Section 13 of the Act confers valuable right on the accused under which provision the accused can make an application to the Court within a period of days from the receipt of copy of the report of Public Analyst to get the samples of food analysed in the Central Food Laboratory and in Case the sample is found, by the said Central Food Laboratory unfit for analysis due to decomposition by Passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied. This would constitute prejudice to the accused entitling him to acquittal but mere delay as such will not per se be fatal to the prosecution case even in cases where the sample continues to remain fit for analysis in spite of the delay because the accused Is In no way prejudiced on the merits of the case to respect of such delay. Therefore it must be shown that the delay has led to the denial of right conferred u/s 13(2) and that depends on the facts of each case and violation of the time limit given in Sub-rule (3) of Rule 7 by Itself cannot be a ground for the prosecution case being thrown out.

(Emphasis supplied).

70. In *Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra*, , the Supreme Court, following its earlier Judgment in *Sukhmal Gupta*, held that it was wrong for Courts to decide, without any data, that the sample would decompose and become Incapable of analysis and that no useful purpose would be served in sending the sample for analysis to the Director, when there was no evidence that the sample had so deteriorated at the time of service of summons as to be incapable of being analysed. In the absence of evidence, that the sample has so deteriorated as to be incapable of analysis, such a presumption would not be justified.

71. An enquiry, as to whether the sample has decomposed, whether it is fit or unfit for analysis etc., is a statutory function required to be discharged by the Central Food laboratory and not for this Court, in proceedings u/s 482, Cr.P.C. to

presume that every case of delay in furnishing a copy of the Public Analyst's report, beyond the shelf life of the product, would either result In the sample becoming decomposed or cause prejudice to the accused.

72. As held by the Apex Court in *Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra*, *Charanji Lal Vs. State of Punjab*, and *T.V. Usman* and this Court in *G.S. Prasad* 2003 Cri LJ 231 and *Gangalahnaldurama Krishna* unless It is shown that the sample has been rendered unfit for analysis and the reasons therefore are on account of the delay in sending the sample for analysis and thereby prejudice has been caused to the accused entitling them to acquittal, mere delay In furnishing the report of the public analyst to the accused would not, by itself, be fatal to the case of the prosecution.

73. As held in *T.V. Usman Vs. Food Inspector, Tellicherry Municipality, Tellicherry*, there is no time limit prescribed for launching prosecution. It is relevant to note that a time limit is prescribed, u/s 9A of the P.F.A. Act, for sending the second sample for analysis to the Public Analyst, a time limit of 10 days was prescribed under Rule 9(j), prior to its omission with effect from 4.1.1977, for supplying a copy of the report of the public analyst, Rule 22 provides that the quantity of food to be sent for analysis must be as prescribed in the table to the rule and Rule 7(3) requires the Public Analyst to submit his report within 45 days. All these statutory provisions were held in *Tulsiram Vs. State of Madhya Pradesh*, *Dalchand Vs. Municipal Corporation, Bhopal* and *Another*, *State of Kerala and Others Vs. Allasserry Mohammed and Others*, and *Arvind Mohan Sinha Vs. Amulya Kumar Biswas and Others*, to be directory and not mandatory. When no time limit is prescribed under the Act for launching prosecution and certain statutory provisions and rules, wherein time-limit is prescribed, were held to be directory and not mandatory, it cannot be said that mere delay in furnishing a copy of the report of the public analyst to the accused, by itself and without any thing more, is fatal to the prosecution.

74. On what basis can Courts presume that expiry of the "best before" date or expiry of the shelf-life of the product would, by itself, and without anything more, result: in rendering the sample unfit for analysis? The shelf life of products vary from one to the other. While in certain cases the shelf life may be as small as one week, in certain others the shelf life could be as long as a few years. Similarly, the delay in making available a copy of the report of the public analyst may also vary. The delay could range from a period of a few days, after the expiry of the shelf life or the "Best Before" date, to even a few years. Can the same yardstick be applied in all cases to hold that the delay in making available a copy of the public analyst report, beyond the shelf life of the product, has caused prejudice to the accused and denied him his valuable right u/s 13(2)? Even in cases where the report of the public analyst is made available within time, the accused may not exercise his right to have the sample sent for analysis to the Central Laboratory. In such cases, the report of the public analyst is required to be accepted. Can a different yardstick be applied to cases, where despite a copy of

the report of the public analyst being furnished Immediately after the shelf life of the product Has expired and the accused does not exercise his right to have the sample sent for analysis to the Central Laboratory, to hold that delay by itself has caused prejudice to the accused? Answers, thereto, have necessarily to be in the negative.

75. Negligence of officials in discharging their functions, and in not promptly furnishing a copy of the report of the public analyst to the accused, must not result in offenders involved in adulteration of the food/seed being permitted to go scot free, unless prejudice is established. Legitimate prosecution should not be scuttled on mere technicalities, in the absence of any proof of prejudice to the accused.

76. In *Dalchand Vs. Municipal Corporation, Bhopal and Another*, , the Supreme Court held thus :

...It is well to remember that quite of ten 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....

(Emphasis supplied)

77. Since the eventual test is one of prejudice, which is to be established, on the facts and circumstances of each case, by way of evidence adduced before the learned Magistrate, it is not for this Court, u/s 482, Cr.P.C. to infer or presume that even In case of delay, say of a few days, beyond the shelf life of the product, and in the absence of reasonable explanation for the delay In furnishing a copy of the report of the Public Analyst, the accused is prejudiced and his right, u/s 13(2) of the P.F.A. Act and Section 16(2) of the Seeds Act, is violated.

