

(2000) 11 GUJ CK 0060
In the Gujarat High Court

Case No : Criminal Revision Application No. 162 of 1989

Pirnmohammad Ibrahim

APPELLANT

Vs

Manilal Gopaldas Patel

RESPONDENT

Date of Decision : 24-11-2000

Acts Referred:

Citation : (2001) 2 GLR 1785

Hon'ble Judges : H.H. Mehta, J

Bench : Single Bench

Advocate : Yogesh S. Lakhani, for the Appellant; S.T. Mehta, APP for Respondent Nos. 1 and 2, for the Respondent

Judgement

1. This is a Criminal Revision Application under Sec. 401 of the Criminal Procedure Code, 1973 (for short "the Cr.P.C.") filed by original accused of Criminal Case No.1061 of 1982 which was pending on the file of the learned Judicial Magistrate, First Class, Patan (who will be referred to hereinafter as the learned Judge of the trial Court for brevity), by which he has challenged the correctness, legality and propriety of judgment Ex.7 dt. 29/4/1989 rendered by the learned Additional Sessions Judge, Mahesana (who will be referred to as the learned Appellate Judge).

2. In Criminal Case No. 1061 of 1982, the accused was tried for an offence punishable under Sec. 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (in short " the Act") for contravention of Sec. 7 of the Act, and on the trial being over, the learned Magistrate by rendering his Judgment Ex.73 dt. 30/9/1988 passed an order of conviction and sentence and by that order of conviction and sentence, the accused has been convicted for said offence and sentenced to undergo Rigorous Imprisonment for six months and to pay a fine of Rs.1,000/-, and in default of fine, to further undergo Simple Imprisonment for 15 days.

3. Being aggrieved against the said judgment of conviction and sentence, the

accused preferred Criminal Appeal No.61 of 1988 to the Sessions Court, Mahesana. After hearing the appeal, the learned Appellate Judge dismissed the appeal preferred by the accused, meaning thereby the learned Appellate Judge confirmed the judgment of conviction and sentence rendered by the learned Magistrate.

4. The facts leading to this present Criminal Revision Application, in a nut shell, are as follows :-

4.1 The accused is carrying on a business of grocery articles in his shop in the name and style of Mansuri Kirana Stores, situated near Bagwada Darwaja at Patan in Mahesana District. The complainant, who is a revision opponent no.1, is a Food Inspector duly appointed under Sec. 9 of the Act.

4.2 On or about 20/4/1981 at about 11-00 a.m., the complainant visited the shop of accused in company of his peon Shri Saiyed. At that time, accused was present in his shop. It is the case of the complainant that grinded chillies powder was stored in the shop for sale purpose. The complainant gave notice of his intention to take sample for analysis as per Rule 12 of the Prevention of Food Adulteration Rule, 1955 (for short "the Rules") and the complainant purchased 450 Gms. of grinded chillies powder from that stock of chillies powder which was kept for sale to public by making a payment of Rs.5-40 Ps. being the price of that 450 Gms. of chillies powder. That sample of 450 Gms. of chillies powder was purchased by the complainant in his capacity as a Food Inspector for the purpose of analysis. After purchase of 450 Grms. of chillies powder in presence of his peon Shri Saiyed and Panch witness Babubhai Virabhai, the complainant prepared three samples of each of three equal parts of 450 Gms. of Chillies powder by following due procedure as prescribed under the Act as well as under the provisions of the Rules. Thereafter, one of three parts of sample was sent to the Public Analyst for analysis. As per report of Public Analyst is dated 28/5/1981, it was found by the Public Analyst that presence of ash insoluble in dilute HCl was found to be 2.689 % instead of permissible standard which ought to be maximum 1.3%. The Public Analyst opined that chillies powder did not conform to the standard laid down under the Rules.

5. Thereafter, the complainant sought permission (consent) under Sec. 20 of the Act from the competent authority authorised to issue such consent and on receipt of that consent under Sec. 20 of the Act, the complainant lodged his Private Complaint in the Court of the learned Magistrate on 29/3/1982. That complaint came to be registered as Criminal Case No. 1061 of 1982.

6. The learned Magistrate followed the due procedure laid down in Chapter 15 of the Cr.P.C. 1973 for trial against the accused for criminal case registered on the basis of complaint lodged by the complainant. The learned Magistrate framed charge ex.31 on 1/9/1987. The complainant has examined in all three witnesses on his side. Thereafter, on evidence being declared as closed by the complainant, the learned Magistrate recorded further statement of accused under Sec. 313 of

the Cr.P.C. below Exh.32. Accused has admitted that the complainant paid an amount of Rs.5-40 Ps. in cash as price for chillies powder for which he has issued a receipt Ex.39. It is his case that he purchased chillies powder in retail. On the date of recording of further statement, he stated that he had brought with him a bill to show the purchase of chillies powder from the stock of which the sample was given to the complainant. It appears from the record that accused has, by seeking permission of the learned Magistrate vide Ex.58, produced two documents with list Ex.59. These two documents are at Exs.62 and 63. Under Sec. 247 of Cr.P.C. accused has examined himself as a witness in his defence at Ex.64. During the course of recording his evidence at Ex.64, he has produced two documents at Exs.65 and 66 to show that he is not a Proprietor of the business but business in name of "Mansuri Kirana Stores" is a partnership business and that partnership is constituted by three partners, one of them is the present accused. That partnership came into existence with effect from 5/11/1983 vide Partnership Deed dt. 8/12/1983. To show that business is of partnership, the accused has also produced original Assessment Order passed by the Income Tax Officer at Ex.66 which shows that name of partnership business is "M/s. Pir Mohmmmed Ibrahim & Co". Thereafter, the learned Magistrate heard the arguments of the learned advocates for both the parties and after analysing and appreciating the evidence led by both the parties, She has come to a conclusion that complainant has proved his case beyond reasonable doubt for offences for which a charge has been framed against the accused. Thereafter, the learned Magistrate, on 30/9/1988 by rendering her judgment Ex.73, passed an order of conviction under Sec. 248(2) of the Cr.P.C. for offence punishable under Sec. 16(1)(a)(i) of the Act for contravention of sec. 7 of the Act. Thereafter the accused was heard on the point of sentence, and thereafter, she passed an order of sentence below that judgment of conviction and sentenced the accused as aforesaid in Para 2 of this judgment.

