
(1993) 03 MAD CK 0011

In the Madras High Court

Case No : Criminal R.C. No's. 517 of 1992, 1 of 1993, 2 of 1993, 5/93, 7/93, 8/93, 15/93, 17/93, 20 of 1993 respectively/Crl. R.P. No's. 508 of 1992 Nil of 1993 2 of 1993 and nil of 1993 respectively

S. Arunachalam and 8 others

APPELLANT

Vs

The State and another

RESPONDENT

Date of Decision : 31-03-1993

Acts Referred:

Essential Commodities Act, 1955 — Section 7(1)(a)(ii)

General Clauses Act, 1897 — Section 26

Prevention of Food Adulteration Act, 1954 — Section 10

Citation : (1993) LW(Cri) 470

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : S.S. Kumar, M. Karpagavinayagam and A. Packiaraj, for the Appellant; B. Sriramulu, Public Prosecutor on behalf of the State, for the Respondent

Judgement

Arunachalam, J.—All these Revisions are disposed of together by a common order since the question raised for consideration is identical.

2. It will be necessary to briefly state the facts in each one of these revision case before narrating the grounds urged.

3. In Crl.R.C. No. 517/92 revision Petitioner Arunachalam is the sole accused. He is being prosecuted in S.T.C. No. 14 of 1992 on the file of the

Special District and Sessions Judge under the Essential Commodities Act, Madurai. He is alleged to have contravened Clause 3 of the Tamil Nadu

Scheduled Articles (Description of Standard) Order, 1977 read with Section 7(1) (a)(ii) of Essential Commodities Act, 1955. Revision Petitioner is

a dealer in edible oil, carrying on trade at Door No. 146, M.N. Road. Thisiyanvilai under the name and style of "Suyambu Oil Store", On

26.10.1991 at or about 2 p.m. Inspector of Police, C.S.C.I.D., Tirunelveli, along with his party, inspected the said oil store and obtained samples

of gingili oil, groundnut oil and coconut oil. The report of the Public Analyst dated 25.11.1992 indicates that samples of gingili oil and coconut oil

were found to be adulterated. On 31.1.1992, final report was filed by the investigating agency. On 1.10.92, Petitioner preferred an application

under Ss. 10, 11 and 13(2) of the Prevention of Food Adulteration Act read with Section 7(3)(b) of the Tamilnadu Scheduled Articles

(Prescription of Standard) Order, 1977, pleading for forwarding another portion of the sample seized to the Director of Central Food Laboratory

for analysis. On 9.10.1992 State filed an objection petition stating that the plea of the Petitioner cannot be acceded to. The Special Court passed

the following Order, which seem to be identical in almost all these revisions:

Heard both sides. Under Clause 7(3)(b) of Tamilnadu Scheduled Articles (Prescription of Standard) Order, 1977, Ss. 10 and 11 of the

Prevention of Food Adulteration Act is applicable. A perusal of that clause will show that Section 13(2) is not stated in it. Hence, I hold Section

13(2) is not applicable and this petition is dismissed.

It is the correctness of this order of dismissal negating the plea of the Petitioner that is challenged in this revision.

4. CrI.R.C. No. I/1993: This Revision relates to S.T.C. No. 3/1992 pending on the file of the same Special Court. Assistant Technical

Commissioner of Supply and Consumer Protection, took sample of groundnut oil and double refined groundnut oil from the shop of the Petitioner

on 16.2.1991. From each food articles, three bottles of sample were taken. Sale consideration was also paid to the Petitioner from whose

premises (Sheik Dawood Sait Oil Stores), samples were seized. On 20.3.1991 one bottle from each of the sample seized were forwarded for

analysis, while two remaining bottles were despatched to the Revenue Office. The report of the Analyst disclosed that the sample of double refined

groundnut oil was adulterated. On the basis of the report of the analyst on 25.11.91 the seizing officer gave a complaint to the Respondent, who

registered Cr. No. 313/91 and after completion of investigation, laid final report before the Special Court on 19.12.91. In between, on 27.11.91

one sample bottle from each of the seizures was sent to court. On 5.5.92,

learned Special Judge took cognizance. On 28.10.92 Petitioner appeared before the Special Judge and preferred an application pleading for forwarding of another sample taken, for analysis to the Director of Central Food Laboratory, Pune. On 4.11.92, as in the earlier case, petition was dismissed on the same parity of reasoning, though the order has a little more detail. Needless to add that the violation alleged is similar as in the earlier revision.

5. CrI.R.C. No. 2 of 1993: This revision gets correlated to S.T.C. No. 4 of 1992 on the file of the same Special Court. On 27.12.1992, Inspector of Police, C.S.C.I.D., Madurai took sample of tea dust from the shop of the Petitioner. One sample bottle was handed over to the Petitioner. The report of the Public Analyst dated 7.2.92 revealed that the sample was adulterated. Final report was laid on 13.2.1991. On 16.6.1992, one other sample bottle was sent to court to facilitate disposal of the prosecution. On 8.7.1992 cognizance was taken and on 10.8.1992 petition appeared before the trial judge. On 11.8.92 Petitioner preferred an application to forward the other portion of the sample to the Director of Central Food Laboratory, Pune for analysis. Plea of the Petitioner was negatived. Hence this Revision.