78. In exercise of its jurisdiction u/s 482, Cr.P.C. this Court does not take upon itself the task of examining the evidence or to record an independent finding that the delay in furnishing a copy of the public analyst's report has resulted in prejudice to the accused. Whether the delay is insignificant or inordinate, whether the delay is attributable to lapses of the prosecution in making available a copy of the public analyst's report, whether on account of the delay In making the report available, the right of the accused u/s 13(2) of the P.F.A. Act or Section 16(2) of the Seeds Act has been rendered illusory as the sample sent to the Central Laboratory is found unfit for analysis due to decomposition by passage of time or for any other reason attributed to lapses on the part of the prosecution, whether inordinate delay in sending the sample for analysis has, by passage of time, rendered the sample "adulterated" are all matters to be examined by the learned Magistrate, in the facts and circumstances of each case, on the basis of the evidence adduced. Delay, by itself and without anything more, cannot form the basis for the High Court, in exercise of its Jurisdiction u/s

482, Cr.P.C. to quash the criminal proceedings.

EXERCISE OF JURISDICTION u/s 482, C.P.C. ? ADULTERATION OFFENCES:

74. It is no doubt true that summoning an accused, in a criminal case, is a serious matter and criminal law cannot be set in motion as a matter of course. The accused can approach this Court, u/s 482, Cr.P.C. to have the proceedings quashed against him when the complaint does not make out any case against him and he is still required to undergo the agony of a criminal trial, for the provisions of Section 482 of the Code are devised to advance justice and not to frustrate it. *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, . u/s 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of Court or otherwise to secure the ends-of justice. But the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice can only be secured in accordance with law including procedural law and not otherwise, Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code. *Arun Shankar Shukla Vs. State of Uttar Pradesh and Others*, .

80. Exercise of power u/s 482 of the Code is the exception and not the rule. The Section does not confer any new powers but only saves the inherent power which the Court possesses. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. While exercising powers under the section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito Justifies to do real and substantial Justice for the administration of which alone Courts exist. While judicial process should not be an instrument of oppression, for, needless harassment, at the, same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that their decision, in exercise of this power, is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. *State of Karnataka Vs. M. Devendrappa and Another*, , *State of Andhra Pradesh Vs. Golconda Linga Swamy and Another*, .

81. Cases which require interference, u/s 482, Cr.P.C. are few and far between.

The most common cases where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction.

The inherent power u/s 482, Cr.P.C. must be exercised only in the rarest of rare cases, State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others, , State of Bihar Vs. Rajendra Agrawalla, , M. Narayandas Vs. State of Karnataka and Others, , Mohd. Malek Mondal v. Pranjal Bardalal (2005) 10 SCC 608 : 2005 Cri LJ 2613, for such a power does not confer arbitrary jurisdiction on the High Court to act according to whim or caprice. Kurukshetra University and Another Vs. State of Haryana and Another, .

82. In State of Punjab Vs. Devinder Kumar and Others, , a case under the P.F.A. Act, the Supreme Court held thus (Paras 8 and 9 of Cri LJ):

...Before concluding we should observe that the High Court committed a serious error In these cases in quashing the criminal proceedings in different Magistrates' Courts at a premature stage in exercise of its extraordinary jurisdiction u/s 482 of the Criminal Procedure Code. These are not cases where it can be said that there is no legal evidence at all in support of the prosecution. The prosecution has still to lead its evidence. It is neither expedient nor possible to arrive at a conclusion at this stage on the guilt or innocence of the accused on the material before the Court. While there is no doubt that the onus of proving the case is on the prosecution. It is equally clear that the prosecution should have sufficient opportunity to adduce all available evidence....

...These were not cases of that exceptional character where continuance of prosecution would have resulted either in waste of public time and money or in grave prejudice to the accused concerned. On the other hand this undue interference by the High Court has been responsible for these prosecutions in respect of grave economic offences remaining pending for a long time....

(Emphasis supplied)

JUDGMENTS RELIED UPON UNDER THE INSECTICIDES ACT:

83. It is necessary to note that the judgments, of the Supreme Court, relied upon on behalf of the petitioners, in State of Haryana Vs. Unique Farmaid P. Ltd. Ors., and Gupta Chemicals (P) Ltd., all arose under the Insecticides Act.

84. u/s 21(1)(e) of the Insecticides Act, 1968 the Insecticides Inspector has been conferred the power to take samples of any Insecticides and send the samples to the insecticides Analyst for analysis in the prescribed manner. Section 22 prescribes the procedure to be followed by the Insecticides Inspector and Sub-sections (5) and (6) thereof reads thus:

Section 22:

(5) Where an Insecticide Inspector takes a sample of an insecticide for the purpose of test or analysis, he shall intimate such purpose in writing in the

prescribed form to the person from whom he takes it, and in, the presence of such person unless he willfully absents himself, shall divide the sample into the portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked:

Provided that where the insecticide is made up in containers of small volume, instead of dividing a sample as aforesaid, the Insecticide Inspector may, and if the insecticide be such, that it is likely to deteriorate or be otherwise damaged by exposure shall take three of the said containers after suitably marking the same and, where necessary, sealing them.

(6) The Insecticide Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it and shall retain the remainder and dispose of the same as follows:

(i) one portion or container, he shall forthwith send to the Insecticide Analyst for test or analysts; and

(ii) the second, he shall produce to the Court before which proceedings, if any, are instituted in respect of the insecticide.

85. Section 24 relates to the report of the Insecticides Analyst and reads as under:

24 Report of Insecticide Analyst:

(1) The Insecticide Analyst to whom a sample of any insecticide has been submitted for test or analysis under Sub-section (6) of Section 22, shall, within a period of (Substituted for "Sixty" by the Insecticides (Amendment) Act, 2000) "Thirty" days, deliver to the Insecticide Inspector submitting It a signed report In duplicate In the prescribed form.

(2) The Insecticide Inspector on receipt thereof shall deliver one copy of the report to the person form whom the sample was taken and shall retain the other copy of use In any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by an Insecticide Analyst shall be evidence of facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty-eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector or the Court before which any proceeding in respect of the sample are pending that he intends to adduce evidence in contravention of the report.