7. Being aggrieved against and dissatisfied with the said judgment of conviction and sentence, the accused preferred Criminal Appeal No.61 of 1988 to the Sessions Court, Mahesana. The learned Appellate Judge, after hearing the arguments of both the parties, and after perusing Record and Proceeding of the case, and after reappreciating the evidence of both the parties led before the trial Court came to a conclusion that appeal was required be dismissed as there was no substance in the appeal, and therefore, the learned Appellate Judge, by rendering his Judgment Ex.7 in Criminal Appeal No.61 of 1988 dismissed the appeal preferred by the accused on 29/4/1989, and thereby he has confirmed the judgment of conviction and sentence rendered by the learned Magistrate.

8. As against that judgment of the learned Appellate Judge, the original accused in Criminal Case No. 1061 of 1982 who was an appellant in Criminal Appeal No.61 of 1988, has, by preferring this present Criminal Revision Application under Sec. 401 of the Cr.P.C. challenged the correctness, legality and propriety of the judgment of the learned Appellate Judge, and therefore, this present Criminal Revision Application is before this Court.

9. Heard Shri Y.S.Lakhani, the learned advocate for the revision petitioner and Shri S.T.Mehta, learned APP for the revision opponents Nos. 1 and 2.

9.1 It would be profitable to state herein the scope and ambit of such type of Criminal Revision Applications.

(A) In case of Bansi Lal and Others Vs. Laxman Singh, , it has been held that-

" It is only in glaring cases of injustice resulting from some violation of fundamental principles of law by the trial Court, that the High Court is empowered to set aside the order of the acquittal and direct a retrial of the acquitted accused. From the very nature of this power, it should be exercised sparingly and with great care and caution. The mere circumstance that a finding of fact recorded by the trial Court may in the opinion of the High Court be wrong, will not justify the setting aside of the order of acquittal and directing a retrial of the accused." accused."

(B) In case of State of Kerala Vs. Putthumana Illath Jathavedan Namboodiri, , it has been held in Para 5 on Page 454 as follows :-

"In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

(C) In Full Bench decision of Narain Prasad Vs. The State of Rajasthan and Another, , in Para 25, it has been held that-

" The revisional jurisdiction is normally to be exercised only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice."

10. Keeping in mind aforesaid legal position with regard to sec. 401 and Sec. 397 of Cr.P.C., now contention taken by Mr. Y.S.Lakhani are dealt with for consideration.

11. Following facts can be said to be " not seriously disputed " facts :

(A) Here in this case, the Food Inspector, after taking sample of Chillies powder sent the same to Public Analyst of State Public Health Laboratory, Baroda for analysis. The report issued by the said Public Analyst is at Ex.43.

(B) As per this report Ex.43, standard with regard to ash insoluble in dilute HCl is not conforming to standard fixed in the Rules.

(C) As per Item No. A.05.05.01 below Appendix B of the Rules, ash insoluble in dilute HCl should not be more than 1.3 percentage by weight.

(D) According to report Ex.43 of the Public Analyst, in this case, the Public Analyst has found as follows :

(i) that ash insoluble in dilute HCl was 2.689 percentage by volume, and therefore, article is an adulterated article.

(ii) As per report Ex.43, total ash was found in the sample to be of 8.266 percentage by weight. As per Item No.A.05.05.01 of Appendix B of the Rules, total ash should not be more than 8 percentage by weight, and therefore, this result of the test with regard to total ash, shows that article of Chillies powder was not conforming to the standard fixed under the Rules, and therefore, an article of food is adulterated.

In view of this, the sample of Chillies powder taken from accused was found to be adulterated as per report Ex.43.

(E) From the record, it appears that accused submitted an application Ex.4 to the learned Magistrate on 20/4/1982 requesting the Court to send one of the parts of sample retained by the Local (Health) Authority to the Director, Central Food Laboratory, Pune (who will be referred to hereinafter as "C.F.L." for the sake of convenience). According to the learned Magistrate, he by following due procedure, prescribed in the Rules, called for one of parts of samples retained by the Local (Health) Authority and then sent under his memorandum Ex.8 dt. 7th May, 1982 to the C.F.L. That sample sent by the Local (Health) Laboratory, was analysed by the Director of Central Food Laboratory who in turn issued his report Ex.15 dated 9/6/1982. As per that report Ex.15, the sample sent to the C.F.L. was found to be adulterated because it did not conform the prescribed standard of Chillies powder as per Item No.A.05.05.01 of Appendix B of the Rules. As per legal position, when the sample has been got analysed by accused from the C.F.L., that report Ex.15 of C.F.L. has superceded an earlier report of Public Analyst Ex.43 as per Sec. 13(5) of the Act.

12. In this case, Shri Y.S.Lakhani has tried to challenge the report Ex.15 of C.F.L. As per Sec. 13(2-A) of the Act, when an application is made to the Court under Sub-sec.(2-A) of Sec. 13 of the Act, 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 receipt of such requisition. As per sub-sec.(2-B) of Sec. 13 of the Act, on receipt of the part or parts of the sample from the Local (Health) Authority under sub section (2-A), the Court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of Section 11 are intact and the

signature or thumb impression, as the case may be, is not tampered with, and despatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the Court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis. So according to sub-section (2-B) of Sec. 13 of the Act, here in this case, the learned Magistrate sent one of the parts of the sample of Chillies powder to the Director of Central Food Laboratory by following due procedure as prescribed in Rule 4 of the Rules. As per sub-Rule (3) of Rule 4 of the Rules, the Magistrate is required to send a copy of the memorandum and a specimen impression of the seal used to seal the container and the cover, separately by registered post to the Director. Here in this case, on receipt of application Ex.4 of accused submitted under sub-section (2-A) of Section 13 of the Act, the learned Magistrate prepared a memorandum Ex.8 and a specimen impression of seal used to seal the container at Ex.9. The learned Magistrate sent a copy of the memorandum and a specimen impression of seal used to seal the container separately by post vide his letter Ex.10 dt. 7/5/1982. Two white postal receipts are at Exs. 11 and 12.

13.1 Shri Lakhani has taken a contention that there is nothing on record to ascertain as to whether a copy of memorandum and a specimen impression of the seal used to seal the container and the cover which were sent by registered post A.D. to the Director of Central Food Laboratory were, in fact received by the Central Food Laboratory or not. No acknowledgment due receipt is produced by the prosecution.

