
(1983) 06 SHI CK 0004
In the High Court Of Himachal Pradesh

State of Himachal Pradesh

APPELLANT

Vs

Thakur Dass and etc. etc.

RESPONDENT

Date of Decision : 22-06-1983

Acts Referred:

Prevention of Food Adulteration Rules, 1955 — Rule 7(3), 9A

Citation : (1983) CriLJ 1694 : (1983) 12 ILR HP 230

Hon'ble Judges : V.D. Misra, C.J

Bench : Single Bench

Judgement

V.D. Misra, C.J.—Whether Rule 9-A. Prevention of Food Adulteration Rules (referred to as the Rules) is directory or mandatory is the question which falls for decision in a number of appeals. Rule 9-A reads:

9-A. The Local (Health) Authority shall immediately after the institution of prosecution forward a copy of the report of the result of analysis in Form III delivered to him under Sub-rule (3) of Rule 7, by registered post or by hand as may be appropriate to the person from whom the sample of the article was taken by the Food Inspector, and simultaneously also to the person if any, whose name address and other particulars have been disclosed u/s 14-A of the Act:

Provided that where the sample conforms to the provisions of the Act or the Rules made thereunder and no prosecution is intended under Sub-section (2E) of Section 13 of the Act. the Local (Health) Authority shall intimate the result to the vendor from whom the sample has been taken and also to the person, whose name, address and particulars have been disclosed u/s 14-A of the Act. within 10 days from the receipt of the report from the Public Analyst.

2. The respondents have been acquitted by the courts below on the ground that this rule is mandatory and failure of the Local (Health) Authority to send a copy of the report of the Public Analyst immediately, after the institution of the prosecution must result in acquittal of the accused. In order to appreciate the ambit of this rule, it is necessary to take into consideration other provisions of

the Prevention of Food Adulteration Act. (referred to as the Act) and the Rules.

3. Section 2 of the Act defines, amongst others, the words "adulterated" and "food". Section 3 provides for the constitution of the Central Committee for Food Standards. The Central Government is required u/s 4 to establish one or more food laboratory or laboratories. Section 7 prohibits the manufacture for sale or store, sell or distribute, amongst others, any adulterated food. Section 8 provides for the appointment of a Public Analyst whereas Section 9 makes a provision for the appointment of Food Inspectors. Section 10 defines the powers of the Food Inspectors. It empowers Food Inspector 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 article to a purchaser or consignee; and (iii) a consignee after delivery of any such article to him. It also empowers the Food Inspector to send the sample for analysis to the Public Analyst for the local area within which such sample has been taken. Sub-section (7) of this section enjoins upon the Food Inspector to call one or more persons to be present at the time of taking samples of any article of food.

The procedure which the Food Inspector is required to follow at the time of taking the sample is laid down in Section 11. He is required, amongst others, to 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 has been prescribed. Where a person refuses to sign or put his thumb impression, the Food Inspector is required to call upon one or more witnesses and take the signature or thumb impression of one or more witnesses. It is also the duty of the Food Inspector to send one of the parts of the sample for analysis to the Public Analyst under intimation to the Local (Health) Authority and send the remaining two parts to the Local (Health) Authority. Sub-section (3) provides that "the Food Inspector shall by 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." Section 13 relates to the report of the Public Analyst. It has been amended from time to time. The relevant part of this section may now be noticed:

(1) The public analyst shall deliver, in such form as may be prescribed, a report to the Local (Health) Authority of the result of the analysis of any article of food submitted to him for analysis.

(2) On receipt of the report of the result of the analysis under Sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after 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 particulars have been disclosed u/s 14-A. forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if

it is so desired, either or both of them may make an, application to the court within, a period of ten days from the date of receipt of the copy of the report to Ret the sample of the article of food kept by the Local (Healthy Authority analysed by the Central Food Laboratory.

(2A) to (2E) xx xx xx (3) The certificate issued by the Director of the Central Food Laboratory under Sub-section (2-B) shall supersede the report given by the Public Analyst under Sub-section (1)

(4) & (5) xx xx xx Provided that any document purporting to be a certificate signed by the Director of the 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-section (1-A) of Section 16. shall be final and conclusive evidence of the facts stated therein.