(4) Unless the sample has already been tested or analysed in the Central Insecticides Laboratory, where a person has under Sub-section (3), notified his intention of adducing evidence in controversial of the Insecticide Analyst's report the Court may, of Its own motion or in its discretion at the request either of the complainant or of the accused, cause the sample of the Insecticide produced before the Magistrate under Sub-section (6) of Section 22 to be sent for test or analysis to the said laboratory, Substituted for "which shall make the test or

analysis" by the Insecticides (Amendment) Act, 2000 "which shall, within a period of thirty days, make the test or analysis" and report in writing signed by, or under the authority of, the Director of the Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Insecticides laboratory under Sub-section (4) shall be paid by the complainant or the accused as the Court shall direct.

86. Rule 19(1)(vii) of the Insecticides Rules, 1971, requires the label of a container to contain particulars of the expiry date i.e., the date before which the insecticide shall retain its efficiency and safety. Rule 24 of the Insecticides Rules, 1971 relates to the procedure on receipt of samples and reads as under:

24. Procedure on receipt of sample:

(1) On receipt of a package from an Insecticide Inspector containing a sample for test or analysis, the Insecticide Analyst shall compare the seals on the packet with the specimen impression received separately and shall note the condition of the seals on the packet.

2. Subs, by G.S.R. 533(E), dated 6th August, 1993 (w.e.f. 6th August, 1993). [(2) In making the test or analysis of Insecticides, it shall be sufficient if the Insecticides Analyst follows the specifications and the method of examination of samples as approved by the Registration Committee.)

(3) After the test or analysis has been carried out under Sub-rule (2), the Insecticides Analyst shall forthwith supply to the Insecticide Inspector a report in triplicate in Form IX of the result or test or analysis.

87. The report of the Insecticides Analyst is required to be furnished in Form IX which reads thus:

Form IX Report of Insecticide Analyst Form (See Rule 24(3))

1. Name of the Insecticide Inspector from whom received....
2. Serial No. and date of Insecticide Inspector's Memorandum....
3. Number of sample....
4. Date of receipt....
5. Name of the insecticide purporting to be contained in the sample....
6. Condition of the seals on the package....
7. Result of test or an analysis with protocols of test applied....

Date... Insecticide Analyst.

88. In National Organic Chemical Industries Ltd., the Insecticides Inspector took

two samples of Monocil and sent one sample to the public analyst who reported that the Ingredients used were less than the specifications and the sample was therefore adulterated. The request of the dealer to have the 2nd sample sent for analysis to the Central Insecticides Laboratory was not complied with and instead a complaint was lodged before the Chief Judicial Magistrate. On a petition filed, u/s 482, Cr.P.C. to quash the proceedings, the Punjab and Haryana High Court held that the delay in taking action and failure to send the sample to the Central Insecticide Laboratory had deprived the accused of their valuable defence and accordingly the proceedings were quashed. It is in this context that the Supreme Court, while examining the scope of Sections 22 and 24 of the Insecticides Act, held thus:

....Unfortunately, in this case, the appellant did not adopt the course as was required under the Act. Of course, the respondent, without availing of the remedy of report by the Director of CIL may not be entitled to plead deprivation of the statutory defence. But the complaint should be lodged with utmost dispatch so that the accused may opt to avail of the statutory defence. The appellant had not given the third sample, to the respondent. As a result, the respondent has been deprived of his statutory opportunity to have the sample tested by the CIL. Resultantly the respondent has been deprived of a valuable defence statutorily available to him. Under these circumstances, we think that further proceedings in the Court of the Chief Judicial Magistrate would be rendered fruitless. Consequently, though for different reasons the complaint quashed by the Court may be justified warranting no interference....

(Emphasis supplied)

89. In State of Haryana Vs. Unique Farmaid P. Ltd. Ors., , the Insecticides Inspector drew three samples of Monochrotophos-36% SL Insecticides. The Quality Control Laboratory reported that the sample was misbranded. Proceedings, u/s 482, Cr.P.C. were instituted on the ground that since the summons, asking them to appear in Court, was after the expiry date of the product, the accused had lost their right of getting the sample analyzed by the Central Insecticides Laboratory u/s 24(4) of the Act and asking them to stand trial was an abuse of process of Court in this context the Supreme Court held thus (at p. 2965, paras 5, 11 and 12 of Cri LJ):

...Sub-section (1) of Section 30 which appears to be relevant only prescribes in effect that ignorance would be of no defence but that does not mean that if there are contraventions of other mandatory provisions of the Act, the accused have no remedy. Procedure for testing the sample is prescribed and if it is contravened to the prejudice of the accused, he certainly has right to seek dismissal of the complaint. There cannot be two opinion about that. Then In order to safeguard the right of the accused to have the sample tested from Central Insecticides Laboratory, it is incumbent on the prosecution to file the complaint expeditiously so that the right of the accused is not lost. In the present case, by the time the respondents were asked to appear before the Court, expiry date of the

insecticide was already over and sending of sample to the Central Insecticides Laboratory at that late stage would be of no consequence. This issue is no longer *res Integra*. In *State of Punjab Vs. National Organic Chemical Industries Ltd.*, this Court in somewhat similar circumstances said that the procedure laid down u/s 24 of the Act deprived the accused to have sample tested by the Central Insecticides Laboratory and adduce evidence of the report so given in his defence. This Court stressed the need to lodge the complaint with utmost dispatch so that the accused may opt to avail the statutory defence. The Court held that the accused had been deprived of a valuable right statutorily available to him. On this view of the matter, the Court did not allow the criminal complaint to proceed against the accused. We have cases under the Drugs and Cosmetics Act, 1940 and the Prevention of Food Adulteration Act, 1954 involving the same question. In this connection reference be made to decisions of this Court in *State of Haryana Vs. Brij Lal Mittal and Others*, under the Drugs and Cosmetics Act, 1940: *Municipal Corporation of Delhi Vs. Ghisa Ram*, : *Chetumal Vs. State of Madhya Pradesh and Anr*, and *Calcutta Municipal Corporation Vs. Pawan Kumar Saraf and Another*, all under the Prevention of Food Adulteration Act, 1954.

