

(1961) 02 GUJ CK 0001
In the Gujarat High Court

Case No : Criminal Revision Application No. 265 of 1960

Mohanlal Chhaganlal Mithaiwala

APPELLANT

Vs

Vipanchandra R. Gandhi and Another

RESPONDENT

Date of Decision : 28-02-1961

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21
Prevention of Food Adulteration Act, 1954 — Section 13, 13(5)

Citation : AIR 1962 Guj 44 : (1961) GLR 735

Hon'ble Judges : J.M. Shelat, J;A.R. Bakshi, J

Bench : Division Bench

Advocate : B.R. Shah, for the Appellant; H.K. Thakore, Asst. Govt. Pleader and A.D. Desai, for the Respondent

Final Decision : Dismissed

Judgement

Shelat, J.—The principal ground urged by Mr. Shall on behalf of the petitioner was that the proviso to Section 13(5) of the Act was ultra vires inasmuch as that proviso violated the fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution; that the Act did not lay down or indicate any standard for the guidance of the Director or the Public Analyst and conferred absolute, naked and arbitrary powers upon these officers; that the presumption arising out of the certificate issued by the Director was not a conclusive presumption but a rebuttable one and, therefore, the petitioner was entitled to challenge the facts stated therein by means of cross-examination or by leading evidence of some other expert.

2. Section 13 of the Act provides first for the report of a Public Analyst in respect of the result of the analysis of an article of food submitted to him by a Food Inspector for analysis. Sub-section (2) provides that after the institution of a prosecution, the accused-vendor or the complainant may make an application to the Court for sending a part of the sample mentioned in Section 11 to the Director of the Central Food Laboratory for a certificate and on receipt of the

application, the Court shall first ascertain if 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 his analysis. Under Sub-section (3) of Section 13, the certificate issued by the Director supersedes the report given by the Public Analyst under Sub-section (1). Sub-section (5) then lays down that any document purporting to be a report signed by a Public Analyst, unless it has been superseded under subsection (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 this Act or under Sections 272 to 276 of the Penal Code. The proviso then states that any document purporting to be a certificate signed by the Director shall be final and conclusive evidence of the facts stated therein.

3. It may be observed that under this section a right to apply for analysis by the Laboratory and for a certificate by the Director is given to both the parties, the vendor and the complainant and the provisions of Sub-section (5) and the proviso thereto would, therefore, apply to the certificate obtained in the manner provided for in the section by either of the parties. Any disadvantage if at all there could be one, that may accrue or arise from the proviso which makes the facts stated in this certificate final and conclusive would apply equally to either side and not merely to the vendor-accused. u/s 13 the certificate has to be in the prescribed form. There is no dispute in this case that the certificate issued by the Director is in the form prescribed under the Act. Under the powers conferred by Sub-section (2) of Section 4 and subsection (1) of Section 23 of the Act, the Central Government after consultation with the Central Committee for Food Standards has also made certain rules. Appendix B contains certain rules which lay down the definitions and standards of quality. Amongst these rules is Rule A. 11.14 which deals with Ghee and provides that Ghee means pure clarified fat solely from milk or from curds or from cream to which no colouring matter or preservative has been added. The rule then lays down certain specifications to which having reference to certain areas of the country, Ghee in question has to conform. Rule 4 of Appendix A inter alia provides for the requisite fees and also provides that a certificate issued under these rules by the Laboratory should be signed by the Director. Rule 5 then provides that the standards of quality of the various articles of food specified in Appendix B to these rules are as defined in that Appendix. In the present case, however no question of any standards of quality arises as the certificate of the Director is to the effect that no ghee in fact was found at all in the sample sent to him by the learned Magistrate for analysis and/or tests. It is clear from the provisions of Section 13 and these rules that what the Public Analyst or the Director of the Central Food Laboratory has to do is to state whether the article which he has analysed contains certain ingredients and whether it conforms to the standards of quality laid down in these rules. The

