

(2009) 07 GUJ CK 0029
In the Gujarat High Court

Case No : Criminal Revision Application No. 118 of 1999 with Cri.R.A. No. 199 of 1999

Laljibhai Amratlal Thakkar and Another APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397(2), 401
Prevention of Food Adulteration Act, 1954 — Section 11(1), 13(2), 14, 16(1), 19
Prevention of Food Adulteration Rules, 1955 — Rule 11, 12, 13, 14, 14

Citation : (2010) CriLJ 565 : (2011) 2 Crimes 398 : (2009) 3 GLH 25 : (2009) 3 GLR 2361

Hon'ble Judges : J.R. Vora, J

Bench : Single Bench

Advocate : B.S. Patel, in Cri. Revi. appli. No. 118 of 1999 and D.K. Modi, in Cri. Revi. appli. No. 199 of 1999, for the Appellant; H.L. Jani, Addl. P.P., for the Respondent

Judgement

J.R. Vora, J.—Both the above Criminal Revision Applications are directed u/s 397(2) read with Section 401 of Code of Criminal Procedure against the same judgment and order dated 2-2-1999 passed by the Additional Sessions Judge, Vadodara in Criminal Appeal Nos. 1 of 1996 and 2 of 1996. Both the applicants of the above Criminal Revision Applications, being accused of Criminal Case No. 465 of 1987 came to be prosecuted by learned Judicial Magistrate, First Class, 3rd Court of Vadodara for the offence punishable u/s 2(1a)(a)(b)(c)(m), Section 7(iv), Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954. Vide judgment and order dated 19th January, 1996, Judicial Magistrate, First Class, 3rd Court, Vadodara, convicted both the applicants being accused Nos. 1 and 2 for the offence punishable under Sections 7(i), 16(1) and under Sections 7(ii) and 16(1) and each of the accused came to be sentenced for rigorous imprisonment for six months and to pay fine of Rs. 1,000/-, in default, to undergo rigorous imprisonment for one month. Both the applicants paid the fine and learned Judicial Magistrate suspended sentence of imprisonment. Both the

accused preferred Criminal Appeal Nos. 1 of 1996 and 2 of 1996 in the Court of Sessions Judge at Baroda against their conviction and sentence as awarded by learned Judicial Magistrate. Accused No. 1-Laljibhai Amrutlal Thakkar preferred Criminal Appeal No. 1 of 1996, while accused No. 2-Lalchand Dayaram preferred Criminal Appeal No. 2 of 1996. Learned Additional Sessions Judge at Baroda, vide his judgment and order, common in both the appeals, dismissed both the Criminal Appeal Nos. 1 of 1996 and 2 of 1996 vide judgment and order dated 2nd February, 1999, and hence, these Criminal Revision Applications by both the accused before this Court. Accused No. 1-Laljibhai Amrutlal Thakkar preferred Criminal Revision Application No. 118 of 1999, while accused No. 2-Lalchand Dayaram preferred Criminal Revision Application No. 199 of 1999.

2. Referring to the facts of the case, it appears that on 24th February, 1987, original complainant-Food Inspector Mr. S.S. Nagar, as duly authorized and appointed under the provisions of Prevention of Food Adulteration Act, 1954, visited the grocery shop of accused No. 1-Laljibhai Amrutlal Thakkar at village-Sevasi of Baroda Taluka. Mr. Nagar was accompanied by one Panch Govindbhai Ambalal Patel. On reaching the shop, complainant-Food Inspector conveyed to accused No. 1 about his intention to purchase the sample of groundnut oil in prescribed Form No. 6. Necessary formality which was required to be observed by the complainant was observed and sample of groundnut oil was purchased at the price of Rs. 8.40 ps which was paid to accused No. 1. Food Inspector had three clean bottles with him as taken from his office and a sample was collected and properly sealed in the manner as has been mentioned in the complaint as well as in the panchnama. One bottle was forwarded to the Chemical Analyzer at Baroda along with memorandum Form No. 7 and specimen seal was separately handed over to Public Analyst. Remaining two bottles were handed over to Assistant Commissioner and Local (Health) Authority along with a memorandum. On receiving the report of Public Analyst, it was found that the sample which was forwarded to him for analysis was not in accordance with the standard prescribed by the Prevention of Food Adulteration Act, and Rules and therefore, on 17th September, 1987, papers were put up before the Local (Health) Authority for consent and sanction came to be granted by the Local (Health) Authority to prosecute accused Nos. 1 and 2, because, it was found that the said groundnut oil was purchased by accused Nos. 1 from accused No. 2, and hence, a complaint came to be filed before the Court of learned Magistrate. Process was issued against both the accused and accused No. 1, vide application Exh. 3 requested the Court of Magistrate to send one sample to Central Food Laboratory, Gaziabad for analysis. Learned Magistrate, after following due procedure and obtaining part of the sample from Local (Health) Authority, sent the same to the Central Food Laboratory, Gaziabad. A report was received by the Court of Magistrate, wherein also it was found that sample did not conform to the standard of groundnut oil as has been prescribed in the Prevention of Food Adulteration Act and the Rules. After some evidence, the trial Court framed charge against both the accused for aforesaid offences at Exh. 41 and they pleaded not guilty and