It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under Sections (4) of Section 24 of the Act. Under Sections 3 of Section 24 report signed by the Insecticide Analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticides Inspector or the Court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases Insecticide inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the Court, shelf life of the sample had already expired and no purpose would have been served informing the Court of such an intention. The report of the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances the case accused have been deprived of that right, prejudicing them in their defence....

(Emphasis supplied)

90. In *Gupta Chemicals Private Ltd.*, the Insecticides Inspector collected a sample of pesticide and sent it for analysis. The Analyst reported that the material did not conform to the prescribed standards and was therefore misbranded. On receipt of the report, the manufacturers sent an intimation expressing their intention to lead evidence against the report. By the time prosecution was instituted, the shelf life of the insecticide had expired and on a petition filed to have the proceedings quashed, the High Court refused to interfere. When the manufacturer approached, by special leave, the Supreme Court held thus:

...From our perusal of the aforequoted provisions it is manifest that ordinarily in the absence of any material to the contrary, the report of the insecticides analyst will be accepted as final and conclusive of the material contained therewith. This is however subject to the right of the accused to have the sample examined by the Central Insecticides Laboratory provided he communicates his intentions for the purpose within 28 days of the receipt of the copy of the report. It needs no emphasis that this right vested under the statutes valuable for the defence, particularly in a case where the allegations are that the material does not confirm to prescribed standard. As noted to airlift in the present case the appellants had intimated the insecticide inspector their intention to have the sample tested in the Central Insecticides Laboratory within the prescribed period of 28 days of receipt of the copy of the State analyst report, yet no step was taken by the inspector either to send the sample to the Central Insecticides Laboratory or to file the complaint in the Court with promptitude in which case the appellants would have moved the Magistrate for appropriate order for the purpose. The resultant position is that due to sheer Inaction on the part of the inspector, it has not been possible for the appellants to have the sample examined by the Central Insecticides Laboratory and in the meantime, the shelf-life of the sample of the insecticide seized had expired and for that reason no further step could be taken for its examination. In the circumstances, we are of the view that continuing this criminal prosecution against the appellant will be a futile exercise and abuse of the process of Court. The High Court was not right in dismissing the petition filing u/s 482 of Cr.P.C....

(Emphasis supplied)

91. National Chemical Industries Ltd. is a case where the High Court, exercised its jurisdiction u/s 482, Cr.P.C. and quashed the proceedings holding that the prosecution had delayed taking action and had deprived the accused of its valuable defence due to delay and in not sending the sample in its custody for analysis to the Central Pesticides Laboratory. The Supreme Court, while holding that prima fade they were not impressed by the reasons given by the High Court, however, held that the ultimate conclusion given was right. The Apex Court held that while the accused, without availing the remedy of the report of Central Insecticides Laboratory, may not be entitled to plead deprivation of their statutory defence, the complaint should be lodged with utmost dispatch so that the accused may opt to avail their of statutory defence and since the accused was not given the third sample they were depraved of their statutory right to have the sample tested by the Central Insecticides Laboratory resulting in their being deprived of the valuable defence statutorily available to them. The question as to whether delay, by itself, had caused prejudice to the accused, did not arise for consideration. Further, the accused was not given one of the three samples as statutorily required u/s 22(6) of the Insecticides Act. The earlier judgment of a co4 ordinate bench in T.V. Usman Vs. Food Inspector, Tellicherry Municipality, Tellicherry, was also not noticed.

92. In Unique Farmaid also, the High Court, in exercise of its jurisdiction u/s 482, Cr.P.C. had quashed the proceedings. The Supreme Court considering the earlier judgment in Ghisa Ram 1967 Cri LJ 5939 , Chetumal Vs. State of Madhya Pradesh and Anr, , State of Haryana Vs. Brij Lal Mittal and Others, and National Organic Chemical Industries Ltd., held that since a procedure for testing the sample is prescribed and if it is contravened to the prejudice of the accused, he certainly has the right to seek dismissal of the complaint and in order to safeguard the rights of the accused to have the sample tested by the Central Insecticides Laboratory, it is incumbent on the prosecution to file the complaint expeditiously so that the right of the accused is not lost. In Unique Farmaid, the accused had notified its intention to adduce evidence in contra version of the report of the Insecticides Analyst and by the time summons were issued the shelf life of the pesticide had expired. The Supreme Court took note of the fact that, by the time the accused was to appear before the Court, the expiry date of the pesticide was already over and held that sending of the sample to the Central Insecticides Laboratory at a later stage Would be of no consequence.

93. It is necessary to note that while Municipal Corporation of Delhi Vs. Ghisa Ram, , Chetumal Vs. State of Madhya Pradesh and Anr, ,were cases which did riot arise u/s 482, Cr.P.C. and were all cases where the sample had been sent for analysis to the Central Laboratory, in National Organic Chemical Industries Ltd., the sample was itself not made available to the accused resulting in their not being able to send the sample for analysis to the Central Laboratory. 3n none of these cases did the question of delay in furnishing a copy of the report of the Public Analyst, by itself and without anything more, causing prejudice and depriving the accused of their right to have the sample sent for analysis to the Central Laboratory, arise for consideration.

94. In Gupta Chemicals, a petition was filed u/s 482, Cr.P.C. to quash the complaint on the ground that the inordinate delay in filing the complaint had deprived the accused of their valuable right to get the samples analysed by the Central Insecticides Laboratory. The accused had intimated the Insecticides Inspector of their intention to have the sample tested in the Central Insecticide Laboratory within the prescribed period of 28 days of receipt of the copy of the Insecticide Inspector's report, and yet no step was taken by the Inspector either to send the sample to the Central Insecticides Laboratory or to file the complaint in the Court with promptitude in which case the appellants would have moved the Magistrate for appropriate orders. The Supreme Court held that the right to have the sample sent for analysis to the Central Laboratory, a right vested under the statute, was valuable for the defence, particularly, in a case where the allegations were that the material did not conform to the prescribed standard and that, due to sheer inaction on the part of the inspector, it had not been possible for the appellants to have the sample examined by the Central Insecticides Laboratory and in the mean time, the shelf life of the sample of the insecticide had expired and for that reason no further steps could be taken for its examination. It is in such circumstances that the Supreme Court held that

continuation of criminal prosecution against the accused would be a futile exercise and an abuse of process of Court.