14. Another contention with regard to sub-rule (3) of Rule 4 of the Rules is taken by Shri Lakhani, the learned advocate for the revision petitioner is to the effect that there is nothing on record to indicate that the Director of Central Food Laboratory had compared the seal impression on the packet sent by the learned Magistrate with the copy of specimen seal impression sent by the Magistrate, separately because as per Rule 4(4) of the Rules, he was required to record the condition of the seal on the container.

15. Shri Lakhani has argued that sub-rule (3) and sub-rule (4) of Rule 4 of the Rules are mandatory rules, and therefore, when it is proved positively that then copy of specimen impression of the seal was not sent separately and further that the Director of Central Food Laboratory did not compare the seal on the packet with a copy of impression of seal sent separately, it can be said that these two mandatory requirements contained in sub-rule(3) and sub-rule(4) of the Rule 4 are not compared with, and therefore, benefit of doubt should be given to the accused. He has argued that the Director of C.F.L. has not recorded the condition of the seal on the container.

16. On perusal of the record of the case, it appears that the copy of memorandum is at Ex.8, whereas copy of specimen impression of seal used to seal the container is at Ex.9 and both these documents were sent to the Director

of C.F.L. vide letter Ex.10. As discussed earlier, white postal receipts issued by Postal Department are at Exs.11 and 12. There is nothing on record to show that two documents Exs.8 and 9 were in fact received by Director of C.F.L. or not. Thus, Shri Lakhani has vehemently argued that Rule 4(4) of the Rules is not complied with. Compliance is missing completely and as there is no oral evidence on that point, benefit of doubt should be given to the accused. For this, he has cited three authorities - (1) case of CLEMENT CHHOTALAL CHRISTIAN vs. PARSHOTTAM SAVJIBHAI PARMAR AND OTHERS reported in 1992(1) G.L.H. 253, (2) case of LAXMICHAND BHAILAL THAKKAR vs. STATE OF GUJARAT & ANOTHER, reported in 1996(1) G.L.H. 266 and (3) case of State of Gujarat Vs. Sohanlal Trikamchand Shah and Others, . By citing these three authorities, Shri Lakhani has argued that value attached to the report of Analyzer would be vitiated when it is found that there is non-compliance of Rule 4 and in that eventuality, such report cannot be used as evidence against the accused.

17. On perusal of prescribed Form I, Appendix A, Ex.8 under Rule 4(1) of the Rules, it appears that the learned Magistrate has specifically said that the copy of memorandum of specimen impression of the seal used to seal the container and the cover were sent separately by registered post A.D. A separate letter Ex.10 was also written by the learned Magistrate to the Director of C.F.L., wherein he has also stated that he was sending copy of the memorandum and a specimen seal impression of the seal used to seal the container and the cover separately by registered post A.D. Whatever the procedure which he followed for sending the sample as prescribed under Rule 4 of the Rules is reflected in his office copy Ex.13 which is not at all challenged by the accused. The learned Magistrate himself has written in his note in Paras 8 to 11 at Ex.13 that he sent a sample to Central Food Laboratory by registered post A.D. under memorandum Distinguishing Number MR. 419/82. He has stated that he also sent a copy of forwarding letter and seal impression to Director, C.F.L. in separate cover on 8/5/1982 and on that very day, he also sent a packet of sample to C.F.L. for which two postal A.D. receipts bearing nos. 2928 and 2775 respectively for Rs.3-40 and Rs. 9-05 respectively are produced in the case. That receipts are at Exs.11 and 12, and therefore, the learned Magistrate sent a packet of sample to C.F.L. separately, and in one cover, he sent one copy of memorandum and copy of seal impression separately to the C.F.L., and therefore, Rule 4(3) is fully complied with. For requirement of sending a sample packet and copy of memorandum with seal impression to be sent separately, Shri Lakhani has placed reliance on a case of MOHANLAL MAGANLAL SINDHI AND ORS. VS. STATE OF GUJARAT AND ORS, REPORTED IN (1977) 18 G.L.R. 1002. That case was decided by the learned Hon''ble Mr.Justice A.M.Ahmadi, (as he then was) as a learned Single Judge, wherein His Lordship was pleased to hold that Rules 7 and 18 regarding memorandum and specimen impression to be sent separately are mandatory and if the sample packet and impression of seal are sent together, it violates mandatory requirement of Rule 18. Mr. S.T.Mehta, learned APP has argued that decision rendered by Hon''ble Mr.Justice A.M.Ahmadi is now not a

good law. Mr. Mehta has cited an authority of SMT. KANTABEN CHAMPAKLAL VS. D.V.MISTRI, FOOD INSPECTOR, AHMEDABAD MUNICIPAL CORPORATION AND ANOTHER, reported in 1978(1) PFAC 125, wherein, Division Bench of this Court has specifically held in the pen-ultimate part of Para 9 that for the aforesaid reason, the decision given by Justice A.M.Ahmadi in Criminal Misc.Appln.No.851 of 1977 reported in 1977(2) PFAC 236 is no longer a good law, and therefore, the authority cited by Mr. Lakhani cannot be looked into. In case of Smt. Kantaben (supra), Division Bench of this Court has held that

" Under rule 18, a copy of the memorandum and specimen impression of the seal used to seal the packet have to be sent to the Public Analyst "separately" by registered post or delivered to him or to any person authorised by him".

18. This Rule 18 contains two part. First part is mandatory. In that case, a question arose, whether Rule 18 can be said to have been violated, if memorandum with the impression of seal is sent through some person to carry the food sample under Rule 17. In that case, the Food Inspector handed over to the Public Analyst one bottle with one memofandum of food and at the same time, Food Inspector delivered to the Public Analyst another packet containing one copy of memorandum and a specimen impression of th seal. On the basis of aforesaid facts, Division Bench of this Court considered the question whether this procedure has violated Rule 18 read with Sec. 11 of the Act. It was held that Rule 18 could be divided two parts. First part requires that copy of memorandum and specimen impression of the seal used to seal the packet shall be sent to Public analyst separately. Later part provides for manner in which said copy of memorandum and specimen impression of seal to seal the container should be sent. The provisions of Rule 18 in so far as it provided for manner of delivery i.e. either by Registered post A.D. or in any other manner so that it should be delivered to the Public Analyst or to any person authorised by him cannot be said to be mandatory, but so far as first part of Rule 18 is concerned which relates to sending of memorandum, the same is of mandatory nature. As observed earlier, on reading Form I on Page 18, forwarding letter Ex.10 and note with regard to procedure to be followed by the Magistrate, Ex.13 clearly proves that the learned Magistrate sent a packet of sample of food article separately and in separate cover, he sent a copy of forwarding letter and a copy of seal impression by Registered Post A.D. for which two postal A.D. receipts are produced which are at Exs.11 and 12. On reading, the report of Central Food Laboratory, Ex.15, we find that the Central Food Laboratory has not expressed his grievance that he did not receive a copy of the memorandum and a copy of the seal impression separately. Under the circumstances, Rule 4(3) is fully complied with.