report of the certificate would therefore contain factual data in respect of the article sent for analysis or test. Under the proviso to Section 13(5) of the Act, the finality or conclusiveness is thus attributed to these facts stated in the certificate of the Director. It would be then for the Court to determine, no doubt after considering the facts stated in the certificate, whether the article of food in question is adulterated food or not. In other words, this would be a question of law which is left to be decided by the Court. What is thus final and conclusive in the certificate is the finding on an analysis or test of the constituents in the sample sent, their proportions etc. The form prescribed by the Act clearly contemplates that the Analyst has merely to give his opinion as to whether the article which he analysed has an excess or deficiency in constituents. The vendor would still be entitled to lead evidence or otherwise show that the article of food in question is not adulterated food. For instance, if the vendor wants to establish that some of the ingredients of ghee are liable to get evaporated from the Ghee having been boiled at high temperature while manufacturing the sweetmeat in question or that some change takes place chemical or otherwise by the ingredients of the Ghee used in the preparation being mixed with the other fats or that a change takes place in the article in question owing to lapse of time or delay in making its analysis, the vendor can do so in spite of the facts stated in the certificate of the Director though made final and conclusive under the proviso.

4. Counsel for the petitioner contended that if the trial of the petitioner was governed by the rules of evidence laid down in the Evidence Act, the vendor accused would be able to challenge the test or analysis made by the Central Laboratory, subject the person who made the test or analysis to cross-examination and point out thereby the innocence of the vendor-accused. He argued that by giving finality and conclusiveness to the facts stated in the certificate, this right of cross-examination and establishing his innocence was taken away from the vendor-accused. The proviso to Section 13(5) of the Act thus creates a classification which classification has no rational basis nor any nexus with the objects the policy of the Act. He, therefore, contended that the proviso to Section 13(5) of the Act was ultra vires as being in contravention of the rights guaranteed to him under Articles 14, 19 and 21 of the Constitution. The Learned Counsel for the petitioner argued that there was both classification and discrimination by means of procedural change viz. in laying down a rule of evidence which deprived him of the opportunity of testing the correctness of the facts stated in the certificate of the Director and thereby establishing his innocence and in both these respects the proviso laid down discrimination in violation of the provisions of Article 14.

5. Article 14 by now has been a subject-matter of discussion in several decisions of the Supreme Court. In *The State of Bombay and Another Vs. F.N. Balsara*, , the Supreme Court was dealing with the Bombay Prohibition Act and the constitutional validity of certain sections contained therein. Referring to their previous decision in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, their Lordships summarized the principles laid down by them in that

decision as follows:--

"(1) The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its law are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

(2) The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

(3) The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.

(4) The principle does not take away from the State the power of classifying persons for legitimate purposes.

(5) Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.

(6) If a law deals equally with members of a well defined class, it is not obvious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

(7) While reasonable classification is permissible, such classification must be based upon real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis. In effect, Article 14 requires that all persons subject to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed. In *Sakhawat Ali Vs. The State of Orissa*, , the same principle was again laid down, viz. that the classification must have a reasonable relation to the object or purpose sought to be achieved by the impugned legislation. In *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , their Lordships observed that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. Two conditions, however, must be fulfilled in order to pass the test of permissible classification, viz., (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different considerations, viz., geographical, or according to objects or occupations or the like. But what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