4. Rule 9 lays down the duties of the Food, Inspector. Clause (j) was added to this rule on 8th July, 1968. It was in the following terms:

(i) to send by registered post, a copy of the report received in Form III from the public analyst to the person from whom the sample was taken within ten days of the receipt of the said report. However, in case the sample conforms to the provisions of the Act or Rules made thereunder, then the person may be informer) of the same and report need not be sent.

This clause was, however omitted on 4-9-1977 when the aforesaid Rule 9-A was inserted.

5. The scheme of the Act shows that the sample of article of food should be subjected to analysis at an early date. It is with that end in view that the Food Inspector has been enjoined upon to send immediately the sample of food for analysis to the Public Analyst. Even the Public Analyst is required to analyse the article of food at an early date and with that end in view a limit has been prescribed. The Public Analyst is also required to send the report to the Local (Health) Authority. If this report reveals that the article of food is adulterated within the meaning of the Act. then prosecution has to be launched. Now. it may be noticed that Section 13 of the Act. as it originally stood, did not require the sending of a copy of the report of the Public Analyst to the vendor. However, the then Sub-section (2) of Section. 13 save a right to the vendor as well as to the Food Inspector to apply to the court for sending a part of the sample to the Director of Central Food Laboratory for a certificate. This sub-section was in the following terms:

(2) After the institution of a prosecution under this Act the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the court for sending the part of the sample mentioned in Sub-clause (i) or Sub-clause (iii) of Clause (c) of Sub-section (1) of Section 11 to the Director of the Central Food Laboratory for a certificate: and on receipt of the application the court shall first ascertain that the mark and seal or fastening as provided in

Clause (b) of Sub-section (1) of Section 11 are in tact and may then despatch the part of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the sample, specifying the result of the analysis.

6. Since the certificate of the Director of Central Food Laboratory was to become final and conclusive evidence of the facts stated therein, it was indeed an important right of the accused to have the article of food so analysed. It was found (as is apparent from various judgments) that the delay in launching the prosecution or the delay in having the presence of the accused before the court sometimes resulted in the sample becoming unfit for analysis by the Central Food Laboratory. The Act as well as the Rules were amended from time to time. In order to ensure that the accused does not lose the right to have a final and conclusive certificate from the Central Food Laboratory, a provision has now been made by Sub-section (2) of Section 13 requiring the Local (Health) Authority to send a copy of the report of the result of analysis to the accused "after the institution of prosecution". The accused can exercise his right of sending the sample for analysis to the Central Food Laboratory within a period of 10 days "from the date of receipt of the copy of the report"

7. It may now be noticed that Clause (i) (since omitted) of Rule 9. which has been reproduced above, enjoined upon the Food Inspector to send a copy of the report of the Public Analyst by registered post "within ten days of the receipt of the said report". In other words, if the Public Analyst found the article of food adulterated then the Food Inspector was required to send a copy of this report to the person from whom the sample was taken. At that time u/s 11 (1) (c) it was the duty of the Food Inspector to deliver one of the parts of the sample to the person from whom the sample had been taken. The purport of Clause (i) of sending a copy of the report of the Public Analyst to the person from whom the sample was taken seemed to be to apprise him of the result so that he may if so desired, have the part of the sample left with him analysed. Since the report of the Public Analyst was not final and conclusive, the vendor was at liberty to have his sample analysed from any analyst so that he could produce evidence of such analysis if it helped him. But if he wanted to have the sample analysed from the Central Food Laboratory, he had to wait for the prosecution since it was only after the institution of the prosecution that he could request the court for sending the sample to the Director of the Central Food Laboratory. In other words, to have final and conclusive evidence from the Director of Central Food Laboratory, it was necessary to wait for the launching of the prosecution.

8. I will now analyse the authorities which have been cited by the learned Counsel for the parties. These will also show not only the development of law but also how the courts have been considering various provisions in the Act as directory and not mandatory.

9. The Supreme Court in *Municipal Corporation of Delhi Vs. Ghisa Ram*, had an

occasion to consider the import of Section 13(2) of the Act as it then stood. It was noticed that this section Have a right to the accused-vendor to have the sample analysed by the Director of Central Food Laboratory for the purpose of obtaining conclusive evidence. It was also observed that in a case where there is denial of this right on account of the deliberate conduct of the prosecution, the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst even though that report continues to be evidence in the case of the facts contained therein. In that case the vendor had asked for the sample to be sent to the Director of Central Food Laboratory who had reported that the sample had become highly decomposed and so was not fit for analysis. It was noticed that no preservative was added to the sample of curd, which was the subject-matter of trial. However, it was further observed that if the accused did not choose to exercise this right, the case could be decided on the basis of the report of the Public Analyst.