19. By placing reliance upon Rule 4(4), Shri Lakhani has argued that Director of Central Food Laboratory has not recorded his finding with regard to condition of seal on the container in his report Ex.18, and therefore, Rule 4(4) is not complied with. For this, as observed earlier, he has placed reliance on three authorities -(i) one in the case of CLEMENT CHHOTALAL CHRISTIAN vs.

PARSHOTTAM SAVJIBHAI PARMAR AND OTHERS reported in 1992(1) G.L.H. 253, which is equivalent to LAXMICHAND BHAILAL THAKKAR vs. STATE OF GUJARAT & ANOTHER, reported in 1996(1) G.L.H. 266. In both these authorities, it is held that "before proceeding to analyse the sample, the Director is required to compare the seals on the container and outer cover with the specimen received by him separately from the Court, and when no such comparison is made, the certificate issued by the Director, Central Food Laboratory cannot be used as evidence and cannot form foundation for conviction of the accused. Shri Lakhani has argued that looking to Rule 4(4), the Director of Central Food Laboratory is specifically directed by statute to record his finding with regard to condition of the seal on the container. He has drawn attention of this Court to the certificate of Central Food Laboratory Ex.15, wherein no such finding is recorded as stated by the Director of Central Food Laboratory, and therefore, as per his argument, Rule 4(4) is not complied with. During the Course of arguments, attention of Mr. Lakhani was drawn by this Court on the case reported in (1992) 1 G.L.H. 253 on the point with regard to sample of food taken on 19/8/1983, whereas in case of (1996) 1 G.L.H. 266, sample was taken on 16/6/1983. When attention of Shri Lakhani was drawn to amended Rule 4(4), it was found that said Rule 4(4) which has been referred to in aforesaid two authorities was amended by Notification No.618(E) dated 16/5/1988. That amended Rule 4(4) has come into force with effect from 16/1/1988.

(A) Before amendment, Rule 4(4) was as under:-

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

(B) After amendment, Rule 4(4) reads as follows:

"On receipt of packet, containing a sample for analysis, the Director or an officer authorised by him shall compare the seals on the container and outer cover with specimen impression received separately, and shall note the condition of the seals thereon".

On making comparison of old Rule 4(4) with the amended Rule 4(4) of the Rules, the requirement of recording condition of the seal on the container is taken away by the Rule making authority. Instead of that, now only requirement is with regard to note the condition of the seals thereon. On reading certificate of Central Food Laboratory Ex.15, we find that the Director of Central Food Laboratory has stated in Para 2 in his certificate that condition of the seals on the container and the outer cover on receipt was as follows :-

" The seals were intract."

And therefore, amended Rule 4(4) of the Rules has been fully complied with. After bringing to notice of Shri Lakhani about amended Rule 4(4) of the Rules, Shri Lakhani has argued that he has now given up his arguments based on

aforesaid two authorities.

20. Second contention of Shri Lakhani is on the ground that no separate independent evidence is on record to prove that plastic bags in which sample was drawn were cleaned and dried. He has drawn attention of this court to rule 14 of the Rules. Rule 14 speaks that samples of food for the purpose of analysis shall be taken in cleaned dried bottles or jars or in other suitable containers. Shri Lakhani has argued that Food Inspector has not taken sample either in bottle or jar, and therefore, Rule 14 is contravened. On reading Rule 14, it is clear that Food Inspector can take sample also in other suitable container. Here in this case, he has taken a sample in a plastic bag. Shri Lakhani is unable to satisfy this court as to how plastic bag cannot be said to be a suitable container. Merely because, it is not "suitable" to accused, it cannot be said to be not suitable container. Under the circumstances, merely because the sample was taken in plastic bag, it cannot be said that Rule 14 of the Rules is contravened. Shri Lakhani has further argued that in view of first part of Rule 14 of the Rules, suitable container should be cleaned and dried. He has drawn my attention to evidence of witness -Peon Attahusein Mohmmmed Husein Saiyed who is examined at Ex.13 and another witness -Babubhai Virabhai who is examined at Ex.55. He has argued that these both witnesses are silent on the point that plastic bags were dried and cleaned. Shri S.T.Mehta, the learned APP has argued that Food Inspector has deposed in Para 2 of his evidence that plastic bags in which sample was taken were transparent, dried and cleaned. On this point, Food Inspector has been cross-examined in Para 7, wherein he has deposed that these plastic bags were purchased before two to three months. A suggestion put to Food Inspector which he has denied is that the polythene bag i.e. plastic bag was not cleaned and it was dusty. Merely because, this suggestion was put, it cannot be said that whatever he stated in Para 2 of his evidence is wiped out.

21. Shri Lakhani has argued that complainant -Food Inspector has deposed in Para 7 of his cross-examination that polyethylene bags were purchased from one shop and that he did not know as to what was the specification of the plastic bag. He has further admitted that he has got no evidence to show about purchase of this polyethylene bags, and that he had kept polyethylene bags in his cupboard. He has purchased these polyethylene bags about two to three months before the date of taking the sample. He has also deposed that before taking the sample, no separate primiry panchnama was drawn for the objects used for taking samples. In view of this evidence, Shri Lakhani has argued that when polyethylene bags were purchased two to three months before the date of taking sample and when that polyethylene bags were kept in cupboard, it was necessary for the complainant to make that polyethylene bags clean and dry before taking them for use for taking sample. He has cited some authorities on this point.

22. (1) SUDHIRCHANDRA B.JOSHI -Food Inspector, Baroda Vs. ARVINDKUMAR NARANBHAI PATEL AND ORS, reported in 1995 (2) G.L.H. (U.J.) 24 on Page 31.