they were tried further. Prosecution examined the complainant-Food Inspector vide Exh. 14 and he produced on record his appointment and authorization vide Notification Exh. 15. Vide Exh. 16 office copy of the notice issued to the accused is produced. Vide Exh. 17 a label of the part of the groundnut oil as recovered by the Food Inspector is produced. Exh. 18 is the receipt for the amount paid to accused No. 1 for purchase of groundnut oil. Vide Exh. 19, panchnama is produced. Vide Exh. 20, a memorandum and vide Exh. 21, a receipt of Local (Health) Authority to have received sample is produced. Sample was received by Public Analyst and receipt of Public Analyst is produced at Exh. 22. Impression of seal is produced at Exh. 23. Vide Exh. 25, a report of Local (Health) Authority is produced. Vide Exh. 27, sanction to prosecute both the accused is also produced. Vide Exh. 28, an office copy of the notice issued to the accused as per Rule 13(2) of the Prevention of Food Adulteration Rules, 1955 is produced. Vide Exhs. 29 and 30, letters by which the Court forwarded extra sample to Central Food Laboratory are produced. Vide Exhs. 32 and 33, report and forwarding letter of Central Food Laboratory are placed on record and other necessary documents in this respect are produced vide Exhs. 35, 36 and 37. At Exh. 67, Panch Govindbhai Ambalal Patel has been examined by the prosecution and he has turned hostile. On prosecution case being over, learned Magistrate recorded statements of both the accused under Sec 313 of Code of Criminal Procedure, 1973 wherein, both the accused took the defence of total denial.

3. Accused No. 1 examined himself at Exh. 70. He produced on record vide Exh. 71 a bill by which he had purchased the said groundnut oil from accused No. 2. In examination-in-cross, duplicate copy of Exh. 71 is produced at Exh. 72. Vide Exh. 73, in examination-in-cross, accused No. 2 also produced one more bill under which he had sold groundnut oil, to show that how and in what manner sale takes place. Complainant placed on record written arguments at Exh. 76. Accused No. 1 also placed written arguments at Exh. 85 and after hearing the learned Advocate for accused No. 2, learned Magistrate came to the above conclusion to convict and sentence both the accused for the above said offences and the learned Sessions Judge confirmed the conclusions of learned Magistrate by dismissing both the Criminal Appeal Nos. 1 and 2 of 1999.

4. In Criminal Revision Application No. 118 of 1999 filed by original accused No. 1, learned Advocate Mr. B.S. Patel appeared and argued for applicant, while in Criminal Revision Application No. 199 of 1999, for and on behalf of original accused No. 2-applicant, learned Advocate Mr. D.K. Modi appeared and was heard in detail. Learned A.P.P. Mr. H.L. Jani in both the revision applications was heard for the respondent.

5. On going through the judgment of both the Courts below, it is found that concurrent findings of facts are that, the prosecution proved beyond reasonable doubt that at given time and period, accused No. 1 sold sample of groundnut oil to Food Inspector-complainant as per the deposition of Food Inspector as well as according to panchnama Exh. 19. It is also concurrent finding of fact by both the

Courts below that sample was duly sent to Public Analyst and according to the report Exh. 7 of Public Analyst, groundnut oil sample which was sent to the Laboratory was not conforming to the standard as prescribed under the Prevention of Food Adulteration Act, 1954 (for short "the Act") and the Rules, and as further confirmed by Central Food Laboratory, Gaziabad. Therefore, accused No. 1 was found guilty for the offence punishable under Sections 7(i) and 16(1) of the said Act. There is also concurrent finding of fact by both the Courts below that accused No. 1 is not entitled to acquittal on account of defence which he had taken during the trial about warranty. It is also concurrent finding of fact by both the Courts below that accused No. 2 had sold groundnut oil in question to accused No. 1 and he was liable to be punished in pursuance of Section 7(ii) of the said Act, and ultimately, for breach of Section 16(1) of the said Act.

6. Both the learned Advocates for the applicants in both the revision applications have adopted almost common arguments except both the Advocates deferred on the contention as to warranty or implied warranty under which accused No. 1 purchased groundnut oil from accused No. 2. It is the case of accused No. 1 that in the bill of Exh. 71, implied warranty is included, while it is the case of accused No. 2 that he had not sold any such groundnut oil to accused No. 1 and question of warranty would not arise. Except that, both the learned Advocates have raised common contentions which shall be dealt with in detail as under.