6. CrI.R.C. No. 5/1993: arises out of S.T.C. No. 9 of 1992, pending on the file of the same Special Court against Petitioner Sasikumar. On 10.1.92, Sub Inspector, C.S.C.I.D. obtained sample of tea dust from the shop of the Petitioner, run under the name and style of Meenakshi Tea Traders. Sample obtained was divided into three equal portions. On 21.1.1992 one sample was forwarded for Chemical analysis. On 21.2.92, on receipt of the Report of the Analyst, it was found that the sample was adulterated. On 24.2.1992 final report was laid. Cognizance was taken on 16.7.1992, on which date one other bottle of the sample was deposited in Court. On 12.8.92 Petitioner preferred an application to forward another portion of the sample for chemical analysis to the Central Food Laboratory. Since the plea of the Petitioner was not accepted, the instant revision has been filed.

7. CrI.R.C. No. 7 of 1993 concerns, the case before the same Special Judge against the Petitioner, in S.T.C. No. 6 of 1992. On 4.1.92 sample of tea dust was taken from the shop of the Petitioner. On 6.1.92 Analyst received

one portion of the sample. On 13.2.92. Analyst offered his opinion that the sample forwarded to him was found adulterated. On 24.2.92 final report was filed. On 12.8.92 a similar plea was made, as in the earlier

case, to forward the sample for second analysis to the Central Food Laboratory. Dismissal of that plea has resulted in entertaining of this Revision.

8. Crl.R.C. No. 8 of 1993: This Revision correlates to S.T.C. No. 8 of 1992 on the file of the same special court. From United Trades Company

(Petitioner Farook) on 10.1.92 tea dust sample was taken in three bottles. One bottle was handed over to the Petitioner. The Analyst Report

dated 21.2.92, disclosed that the tea dust was found adulterated. On 24.2.1992 final report was laid. Cognizance was taken on 16.6.92. On

12.8.92 Petitioner pleaded for forwarding of the second sample to the Central Food Laboratory for analysis. That plea was not acceded to and

the result in the instant revision against the impugned order.

9. Crl.R.C. No. 15/1993: This revision arises out of S.T.C. No. 2 of 1992 on the file of the same special court. Violation, as in the other case, is of

the provisions of the Tamilnadu Scheduled Articles (Prescription of Standard) Order read with the relevant provisions of the Essential Com

modifies Act. On 24.10.91 Inspector of Police, C.S.C.I.D., inspected the tea stores of the Petitioner situated at Door No. 52, Bunglowmedu 1st

St., Theni, and seized samples of tea-dust weighing approximately 500 gms. each. One packet of sample was handed over to the Petitioner, yet

another forwarded to the Court, while the third was despatched for analysis. On 3.12.1991 Public Analyst offered his opinion that the tea dust

analysed by him was found to be adulterated. On 24.12.91, final report was filed. On 2.4.92 cognizance was taken. On 9.10.92 Petitioner made a

plea for forwarding another sample for analysis to the Central Food Laboratory, which was negatived, leading to this revision.

10. Crl.R.C. No. 17 of 1993 corresponds to S.T.C. No. 10 of 1992 on the file of the same special Judge, violation alleged is also identical. On

21.1.92, Inspector of Police, C.S.C.I.D. went over to Sriruvasa Trading Co., a company belonging to the Petitioner, situated at Chithiraivasal St.,

Madurai and obtained three samples of dhal. As in the earlier case one sample was handed over to the Petitioner, while the second was sent to

Court. The third sample was despatched for analysis. The report of the Analyst

dated 20.2.1992 disclosed that dhall seized was sub-standard. On

24.2.92 final report was filed, leading to cognizance being taken on 8.7.1992
Petitioner to forward another sample to the Central Food

Laboratory was filed and rejected in the same pattern as in the earlier cases.
Such negation is questioned in this revision.

11. Crl.R.C. No. 20/1993: This revision arises out of S.T.C. No. 7 of 1992 pending
on the file of the same special court. On 4.1.1992 sample of

tea dust was obtained from the shop of the Petitioner. Analyst, who received the
sample on 6.1.1992, offered his opinion in his report dated

13.2.1992, that the sample was found adulterated. Charge sheet was laid on
15.2.92 leading to cognizance being taken on 16.6.1992. On

12.8.1992 Petitioner requested for forwarding of another sample to the Central
Food Laboratory for second analysis, plea of the Petitioner was

rejected, leading to presentation of this revision.

12. Mr. M. Karpagavinayagam, learned Counsel appearing on behalf of the
respective Petitioners in Crl.R.C. Nos. 1,2,5,7,8 and 20 of 1993 and

Mr. A. Packiaraj, learned Counsel representing the Petitioners in Crl.R.C. Nos. 15
and 17 of 1993 addressed arguments in extenso, while Mr.