In this case, the complainant himself had admitted that the sample bottles were not cleaned at the vendor's place and the sample bottles were delivered by the store department. He had submitted that he had no information as to when and by whom, these bottles were cleaned in the Stores. In view of that peculiar facts and circumstances of that case, this Court came to a conclusion that a duty is cast upon the prosecution not only to comply with the mandatory provisions of law by using clean and dry bottles for samples, but to lead evidence at the trial Court that the bottles which were used were clean and dry. In reply to this authority, Shri S.T.Mehta, the learned APP for the revision opponents has argued that in pen-ultimate part of Para 2 of examination-in-chief of the Food Inspector, he has specifically deposed that sample was taken in plastic bags and that these plastic bags were transparent, dry and clean and when there is an evidence of Food Inspector, there is no reason to disbelieve him on this point, and therefore, this authority is not applicable to this present case.

23. In case of State of Gujarat Vs. Sohanlal Trikamchand Shah and Others, , wherein this Court has held that Rule 14 is mandatory in nature and it is, therefore, the duty of the prosecution to prove beyond reasonable doubt that all ingredients or provisions that are to be proved as per law and especially provisions which are mandatory in nature have got to be proved beyond reasonable doubt. This authority is mainly on Rule 14 of the Rules. It is held in this authority that having regard to the facts and circumstances, this Court has found that Rule 14 of the Prevention of Food Adulteration Rules, 1955 is mandatory and it is the duty of the prosecution to prove by leading positive evidence that bottles were cleaned and dried before the sample was taken by the food inspector. It is, therefore, very clear from the said Rule 14 that the sample of food for the purpose of analysis should be taken in clean and dry bottles or Jars or other suitable containers which were closed sufficiently tight so as to prevent leakage, evaporation or in the case of dry substance, entrance of moisture and should be carefully sealed. The contention of Shri Lakhani is only to the effect that polyethylene (Plastic) bags in which samples were taken were not dried and cleaned. He has not argued anything about contravention of other requirements of Rule 14 of P.F.A.Rules. Here in this case, the complainant has deposed specifically that the plastic bag was transparent, clean and dry. On this point, there is no cross-examination. In evidence of peon Sattar Husein Mohmad Saiyed Ex.53 and panch witness Babubhai Virabhai Ex.55, no case has been put by the learned advocate for the accused in cross-examination that said plastic bags were not dried and cleaned. Keeping in mind this evidence, the learned Magistrate appreciated the evidence with regard to plastic bag in Para 10 of her judgment. After analysing the evidence and appreciating the evidence on the point with regard to compliance of Rules 14 and 15 of the Rules, more particularly for plastic bag, the learned Magistrate has come to a conclusion that Rule 14 is fully complied with and in the same manner, the learned Appellate Judge has reanalysed and reappreciated the evidence with regard to this use of plastic bag for taking sample. In Para 17 of her judgment, she has come to a

conclusion that contention with regard to noncompliance of Rule 14 of the Rules cannot be sustained.

24. The contention with regard to suitable container for taking sample and contention with regard to plastic bag on the point as to whether it was dried and cleaned, both rest on factual aspects. For compliance of Rule 14 of the Rules, both the courts below have come to a consistent and concurrent finding to the effect that Rule 14 was fully complied with.

25. As discussed earlier, as held in case of STATE OF KERALA VS. PUTTHUMUNA ILLATHJATHAVEDAN NANBOODIRI, (Supra), it would not be appropriate for the High Court to reappraise the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the learned Magistrate as well as by the learned Sessions Judge in appeal. The approach of appreciation of evidence cannot be said to be the approach leading to gross miscarriage of justice.

26. Shri Lakhani, the learned advocate for the revision petitioner has placed reliance on the third authority in case of M.B.RISALDAR Vs. RADHESHYAM RAMDHAR AGARWAL & ANR., reported in 1980 (2) G.L.R. 31. In that case, Food Inspector had led evidence that he has put quantity in bottle. In that case, there is no evidence that bottles were cleaned and washed in his presence, and person who washed the bottles was not examined. It was held by this Court that it was not proved that the Food Inspector had proved that the bottles were cleaned and dried as required under the Rules. That case has been decided on its own facts and circumstances of the case. In that case, bottles were used as container for taking sample. Here in this case, plastic bags have been used by Food Inspector. He himself has deposed that he has purchased that plastic bags and kept in his own cupboard, and therefore, when he has deposed that plastic bags were transparent, dry and clean, then there is no reason to disbelieve him and there is no valid ground to discard that evidence on that score, and therefore, aforesaid three authorities are not applicable to the present case.

27. Shri S.T.Mehta, the learned APP for the revision opponents has cited an authority of (The) STATE OF GUJARAT VS. CHANDRAPRAKASH KHUSHALDAS SINDHI, reported in 1999(1) G.L.H. 29, wherein this Court has held that procedure for collecting samples falls into four broad stages :

- (i) taking of the sample.
- (ii) dividing, packing and sealing of the sample.
- (iii) sending of one of the samples to the Public Analyst, and
- (iv) the analysis by the Public Analyst of the sample sent to him.

It has further been held that

"In so far as exercise of power in the discharge of his duty do not bear the ingredients of the offence, a presumption in favour of compliance with the law is

permissible under Sec. 114 illustration (e) of the Evidence Act, when the broad facts are proved, there would be justification to raise the presumption."

An example has been given in this authority. In that case sample was taken by Food Inspector and Food Inspector deposed that he divided article of food taken as sample into three parts and packed, sealed and fastened the container, then this act was done in such a manner so as to comply with the rules and that could be reasonably presumed in absence of any challenge on that point. In this case also, Food Inspector deposed according to the requirements for compliance of Rules 14 and 15 of the Rules. Under the circumstances, presumption can be raised in favour of compliance of the Rules. Under such circumstances, this second contention of Shri Lakhani is required to be rejected, and therefore, this second contention is rejected.