They also laid down that Article 14 coudemns discrimination not only by a substantive law but also by a law of procedure. In *C.I. Emden Vs. State of Uttar Pradesh*, , while dealing with the presumption laid down in Section 4(1) of the Prevention of Corruption Act, 1947, the Supreme Court again laid down the same principles and upheld the validity of Section 4(1) of the Prevention of Corruption Act on the ground of intelligible differentia and a reasonable nexus with the object of the Act. In dealing with the question of "reasonable nexus", their Lordships observed that in enacting that Act and in particular Section 4(1), there could be no doubt that the basis adopted by the Legislature in classifying one class of public servants was a perfectly rational basis. It was based on an intelligible differentia and there can be no difficulty in distinguishing the class of persons covered by that section from other classes of persons who are accused of committing other offences. They further observed that the Legislature presumably realised that experience in Courts showed how difficult it was to bring home to the accused persons the charge of bribery; evidence which was and could be generally adduced in such cases in support of the charge was apt to be treated as tainted, and so it was not very easy to establish the charge of bribery beyond a reasonable doubt. The Legislature felt that the evil of corruption amongst public servants posed a serious problem and had to be effectively rooted out in the interest of clean and efficient administration. That was why the Legislature decided to enact Section 4(1) with a view to require the raising of the statutory presumption as soon as the condition precedent prescribed by it in that behalf was satisfied. The object which the Legislature thus wanted to achieve was the eradication of corruption from amongst public servants, and between that object and the intelligible differentia on which the classification was based there was a rational and direct relation. Two principles, therefore, emerge from this decision.

(1) that equality of law does not involve an absolute concept of equality of human beings and that it only means that amongst equals the law should be equal and should be equally administered and

(2) that in order to achieve a classification there must be intelligible differentia and a reasonable nexus with the object or objects of the Act in question.

On these principles we have to consider whether the proviso to Section 13(5) of the Act is in violation of the provisions of Article 14.

6. Mr. Shah concedes that he cannot object to the proviso on the ground that it creates a classification which is not supported by the principles laid down by the Supreme Court. It is obvious that the classification is one for all persons who deal in articles of food throughout the whole country and since the Act applies to all of them and the law is the same for all of them, there is no question of any inequality or discrimination amongst them. But he contended that this is not sufficient for there should not be not only any discrimination or inequality in the applicability of the Act but that there should not be any inequality or discrimination as regards even the procedural law. He submitted that such

discrimination or inequality arise by reason of the finality and collusiveness given to the facts stated in the certificate of the Director. The proviso to Section 13(5) deprives an accused of his right to challenge the correctness of the facts stated in the certificate and, therefore, it amounts to deprivation of his right to defend and prove his innocence. He contended that in order that such discrimination can escape the application of Article 14 it must be supported by the two tests : (1) intelligible differentia and (2) rational nexus of the proviso with the object or objects of the Act. Strictly speaking, the proviso does not lay down any special procedure for the trial but lays down a rule of evidence whereby a certain probative value is given to the statements in the certificate of the Director. To bestow a full appreciation to these contentions, it is necessary to analyse Section 13. As we have observed, the scheme of Section 13 is first to have a report of the Public Analyst of the article of food in question. The report is a condition precedent for the launching of prosecution against a vendor-accused. If after the institution of such a prosecution either of the parties i.e. the vendor or the complainant is not satisfied with that report, sub-section (2) gives both of them liberty to make an application to the Court for sending the sample to the Director and to obtain a certificate from him. Such a certificate supersedes the report of the Public Analyst. Under Sub-section (5) the report and the certificate are made evidence the object being not to necessitate a formal proof. The report of the Public Analyst is not made conclusive under the proviso but the facts stated in the certificate are given finality and conclusiveness against which, no doubt, no evidence of rebuttal is permissible. Now, the object of the Act as seen from the title and the preamble is the prevention of adulteration of food. In other words, the object is to achieve purity of food and the maintenance of public health. The Legislature presumably intended while enacting this statute, that those responsible for such adulteration are brought to book and the mischief or the evil perpetrated by them is prevented. A speedy trial of a case under the Act would be ancillary to the main object which the Legislature had in view; for unless the offender is prevented soon from continuing the mischief, the very object of the Act was likely to be frustrated. But It was argued by Mr. Shah that the object or purpose of giving finality and conclusiveness to the facts stated in the certificate was to obviate inconvenience and harassment that may be caused to the Director if he were to be summoned as a witness in each case and subjected to cross-examination or if the facts stated in the certificate were made rebuttable. There may be perhaps something in it and incidentally the proviso may have that effect. But it would appear from the scheme of Section 13 that the object in enacting that section, was to have finality of a test and an analysis So as to prevent prolonged trials and the long lapse of time between the trial and the analysis and/or test. In our view, a classification it the proviso can be said to have that effect is supported by both the tests laid down by the Supreme Court. In effect, no real hardship or prejudice would be caused to the vendor-accused by reason of the proviso having been inserted in Section 13. As pointed out Section 13 gives an accused a right to challenge the report of the Public analyst by applying to the Court to have the sample tested by the Director. A similar