S.S. Kumar, learned Counsel for the Petitioner in Crl.R.C. No. 517 of 1992
adopted their arguments. The contentions advanced by the counsel,

harp on Clause 6 of the Order, which reads that the competent officer or any
officer authorised by him in this behalf, shall exercise the same

powers and discharge the same duties, as those of a Food Inspector under Ss. 10
and 11 of the Prevention of Food Adulteration Act, 1954

(Central Act XXXVII of 1954). In expatiation of the provisions of clause of the
order it was contended that Section 10 of the Prevention of Food

Adulteration Act stipulated powers of the Food Inspector, while Section 11 of the
Act prescribed procedure to be followed by the Food

Inspector, in obtaining samples. It was specifically pointed out, that under the
provisions of the Prevention of Food Adulteration Act, three samples

will have to be obtained, out of which one bottle should be forwarded to the
Public Analyst, while the other two bottles should be despatched to

the Local Health Authority for the purpose of Section 13 of the Act. The corollary
sought to be drawn was, that the other two samples, which

have been forwarded either to the Revenue office or in some cases, to the Court,

were only intended for the purpose of Section 13 of the Act.

Learned Counsel laid emphasise on the procedure prescribed u/s 13 of the Act, which had to be followed by the concerned Court for sending the

second sample for analysis to the Central Food Laboratory,

13. Detailing further on the scope of the provisions of the order and the Act definition of competent officer under Clause 2(b) was pointed out. It is

those officers contemplated under Clause 2(b) of the order who are permitted either by themselves or on their authorisation, to exercise the

powers and discharge the duties as those of the Food Inspector under the Act. It was reiterated that the competent officers, were bound to

exercise the same powers and discharge the same duties as those of the Food Inspector under the Act. Violation alleged in all those cases falls

under Clause 3 of the Order, which reads that no dealer or any person employed by him shall, (produce, supply or sell) any scheduled article

which is not according to the standard prescribed in schedule II to this order. Both Mr. M. Karpagavinayagam and Mr. A. Packiaraj contended,

that Clause 6 of the order does include Section 11(i)(c) which is an integral part of Section 11 of the Act. If that be so the court cannot allow it to

be excluded, as done by the special Court. Arguments were advanced, that Section 11 of the Act was interlinked with Section 13(2A) and if the

provisions u/s 13(2A) of the Act are not extended, it would not only be arbitrary but would also result in serious prejudice to the case of the

Petitioners. Mr. A. Packiaraj specifically brought to my notice Clause 7(3)(b) of the Order, which reads as follow: -

The provisions of Ss. 10 and 11 of the Prevention of Food Adulteration Act, 1954 (Central Act XXXVII of 1954) and the rules thereunder

relating to the analysis of food sample.

The purpose was, that the provisions of the Prevention of Food Adulteration Act were not only applicable for sampling by the competent officer as

ordained under Ss. 10 and 11 of the Act, but will also extend the Act and the Rules in respect of analysis of the Food sample.

14. Mr. B. Siramulu, learned Public Prosecutor, who appeared on behalf of the Respondents in all these revisions, submitted that this Court will

have to scrutinise if legislation relatable to the order, was by reference or by incorporation. If that question is answered, then there will be no

difficulty in disposing of all these revisions, on a pure question of law. He was fair enough in stating, that if three samples were to be taken and that

is the mandate or law, it would obviously be incongruous, if the respective Petitioners do not have an opportunity to have the Second sample

tested by the Central Food Laboratory. Counsel on either side have placed for my consideration, certain decided cases, which I will refer to in the relevant context.

15. Before doing so, let me briefly narrate the object underlying the Prevention of Food Adulteration Act, 1954 and the purpose for which the

Tamil Nadu Schedule Articles (Prescription of Standards) Order, 1977 was brought into the statute book. The Prevention of Food Adulteration

Act was enacted with the aim of eradicating the anti-social evil and for ensuring purity in the articles of Food. In view of the above object of the

Act the intention of the legislature is revealed, by the fact that a minimum sentence of imprisonment and fine have been prescribed. The purpose is

that the courts cannot lightly sentence the food offenders, for the welfare of the society, was the background of this legislation. The further purpose

was to obtain uniform standard of food stuffs all over the country, let alone as stated earlier prevention of adulteration of Food. Grievous danger to

the health of the nation was sought to be minimised by this Act. Tamil Nadu Order was issued by reason of the powers conferred by Section 3 of

the Essential Commodities Act, to control production supply and distribution of essential commodities. The object is clear, as the Order itself

makes it apparent, that in the opinion of the Government, it was necessary to maintain the increase of supplies and services of certain articles

essential to the life of the community. It was also deemed necessary to prevent any corrupt practice or abuse of authority in respect of supply of

such articles. On that foundation, it was found necessary to prescribe standards of such articles, for securing supply or sale according to the

prescribed standards.

16. Even at this stage, it must be stated that the prescription of standards is found not only in the order, but also in the Prevention of Food

Adulteration Rules.