28. The third contention taken by Shri Lakhani is on the point that there is no compliance of Sec. 13(2-B) of the Act. As per his argument, Sec. 13(2-B) of the Act, the Director of C.F.L. is required to send a certificate to the Court in the prescribed form within one month from the date of receipt of part of the sample satisfying the result of analysis. Shri Lakhani has drawn attention of this Court to Para 19 of the judgment of the Appellate Judge, wherein certain dates are referred to. As per this Para 19 of the judgment of the learned Appellate Judge, on referring the certificate of Director of C.F.L. Ex.15, it seems that sample was received by Central Food Laboratory on 12/5/1982, and the report was received by the learned Magistrate on 17/6/1982, and therefore, as argued by Shri Lakhani, Sec. 13(2-B) is not complied with. It may be noted that on reading Ex.15, it is clear that sample was received by the Central Food Laboratory on 12/5/1982, and on analysis being made, report Ex.15 was prepared on 9/6/1982. If we read Sec. 13(2-B) of the Act, it appears that after Director of C.F.L., it is necessary for him to send a certificate to the Court in the prescribed form within one month from the date of receipt of part of the sample specifying result of the analysis. There is no requirement in this sub-sec.(2-B) of Sec. 13 of the Act that Court should receive certificate of analysis within one month. When certificate ex.15 was issued by the Director of C.F.L. on 9/6/1982, it is crystal clear that analysis was made within one month. This Court is of the opinion that merely because the learned Magistrate received that certificate Ex.15 after one month, it cannot be said that sub-sec.(2-B) of Sec. 13 of the Act has been contravened, and therefore, this argument of Shri Lakhani is devoid of merits and is not acceptable. Hence this third contention is also rejected.

29. Shri S.T.Mehta has cited an authority of STATE OF GUJARAT Vs. VISHRAMDAS VIRUMAL SINDHI, reported in 1998 (2) G.L.H. 986, wherein Rule 7(3) of the Rules is dealt with. As per Rule 7(3) of the Rules, the Public Analyst is required to send or deliver his report and the result of such analysis to the Local (Health) Authority within a period of 40 days from the date of receipt of the sample for analysis. Division Bench of this Court held that this Rule is not mandatory. It has been held that this Rule 7(3) of the Rules regarding

requirement of forwarding within 40 days a report to the Local (Health) Authority cannot be said to be mandatory, but only directory. It has further been held that mere delay does not mean prejudice. Here in this case, the Director of C.F.L. had analysed the sample within one month. From record, it appears that it was received by the learned Magistrate after 35 days. Rule does not require that it should have been received by the learned Magistrate within one month, and therefore, in no case, it can be said that Sec. 13(2-B) of the Act is not complied with. Therefore, this contention of Mr. Lakhani is not accepted.

30. The fourth contention advanced by Mr. Lakhani, the learned advocate for the revision petitioner is to the effect that there is every possibility of dust having been entered into plastic bag while taking sample in the shop. Shri Lakhani has, by drawing attention of this Court to Para 6 of deposition of the Food Inspector, argued that there was every possibility of dust being entered into the stock of Chillies powder kept inside the shop of the accused. For this, he has argued that complainant has deposed that the shop of the accused is situated abutting on the main road near Bagwada Darwaja at Patan and complainant has admitted that it was true that there remains a continuous traffic of the vehicles entering into Patan city. The complainant has also admitted that height of the shop of the accused is nearly three feet from the ground level and the articles kept inside the shop are placed just near an edge of the shop but inside the shop. By taking an advantage of this type of deposition, Shri Lakhani has argued that there was every possibility of dust having been entered into the sample of chillies powder which was taken from the quantity of chillies powder kept inside the shop of accused. For this, he has cited an unreported decision in the case of Dahyabhai Ambalal Modi vs Chandrakant Raichand Modi, rendered in Criminal Appeal Nos. 889/77 & 765/78. As against this, Shri S.T.Mehta, the learned APP for the revision opponents has cited an authority of (THE) STATE OF GUJARAT VS. CHANDRAPRAKASH KHUSHALDAS SINDHI, reported in 1999(1) G.L.H. 29, wherein this Court has held that while supplying article of food, it is the vendor to take proper care that the article of food is in no way mixed with any other article. Scale, Paper Bags, Spoon or other articles used for taking out materials are required to be cleaned by him and not by the customers. He has to supply the article of food as demanded by the consumers and the article of food supplied must be according to standard laid down in the Act and the Rules and he has to see that no breach of any of the provisions contained in the Act or the Rules is committed by him. It is for him to use cleaned utensils or containers for storing food articles and in the same way, it is for him to see that scales, paper bags or instruments used for taking out the food articles are cleaned and dried.

31. In view of above legal position, an accused cannot take an advantage of his own wrong. He was knowing full well that his shop is at a height of nearly three feet from the ground level and there used to remain a traffic on the road abutting on which the shop is situated. Under the circumstances, he was required to get the stock of chillies powder stored suitably in such a manner that no dust from the road may enter into the storage of chillies powder. In view of this,

accused is not entitled to any benefit for his own wrong. Duty is cast on accused to see that the storage of food articles is kept with utmost care so that that article of food is in no way mixed with any other articles or dust from outside. In view of this, this fourth contention of Shri Lakhani is also rejected.

32. The fourth contention taken by Shri Lakhani is to the effect that there was a delay in filing the complaint. As per his case, the delay is of more than six months. He has argued that in this case, sample was taken on 20/4/1981. The report of Public Analyst was prepared on 28/5/1981. It was forwarded by the Public Analyst to Local (Health) Authority and as per the endorsement in rubber stamp impression on the back side of that report Ex.14, that report was received by the competent authority of Drugs Control Administrator, Mahesana on 1/6/1981. The Food Inspector set silent for about six months and he, by addressing a letter Ex.44 dt. 29/1/1982, requested the competent authority to accord a sanction so as to enable him to lodge a complaint in the Criminal Court. Sanction Ex.45 appears to have been granted on 16/2/1982, and it was received by the Food Inspector on or about 17/2/1982. Thereafter on or about 29/3/1982, the complainant lodged his Private Complaint against the accused in the Court of the learned Magistrate on 29/3/1982. Thus delay in lodging the complaint is caused for more than six months. The complaint has been lodged for an offence punishable under Sec. 16(1)(a)(i) of the Act for contravention of Sec. 7(1) of the Act. In Sec. 16(1)(a)(i), maximum sentence which is prescribed is an imprisonment for three years and with fine. No doubt minimum sentence prescribed is an imprisonment for a period of six months, but when provisions with regard to limitation in Criminal Procedure Code, 1973 are required to be referred to, then maximum sentence prescribed for an offence must be kept in mind. The provisions with regard to limitation for taking cognizance of certain offences are contained in Chapter 36 of the Criminal Procedure Code, 1973 running in between Secs. 467 and Sec. 473. As per sec. 468(2)(c) of the Act, the period of limitation shall be three years, if the offence is punishable with imprisonment for a term exceeding one year, but not exceeding three years. In view of this, when an offence for which the complaint has been lodged against the accused is an offence for which maximum imprisonment of three years has been prescribed, then the complaint lodged on 29/3/1982 is within the prescribed period of three years from the date of taking sample. Hence complaint cannot be said to be time barred, and therefore, this contention with regard to limitation is also devoid of merits and the same is required to be rejected and accordingly it is rejected.