right is also conferred upon the prosecution. The fact that under Sub-section (3) of Section 13 a certificate supersedes the report given by the Public Analyst under Sub-section (1) would seem to indicate that whenever either of the two parties feels dissatisfied with the report of the Public Analyst, he has been given the right of appeal to go to the Director of the Central Food Laboratory and obtain his certificate on a result of an analysis or test at that Laboratory. It is to such a certificate that finality and conclusiveness is conferred by the proviso. Besides there are two limitations to the finality or conclusiveness of such a certificate; (1) that it is governed by the standards laid down by the rules, and (2) that it is merely final and conclusive as regards the test or analysis. The certificate of the Director does not conclude the trial as was contended by Mr. Shah for the question whether the article of food in question is adulterated or not has to be decided by the Court. It is a question of law which the Court alone can decide. Even though the statements contained in the certificate are made final and conclusive, the vendor-accused can still contend that the article of food in question is not adulterated. For instance, he can still contend that the sample had deteriorated owing to lapse of time; that the constituents or the ingredients of the article in question had suffered either in the course of its manufacture or owing to the delay in making the test or analysis or by reason of the ingredients having been mixed with other things in the course of manufacture. In our view, therefore, the contention that the proviso is in violation of Article 14, cannot survive.

7. There is another aspect also which would seem to support our conclusion. Sub-section (2) of Section 13 provides that the Director has to send his certificate to the Court in the prescribed form within one month from the date of the sample specifying the result of his analysis. This provision shows that the Legislature had in mind that a case or a trial under this Act should be concluded as expeditiously as possible and that delay in the trial by reason of a certificate from the Director having been sought for should be avoided as far as possible. The object of the Legislature also appears to be to avoid evidence of experts examined by or on behalf of a vendor-accused whose evidence might sometimes be characterised as partisan evidence. The Legislature might also well have thought that since it had already provided an appeal against the report of a Public Analyst, no such partisan evidence should any more be allowed and that the Director of the Central Food Laboratory being a responsible officer, his findings as a result of an analysis or test in the laboratory were enough safeguards for the protection of an accused. That the object of the Legislature in putting these enactments on the statute book was to prevent as quickly as possible the evil sought to be eradicated appears fairly clear from certain provisions in the Act. u/s 10, no doubt, a Food Inspector has been given ample powers not only to take a sample of an article of food in question but also to seize or carry away or keep in the safe custody of the vendor such article in order that it may be dealt with as provided in the Act where an article of food appears to him to be adulterated or misbranded. Section 11, however, contemplates that where a Food Inspector

resorts to such seizure, the article in question has to be produced before a Magistrate. Such act on seizure can be challenged by a vendor and in fact Sub-section (9) of Section 10 provides in express terms that where any Food Inspector exercising powers under this Act or the rules vexatiously and without any reasonable grounds of suspicion seizes any article of food, he is punishable for such an offence with fine which may extend to Rs. 500/-. Thus, though a Food Inspector has been granted ample powers u/s 10, there are safeguards provided in that very same section, which might deter him from exercising them freely. The result would be that in ordinary cases a Food Inspector would be merely content by taking a sample and on analysis made of that sample by a Public Analyst, if he finds that there is a case against a vendor, he would file a prosecution under the provisions of Section 13. Until the trial is concluded even if the article of food were to be adulterated, the vendor would still be able to continue the mischief. The Act, no doubt, provides for forfeiture but the power to forfeit such article of Food is not granted to the Food Inspector. That power is with the Magistrate who under sub-section (5) of Section 11, can exercise that power if it appears to him on taking such evidence as he may deem necessary that the article of food produced before him is adulterated. That again would mean that an article of food which is adulterated can only be forfeited by the Magistrate after necessary steps as laid down in Section 11 have been taken and complied with,