17. Before scrutinising the contentions advanced by either counsel, it will be necessary to extract the relevant clauses of the order and the sections

of the Act consideration of which will be necessary for the disposal of these revisions.

18. Clause 6 of the Order reads as follows: -

Compellent officer to exercise the powers of Food Inspector: The competent officer or any officer authorised by him in this behalf, shall exercise

the same powers and discharge the same duties as those of a Food Inspector under Ss. 10 and 11 of the Prevention of Food Adulteration Act,

1954 (Central Act XXXVII of 1954).

A reading of this clause indisputably indicate that the competent officer shall exercise the same powers and discharge the same duties as those of

the Food Inspector under Ss. 10 and 11 of the Prevention of Food Adulteration Act. In other words, practically a Food Inspector can be

substituted in the place of a competent officer or any officer authorised by him in that behalf I have already referred to Clause 7(3)(b) of the Order

which states, that the provisions of Ss. 10 and 11 of the Prevention of Food Adulteration Act, 1954 (Central Act XXXVII of 1954) and the rules

thereunder relating to the analysis of food sample shall, so far as may be applied to search and seizure and to the analysis of scheduled articles and

adulterants etc. A combined reading of Clause 6 and Clause 7 of the Order, naturally makes it necessary to extract the relevant portions of Ss. 10

and 11 of the Prevention of Food Adulteration Act.

19. Section 10(1) of the Act, as far as we are concerned reads as follows:

(1) A food inspector shall have power

(a) to take samples of any article of food from -

(i) any person selling such article;

(ii) any person who is in the course of conveying, delivering or preparing to deliver such articles to a purchaser or consignee;

(iii) a consignee after delivery of any such article to him; and

(b) to send such sample for analysis to the public analyst for the local area within which such sample has been taken.

Ss. 10(2) and 10(3) of the Act, which reads as hereunder, are also relevant:

(2) Any food inspector may enter and inspect any place where any article of food is manufactured, or stored for sale, or stored for the manufacture

of any other article of food for sale, or exposed or exhibited for sale or where any

adulterant is manufactured or kept, and take samples of such article of food or adulterant for analysis;

Provided that no sample of any article of food, being primary food, shall be taken under this Sub-section if it is not intended for sale as such food.

(3) Where any sample is taken under Clause (a) of sub-S. (1) or Sub-S. (2), its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

We are not concerned with the other Sub-sections of Section 10, except sub-S. (7) which reads as hereunder;

Where the food inspector takes any action under Clause (a) of sub-S. (1), sub-S. (2), sub-S. (4) or sub-S. (6) he shall call one or more persons to be present at the time when such action is taken and take his or their signatures.

20. Section 11 of the Act refers to the procedure to be followed by the Food Inspector. Only sub-Ss(1) to (3) of Section 11 of the Act will be relevant for the purpose of these revisions. They read as hereunder:

11. Procedure to be followed by Food Inspectors: - (1) When a food inspector takes a sample of food for analysis, he shall-

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

if any, whose name, address and other particulars have been disclosed u/s 14.A.

(b) except in special cases provided by rules under this act divide the sample then and there into three parts and mark and seal or fasten up each

part in such a manner as its nature permits and take the signature or thumb-impression of the person from whom the sample has been taken in such

place and in such manner as may be prescribed;

Provided that where such person refuses to sign or put his thumb impression the food inspector shall call upon one or more witnesses and take his

or their signatures or thumb impressions, as the case may be, in lieu of the signature or thumb, impression of such person;

(c) (i) send one of the parts for analysis to the public analyst under intimation to the Local (Health) Authority; and (ii) send the remaining two parts

to the Local (Health) Authority for the purposes of sub-S. (2) of this Section and sub-Ss. (2.A) and (2-E) of Section 13.

(2) Where the part of the sample sent to the public analyst under Sub-clause (i) of Clause (c) of sub-S. (1) is lost or damaged, the Local (Health)

Authority shall, on a requisition made to it by the Public Analyst or the Food Inspector despatch one of the parts of the sample sent to it under

Sub-clause (ii) of the said Clause (c) to the Public Analyst for analysis.

(3) When a sample of any articles of food (or adulterant) is taken under sub-S. (1) or sub-S. (2) of Section 10 the Food Inspector shall, by the

immediately succeeding working day send a sample of the article of food or adulterant or both, as the case may be, in accordance with the rules

prescribed for sampling to the public analyst for the local area concerned.

Emphasis will have to be laid on Section 11(1)(c)(i) and (ii), which relates to the need of the Food Inspector to send one of the parts, for analysis

to the Public Analyst under intimation to the Local (Health) Authority and send remaining two parts to the Local (Health) Authority for the

purposes of sub-S. (2) of this section and sub-Ss. (2.A.) and (2.E) of Section 13 of the Act.