33. Seventh contention is with regard to challenge to the sanction dt. 16/2/1982 which is at Ex.45. Shri Lakhani has argued on the point of sanction on two counts:

(A) Firstly that the Sanctioning Authority has accorded sanction under Sec. 20 of the Act mechanically without application of mind because there is no reference in letter Ex.44 written by the Food Inspector to the sanctioning authority that copy

of memorandum was sent to the sanctioning authority. Shri Lakhani has argued that for seeking sanction to be accorded in his favour by the sanctioning authority, the Food Inspector wrote a letter Ex.44 requesting the Sanctioning Authority to accord sanction. He has given particulars Exh.44 with regard to name and address of accused, nature of food article, date and place of taking sample, number and date of report of Public Analyst, particulars to percentage of ash insoluble HCl and number of offences committed by the accused. Thus on reading Ex.44, the Food Inspector has furnished all possible information which can be given to the Sanctioning Authority in his letter Ex.44. In the Act, there is no provision as to what type of documents should be sent by the Food Inspector to the Sanctioning Authority. There is a specific provision with regard to sanction under Sec. 20 of the Act which speaks that no prosecution for an offence under this Act, not being an offence under Sec. 14 or Sec. 14-A shall be instituted except by order or with written consent of the Central Government or the State Government or a person authorised in this behalf by general or special order by the Central Government or by the State Government. If we read Ex.44 letter written by the Food Inspector to the Sanctioning Authority, we find that he had enclosed two documents with letter ex.44. One of two documents was a written receipt passed by accused for price paid to him for the sample of chillies powder and another was a copy of written intimation in prescribed Form No.VI (which is required to be given under Rule 12 of the Rules) to the accused. Shri Lakhani has argued that the Food Inspector did not send a copy of memorandum to the Sanctioning Authority and therefore Sanctioning Authority has mechanically accorded sanction without application of its mind. He ought to have called for copy of memorandum from the Food Inspector before according sanction. As per Rule 7(3) of the Rules, the Public Analyst is required to send his report of analysis to the Local (Health) Authority in prescribed Form No. III. Here in this case, the Public Analyst sent his report of analysis Ex.43 to that Local (Health) Authority which has accorded a sanction. Thus, on the date of according of sanction Ex.45, the Local (Health) Authority had with him a report of the Public Analyst Ex.43 which was sent by the Public Analyst directly to him. If we read the report of the Public Analyst, we find that the Public Analyst received the sample of chillies powder from the Food Inspector, Patan Municipality on 24/4/1981 for analysis and that sample was properly sealed and fastened and that he found that seal was intact and unbroken. He has further mentioned in his report that the seal affixed on the container and outer cover of the sample tallied with specimen of the seal separately sent by the Food Inspector and therefore, it can be said that the sample was in a condition fit for analysis. As per evidence of Food Inspector, he sent sample of chillies powder to the Public Analyst under a memorandum which is at Ex.40, and therefore, a statutory requirement was fulfilled by Food Inspector for sending a sample of chillies powder to the Public Analyst under a memorandum as per Rule 17 of the Rules. Had the Food Inspector not sent the memorandum Ex.40 to the Public Analyst, the Public Analyst would not have analysed the sample in absence of memorandum. Under the circumstances, an inference can be drawn that the Food Inspector did send a

memorandum Ex.40 and on receipt of that memorandum Ex.40, the Public Analyst analysed the sample and sent the report Ex.43 to the Local (Health) Authority. In view of this, it was not necessary for the Local (Health) Authority to see a copy of memorandum before issuance of sanction under Sec. 20 of the Act. When he received a report from the Public Analyst, he can well infer and presume that the Food Inspector must have sent the memorandum under Rule 17 of the Rules to the Public Analyst. Under the circumstances, it was not necessary for the Local (Health) Authority to see a copy of memorandum before according sanction. After all, sanction is to be accorded for lodging a complaint against accused for an offence under the Act. He himself has to be satisfied as to whether this is a fit case for according sanction to lodge a complaint against the accused or not and that satisfaction can be arrived at on the basis of particulars furnished by the Food Inspector in his letter Ex.44 reading with report of the Public Analyst Ex.43 which he had already received from the Public Analyst, and therefore, to my mind, sanction cannot be said to have been accorded mechanically without application of mind. In Sec. 20 of the Act, there is no provision that Sanctioning Authority before according sanction must go through the particular documents and then to accord the sanction. In case of (THE) STATE OF GUJARAT Vs. CHANDRAPRAKASH KHUSHALDAS SINDHI (Supra), this Court has held that it is not necessary that the details must be written by the Sanctioning Authority. The Sanctioning Authority has to peruse documents which are relevant and on being satisfied, the authority has to grant the sanction which in that case had been done. Merely because, there is no reference in letter Ex.44 that copy of memorandum was sent to the Public Analyst, it cannot be said that there is non-application of mind on the part of the Sanctioning Authority, and therefore, this contention advanced by Shri Lakhani, the learned advocate for the revision petitioner is also rejected.

34. Second contention taken with regard to sanction by Shri Lakhani is to the effect that the Food Inspector requested the Local (Health) Authority to accord sanction after about seven months, and therefore, the accused has been prejudiced for getting the sample analysed through the Central Food Laboratory. As discussed earlier, the Local (Health) Authority received a report of Public Analyst Ex.43 on 1/6/1981 and the Food Inspector, by his letter Ex.44, requested the Local (Health) Authority to accord the sanction. It is true that the complainant wrote a letter Ex.44 after about seven months and admittedly there is a delay of about seven months, but in that event, accused must show as to how he has been prejudiced by delay being occasioned on part of the Food Inspector for applying for sanction to be accorded under Sec. 20 of the Act to prosecute the accused. Shri Lakhani has tried to argue that as sanction was accorded after about seven months, the Local (Health) Authority wrote a letter Ex.47 to accused on 5/3/1982 asking him to get the sample analysed through the Central Food Laboratory. Shri Lakhani has argued that because of this delay, he could make an application Ex.4 on 20/4/1982 requesting the Court to call for one of the parts of the sample of chillies powder from the Local (Health)

Authority and then to send it for analysis to the Director of Central Food Laboratory and pursuant to that application Ex.4, the learned Magistrate could send one of the parts of the sample to the Director of Central Food Laboratory vide Ex.8 on 7/5/1982. Thus, once there was a delay on the part of the complainant, there is a subsequent delay in sending the sample by the learned Magistrate to the Central Food Laboratory. The Director of Central Food Laboratory received one of the parts of the sample of Chillies powder sent by the learned Magistrate on 12/5/1982, and he analysed the sample and issued certificate of analysis Ex.15. If we read that certificate ex.15, we find that the Director of Central Food Laboratory has specifically stated that sample was in a condition fit for analysis, and therefore, it cannot be said that merely because there was a delay in sending the sample to the Central Food Laboratory, the sample was deteriorated and result of analysis had come adverse to the accused. When the Director of Central Food Laboratory also found the sample was in a condition fit for analysis, then it cannot be said that accused has been prejudiced because of delay occasioned on part of the Food Inspector for seeking sanction Ex.45 from the Sanctioning Authority, and therefore, this contention is also rejected.