8. It is obvious from the Act that the objects of the Legislature had in mind were: to secure purity of food to maintain public health, and also to eradicate the evil of adulteration of food and to prevent a vendor of such adulterated food from continuing to perpetrate the mischief sought to be done away with under this statute. As we have said, the finality or conclusiveness conferred upon the facts stated in the certificate of the Director has been provided with a view to achieve one of these objects, viz., to have the trial of an accused under the Act concluded as expeditiously as possible and to prevent the vendor-accused in the meantime to continue to commit the very same mischief which the Act is intended to prevent. There is thus not only a classification if any such classification can be said to have been created under the proviso, both on the basis of intelligible differentia and also on the basis of a rational nexus with the objects with which the Legislature enacted this particular Act.

9. Mr. Shah next contended that the proviso was bad in law as it was also in violation of the rights guaranteed under Article 19, viz., to practice any occupation, trade or business; as the proviso imposed a restriction upon him which cannot be justified on the ground of reasonableness. It is difficult to appreciate as to how the proviso which lays down a rule of evidence can be said to have the effect of a restriction or a restraint upon the right of an accused person to practise his profession or to carry on his occupation, trade or business. The rule of evidence as laid down in the proviso for the purpose of a trial cannot by any means be said to be a curtailment of a right to trade or to carry on any occupation or business,

10. In *Re: A.S. Krishna and Others*, , while dealing with the Madras Prohibition Act, the High Court of Madras held that the fact that certain actions are made offences and are visited with penal consequences, while other actions are not, has never been understood to contravene the rule of equal protection of the laws. The High Court also observed that it was also obvious that the same procedure cannot be made applicable for every offence, and there was no discrimination made against persons accused of offences under the Madras Prohibition Act. It was also pointed out that there was no difference in procedure, because the procedure as laid down under the Code of Criminal Procedure would apply to the trial of offences under the Prohibition Act. They held that the enactment of a special presumption u/s 4(2) of the Act in certain circumstances, did not offend Article 14 of the Constitution in any manner and therefore it was neither invalid nor unconstitutional on any ground. At page 998 of the report, they further observed that even if the Prohibition Act were to prescribe a procedure different from the procedure laid down in the Code of Criminal Procedure, such procedure would not be on that account invalid for Section 1(2) of the Code of Criminal Procedure itself provides that nothing contained in the Code shall affect any special form or procedure prescribed by any other law for the time being in force. Section 5(2) also provides that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. The fact, therefore, that a different procedure is provided for, for the trial of an offence under a special statute would not render that statute invalid for that reason alone. Mr. Shah, however, contended that the proviso under consideration laid down a presumption which was irrebuttable and that the finality and conclusiveness conferred upon the statements contained in the certificate were in excess of and consequently had no reasonable relation with the object of the legislation. A similar argument was put forward before the Supreme Court in the case of *In Re: A.S. Krishna and Others*, when it went up from the High Court of Madras and the Supreme Court in its decision reported in *A.S. Krishna Vs. State of Madras*, negated it on the footing that the argument was based on the doctrine of due process clause to be found in the American law but that it was extremely doubtful if that doctrine would have any application in our Constitution. Under the doctrine of due process clause, there are certain limitations to presumptions provided in American law which by such limitations have of necessity to be only rebuttable. In the case before them, their Lordships of the Supreme Court held that the presumption laid down in the Madras Prohibition Act not only did not offend against the requirement of equal protection of laws as they have to be raised against all persons against whom facts mentioned therein are established but that even on the application of due process clause, the presumption laid down in Section 4(2) could not be struck down as denying equal protection and therefore unconstitutional for such presumptions have been upheld by several American authorities as reasonable and not hit by the due process or equal