7. On facts, it is vehemently argued that to prove that Rules 14 to 18 of the Prevention of Food Adulteration Rules, 1955 (for short "the said Rules"), is complied with, no other independent witness has been examined by the prosecution. Panch has turned hostile. It has not been proved that sample of food for the purpose of analysis had been taken in clean and dry bottles or jars or any other suitable containers and were closed sufficiently tight to prevent leakage, evaporation and to prevent entering of moisture. It is vehemently submitted that it is a law laid down by this Court and other Courts that it should be proved that bottles in which samples were taken were dried and cleaned and in presence of Food Inspector, the bottle ought to have been dried and made clean. It is submitted that it is admitted by the Food Inspector in his deposition that he had not himself cleaned the bottles, and breach of this mandatory rule must result in acquittal of both the accused.

8. True, it is that Rules 14 to 18 for sealing etc. are mandatory rules and compliance is necessary. It must not be forgotten that whether any rule, even mandatory rule has been complied with or not is always question of fact and has to be judged from the evidence recorded during the trial. There may be variety of cases in which from the evidence recorded, the Court might have come to a conclusion that there was a breach of Rules 14 to 18, but that conclusion would be a conclusion of fact in each case and cannot be a precedent for the other case which may be on different facts. This Court has carefully gone through the evidence of Food Inspector and the evidence of panchnama. True that Panch has

turned hostile, but still the panchnama is proved by the complainant who is Food Inspector who has been examined. It is found with certainty that Food Inspector did visit the shop of accused No. 1 and had purchased 100 grams of groundnut oil, and accordingly, had paid Rs. 8.40 ps. Necessary receipt of this purchase is at Exh. 18 which could not be challenged by the accused in the trial Court. It is also very clear from the deposition of the Food Inspector that before he purchased groundnut oil, he made shopkeeper-accused No. 1 to stir well material in the tins of groundnut oil. Both the Courts below have dealt with this question of fact in detail and have come to a conclusion with sound reasons that the procedure for obtaining the sample in clean and dry bottles by the Food Inspector was proved beyond any doubt. It is also proved by documentary evidence on record that, procedure for sealing bottles and forwarding the same to Public Analyst as well as to Local (Health) Authority has also been very well established by the Food Inspector and nothing is brought about in examination-in-cross of the Food Inspector by both the accused that the procedure was defective as to result in breach of Rule 11 to Rule 14 of the said Rules. What is found is that right from Rule 14 to Rule 18 of the said Rules are scrupulously followed by the Food Inspector and nothing is shown either before the trial Court by accused Nos. 1 and 2 nor before this Court as to come to a conclusion that this mandatory requirement was not followed.

8.1 Though, it is vehemently urged that there is an admission on the part of the Food Inspector that he himself had not cleaned the bottles and there was no evidence except Food Inspector that bottles were dried in which the sample was obtained.

8.2 In this respect, it must be noted that Rule 14 of the Prevention of Food Adulteration Rules, 1955 mandates that samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation or in the case of dry substance, entrance of moisture and shall be carefully sealed. Now, it is the question of fact in each case as to whether it has been proved that the bottles were dried and cleaned in which samples were taken. It must be noted that it is not requirement of law even of Rule 14 that bottles should be made clean and dry by Food Inspector himself or bottle should be made clean and dry in the presence of Food Inspector as has been contended by both the learned Advocates. There may be cases on facts that Courts might have come to a conclusion that Food Inspector failed to prove that bottles were cleaned and dried, but as said above, it is always a question of fact. In the present case, when evidence of Food Inspector is appreciated, he has stated in no uncertain terms that before taking sample, accused No. 1 had stirred the material contained in a tin very well before the Food Inspector as mentioned in Para 5 of the deposition of the Food Inspector. The bottles were dry, clean and odourless in which the samples were taken is also deposed by the Food Inspector in Para 5. Not only that, bottles were examined by accused No. 1 and panchas as well and they were satisfied that the bottles were dry, clean and odourless and were

competent for the samples to be taken. Now, this aspect of the prosecution case is very well established by the Food Inspector as there is no reason that why Food Inspector should not be believed in respect of this procedure which he adopted in presence of the accused. Even it has not been challenged that accused has not examined the bottle to be dried and cleaned. When it is not requirement of law that the bottles should be made clean and dry by the Food Inspector himself or if this process takes place in the presence of Food Inspector, it is futile to say that only because Food Inspector deposed that bottles were not made clean or dry in his presence, the accused were entitled to acquittal for breach of mandatory Rule 14. Only requirement of Rule 14 is that the bottle should be cleaned and dried. Prosecution is duty-bound to prove that bottles are in condition as mandated by Rule 14. In the present case, the Food Inspector, by his deposition and which is extremely truthful and credible, has not only ascertained about the condition of the bottles, but the accused No. 1 also satisfied himself as to condition of the bottles which were in accordance with the mandate of Rule 14. The contention that accused are entitled to acquittal for breach of Rules 14 to 18 is of no avail to the applicants at this stage when the concurrent finding is against both the applicants. This Court has also undertaken appreciation of evidence of Food Inspector and has found nothing to disbelieve his say that there was no breach of Rules 14 to 18.