21. Before we proceed to extract Section 13 of the Act, it will be necessary to have a quick look at Section 11(c)(ii). Under this Sub-section

where the part of the sample sent to the Public Analyst under Sub-clause (i) of Clause (c) of sub-S. (1) is lost or damaged, the Local (Health)

Authority shall, on a requisition made to it by the Public Analyst or the Food Inspector, despatch one of the parts of the sample sent to it under

Sub-clause (ii) of the said Clause (c), to the Public Analyst for analysis. This Sub-section only shows, that on the requisition of a public analyst or

the Food Inspector, a second sample will have to be forwarded for analysis, if the sample initially sent gets lost or damaged. This Sub-section

provides a right for the prosecuting agency, to have yet another sample analysed on a particular ground. While such a right has been given to the

prosecution under sub-S. 11(2) of the Act, we cannot overlook, that the prosecution has yet another similar right u/s 13(2) of the Act. Section

13(2) reads as follows:

If after considering the report, if any, of the food inspector or otherwise, the Local (Health) Authority is of the opinion that the report delivered by

the Public Analyst under sub-S. (1) is erroneous, the said Authority shall forwarded one of the parts of the sample kept by it to any other public

analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the article

of food is adulterated, the provisions of sub-Ss. (2) to (2D) shall, so far as may be, apply

S. 13(2E) of the Act preserves the right of the prosecution to establish its case to the hilt if it entertained doubt, that the initial report of the Public

Analyst was likely to be erroneous. Naturally the Court will have to visualise, that such a right should also be available to the accused to establish

that, in all probability the report of the Public Analyst obtained by the prosecution agency was erroneous. Only recognising such a right, Section 13

of the Act mandates the procedure to be followed by the Court, with regard to forwarding a second sample for analysis, through it. Section

13(2A) of the Act which has been referred to u/s 11(1)(c)(i) and (ii) reads as follows:

When an application is made to the Court under sub.S. (2), the Court shall require the Local (Health) Authority to forward the part or parts of the

sample kept by the said Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the

court within a period of five days from the date of receipt of such requisition.

S. 13(2E) of the Act, which has been referred to u/s 11(1)(c)(i) and (ii) has already been taken note of by me, a little earlier. That Sub.S. (2A) of

Section 13 is dependent of Section 13(2) of the Act is so evident, for the opening words of Section 13(2.A) reads ""when an application is made to

the court under sub-S. (2), the Court shall require the Local Health Authority....""

If Section 13(2)(A) has to be applied and the accused gets

protection therefrom, as contemplated u/s 11(1)(c)(ii) of the Act, naturally Section 13(2) of the Act also comes into operation. Section 13(2) of

the Act reads as follows:

On receipt of the report of the result of the analysis under sub-S. (1) to the effect that the articles of food is adulterated, the Local (Health)

Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any,

whose name, address and other particulars have been disclosed u/s 14-A, forward, in such manner as may be prescribed, a copy of the report of

the result of the analysis to such person or persons as the case may be,

informing such person or persons that if it is also desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.

We need not have to consider in detail Section 13(2.C) and (2.D) of the Act for the purposes of these revisions. However Section 13(3) of the

Act is very relevant, for the certificate issued by the Director of the Central Food Laboratory u/s 13(2B) shall supersede the report given by the

Public Analyst under Sub-S. (1), Section 13(5) of the Act will also be relevant, for any document purporting to be a report signed by a public

analyst, unless it has been superseded under sub-S. (3) or any document purporting to be a certificate signed by the Director of the Central Food

Laboratory, may be used as evidence of the facts stated therein, in any proceeding under the Act or under Ss. 272 to 276 of the Indian Penal

Code. The proviso further affirms that the certificate signed by the Director of Central Food Laboratory, not being a certificate with respect to the

analysis of the part of the sample of any article of food referred to in the proviso to sub-S. (1A) of Section 16, shall be final and conclusive

evidence of the facts stated therein. We are not concerned in these revisions with sub-S. (1A) of Section 16 of the Act. Needless to state, on the

facts placed before me, that if a report is obtained from the Director of Central Food Laboratory it shall be final and conclusive of the facts stated

therein. We have already noticed that the sampling authority, be it under the Act, or the order, must obtain three samples, for u/s 11(c) of the Act

one part had to be forwarded for analysis to the Public Analyst while the remaining two parts will have to be send to the Local (Health) Authority

for the purposes of Section 11(2) or Section 13(2A) and (2.E) of the Act.