protection clause. At page 303 of the report, their Lordships have cited a passage from Rottschaefer on Constitutional Law 1939 Ed. 835 where it is stated that if the power of a Legislature to prescribe rules of evidence is universally recognised, but it is equally well established that due process limits it in this matter. It may establish rebuttable presumptions only if there is a rational connection between what is proved and what is permitted to be inferred therefrom. As we have already observed, these limitations in the American law are founded on the due process clause. But since the doctrine of due process clause cannot apply to our Constitution, no such limitations can be placed upon the power of a Legislature to prescribe rules of evidence. That being so, whether a presumption in a particular statute is rebuttable or not makes in principle no difference. The power of the Legislature to prescribe rules of evidence being universally recognised, the position has been now concluded by the Supreme Court in *Collector of The Collector of Malabar, Kozhikode and Another Vs. Erimmal Ebrahim Hajee*, where Imam J. delivering the Court's judgment has observed that the words "procedure established by law" in Article 21 mean procedure enacted by law made by the State, that is to say, the Union Parliament or the Legislatures of the States and therefore where it is established that the legislature was competent to enact a statute and the law was valid, if an accused person has been lawfully deprived of his personal liberty, he cannot be heard to complain of the infraction of any of the fundamental rights mentioned in Article 19(1)(a) to (e) or (g). It was also observed that the personal rights guaranteed by Sub-clauses (a) to (e) and (g) of Article 19 were in a way dependent upon the provisions of Article 21 just as the rights guaranteed by Sub-clause (f) of Article 19(1) were subject to Article 31. If the property itself is taken lawfully under Article 31, the right to hold or dispose of it perishes with it and Article 19(1)(f) cannot be invoked. Likewise, if life or personal liberty is taken away lawfully under Article 21, no question of the exercise of the fundamental rights under Article 19(1)(a) to (e) and (g) can be raised. This is a clear authority for the proposition that if there is a statute competently made and if liberty of a subject is lawfully taken away thereunder, no question of violation of the fundamental rights under Article 19 can possibly arise.

11. There can be no question that the Union Parliament had the power to enact the Prevention of Food Adulteration Act of 1954. Equally, there cannot be any question that it had the right to enact a rule of evidence and incorporated it in the statute. Since the words, "Procedure established by law" mean procedure enacted by statute if under such procedure a rule of evidence such as the one we have in the proviso to Section 13(5) is enacted, an accused person has no right to complain that his fundamental rights guaranteed by Article 19(1) have been infringed and, therefore, such a proviso must be struck down as unconstitutional or otherwise invalid. At page 690 of the report, their Lordships have held that as early as *Gopalan's case A.K. Gopalan Vs. The State of Madras*, the Supreme Court had settled that Article 19(1)(d) has to be read as controlled by the provisions of Article 21 and that the view that Article 19 guaranteed substantial

rights and Article 21 prescribed procedural protection was incorrect and therefore the personal rights guaranteed by Article 19(1)(a) to (g) were in a way dependent on the provisions of Article 21. The contention, therefore, that the proviso to Section 13(5) of the Act infringes the rights of the petitioner guaranteed under Article 19(1) and that, therefore, the proviso was unconstitutional or invalid cannot be sustained,

12. The contention that proviso to Section 16(5) was bad because it was contrary to the principles of natural justice is also not sustainable. The contention was that inasmuch as the petitioner had been deprived of the right of cross-examination of the Director or the person who made the analysis or test of the sample in question was contrary to the principles of natural justice and established principles of criminal jurisprudence and, therefore, the proviso was invalid. A similar contention was raised In A.K. Gopalan Vs. The State of Madras, but that was rejected.