8.3 Learned Advocates have cited many authorities for this contention which may be noted as below:

- (1) State of Gujarat v. Babu Lavji Jalia 1997 (2) FAC 26 (Guj.)
- (2) State of Gujarat v. Jitendrakumar Motilal Dubai and Ors. in Criminal Appeal No. 704 of 1996 decided on 7-9-2005 (Guj.).
- (3) C.D. Pate I, Food Inspector v. Popatlal Jivaji Thakor 2005 (1) FAC 46 (Guj.)
- (4) State of Gujarat v. Mahmadsalim Ibrahim Memon 2005 (1) FAC 85 (Para 4)
- (5) Decision dated 12-2-2006 in case of State of Gujarat v. Rajendrakumar Melabhai Patel Criminal Appeal No. 404 of 1996 (Guj.)
- (6) Harkant L. Shukla v. Dinesh Kumar D. Buddhbhatti and Anr. 2007 FAC 323 (Para 3)
- (7) State of Gujarat v. Doshi Chhabildas Shivilal and Ors. 2008 (1) FAC 59 (Guj.)
- (8) State of Gujarat v. Dineshbhai Keshavlal Patel (Vendor) and Anr. 2007 (2) FAC 152
- (9) Decision dated 14-3-2008 in the case of State of Gujarat v. Champalal Gekchand Parekh and Ors. in Criminal Appeal No. 706 of 1998 (Guj.)
- (10) Decision dated 13-5-2009 in the case of State of Gujarat through S.S. Patel, Food Inspector v. Shyamal Tolaram Kourani in Misc. Criminal Application No. 16203 of 2008 (Guj.)

8.4 All the above decisions are on the facts of those cases. As above said, the Court may come to a conclusion that the statement of the Food Inspector was not reliable on given facts and may come to a conclusion that there was a breach of Rule 14. However, when there are no requirement of law that the bottle should be made clean and dry in the presence of Food Inspector, it becomes a question of fact whether to believe or not the deposition of Food Inspector of having the bottles cleaned and dried. In the present case, as above stated, this Court has carefully gone through the evidence of the Food Inspector and there is no iota of reason that he should be disbelieved in respect of the procedure he followed and for the purchase of sample from accused No. 1, and that the bottles were not established to be cleaned and dried. This contention has no substance at all and must be rejected.

9. Then, it is contended that there is breach of Section 11(1)(c)(ii) of the said Act. It is contended that the samples were not sent to the Analyst under intimation to Local (Health) Authority and that memorandums were not prepared. To deal with this contention, again, it is required to refer that this Court has gone carefully through the evidence of Food Inspector and nowhere it is found that there was any breach in this respect. It is amply clear from the evidence of Food Inspector that one sample was sent to Analyst at Baroda, while on 25th February, 1987, along with memorandum, two samples were sent to Local (Health) Authority duly sealed. In Paras 9 and 10 of deposition of the complainant, the sealing procedure as well as forwarding of samples to Local (Health) Authority is also established. In support of his deposition, Food Inspector also produced on record documentary evidence. Exh. 21 is a forwarding letter addressed to the Local (Health) Authority by the Food Inspector for the purpose of Section 11(1)(c)(ii) of the said Act, wherein, it is mentioned that two samples were forwarded to Local (Health) Authority, while one sample was forwarded to Public Analyst through D.M. Parmar. Local (Health) Authority, i.e. R.V. Shah has signed in receipt of this letter at Exh. 21. There is no scope for arguing that there is no compliance of Section 11(1)(c)(ii). This evidence could not be dislodged by the accused in cross-examination, and hence, this Court is unable to accept this contention.

10. Next it was urged specifically for accused No. 2, original dealer of the groundnut oil that there was no charge against accused No. 2 u/s 7(ii) of the said Act. It was submitted that even in sanction given by the concerned authority which is at Exh. 27, consent is given to prosecute accused No. 2 for contravention of Section 7(i) of the said Act. It is contended therefor, that Sub-section (ii) of Section 7 prohibits manufacture for sale or store or sell or distribute any misbranded food and it is not the case of the prosecution that accused No. 2 manufactured, sold or stored misbranded food. It is contended, that therefore, sanction was accorded for breach of Section 7(ii) for misbranded food. Charge is also framed for breach of Section 7(ii) of the Prevention of Food Adulteration Act against case accused No. 2 and he came to be convicted for contravention of Section 7(i) of the said Act which is illegal and prejudicing to

accused No. 2, and hence, he is required to be acquitted only on this ground.