10. The Supreme Court in *Shri Ram Labhaya Vs. Municipal Corporation of Delhi and Another*, had an occasion to consider the ambit of Section. 10(7) of the Act as it then stood. It was observed that the purport was only to ensure that the Food Inspector calls the individual witnesses at the time of his taking the sample and in case no one agreed to become a witness the prosecution was relieved of its obligation.

11. The Supreme Court in *Babu Lal Hargovindas Vs. The State of Gujarat*, . ruled that a vendor could not make a grievance of his right to have the sample tested from the Director of Central Food Laboratory due to delay in launching the prosecution when the vendor did not make any application u/s 13(2) of the Act to have the sample tested. A similar view was taken by the Supreme Court in *Ajit Prasad Ramkishan Singh Vs. The State of Maharashtra*, .

12. A learned single Judge of Gauhati High Court in *Chandrika Prosad Rai Vs. The State of Assam*, had an occasion to consider the import of Section 13(2) of the Act as it stood at that time. In that case no application was made by the vendor to exercise his right given u/s 13(2) of the Act for getting the sample analysed from the Director of Central Food Laboratory. It was held that the delay in launching the prosecution has not taken away the right of the vendor in the circumstances of that case and the conviction could not be quashed on that ground.

13. In *Dalchand Vs. Municipal Corporation, Bhopal and Another*, the Supreme Court had an occasion to consider whether Rule 9 (i) (already extracted above and which has since been omitted) was mandatory or directory. It may be recapitulated that this rule required the Food Inspector to send to registered post a copy of the report from the Public Analyst to the vendor within 10 days of the receipt of the report. It was observed:

There are no ready tests or invariable formulae to determine whether a provision is mandatory or directory. The broad purpose of the statute is important. The

object of the particular provision must be considered. The link between the two is most important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not, determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the advance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of. It is well to remember that quite often many rules, though couched in language which appears to be imperative, are no more than mere instructions to those entrusted with the task of discharging statutory duties for public benefit. The negligence of those to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute. It is as well to realise that every prescription of a period within which an act must be done, is not the prescription of a period of limitation with baneful consequences if the act is not done within that period. Rule 9 (j). Prevention of Food Adulteration Rules. as it then stood merely instructed the Food Inspector to send by registered post copy of the Public Analyst's Report to the person from whom the sample was taken within 10 days of the receipt of the Report. Quite obviously the period of 10 days was not a period of limitation within which an action was to be initiated or on the expiry of which a vested right accrued. The period of 10 days was prescribed with a view to expedition, and with the object of giving sufficient time to the person from whom the sample was taken to make such arrangements as he might like to challenge the Report of the Public Analyst, for example, by making a request to the Magistrate to send the other sample to the Director of the Central Food Laboratory for analysis. Where the effect of non-compliance with the rule was such as to wholly deprive the right of the person to challenge the Public Analyst's Report by obtaining the report of the Director of the Central Food Laboratory, there might be just cause for complaint, as prejudice would then be writ large. Where no prejudice was caused there could be no cause for complaint.

(emphasis supplied).

The Supreme Court specifically overruled the judgments of the High Courts of Andhra Pradesh and Calcutta reported as *The Public Prosecutor Vs. J. Murlidhar, and Bhola Nath Nayek Vs. The State and Another*, on this aspect.

14. The decisions of the Bombay High Court in the *State of Maharashtra v. Tilok Chand Bhivra*,ⁱ *Jain*. 1979 FAJ 415 of Madras High Court in *State Public Prosecutor Vs. Meenakshi Achi and Others*, of Punjab and Haryana High Court in *State of Punjab v. Jai Gopal*. (1983) 85 PLR 15 . and that of the Kerala High Court in *Food Inspector Vs. Moosa and Others*, cannot in view of *Dal Chand's* case (supra) be said to be good law.

15. My attention has been invited to the decisions of the various courts

interpreting the word "immediately" used in Rule 9A of the Act. In *State of Maharashtra v. Tukaram Baburao Mane* 1982 Cri LJ 1462 it was observed that use of the expression "immediately" shows the anxiety of the Legislature that the copy of the report must be made available to the accused forthwith, and, therefore, where the report was made available after six days after the institution of the prosecution, the accused was entitled to acquittal.