13. Reference was made to Dharam Deo Gupta Vs. State, , where A.N. Mulla, J. was concerned with the question of the validity of Section 25 of the U. P. Drugs Act, 1940. That section is in somewhat similar terms to Section 13 of the Prevention of Food Adulteration Act of 1954 and provides that the Government Analyst appointed under the Drugs Act to whom sample of any drug has been submitted for test or analysis, shall deliver to the Inspector a signed report in triplicate in the prescribed form; that the Inspector on receipt thereof shall deliver one copy to the person from whom the sample was taken and another copy to the warrantor, if any, and shall retain the third copy for use in any prosecution in respect of the sample. Sub-section (3) of Section 25 of the Act then provided that any document purporting to be a report signed by a Government Analyst shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken or the said warrantor had within 28 days of the receipt of a copy of the report, notified in writing to the Inspector or the Court before which proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report. Sub-section (4) of Section 25 then lays down that unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has notified his intention of adducing evidence in controversion 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 of the accused cause the sample of the drug produced before the Magistrate 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. In reality, the rules of evidence laid down in Section 25 of the Drugs Act are more far reaching in effect than the rules of evidence laid down in the proviso to Section 13(5) of the present Act. Under Sub-section (3) of Section 25 of the Drugs Act, even the report of the Government Analyst is made conclusive unless the person from whom the sample was taken

notified in writing either to the Inspector or the Court that he intended to adduce evidence to challenge the report. Under Sub-section (4) of that section, the result of an analysis or test in the Central Drugs Laboratory and the report thereon are made conclusive evidence of the facts stated therein. The Learned Judge who decided this; case felt that since the report of the Government Analyst was to be held to be conclusive only if it was not challenged according to the procedure laid down in the section meant that it was not conclusive evidence in the sense than it must be accepted. It was open to an accused person to rebut the report and it was also open to a Court to reject the report, if the rebuttal was satisfactory. He observed that the Legislature, although it had denied the right of cross-examination to an accused and had also made the report admissible in evidence without the Analyst deposing on oath, had provided an alternative procedure by which an accused could defend himself. He held that the basic right of an accused to defend himself was thus protected and the provisions of Section 25 were held valid. It will thus be seen that though the report of the Public Analyst u/s 25 of the U. P. Drugs Act was made conclusive, until it was challenged by an accused thereunder, and though under Sub-section (4) of Section 25 the report of the Director and the result of the analysis or test in the Central Laboratory were made conclusive the whole of the Section 25 viz., Section 25 of the Drugs Act, was upheld. The question before the Allahabad High Court in that case however was that as the opinion of the Director was sent for directly without the sample having been sent first to the Public "Analyst as contemplated by Section 25, the report should not be held to be conclusive as the prescribed procedure had not been followed. But as we have said, the learned Judge deciding that case upheld the validity of the entire Section 25, though as in the case before us, a rule of evidence was incorporated in subsection (4) of Section 25 whereunder certain probative effect was given to the facts stated in the certificate of the Director which rendered it conclusive. We may observe that in the Allahabad decision no reference was made to the decision in A.S. Krishna Vs. State of Madras, , where the applicability of the doctrine of due process clause and the limitations as to presumptions thereunder have been doubted. The decision in AIR 1958 All 365, would not thus assist the petitioner in this case.

14. For the reasons aforesaid we are of the view that the proviso to Section 13(5) on the test laid down by the Supreme Court in the decisions aforesaid must be upheld. The learned Sessions Judge was, therefore, right in the view he took in upholding the order passed by the learned trial Magistrate that the report of the Director was not inadmissible on the ground that the petitioner had not had an opportunity of cross-examining the Director or the person who carried out the analysis or the test or on the ground that he had no opportunity to rebut the statement contained in the certificate by other evidence. Mr. Shah says that apart from the question as to the invalidity of the proviso, he has raised in this petition other questions of law. These questions, however, do not appear to have been raised either before the learned trial Magistrate or before the learned

Sessions Judge. They would not therefore, arise in this revision petition and therefore we are not called upon to decide them. The petition, therefore, fails and is dismissed.