95. In all these three cases, i.e., State of Haryana Vs. Unique Farmaid P. Ltd. Ors., and Gupta Chemicals, the accused had exercised their right u/s 24(3) of the Insecticides Act and had notified their intention to adduce evidence in contra version of the report of the Government Analyst and it was in such circumstances that the Supreme Court held that expiry of the shelf life, before the complaint was lodged, had denied the accused their right to send the sample for analysis to the Central Insecticides Laboratory.

96. In State of Haryana Vs. Brij Lal Mittal and Others, . two samples of Sodium Chloride injection were taken from a medical shop by the Drugs Inspector and on being sent for analysis, the Analyst opined that both the samples were not of standard quality, were misbranded and adulterated. On a complaint being filed in the Court of the Chief Judicial Magistrate, process was issued against the persons arraigned. Proceedings instituted before the Punjab and Haryana High Court, u/s 482, Cr.P.C. resulted in the prosecution being quashed. In appeal, the Supreme Court held thus (Para 7 of Cri LJ):

...At the risk of repetition, we wish to emphasize that the right to get the sample examined by the Central Drugs Laboratory through the Court before which the prosecution is launched arises only after the person concerned notifies in writing the Inspector or the Court concerned (here the latter clause did not apply for the prosecution was yet to be initiated) within twenty-eight days from the receipt of the copy of the report of the Government Analyst that he intends to adduce evidence in controversial of the report. The complaint and its accompaniments (which include correspondences that took place between the Inspector and the manufacturers) clearly disclose that on 19.2.1991 the Inspector served the original copies of the Analyst's report upon the Managing Director of the manufacturers along with two letters asking for their comments. They further disclose that receiving no reply from the manufacturers the Inspector again wrote a letter on 6.3.1991 directing them to reply to his letters dated 19.2.1991 and asked whether they wanted to take benefit of the provisions of Section 25(3) of the Act. In spite thereof the manufacturers did not exercise their right (much less within 28 days from the date of the receipt of the report of the Government Analyst, i.e., 19.2.1991); and, on the contrary, in their letter dated 8.4.1991 (annexed to the complaint), sent in response to the letter dated 6.3.1991, asserted that their Quality Control Department examined and tested samples of the two drugs and found that they complied with the test of sterility. It must, therefore, be said that consequent upon their failure to notify the Inspector that they Intended to adduce evidence in controversial of the report within 28 days, not only the right of the manufacturers to get the same tested by the Central Drugs Laboratory through the Court concerned stood extinguished but the report of the Government Analyst also became conclusive evidence under Sub-section (3). The delay in filing the complaint till the expiry of the shelf-life of the drugs

could not, therefore, have been made a ground by the High Court to quash the prosecution....

(Emphasis supplied)

97. Since *State of Haryana Vs. Brij Lal Mittal and Others*, , arose under the Drugs and Cosmetics Act, it is necessary to refer, to Section 25 thereof which reads thus :

25 Reports of Government Analysts.:

(1) The Government Analyst to whom a sample of any drug a[a] Chapter IVA consisting of Sections 33-B to 33-O inserted by the Drugs and Cosmetics (Amendment) Act (13 of 1964), Section 26 (1.2.1969) for cosmetic has been submitted for test or analysis under Sub-section (4) of Section 23, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form.

(2) The Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken b(b) Substituted for the words and brackets "Ayurvedic (including Siddha) or Unani" by the Drugs and Cosmetics (Amendment) Act (68 of 1982), Section 2(a) [and another copy to the person, if any, whose name, address and other particulars have been disclosed u/s 18A], and shall retain the third copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken b(b) Substituted for the words and brackets "Ayurvedic (including Siddha) or Unani" by the Drugs and Cosmetics (Amendment) Act (68 of 1982), Section 2(a) or the person whose name, address and other particulars have been disclosed u/s 18A] has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that the intends to adduce evidence it controversial of the report.

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under Sub-section (3) notified his intention of adducing evidence in a controversial of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug a[a] Chapter IVA consisting of Sections 33-B to 33-0 inserted by the Drugs and Cosmetics (Amendment) Act (13 of 1964), Section 26 (1.2.1969). [or cosmetic) produced before the Magistrate under Sub-section (4) of Section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Drugs Laboratory under

Sub-section (4) shall be paid by the complainant or accused as the Court shall direct.

98. In *Brijlal Mittal*, the Punjab & Haryana High Court, in exercise of its jurisdiction u/s 482, Cr.P.C. had quashed the proceedings against the accused on the ground that the prosecution was launched after the shelf of the drug had expired and had held that, as a consequence thereof, the accused were deprived of their right to get the drugs tested by the Central Drugs Laboratory. The Supreme Court held that, u/s 25(3) of the Drugs and Cosmetics Act, the report of Government Analyst shall be conclusive unless the person from whom the sample was taken had, within 28 days of receipt of the report, informed in writing to the Inspector or the Court before which any proceedings, in respect of the sample, was pending that he intends to adduce evidence in contra version of the report. Under Sub-section (4) of Section 25, the right to get the sample tested by the Central Government Laboratory through the Court accrued to the accused only if he had earlier notified, in accordance with Sub-section (3), his intention of adducing evidence in contraversion of the report of the Government analyst. The Supreme Court held that, unless the requirement of Sub-section (3) was complied with, the person concerned could not avail of his right under Sub-section (4). While holding that the Punjab & Haryana High Court had not properly considered the provisions of Sub-section (3) of Section 25, the Supreme Court held that the right to get the sample examined by the Central Drug Laboratory, through the Court before which the prosecution is launched, arises only after the person concerned notifies, in writing, the Inspector or the Court concerned, within 28 days from the date of receipt of the report of the Government analyst, that he intends to adduce evidence in contra version of the report and since the manufacturer did not exercise its right and had failed to notify the Inspector that he intended to adduce evidence in contraversion of the report, not only the right of the manufacturer to get the sample tested by the Central Drugs Laboratory, through the Court concerned, stood extinguished, but the report of the Government analyst also became conclusive evidence under Sub-section (3). The Supreme Court held that "the delay in filing the complaint till the expiry of the shelf life of the product could not, therefore have been made a ground by the High Court to quash the prosecution.