16. In *Sebastian v. State* 1982 Cri LJ 1359 a single Judge of the Madras High Court observed that the expression "immediately" meant without any delay, reasonably quick and prompt. The delay of 25 days in sending the report was held to be inordinate delay entitling the accused to acquittal.

17. A single Judge of the Kerala High Court in *Kanarath Valappil Kunhappa Vs. The Food Inspector, Kanapuram Panchayat and Another*, held that the word "immediately" was mandatory and that even one day's delay would be fatal.

18. A Division Bench of the Madras High Court in *Kandasami Vs. Food Inspector, Athoor*, ruled that Section 13(2) of the Act was mandatory and non-compliance vitiates the entire proceedings.

19. A single Judge of the Allahabad High Court in *Raja Ram Vs. State of U.P.*, held that the word "immediately" in Rule 9A is directory and, therefore, where a copy of the report of the Public Analyst was sent after 42 days of launching the prosecution there was substantial compliance of law.

20. A single Judge of the Madras High Court in *Perumal and Another Vs. Kumbakonam Municipality*, held that the word "immediately" in Rule 9A means without any delay, that is forthwith.

21. Keeping in view the purport of the legislation to curb the public mischief and the legislative history it is not correct to hold that Rule 9A is mandatory and its infraction will entitle an accused to acquittal. The primary object of the rule is to ensure that a vendor-accused does not lose due to the fault of the prosecution, his right to have the sample of food analysed by the Director of Central Food Laboratory. With that end in view it has been enjoined upon the Local (Health) Authority to send a copy of the report with reasonable promptness. Where this is done there is a substantial compliance of this rule. If the delay in sending a copy of the report has in fact, caused prejudice to the accused then there is no substantial compliance of this rule. It may be repeated with advantage that the only duty is to send a copy by registered post or by hand. The moment it is done the rule stands complied with. Since the right of the accused to apply to the court for sending the sample to the Director of Central Food Laboratory arises after the receipt of a copy of report the delay by the Local (Health) Authority in sending it by itself does not cause any prejudice to the accused.

22. Now I will deal with each case separately. Criminal Appeal No. 77 of 1982.

23. A sample of burakhand was taken on 7-11-1979 by the Food Inspector from the shop of Inderjit respondent. The Public Analyst by his report dated

14-12-1979 opined that "the contents of the sample contain 556.8 parts per million of sulphur dioxide against the maximum prescribed standard of 70 parts per million." On 5-1-1980 the Public Analyst sent his report to the Chief Medical Officer, Chamba. It was on 14-1-1980 that the Food Inspector filed a complaint against the accused-respondent before the Chief Judicial Magistrate, Chamba, On 18-1-1980 the Local (Health) Authority sent a copy of the report to the respondent by registered post. During the trial the respondent did not dispute the taking of the sample by the Food Inspector. It was, however, contended that there was non-compliance of Section 13(2) of the Act read with Rule 9A. The trial Magistrate came to the conclusion that the provisions of Rule 9-A were mandatory and, therefore, acquitted the respondent.

24. It is contended by Mr. Kapil Dev Sood, learned Counsel for the respondent, that the prosecution has failed to prove that the report was sent by registered post, It is submitted that the registered cover was received back by the Local (Health) Authority who opened it in the office and therefore there is nothing on the record to show that this cover contained a copy of the report in question

25. It is not disputed that the registered cover was fully and properly addressed to the respondent. It is also not disputed that the registered cover was received back by the Local (Health) Authority, There is an endorsement on this cover that the cover is being returned because the respondent was not at the given address.

26. In order to prove the despatch as well as the receipt of the registered cover the prosecution examined Shri A.N. Grover. P.W. 3. He is the Head Clerk/dealing assistant of the Local (Health) Authority, Chamba. He deposed that a copy of the report along with a covering letter was sent under registered cover. He stated that Ex. P.W. 3/A is a copy of the information sent to the respondent and Ex. P.W. 3/C is the registered cover received back undelivered from the post office. In cross-examination he stated that he got the cover Ex. P.W. 3/C sent by registered post. This statement was not challenged by the respondent in cross-examination. In other words, his statement that a copy of the Public Analyst's report, and the covering letter informing the respondent about the prosecution having been launched against him on 14-1-1979 in the court of Chief Judicial Magistrate, Chamba, was accepted as correct. It is, therefore, too late in the day to contend that the prosecution has failed to prove sending copy of the report and the information of the prosecution having been launched against the respondent.