22. Before amendments were introduced in the Prevention of Food Adulteration Act, one part of the sample seized used to be handed over to the

vendor who had an option to send either that portion handed over to him or the third portion with the authority, for second analysis. The very

object of obtaining three samples clearly indicates, that the right of the accused to have one of the samples analysed was sought to be preserved by

the Legislature and only in view of that salutary object, intimation to the accused

u/s 13(2) of the Act, to facilitate yet another sample being forwarded to Central Food Laboratory for analysis, was mandated. Merely because Clause 6 of the Order refers only to Ss. 10 and 11 of the Prevention of Food Adulteration Act, 1954 it cannot be held, that the other provisions of the Act, which may be relevant for the purpose of co-ordination of the object behind the Act and the Order, cannot be looked into, for then the very purpose of the Order, will get defeated. That such an object will have to be inferred is very clear, from Clause 7(3) for, the Rules to be followed and the Act to be applied, relate not only to obtaining of food sample, but also for analysis of the said sample. A narrow interpretation cannot be given, for u/s 13 of the Act, at every stage, time has been sought to be made the essence. The accused, who gets intimated of his right to have the second sample analysed, will have to do so within a period of ten days from the date of receipt of the Analyst report as well as intimation u/s 13(2) of the Act. Once an application is made to the Court by the accused, the Court shall require the Local (Health) Authority to forward another part of the sample within a period of five days from the date of such requisition. The Director of Central Food Laboratory is also bound to send his 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. The object behind these provisions, which are time bound, is not far to seek, for the food articles are likely to undergo changes or get decomposed by efflux of time. The rights contemplated under the Act, be it in favour of the prosecution or the accused, will have to be exercised before the food article gets decayed or decomposed or get irrevocably changed for otherwise the very purpose of the Act and the order is bound to get defeated.

23. In other words, proper sampling and the report of the public analyst constitute the basic foundation for initiating prosecution, be it under the Act or the Order. If there is a denial of the right conferred u/s 13(2) of the Act, it will be difficult, if not impossible, to sustain the prosecution.

There cannot be a better example of prejudice to the case of the accused, if his request for Forwarding a second sample to the Central Food

Laboratory, is not acceded to, though mandated by law. Proceeding a step further if the legislature thought it fit to usher in a right to the accused to

have another sample examined by the Central Food Laboratory, one could reasonably presume that the accused will also be entitled to intimation

of the existence of such a right. The right conferred on the accused is a valuable right and cannot be easily allowed to be thwarted. No doubt, the

Apex Court has consistently held that the right u/s 13(2) of the Act could only arise if the accused choose to exercise their right conferred u/s 13(2)

of the Act, but that aspect need not have to detain us in these revisions, for all the Petitioners, have chosen to prefer applications before the special

court, to have another portion of the sample, forwarded to the Central Food Laboratory for analysis.

24. The right given to the accused is not only for his satisfaction and proper defence, but to serve a clinching purpose as well, which may benefit

even the prosecution since the certificate of probably a greater expert is accepted by the Court as conclusive. Provisions of Food Adulteration Act

have vested such a right for getting the second sample analysed, not only to benefit the prosecution but to benefit the accused as well. If, as held

by the learned Special Judge, the accused has no right to have yet another sample forwarded to the Central Food Laboratory, there was no need

to have obtained three examples. When we consider the application of those provisions of the Prevention of Food Adulteration Act, referred to in

the order it cannot be taken as an isolation, for the sections referred to therein, naturally, on a mere reading, extend to other provisions of those

sections, without which the purpose contemplated cannot be given effect to.

25. Learned Public Prosecutor, who was conscious of several infirmities in the Order, brought to my notice that the State, which has become

aware of the serious lacuna; is likely to introduce provisions in the Order, which fully correlate with the provisions of the Prevention of Food

Adulteration Act. That such effective legislation is necessary cannot be gain-said, for an offender in respect of a food articles, can be prosecuted

not only under the provisions of the Order, but also under the provisions of the Food Adulteration Act. If any authority is required for this

proposition, the decision of the Apex court in *Municipal Corporation of Delhi Vs. Shiv Shanker*, can be usefully referred to. The Supreme Court

stated thus:

The object and purpose of the Adulteration Act is to eliminate the danger to

human life and health from the sale of unwholesome articles of food.

The Essential Commodities Act on the other hand has for its object, the control of the production, supply and distribution of, and trade and

commerce, in essential commodities. In spite of this difference the two provisions may have conterminous fields of operation. The provisions of the

Adulteration Act and of the Fruit order are supplementary and cumulative in their operation and they can stand together. If the Adulteration Act or

Rules impose some restrictions on the manufacturer, dealer and seller of vinegar than they have to comply with them irrespective of the fact that the

Fruit order imposes lesser number of restrictions in respect of these matters. The Parliament did not intend by enacting the Essential Commodities

Act or the Fruit order to impliedly repeal the provisions of the Adulteration Act and the Rules in respect of the Vinegar. Both the statutes can

function with full vigour side by side in their own parallel channels. Even if they happen to some extent to overlap, Section 26 of the General

Clauses Act fully protects the guilty Parties against double jeopardy or double penalty. Both the Adulteration Act and the Essential Commodities

Act have been amended from time to time after their enactment. The subsequent amendments of the Adulteration Act and of the Essential

Commodities Act by the Parliament and the amendment of the Adulteration Rules would also tend to negate any legislative intent of implied

repeal of the Adulteration Act by the Essential Commodities Act or the Fruit order.

Of course, the question posed before the Supreme Court was the converse proposition, but that can make no difference as far as the principle of

law is concerned.