99. Pre-requisite for sending the sample for analysis to the Central Laboratory, u/s 24(4) of the Insecticides Act, is the notification by the accused of his intention to adduce evidence in contraversion of the report of the public analyst. u/s 13(2) of the Prevention of Food Adulteration Act, and u/s 16(2) of the Seeds Act, after institution of prosecution, the accused may make an application to the Court to send the sample for analysis to the Central Laboratory. Right of the accused to have the sample sent for analysis to the Central Laboratory, both under the Prevention of Food Adulteration Act and the Seeds Act, is after prosecution is instituted. It is necessary to note that Sections 25(3) & (4) of the Drugs and Cosmetics Act is in part materia with Section 24(3) and (4) of the Insecticides Act. Since neither the Prevention of Food Adulteration Act nor the Seeds Act

contain provisions similar to Section 24(3) of the Insecticides Act or Section 25(3) of the Drugs and Cosmetics Act and do not provide for the accused to notify his intention to adduce evidence in contraversion of the report of the public analyst, the judgments of the Supreme Court, in *State of Haryana Vs. Unique Farmaid P. Ltd. Ors.*, and *Gupta Chemicals*, all of which arose under the Insecticides Act, cannot automatically be applied to cases which arise either under the Prevention of Food Adulteration Act or the Seeds Act, for it is not a sound principle of construction to interpret the provisions of one enactment following the decisions rendered under a provision in another enactment when the two statutes are not in part materia. *Babu Khan and Others Vs. Nazim Khan (dead) by Lrs. and Others*, .

100. In *Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another*, , the landlord filed a writ petition before the Madras High Court taking the stand that since he was not willing for renewal of the lease deed in favour of the tenant, it was liable for eviction. The tenant took the stand that certain benefits under the Madras City Tenants Protection Act, 1921 was available to it. Though reliance was placed by the landlord on the decision of the Supreme Court in *Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das*, , the High Court held that where the landlord had rejected the request for extension, the only remedy available was to take appropriate proceedings to evict the tenant by moving the appropriate Court. It was held that the matter could not have been agitated in the writ petition. The landlord filed a writ appeal and the Division Bench of the Madras High Court came to hold that since no factual controversy was involved, therefore, in the background of what had been said in *Hindustan Petroleum*, the order of eviction was to be passed and accordingly allowed the writ petition. Before the Supreme Court, the learned Counsel for the appellants submitted that in *Hindustan Petroleum* there was no provision parallel to either Section 3 or 9 of the Tenants Act and the ratio in the said decision had, therefore, no application. The Supreme Court held thus (Paras 8 to 12 of AIR):

...As rightly submitted by learned Counsel for the appellants, provisions similar to Sections 3 and 9 of the Tenants Act were not under consideration in *Hindustan Petroleum* case.

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Eculid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated, Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* 1951 AC 737 (AC at p. 761) Lord Mac

Dermott observed : (All ER p. 14 C-D).

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of Interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge....

In *Home Office v. Dorset Yacht Co.* (1970) 2 All ER 294 Lord Reid said, "Lord Atkin's speech...is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in *Shepherd Homes Ltd. v. Sandham* (No. 2) (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament." And, In *Herrington v. British Railways Board*: (1972) 2 WLR 537 Lord Morris said: (All ER p. 761c).

There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

* * * Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.

(Emphasis supplied)

101. In *Ashwani Kumar Singh Vs. U.P. Public Service Commission and Others, and Union of India (UOI) Vs. Amrit Lal Manchanda and Another*, the Supreme Court held thus (Para 15 of Cri LJ):

...Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems for as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes. To

interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes....

(Emphasis supplied)

102. Since the provisions of the Prevention of Food Adulteration Act and the Seeds Act are not in pari materia with the provisions of the Insecticides Act, it is not a sound principle of construction to interpret Section 13(2) of the Prevention of Food Adulteration Act and Section 16(2) of the Seeds Act, on the basis of the decisions of the Supreme Court, in National Organic Chemical Industries Ltd., Unique Farmaid and Gupta Chemicals Ltd., all of which arose u/s 24(3) & (4) of the Insecticides Act.

To sum up :

103. 1. Since the object and purpose of the PFA Act is to eliminate danger to human life and health from the sale of unwholesome articles of food, strict adherence to the PFA Act and the rules made thereunder is essential. In offences relating to food articles, strict liability is the rule.

2. The report of the public analyst, u/s 13(1) of the PFA Act and Section 16(1) of the Seeds Act, forms the basis for institution of prosecution for adulteration offences. This report, prima facie, indicates that the accused have sold adulterated food/seed.

3. The option given for analysis to the Central Laboratory, is to enable them to ascertain the correctness or otherwise of the findings of the public analyst. This valuable right, u/s 13(2) of the PFA Act and Section 16(2) of Seeds Act, if denied, would cause prejudice to the accused.

4. Denial of the right of the accused, u/s 13(2) of the PFA Act and Section 16(2) of the Seeds Act, would arise only when the accused have applied to the Court to have the sample sent for analysis to the Central Laboratory. Failure to exercise this option or to make an application to the Court, requesting that the sample be sent for analysis to the Central Laboratory, would disentitle the accused from contending that they have been denied their right u/s 13(2) of the PFA Act and Section 16(2) of the Seeds Act. Babu Lal Hargovindas Vs. The State of Gujarat, , Jagdish Prasad alias Jagdish Prasad Gupta Vs. State of West Bengal, , Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra, . Prabhu AIR 1994 SCW 2649 , Tulsiram Vs. State of Madhya Pradesh, , G.S. Prasad 2003 Cri LJ 231, and Gangaiahnaidu Rama Krishna.