10.1. Dealing with this contention, it is mentioned that Section 7 of the Prevention of Food Adulteration Act, 1954 prohibits manufacturing, selling etc. of certain articles of food. Section 7(i) prohibits any misbranded food and Sub-section (ii) of Section 7 prohibits any adulterated food. In the present case, sample of food i.e. groundnut oil was found adulterated and certainly there was no case of misbranded article sold or stored by accused No. 2. This Court has gone to the background and evidence of the prosecution case. It is to be noted that when sanction was accorded which is at Exh. 20, all the relevant papers were forwarded to the sanctioning authority and after taking into consideration all the necessary papers, Local (Health) Authority came to a conclusion that accused Nos. 1 and 2 are required to be prosecuted. It is clear from the contents of the sanction that it is narrated in uncertain terms by the Assistant Commissioner of Local Health Authority that he had gone through the subject case and that Public Analyst had declared sample of food article "Sing Tel" to be adulterated as per the provision as contained in the Prevention of Food Adulteration Act, and therefore, being satisfied, sanction was accorded. Mentioning in the sanction the provision of law to be 7(i) instead of 7(ii). In the view of this Court, this simple error would not make any difference, because, it was well within the knowledge of sanctioning authority that the sample which was sent to Public Analyst was found adulterated and not misbranded. This fact was very well known to the accused Nos. 1 and 2 as well, and therefore, mentioning Section 7(i) instead of 7(ii) of the Prevention of Food Adulteration Act, in the sanction, in no case, would so prejudiced the accused as to give them benefit of acquittal on this technical ground as there is nothing but ministerial error apparent on the face of the record. Both the accused were tried for selling adulterated food and not misbranded food that was amply made clear in the complaint and accused Nos. 1 and 2 both understood the case against them, and therefore, it could not be said that on account of mistake in quoting provision of law slightly through error, would entitle the accused for acquittal. Same reasons may be given for rejecting the contention that charge is also defective. True, it is that in charge for accused No. 2, contravention of Section 7(i) is written, but before quoting the provision in charge at Exh. 41, the gist of the case against both the accused, in clear detail, mentioned by which any one can understand that what case has to be faced by the accused. Merely by quoting a wrong provision in the charge, there is no prejudice to the accused when gist of the charge is very well given in that charge itself. Learned A.P.P. Mr. H.L. Jani rightly relied upon a decision of the Apex Court in the matter of Dinesh Seth v. State of N.C.T. of Delhi as reported in 2008 (3) GLH 298, wherein, ratio has been laid down by the Apex Court that an error or omission or irregularity in framing charge is not sufficient for upsetting conviction unless prejudice or failure of justice is shown. The appellant had an opportunity to defend himself during cross-examination and accused-appellant knew very well what was the case against him. In view of this, we reject the contention of the applicants in this regard.

Though, it has been argued by learned Advocate Mr. Modi that decision of the Apex Court would not be applicable to the facts of the case and that in the present case, to prosecute accused, sanction is necessary which is defective, while in case before the Supreme Court, sanction was not necessary. This contention also cannot be upheld, because, simple error in sanction itself as above stated, would not make the sanction so invalid as to benefit the accused specially when the substance of accusation is made clear in the sanction itself.

11. It was then contended that substance which was obtained was edible oil and by nature, this substance is required to be so stirred to make it homogeneous. Learned Advocate Mr. Modi also relied upon some I.S.I. mark definition. Dealing with this contention, it is sufficient to say that in the deposition of Food Inspector, he has established that before taking sample, the whole substance in tin was stirred by the vendor in his presence and according to this Court, this is sufficient compliance to make sample homogeneous of edible oil. This fact could not be dislodged by the defence in examination-in-cross that whole tin from which sample was obtained was stirred carefully by the vendor before the Food Inspector obtained the sample. The contention, therefore, has no substance. Decisions cited by learned Advocates for the applicants in this regard are as under:

(1) State of Gujarat v. Gamnaji Bhuraji Prajapati in Criminal Appeal No. 1883 of 2004 decided on 4-7-2006 (Guj.)

(2) State of Gujarat v. Laljibhai Ishwarbhai Zala in Criminal Appeal No. 841 of 2003 decided on 15-2-2007.

(3) State of Gujarat v. Laghadhirbhai Vaghjibhai Prajapati as reported in 2008 (1) FAC 381.

All these three decisions are on the facts of each case and not helpful to the applicants.

12. Then, it was contended that there was breach of Rule 4(3) of the said rules. Sub-rule (3) of Rule 4 provides that sample 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 and 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. It is contended that when Court of Magistrate, upon request of accused No. 1 forwarded sample to Central Food Laboratory, prevention of Rule 4(3) has been committed. A decision of this Court in the matter of State of Gujarat v. Ramaribhai Durlabhbhai Patel and Anr. as reported in 1997 (2) GLH 457 is relied upon. It is contended that on record, there is only one window slip found for sending sample to Central Food Laboratory, Gaziabad and no postal acknowledgment is placed on record. According to the learned Advocates, in fact, two separate covers could be sent to the Central Food Laboratory; one for

sample and the other for the impression of seal and that has not been done by the trial Court and for mandatory breach of this Rule, accused are entitled to acquittal and this fact has not been considered properly by the Courts below.