35. During the course of arguments, Shri Lakhani has raised a dispute with regard to signature of Public Analyst having been put by him after analysis was performed. Shri Lakhani has argued that looking to report of analysis Ex.43 issued by the Public Analyst, sample was received by him on 24/4/1981 and as per that report ex.43, he analysed the sample on 12-05-1981 and signed that report on 27/5/1981 and report was made ready for despatch on 28/5/1981, and therefore, Rule 7(3) of the Rules is violated. In reply to this, Shri S.T.Mehta, learned APP for the revision opponents has cited an authority in case of STATE OF GUJARAT vs. VISHRAMDAS VIRUMAL, reported in 1998(2) G.L.H. 986. wherein it has been held that when any doubt is raised about correctness of the report of the Public Analyst, then the Public Analyst should be examined either by the Court or by accused raising some doubt, but at the same time, it has further held that without examining the Public Analyst, his report cannot be ignored only on the ground that report is signed by him lateron and not on the date on which sample was analysed.

36. By citing Rule 7(3)(2) of the Rules, Shri Lakhani has argued that the Public Analyst is required to send a report of the analysis in prescribed Form III within a period of 40 days from the date of receipt of sample. Here in this case, the Public Analyst received sample on 12/5/1981 and signed it on 27/5/1981 and sent it to the Local (Health) Authority on 28/5/1981. It was received by Local (Health) Authority on 1/6/1981, and therefore, it cannot be said that it was sent after prescribed period of 40 days. His arguments are merely on the ground that sample was analysed on 12/5/1981 and was signed by the Public Analyst on 27/5/1981, and therefore, there is no delay in sending the sample to the Local (Health) Authority.

37. It may be noted that now aforesaid arguments advanced challenging report of Public Analyst cannot be sustained because accused himself applied for sending one of the parts of the sample by the Court to the Director, Central Food Laboratory, and Director, Central Food Laboratory has issued his certificate Ex.15 and in view of Sec. 13(5) of the Act, the certificate issued by the Director of Central Food Laboratory supersedes the report of the Public Analyst, and therefore, now it is of no use to challenge the report of the Public Analyst on the ground that it was signed later on after it was analysed. In view of discussion made hereinabove, this contention with regard to signing of report by Public Analyst subsequently after sample was analysed, is devoid of any merits and is not accepted and rejected.

38. Last contention taken by Shri Lakhani is on the point with regard to sentence. He has argued that in case if this Court comes to a conclusion that this Criminal Revision Application is required to be rejected on the point of order of conviction passed against the accused by the learned Magistrate and confirmed by the learned Appellate Judge, then in that case, this Court is requested to consider the question with regard to sentence sympathetically and lenient view be taken by this Court.

38.1 As discussed earlier, accused has contravened provisions of Sec. 7(i) of the Act read with Sec. 2(i-a)(m) of the Act read with Rule 5 of the Rules and read with Item No.A.05-05-01 of Appendix B below Rules for which he has been sentenced under Sec. 16(1)(a)(i) of the Act. If we read Sec. 16(1), we find that minimum sentence prescribed is six months. So far as Sec. 16(1) which relates to sentence is concerned as per that Sec. 16(1), punishment is prescribed for imprisonment for a term which can not be less than six months but that may extend to three years and with fine and that fine can not be less than one thousand rupees. In view of this, the learned Magistrate has inflicted minimum sentence. Under the circumstances, question does not arise for taking a lenient view because the learned Magistrate has already taken a lenient view while inflicting the sentence.

39. The question of sentence is a matter of discretion and discretion lies primarily on the trial Court and the Appellate Court would not lightly interfere with the sentence. At the time of inflicting sentence, object and purpose of enacting the Act is required to be kept in mind. In case of *STATE OF GUJRAT vs. CHANDRAPRAKASH KHUSHALDAS SINDHI* (Supra), it is held as under:

"The object and purpose of the Act are to eliminate the danger to human life from the sale of unwholesome articles of food. The legislature has provided minimum punishment. The Act is enacted to curb the wide-spread evil of food adulteration and is a legislative measure for social defence. It is intended to suppress a social and economic mischief and evil of adulteration of food and its effects on the health of the community are assuming alarming proportions. The offence of adulteration is a socio-economic offence. The construction appropriate to a social defence legislation is, therefore, one which would suppress the

mischievous aimed by the legislation and advance the remedy. The offence under the Act are really acts prohibited by the police powers of the State in the interest of public health and well-being. The prohibition is backed by the sanction of a penalty. The offences are strict statutory offences. Intention or mental state is irrelevant.

40. In view of the discussions made hereinabove, keeping in mind the scope, object and purpose of enacting the Act and when the learned Magistrate has inflicted minimum sentence, then this Court is of the view that no lenient view can be taken in this matter.

41. Except aforesaid contentions, no other contention has been taken by Shri Y.S.Lakhani, the learned advocate for the revision petitioner.

42. In view of what is discussed hereinabove, this Criminal Revision Application is devoid of merits and the same is required to be rejected, and accordingly it is rejected. Rule is discharged. Bail granted by this Court vide order dt. 2/5/1989 stands cancelled. Revision petitioner is ordered and directed by this Court to appear and surrender before the Court of the learned Judicial Magistrate, First Class, Patan within two months from the date of receipt of the writ of this Court to serve out the sentence which has been inflicted as per judgment Ex.73 dt. 30/9/1988 rendered by the learned Judicial Magistrate, First Class, Patan in Criminal Case No. 1061 of 1982.