26. An argument was sought to be advanced by Mr. M. Karpagavinayagam that prescription of standards under the Order and the Act differ and

the Analyst reports in all these cases are based on the standards prescribed under the Act, overlooking the standard prescribed under the Order.

He further pointed out that under the provisions of Prevention of Food Adulteration Rules, Rule A.14, tea means and includes tea-dust as well,

but in item 6 of Schedule II to the Order, tea-dust has not been mentioned. On a careful perusal of the standard prescribed under the Act and the

Order, I am unable to see any significant difference, except that there is no prescribed standard for double refined ground-nut oil in Schedule-II of

the order, though under the Act under A. 17, 15 separate standards have been prescribed for refined oil. This question, even if there are

differences in the standards., will not be material for the purpose of disposing of these revision cases, for we are now concentrating on the salient

question if the respective accused can be prevented from exercising their right to send a sample for analysis, to the Central Food Laboratory,

merely because Section 13(2) of the Act has not been stated either under Clause 6 or Clause 7(3)(b) of the Order.

27. If, as stated earlier, a vendor can be prosecuted either under the Prevention of Food Adulteration Act or under the Order or under both,

though the question of imposing sentence both under the Order as well as the Act will still loom large, it is possible to visualise that if the

prosecuting agency chooses to prosecute the vendor under the Order the rights would get limited, while they get enlarged if the prosecutions were

to be initiated under the provisions of the Prevention of Food Adulteration Act. Such diversity in the right could not have been intended by the

legislature. Even if such negation of right is contemplated under the order, naturally they have to be struck down as not in consonance with

accepted norms of justice.

28. I do not think it necessary to discuss in detail of the need to serve intimation on the accused, with the report of the Analyst to make him aware

of his right, for, all that is under the contemplation of the State Government, to get the order suitably amended.

29. Mr. B. Sriramulu, learned Public Prosecutor referred to the following passages in "principles of Statutory interpretation by Justice G.P. Singh,

Fifth Edition 1992. These passages are found in pages 190 and 193 respectively.

Incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction

of the provisions of the earlier Act into the later. When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the

provisions so incorporated become part and parcel of the later Act as if they had been bodily transposed in to it."..... As observed by Erett, J.

Where a statute is incorporated, by reference, into a second statute, the repeal of the first statute by a third does not affect the second. The effect

of incorporation is admirably stated by Lord Esher, M.R., If a subsequent Act

brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to Write those sections into the new Act as if they had been actually written in it with the pen, or printed in it. The result is to constitute the later Act along with the incorporated provisions of the earlier Act, an independent legislation which is not modified or repealed by a modification or repeal of the earlier Act (page 190)

In case of legislation by incorporation as the incorporated provisions become part and parcel of a fresh, statute, the constitutional validity of such a statute including the provisions so incorporated is judged with reference to the powers of the legislature enacting the fresh statute and not with reference to its own source. This proposition, which is a necessary consequence of incorporation, is illustrated in the decision of the Supreme Court"" (page 193).

30. In Mahindra & Mahindra Ltd. v. Union of India. (A.I.R. 1979 S.C. 798)the Apex Court, after referring to Section 8(1) of General Clauses

Act and while negating the contention that the substitution of new section amounted to repeal and re- enactment of the former section and that an appeal can be maintained only on the grounds specified in the new section, observed:

We do not think this contention is well founded. It ignores the distinction between a mere reference to or citation of one statute in another and an incorporation which in effect means bodily lifting a provision of one enactment and making it a part of another. Where there is mere reference to or citation of one enactment in another without incorporation, Section 8(1) applies and the repeal and reenactment of the provision referred to or cited has the effect set out in that section and the reference to the provision repealed is required to be construed as reference to the provision as re-enacted... But where a provision of one statute is incorporated in another, the repeal or amendment of the former does not affect the latter. The effect of incorporation is as if the provision incorporated were written out in the incorporating statute and were a part of it. Legislation by incorporation is a common legislative devise employed by the legislature, where the legislature for convenience of drafting incorporates provisions from an existing statute by reference to that statute, instead of settling out for itself at length the provisions which it desires to adopt. Once the

incorporation is made the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to

refer to the statute to from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute.

To the same effect is the observation of the Supreme Court in *Mary Roy and Others Vs. State of Kerala and Others*,).

31. In *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, Apex Court quoted with approval the observations of Sarjant, J., in

Attorney General v. Fulham Corporation, (1921) 1 Ch.D. 440.

Following are the observations of Sarjant, J.

That recognises that in every case it is for a corporation of this kind to show that it has affirmatively an authority to do particular acts, but that in

applying that principle of the rule is not to be applied too narrowly, and the corporation is entitled to do not only that which is expressly authorised

but that which is reasonably incidental to or consequential upon that which is in terms authorised.

The Supreme Court held that the principle so stated was unobjectionable.