12.1. Dealing with the contention, it is found that Exh. 3 application was preferred by the accused before the trial Court stating that one part of sample which were lying with the Assistant Commissioner and Local (Health) Authority be summoned and forwarded to Central Food Laboratory. The trial Court summoned samples which were lying with the Local (Health) Authority which is also proved from the record. Below Exh. 4, the Magistrate has passed a detailed order that bottles called for from the Local (Health) Authority were found in sealed condition and copy of the memorandum was kept with the Court. That memorandum is placed at Exh. 5. Vide Exh. 6, the trial Court has sent samples to the Director, Central Food Laboratory, Gaziabad and it has been mentioned specifically in the letter that copy of the memorandum and the specimen seal impression used to seal the container and the cover were sent separately by Registered Post A.D. One R.P.A.D. slip is also placed on record. It appears that contention is that memorandum and the specimen impression of seal has not been sent separately, and therefore, prejudice. In this regard, it is necessary again to look at the provision of Rule 4(3) of the said Rules. This provision only mandates that samples of food for analysis and copy of memorandum of specimen impression of seal contained in the cover shall be sent separately by Registered Post A.D. It is not provided for that the samples of food and copy of memorandum of specimen impression of seal should be sent in separate covers. In this respect, a decision of the Supreme Court in the matter of State of H.P. Vs. Narendra Kumar and Another, would be helpful. In respect to sending food sample and memorandum and seal of impression separately, the Supreme Court ruled categorically that provision is not to be read in the manner that sample of food and copy of memorandum and impression of seal should be sent in different packets. Both of them can be sent by Food Inspector or the Court in the same packet separately and that would be a sufficient compliance of mandatory provision. Further, it must be noted that report of Central Food Laboratory is placed at Exh. 33, while forwarding letter of the said Laboratory is placed at Exh. 32. The certificate contained in Exh. 33 as has been given by the Central Food Laboratory in uncertain terms establishes that the seals on samples' container were intact. Seals on the cover of sample container as well as on outer cover of sample parcel were also intact and tallied with the specimen impression of seal given on copy of the memorandum forwarded separately. This certificate clearly establishes beyond doubt that mandatory requirement of Rule 4(3) has been fully complied with. This certificate Exh. 33 has not been challenged by any of the accused in any of the two Courts below, and therefore, there is no substance at all in the contention that the Court committed breach of mandatory rules, i.e. Rule 4(3) of the said Rules. The decision cited by learned Advocate for the applicants is not helpful to them.

13. Now, we come to the contention raised separately by both the accused,

where both applicants, i.e. accused Nos. 1 and 2, each has raised defence in respect of warranty? Accused No. 2 raised contention that concerned groundnut oil was never sold by him to accused No. 1, while accused No. 1, relying upon Exh. 71 Credit Memo, defended that he was covered by the defence of warranty. Dealing with this contention, as has been raised vehemently by both the learned Advocates contrary to each other, it is found that accused No. 1 had purchased the said groundnut oil from accused No. 2 and that is established by the bill produced by him at Exh. 71. It is necessary to advert to deposition of complainant-Food Inspector in this regard. In Para 7, Food Inspector deposed that after he purchased the groundnut oil from accused No. 1, he inquired that from where accused No. 1 did purchase the groundnut oil and the accused No. 1 at that point of time had produced bill No. 762 which is Credit Memo dated 12th February, 1987 in the name of accused No. 2. Food Inspector further stated that on strength of statement of accused No. 1, he made further inquiry and issued notice under Rule 12 to accused No. 2. Accused No. 2 received the said notice duly and replied to it, which is placed at Exh. 34. In the reply, though stand"was taken by the accused No. 2 that he had not sold the sample in question to accused No. 1, but he admitted that Maheshkumar Lalchand is a trading and proprietary firm and Lalchand Dayaram was the sole proprietor of proprietary firm Maheshkumar Lalchand. Accused No. 1-applicant herein, has examined himself on oath. Accused No. 2 has cross-examined accused No. 1 and appreciating deposition of accused No. 1, he in uncertain terms stated that he was carrying on grains and grocery shop at village Sevasi and that Food Inspector had visited his shop and had taken samples. He also deposed that he had purchased the said oil in sealed packed condition from accused No. 2 for which bill was issued which was produced at Exh. 71. Thus, purchase of oil by accused No. 1 from accused No. 2 is established through Exh. 71. In all five tins were sold. In examination-in-cross, he denied the fact that in fact, goods of Exh. 71 was sold by accused No. 2 to one Vinodchandra Lalchand, brother of accused No. 1. Thereafter, accused No. 2 in examination-in-cross produced on record duplicate of Exh. 71 which is proved and placed at Exh. 72 which was bearing signature of Thakkar Vinodchandra Lalchand in the bottom part of the bill. To that, accused No. 1 explained that the bottom part of it contained signature of Vinodchandra Lalchand which was cut out from the bill while passing through the gate though accused No. 1 denied that Exh. 72 contained signature of Vinodchandra Lalchand, and therefore, there is no scope for the contention raised on behalf of the accused No. 2 that he had not sold the goods to accused No. 1, because, accused No. 2, in cross-examination could not dislodge whatever stated by the accused No. 1 about the purchase of oil in examination-in-chief, and appreciating Exh. 71 and Exh. 72, it clearly appears that Exh. 72 is duplicate bill of Exh. 71 and Exh. 72 has been placed on record from the custody of accused No. 2. Accused No. 1 has explained that lower portion of Exh. 71 was cut while passing of the goods through gate of the business premises of accused No. 2 otherwise, Exh. 72 is exact duplicate of Exh. 71, and therefore, it could not be said that the goods were not sold by accused No. 2 to accused No. 1. Merely

because in deposition in opening line accused No. 1 stated that he had purchased goods from Maheshkumar Lalchand would not dislodge the evidence of accused No. 1 which is required to be considered as a whole. Contention that accused No. 2 never sold the goods to accused No. 1 is required to be rejected. This contention was raised in the trial Court as well as before the first appellate Court and as a question of fact, the Court below decided against the accused No. 2.