5. "Best Before date", under Rule 32 of the PFA Rules, merely requires the manufacturer to indicate the period during which the product would remain fully marketable and retain its specific qualities. Explanation VIII (i) thereunder provides that beyond the "Best Before date", the food may still be perfectly

satisfactory.

6. Expiry of the "Best Before" date or the shelf life of the product would only enable a manufacturer to disclaim liability regarding the marketability and the specific qualities of the product. Expiry of the shelf life would not automatically render the sample unfit for analysis.

7. The "Best Before" date would vary from one article to another. Similarly the extent of delay in furnishing a copy of the report of the public analyst to the accused would vary from one case to another.

8. Rule 4(5) of the Prevention of Food Adulteration Rules, read with Form II of Appendix-A thereof, requires the Central Laboratory to certify as to whether the sample sent to it for analysis is fit for analysis or not and in case it is found unfit for analysis to certify the reasons therefor.

9. The PFA Act and the Rules made thereunder cast a duty on the Central Laboratory to certify whether or not the sample is set for analysis.

10. Whether the sample is fit for analysis or has decomposed to such an extent as to render it incapable of analysis are all matters to be examined by the Central Laboratory.

11. It is only if the Central Laboratory certifies that the sample is unfit for analysis and this has resulted due to the delay on the part of the prosecution to furnish a copy of the report of the public analyst to the accused, can the accused be said to have suffered prejudice. (Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra, , Charanji Lal Vs. State of Punjab, , T.V. Usman Vs. Food Inspector, Tellicherry Municipality, Tellicherry, , G.S. Prasad 2003 Cri LJ 231 and Gangaiahnaidu Ramakrishna).

12. If the sample has not been sent for analysis to the Central Laboratory and the Central Laboratory has not certified that the sample has decomposed, rendering it unfit for analysis, mere delay in furnishing the report of the public analyst to the accused cannot, by itself, be said to have caused prejudice to the accused.

13. Power u/s 482, Cr.P.C. is to be exercised sparingly, with circumspection, and in the rarest of rare cases. This power is not to be used to stifle legitimate prosecution. Inherent powers u/s 482, Cr.P.C. do not confer arbitrary jurisdiction on the High Court to act according to whim or caprice.

14. In proceedings u/s 482, Cr.P.C. the High Court does not take upon itself the task of appreciating the evidence on record or to record an independent finding that the delay in furnishing a copy of the report of the public analyst has resulted in prejudice to the accused.

15. Whether delay, in furnishing a copy of the report of the public analyst, has resulted in prejudice to the accused and whether the prosecution has furnished a satisfactory explanation for the delay, are all matters of evidence, to be

examined by the trial Court and not for this Court to infer in proceedings u/s 482, Cr.P.C.

16. Section 24(3) and (4) of the Insecticides Act is in part *materia* with the provisions of Section 15(3) and (4) of the Drugs and Cosmetics Act. u/s 24(3) of the Insecticides Act and Section 25(3) of the Drugs and Cosmetics Act, on receipt of the report of the public analyst the person from whom the sample has been taken, or any other person concerned, is required, within 28 days of receipt of a copy of the report, to notify in writing, the Inspector or the Court, of his intention to adduce evidence in contraversion of the report.

17. In *The State of Punjab Vs. Kulwant Singh, , and Gupta Chemicals*, the accused had, u/s 24(3) of the Insecticides Act, notified their intention of adducing evidence in contraversion of the report of the public analyst.

18. In *State of Haryana Vs. Brij Lal Mittal and Others*, the Supreme Court held that, in cases where the accused has not intimated his intention to adduce evidence in contraversion of the report of the public analyst the delay, in filing the complaint after the expiry of the shelf life of the product, could not be made a ground to quash the prosecution.

19. In cases where the accused have not even requested or made an application to the Court to have the sample sent for analysis to the Central Laboratory, delay in furnishing a copy of the report of the public analyst, beyond the shelf life of the product, cannot be made a ground to quash the prosecution.

20. There is no provision similar to Section 24(3) and (4) of the Insecticides Act, either under the Prevention of Food Adulteration Act or the Seeds Act, requiring the accused to notify his intention to adduce evidence in contraversion of the report of the public analyst.

21. Where two statutes are not in *pari materia*, the decision rendered on a provision in one enactment would not constitute a binding precedent to interpret a provision in another enactment. *Babu Khan and Others Vs. Nazim Khan (dead) by Lrs. and Others*, and *N.R. Vairamani AIR 2004 SC 4778*.

Now to the judgments of this Court:

104. Though *The Food Inspector Vs. Busa Gangadhar*, were not u/s 482, Cr.P.C. this Court observed that prejudice has to be inferred in the absence of a reasonable explanation, by the authorities concerned, for the delay in furnishing a copy of the report of the public analyst to the accused.

105. This Court, in *G.S. Prasad 2003 Cri LJ 231* and *Gangaiah Naidu Ramakrishna*, (proceedings u/s 482 Cr.P.C), has held that evidence has to be adduced before the criminal Court to show that the sample sent to the Central Laboratory has become unfit for analysis, and has thereby caused prejudice to the accused and that delay in furnishing a copy of the public analyst's report to the accused, after expiry of the shelf life of the product cannot, by itself, be said

to have resulted in prejudice to the accused.

106. On the other hand in *Matha Venkateswara Rao and Others Vs. State, , Mallela Laxmi, M/s. Vivekananda Seeds, China Venkata Narasimha Rao and S.S. Sujala*, (Proceedings u/s 482 Cr.P.C). this Court held that the delay in furnishing a copy of the report of the public analyst, after expiry of the shelf life of the product, had resulted in denial to the accused of his right u/s 13(2) of the PFA Act and Section 16(2) of the Seeds Act and in the absence of reasonable explanation for the delay, it must be inferred that the accused has suffered prejudice.

BINDING PRECEDENTS : CONFLICTING JUDGMENTS OF SINGLE JUDGES : REFERENCE TO DIVISION BENCH

107. Would the conflicting views expressed in the aforesaid judgments of Single Judges of this Court necessitate these batch of cases being referred to a Division Bench for adjudication?