I find that the Magistrate was not justified in disbelieving the prosecution by holding that, since there was no proper endorsement by the postman on the returned cover so it was not proved that the postman had in fact gone to the address mentioned on the registered cover to deliver the letter. The Magistrate failed to realise that the only duty of the Local (Health) Authority is to send a copy of the report and the requisite information under registered post. Once the Local (Health) Authority had performed its duty, it could not be held responsible for the failure, if any of the post office to ensure the delivery of the cover. Again,

the trial court was not justified in coming to a conclusion that since this registered letter cover was opened in the office of the Chief Medical Officer before being produced in the court so there was no evidence that this cover contained a copy of the report as well as the forwarding letter in question. The Magistrate failed to notice that a statement on oath has been made by P.W. 3 about these documents being despatched under registered cover and that there was no cross-examination by the respondent suggesting that these were not sent. Whenever a statement of fact made by a witness is not challenged in cross-examination, it has to be concluded that the fact in question is not disputed.

27. I have already held that Rule 9-A is not mandatory. No prejudice has been shown to have been caused to the respondent on account of the delay of four days in sending a copy of the report to the respondent.

28. I, therefore, accept the appeal and set aside the impugned order of acquittal. The respondent is convicted u/s 7 read with Section 16 (1) (a) (i) of the Act and sentenced to rigorous imprisonment for six months and a fine of Rs. 1,000. In default of payment of fine the respondent shall undergo rigorous imprisonment for another period of six months.

Criminal Appeal No. 29 of 1982:

29. Khem Chand, respondent, is a milk vendor. On 30-11-1974 the Food Inspector took a sample of cow's milk from him. Requisite drops of formalin were added and it was divided into three equal parts. One part was sent to the Public Analyst who received it on 3-12-1974. On analysis the milk was "found deficient in milk-solids-not-fat by 7.0 per cent. After sending a copy of this report by registered post the Food Inspector filed a complaint against the accused-respondent on 12-8-1975 but the presence of the respondent could be had only on 15-12-1975. The trial Magistrate found the respondent guilty and so convicted him u/s 16 (1) (a) of the Act. The respondent was sentenced to rigorous imprisonment for six months and was directed to pay a fine of Rs. 1,000 in default of which he was directed to undergo rigorous imprisonment for another term of six months. On appeal the Sessions Judge acquitted the respondent on the ground that the report of the Public Analyst along with the information required u/s 13(2) of the Act was not supplied to the respondent within the specified period.

30. It may be noticed that at the time the offence was committed Rule 9 (j) was in force. This rule enjoins upon the Food Inspector to send by registered post a copy of the report of the Public Analyst to the vendor within 10 days of the receipt of the said report. In the instant case the Food Inspector, Shri Gian Chand, has stated on oath that a copy of the report Ex. PD was sent to the respondent by registered post. He was not cross-examined. The Sessions Judge was not justified in holding that there was no evidence to show that a copy of the report was sent to the respondent by registered post. The delay, if any, in sending the report has not been shown to have caused any prejudice to the

respondent.

31. The appeal is therefore allowed and the judgment of the Sessions Judge acquitting the respondent is hereby set aside. The conviction of the respondent and sentence awarded to him by the trial Magistrate are restored.

Criminal Appeal No. 54 of 1982:

32. On 14-12-1978 the Food Inspector found the respondent carrying buffalo's milk for sale. A sample of the milk for analysis was duly taken. This was divided into three equal parts and requisite drops of formalin were duly added. One of the samples was sent to the Public Analyst who found deficiency of 35.5 per cent in milk-solids-not-fat. The report is Ex. PE and is dt 8-1-1979. On 28-1-1979 a complaint was filed by the Food Inspector. A copy of the report was sent under registered cover on 30-1-1979. Ex. PF is the copy of the forwarding letter informing the respondent that if he so desired he may make an application in the, court of Judicial Magistrate, Ghumarwin within ten days of the receipt of the memo to get the second part of the sample analysed by the Central Food Laboratory, The trial Magistrate found the respondent guilty and convicted him u/s 16 (1) (a) of the Act and sentenced him to undergo rigorous imprisonment for three years and a fine of Rupees 1.000 in default of which he was directed to undergo rigorous imprisonment for six months. On appeal the Additional Sessions Judge acquitted the respondent on the ground that the provisions of Rule 18 were not complied with. It Was also held that a copy of the Public Analyst's report was not shown to have Been sent to the respondent.