13.1. Now, if the contention of accused No. 1 is dealt with as to warranty contained in Exh. 71 and that defence is available to accused No. 1 as per Section 14 of the said Act, it is found that the defence of warranty is also not available to accused No. 1. Learned Advocate Mr. B.S. Patel, on behalf of accused No. 1 vehemently argued that in the shop, two tins were found in packed condition and label was of some Apeksha Industries, Chorwad, and therefore, accused No. 2 was not manufacturer, but one Apeksha Industries was manufacture and accused No. 2 was not liable. In this regard, it must be mentioned that both the Courts below dealt with this argument and have come to a conclusion that Food Inspector did inquire about Apeksha Industries, Chorwad, but there was no existence of Apeksha Industries. In any case, on a question of fact, it is proved beyond doubt that accused No. 2 sold the concerned oil to accused No. 1 for which Exh. 71, Exh. 72 and the deposition of accused No. 1 along with deposition of Food Inspector are sufficient evidence. Now, learned Advocate Mr. B.S. Patel for accused No. 1 argued that in Exh. 71, warranty, as envisaged by the Act, has been offered by the seller accused No. 2, and therefore, defence of warranty in pursuance of Section 14 and proviso thereto, is available to accused No. 1, and he is protected by the warranty below Exh. 71, wherein, it is certified that "foods mentioned in this invoice are warranted to be the same in nature and substance and quality as that demanded by the vendor. Learned Advocate Mr. B.S. Patel relied upon two decisions of this Court; one in the matter of the State of Gujarat v. Kantilal Chimanlal as reported in 1979 Cri. LJ 470 (Guj.) and another in the case of B.C. Patel v. Jai Hind Stores and Ors. as reported in 1998 (2) GLH 866. It is contended that it is not necessary that warranty should be in prescribed Form No. VIA as prescribed in the Prevention of Food Adulteration Act, 1954. Learned Advocate Mr. Patel, harping on proviso to Section 14 stated that even invoice, cash memorandum or a bill given by a manufacturer or distributor for article which is sold or manufactured shall be deemed to be warranty given by such manufacturer, distributor or dealer under this Section. Learned Advocate Mr. B.S. Patel stated that both the Courts below did not believe the defence of accused No. 1 as to warranty because, the warranty was not in prescribed Form No. VIA as prescribed in the Prevention of Food Adulteration Rules, 1955. It is submitted that by virtue of proviso to Section 14, no such form is mandatory and warranty contained in invoice etc. would be sufficient to operate as warranty and that Exh. 71 bill by which accused No. 1 purchased the concerned oil contained that warranty.

13.2. This Court is unable to accept the argument of learned Advocate Mr. B.S. Patel as to warranty. True, it is that proviso to Section 14 makes it clear 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 given by such manufacturer, distributor or dealer under this Section. Section 14 provides that no manufacturer or distributor of, or dealer in any article of food, sell such article to any vendor unless he also gives a warranty in writing in prescribed form about the nature and quality of such article to the vendor. Now, the effect of proviso to Section 14 is that the warranty as prescribed by Section 14 may not be separately given by the vendor, but it may be embodied in bill, cash memorandum or invoice in respect of any article of food. But mandatory nature of Section 14 that warranty should be, in substance, as prescribed by Rule remains the same and proviso only dilutes mandatory character of Section 14 to the extent that it is not necessary that warranty should be separately provided by the vendor. It might be embodied in the bill, cash memorandum or invoice as given. The decision referred to above by learned Advocate Mr. B.S. Patel is not helpful to him, because, in the decision of the State of Gujarat v. Kantilal Chimanlal (supra), this Court made it clear that reading the proviso appended to Section 14 conjointly with Section 19(2) of the Act, in the facts of that case, defence u/s 19(2) was well laid.