108. It is well to remember that certainty of the law and consistency of rulings are fundamental to the rule of law and form the core of judicial discipline. Judicial discipline envisages that a co-ordinate Bench follow the decision of an earlier co-ordinate Bench. If a co-ordinate Bench does not agree with the principles of law enunciated by the other Bench, the matter may be referred to a larger Bench. But no decision can be arrived at contrary to or inconsistent with the law laid down by the co-ordinate Bench. *State of Punjab and Another Vs. Devans Modern Breweries Ltd. and Another, , Chandra Prakash v. State of U.P. : (2002)IILLJ841SC* . Benches of High Courts should not, normally, differ from earlier judgments tendered by benches of co-ordinate jurisdiction merely because they hold a different view on a question of law for the reason that certainty and uniformity in the administration of justice is of paramount importance, If, however, the earlier judgment is erroneous or adherence to the rule of precedents would result in manifest injustice, differing from the earlier judgment is permissible. Even in such cases of difference, the latter bench of co-ordinate jurisdiction has to refer the question for the decision of a larger bench. *State of U.P. v. Synthetics and Chemicals Ltd. (1991) 1 SCC 139; Prakasa Reddi and Others Vs. Jonnala Pitchareddi and Another, ; and Commissioner of Income Tax v. B.R. Constructions (1994) 1 An. W.R. 450 (FB)*). If a Bench of co-ordinate jurisdiction disagrees with another Bench of coordinate jurisdiction, whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety, forms the basis of judicial procedure and it must be respected at all costs. *Dr. Vijay Laxmi Sadho Vs. Jagdish, .* If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of co-ordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is

unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of the opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts, subordinate to the High Court, would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court. *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, , *Shridhar Vs. Nagar Palika, Jaunpur and Others*, .

109. One cannot, however, lose sight of the fact that in *Matha Venkateswarao* 2002, CrL LJ 2891, *Smt. Mallela Laxmi and Others Vs. State of Andhra Pradesh*, , *Vivekananda Seeds, Chima Venkata Narasimha Rao, and S.S. Sujala*, the earlier judgments of the Supreme Court in *Babu Lal Hargovindas Vs. The State of Gujarat*, , *Jagdish Prasad alias Jagdish Prasad Gupta Vs. State of West Bengal*, , *Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra*, , *Prabhu* AIR 1994 SCW 2649 . *Jagdish Prasad alias Jagdish Prasad Gupta Vs. State of West Bengal*, and *Charanji Lal Vs. State of Punjab*, . all of which arose under the Prevention of Food Adulteration Act, were not noticed.

110. In *Nirmal Jeet Kaur Vs. The State of Madhya Pradesh and Another*, the Supreme Court referred with approval to the observations, in *Young v. Bristol Aeroplane Co. Ltd.* 1944 (2) All ER 293, that the "quotable in law", is avoided if it is rendered in ignorance of binding authority. Similar view has been taken by the Supreme Court in *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, . The law declared by the Supreme Court binds Courts in India *Rajeswar Prasad Misra v. State of W.B.* AIR 1965 SC 1887 . It is well to remember that on the law laid down by the Supreme Court. Judicial discipline to abide by the declaration of law, of the Supreme Court, cannot be forsaken by any Court, be it even the highest Court in a State, oblivious of Article 141 of the Constitution of India. *Chandra Prakash : (2002)IILLJ841SC ; State of Orissa Vs. Dhaniram Luhar*, . The decisions of the Supreme Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because In doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. (Chandra Prakash).

111. In *Director of Settlements, A.P. v. M.R. Apparao* the Supreme Court held thus: (Para 7 of AIR)

...Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is,

therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decided is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court see *Ballabhadras Mathurdas Lakhani and Others Vs. Municipal Committee, Malkapur*, and AIR 197 3CC 794. When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate Court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which has been set aside by that Supreme Court is a nullity. See *Narinder Singh Vs. Surjit Singh*, and *Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another*, .

(Emphasis supplied).

112. The judgments of the Supreme Court in *Babu Lal Hargovindas Vs. The State of Gujarat*, . *Jagdish Prasad alias Jagdish Prasad Gupta Vs. State of West Bengal*, , *Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra*, , *Prabhu AIR 1994 SCW 2649* , *Tulsiram Vs. State of Madhya Pradesh*, and *Charanji Lal Vs. State of Punjab*, , all of which arose under the Prevention of Food Adulteration Act, are binding both on the Division bench and Single Judges of this Court. As stated above, the aforesaid judgments of the Supreme Court were not noticed in *Matha Venkateswara Rao and Others Vs. State*, , *Smt. Mallela Laxmi and Others Vs. State of Andhra Pradesh*, , *Vivekananda Seeds, Chinna Venkatanarasimha Rao and S.S. Sujala*. while a contrary view may have been taken in these judgments of this Court, in ignorance of the aforementioned judgments of the Supreme Court, it needs no emphasis that, whatever may be the view expressed by this Court, it is the law laid down by the Supreme Court which is required to

be followed.

CONCLUSION:

113. In these four criminal petitions the accused have not exercised their option, u/s 13(2) of the Prevention of Adulteration Act and Section 16(2) of the Seeds Act, and have not requested or made an application to the Court to send the sample for analysis to the Central Laboratory. The delay in furnishing a copy of the report of the public analyst cannot, therefore, be said to have caused prejudice to them. It is only if the petitioners herein had made a request and if, on the sample being sent thereafter to the Central Laboratory, the Central Laboratory had certified that the sample had so decomposed as to render it unfit for analysis, can the petitioners herein be said to have suffered prejudice. In any event these are all matters for the learned Magistrate to examine on the basis of evidence, in the facts and circumstances of each case, and not for this Court to infer in proceedings u/s 482 Cr.P.C.

114. Criminal petition Nos. 4325 of 2003, 3701 of 2004, 3856 of 2005 and 1007 of 2003 fail and are accordingly dismissed.