32. In *J.K.C.S. & W Mills v. State of U.P.*, (A.I.R. 1961 S.C. 1171) Das Gupta, J., speaking for the Bench while noticing disharmony between

the two provisions stated as follows:

.... Undoubtedly we have to apply the rule of harmonious construction. In applying the rule, however we have to remember that to harmonise is not

to destroy. In the interpretation of statutes the courts always presume that the legislature inserted every part thereof for a purpose and the

legislative intention is that every part of the statute should have effect. These presumptions will have to be made in the case of rule making authority

also.

33. The observations of the House of Lords in *Mayor & C. of Portsmouth v. Smith* (X Appeal Cases 364) appear to be very apt for application

to the facts of the present group of revisions. These observations are extracted hereunder:

.... Where a single section of an act of Parliament is introduced into another Act, I think it must be read in the sense which it bore in the original act

from which it is taken, and that consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section meant,

though those other sections are not incorporated in the new Act. I do not mean that if there was in the original act a section not incorporated,

which came by way of a proviso or exception on that which is incorporated, that should be referred to.

34. In *Madhav Rao Scindia v. Union of India* (A.I.R. 1071 S.C. 530) on interpretation of statutes vis-a-vis provisions ensuring security of

fundamental human rights, in the view of the Apex Court, liberal construction should be adopted. The observations are as follows:-

In any avowedly democratic polity, statutory provisions ensuring the security of fundamental human rights including the right to property will, unless

the contrary mandate be precise and unqualified, be construed liberally so as to uphold the right. These rules apply to the interpretation of

constitution and statutory provisions alike.

These observations have a binding effect on the facts in the instant revisions. If the accused have a right under the provisions of the Act to forward

a second sample to the Central Food Laboratory for analysis, that right cannot be negated, when certain portions of the Act have been sought to

be incorporated in the order. The observations of the Supreme Court will rightly come into operation, for there is no contrary mandate in the order

that the accused have no right to forward a second sample to the Central Food Laboratory and if that be so liberal construction to uphold the right

of the accused will have to be adopted. Even otherwise, as stated earlier, the very introduction of Ss. 10, 11, 13 (2-A) and 13(2-E) of the

Prevention of Food Adulteration Act in the order, automatically takes in their fold the other parts of Section 13 of the Act, without which the very

purpose of the order, will stand thwarted. If the prosecution alleges that the Food articles samples was adulterated, the accused must be afforded

an opportunity to show that the articles was not adulterated by adopting a scientific interlude, which is guaranteed to him u/s 13 of the Act.

35. While narrating the facts I have stated that in some of these revisions one part of the sample had been handed over to the concerned accused,

while in other cases such a procedure had not been followed. There is also no provision in the order as to the authority to whom the remaining to

samples may have to be forwarded by the seizing officer, after despatching one sample to the public analyst. Further, there is no contemplation in

the order of any intimation being Served on the respective accused, making them aware of their right to have a second sample of the food stuff

forwarded for analysis to the Central Food Laboratory. It is fairly clear that beneficial provisions mandated in the Prevention of Food Adulteration

Act will naturally apply to prosecution under the other, since by incorporation certain sections of the Prevention of Food Adulteration Act have

been referred to in the order. These sections in part alone, cannot be considered in isolation, for then the logic behind the mentioning of those

sections, gets lost, for there is a connection between the Sub-sections mentioned in Section 11 of the Act and Section 13 of the Act. All the

relevant provisions extracted earlier under Ss. 11 and 13 as well as Section 10 of the Prevention of Food Adulteration Act will have to be read

together, for otherwise there is bound to be a discrimination between the persons sought to be prosecuted under the Act or under both. Learned

Public Prosecutor, on becoming aware of several lacunae in the impugned prosecutions, fairly, stated that prejudice to the accused, is so apparent.

It was only in that context, he brought to my notice the likelihood of the other being reoriented completely, so that the intentment of including

certain provisions of the Prevention of Food Adulteration Act in the order, can be given full and logical effect, without which they could make no

sense.

36. Though all these revisions have been preferred challenging the negating of the plea made by each one of the Petitioners, before the learned

Special Judge, Madurai, to afford them an opportunity to send a second sample for analysis to the Central Food Laboratory, I am satisfied, that no

useful purposes could be served in allowing the prosecutions in each one of these summary Trial Cases to be proceeded with, for the lacuna

pointed out go to the root of the matter. The trials if allowed, will only be mock trials, for the end result is so obvious. It cannot be overlooked that

the time lag between the seizure of the food articles and allowing now the Petitioners to exercise their right to forward another sample to the

Central Food Laboratory, is too long, that prejudice can be easily and readily inferred. The lacunae in the legislation (Tamilnadu Order) may have

provided a scope for escape of offenders who are social evils, but that cannot help for the accused, however, grave the offence may be must be

afforded a reasonable and purposeful opportunity to defend himself, for otherwise the object of due process of law would get thwarted. In that view, while allowing all these revisions, I direct quashing of the entire proceedings in S.T.C. Nos. 14/92, 3/92, 4/92, 9/92, 6/92, 8/92, 2/92, 10/92 and 7/92 pending on the file of Special District and Sessions Judge, (Essential Commodities Act), Madurai. All these revisions are allowed, as indicated above.