13.3. In substance, reading Section 14 and proviso thereto, it clearly appears that if the words in the warranty can reasonably be interpreted to have the same effect as certifying the nature, substance and quality of article of food, then, the warranty will fall within the proviso. Now, the other decision which is cited by learned Advocate Mr. B.S. Patel in the case of B.C. Patel, Food Inspector v. Jai Hind Stores (supra), it was found that bill produced by vendor referred to the name of Lucky Canning Company and was representing warranty in view of deeming fiction in proviso to Section 14 of the Act, meaning thereby, that words and language used represented prescribed criteria as mandated by Section 14 in that case. While in the present case, it is not so, what is warranted is the substance and quality as demanded by the vendor and what is required is this that warranty should be in the form representing that vendor should certify that food mentioned in the invoice warranted to be of the nature and quality which it purports to be. What is mentioned in Exh. 71 is nothing but statement of vendor that the food or article represented what was demanded by the purchaser, while what is required by the Act is the warranty to the extent that the article or food sold must be of the nature and quality which it purported to be. In the present case, when article is edible oil, warranty should be that when it purports to be edible oil it must be edible oil. Instead, in this case, warranty is that the food or article which was sold by accused No. 2 was of the quality and nature as was demanded by the vendor, and therefore, in these circumstances, both the Courts rightly held that warranty was not in the form as prescribed under the Form 5A u/s 14 of the said Act. Accused No. 1, is therefore, not entitled to protection of the defence of warranty. It is necessary to refer to the decision of this Court in the case of State of Gujarat Vs. Bhagchand Sadhumal and Another, wherein, this

Court, after relying upon the decision of the Supreme Court, observed as under:

The trial Court also erred in appreciating the concept of warranty. Section 19 is for protection of the vendors. However, Sub-clause (2) of Section 19 is relevant, which reads as under:

19(2). A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves-

(a) that he purchased the article of food-

(i) in a case where a licence is prescribed for the sale thereof, from a duly licenced manufacturer, distributor or dealer;

(ii) in another case, from any manufacture, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state he purchased it.

8.1. The trial Court seems to have shifted the burden on the prosecution to prove that the accused No. 1 has purchased the article of food from accused No. 2 and as the prosecution has not proved, the benefit requires to be given to the accused No. 1. It was the case of accused No. 1 that he purchased the article of food from accused No. 2. It is for the accused No. 1 to prove that he purchased the article of food with a written warranty as contemplated in Section 19(2) of the Act and that the article of food, while in his possession, he stored it in the same condition as he purchased it.

8.2. Rule 12A refers to warranty, which reads as under:

12A. Every manufacturer, distributor or dealer selling an article of food to a vendor shall give either separately or in the bill, cash memo or label, a warranty in Form VIA.

8.3. Thus, reading Section 19(2) and Rule 12A, it becomes clear that if the vendor wants to take up a defence with a view to exonerate himself, then it is for him to prove that he purchased the article of food with a written warranty in terms of Rule 12A. It is for the vendor to prove that he purchased from the manufacturer as contemplated u/s 19(2) of the Act. It was submitted before the Court that on the container, name of the manufacturer was printed and it was also mentioned on the label that it was laboratory tested, and therefore, it could be said that the goods were supplied by accused No. 2 with a written warranty.

8.4. In the case of M/s. Murlidhar Shyamlal and another Vs. State of Assam, on the container there was a printed label reading as "New Rice & Oil Mill, Raha, pure mustard oil (Biswanath Brand) net wet. 16 kg." The Apex Court in Paragraph 9 held as under:

It would only indicate that the packed tin containing the same weighing 16 kg. (net) with a printed label on it "New Rice & Oil Mill, Raha, pure mustard oil

(Biswanath Brand) net wet. 16 kg." was stored for sale in the said premises. From this, it is contended that the appellant had the warranty and that, therefore, by operation of Section 19(2) read with Rule 12A, the appellant is absolved of his liability to be prosecuted for sale of the adulterated article of food. We are afraid that we cannot accept the contention. In view of the above warranty as envisaged under Form VIA, there must be specific mention therein by the dealer or distributor or manufacturer, that the article of food sold was in the same nature and quality of the article of food, as the case may be. Then only he would get acquitted, though the article of food was found adulterated. It would be then open to the prosecution to proceed against the manufacturer, dealer or distributor".

Thus, Apex Court has made it very clear that in view of the warranty as envisaged under Form 5A, there must be specific mention therein by the dealer or distributor or manufacturer that the article of food sold was in the same nature and quality of the article of food as the case may be. Then, he would get acquitted. Proviso to Section 14, therefore, only envisages that warranty as may be representing the substance of Form 5A must be there to take defence of warranty and such warranty may not be separately given but may be embodied in invoice, bill etc. In view of the above, the contention of accused No. 2 that he had not sold the food article to accused No. 1 cannot be accepted in view of overwhelming evidence, documentary as well, on record and the contention of accused No. 1 that what is endorsed below Exh. 71 is by virtue of proviso to Section 14 could be considered as warranty and accused No. 1 be exonerated, cannot also be accepted in any circumstances.

14. Thus, in view of the discussion as mentioned above and for the reasons recorded, none of the revisions has any substance, and therefore, following order is passed:

Both the Revision Applications, being Criminal Revision Application No. 118 of 1999 and Criminal Revision Application No. 199 of 1999 stand dismissed. The applicant in each revision application is on bail by virtue of the orders passed by this Court. Bail bonds of each of the applicants in both the revision applications stand cancelled. Each of the applicants to surrender before the trial Court for serving of sentence within 8 (eight) weeks from today. Rule is discharged in each of the revision application.