33. The Food Inspector categorically stated that the complaint was filed on 29-1-1979 and the requisite notice u/s 13(2) of the Act was sent to the accused-respondent under registered cover. He proved the registration by producing the registration receipt Ex. PG and copy of the letter Ex, PF, Now Ex. PF is the letter sent to the respondent informing him that he can make an application if he so desires, in the court of Judicial Magistrate. Ghumarwin. within ten days of the receipt of this memo to get the second part of the sample which was kept under the safe custody of Local (Health) Authority, Ghumarwin, analysed by the Central Food Laboratory. This memo also recorded the fact that a copy of the Public Analyst's report was attached to this memo. No question was asked in the cross-examination to suggest that the copy of the report of the Public Analyst was not despatched with the memo. It may be noticed that the office of the Local (Health) Authority had received the A.D. card Ex. PH in token of the registered cover having been delivered to the respondent. This bears the signatures of the respondent. The prosecution examined the postman Shri Satya Dev. P.W. 4 who had delivered the letter to Shri Thakur Dass. addressee.

Of course in cross-examination he had stated that he did not remember whether he had delivered it to the respondent since he did not know him. But then the only duty of the Local (Health) Authority was to send under registered cover a copy of the report as well as the requisite information to the vendor. Once this

duty was performed the prosecution could not be blamed even if this letter was never received by the addressee. However in the instant case I find that both the lower courts have taken the correct view by holding that this letter has been delivered to the respondent. I find that the learned Additional Sessions Judge took a superficial view of the matter in holding that though the memo Ex. PF has (been proved to have been sent there was nothing to show that a copy of the report of the Public Analyst was enclosed with the same. He failed to notice that the aforementioned statement of the Food Inspector had gone unchallenged.

34. As regards the non-compliance of Rule 18 I find that the Public Analyst in his report has specifically stated: "the seals fixed on the container and on the outer cover of the sample tallied with the specimen impression of the seal separately sent by the Food Inspector and sample was in a condition fit for analysis." The Food Inspector has also deposed that he had sent one of the sample bottles to the Public Analyst with form No. VII, Ex. PD. In this form it is mentioned that a copy of this memo and specimen impression of the seal used to seal the packet of sample are being sent separately. It may be noticed that there was no cross-examination of this witness on this aspect. The evidence is sufficient to show that the Food Inspector had complied with the requirements of Rule 18. The learned Additional Sessions Judge failed to notice these facts while coming to the conclusion that the provisions of Rule 18 were not complied with.

35. I would therefore set aside the judgment of the learned Additional Sessions Judge acquitting the respondent and restore the judgment of the trial court convicting the respondent. As regards the sentence, I would sentence the respondent to rigorous imprisonment for one year and a fine of Rs. 1,000 in default of which he would undergo rigorous imprisonment for another period of six months.

Criminal Appeal No. 60/32:

36. On 31-8-1978 the Food Inspector took a sample of pure desi ghee which the respondent was carrying for sale. One of the samples was sent to the Public Analyst who vide his report dt. 9-9-1978 (Ex. PE) found it adulterated as : "the Butyro-Refractometer Reading at 40° C being 45.5 against the prescribed standard of 40.0 to 43.0. Reichert value 22.99 against the minimum prescribed standard of 26.0 and positive test for sesame oil indicates that the contents are admixed with Vanaspati. It also contains 10.4% moisture against the maximum prescribed standard of 0.3%. Sediments are also present at the bottom." It was on 6-10-1978 that the complaint was filed against the respondent under Sections 7/16 of the Act. A copy of the report of the Public Analyst along with the memo Ex. P.W. 3/A informing the respondent that he can get the sample analysed from the Director of Central Food Laboratory within ten days of the receipt of the notice by making an application in the court of Chief Judicial Magistrate, Chamba was sent under registered cover In proof of the registration of the cover postal receipt Ex. R.W. 3/B was proved by the prosecution.

37. The trial court acquitted the respondent on the ground that the cover was not properly addressed and so it could not be presumed that the Local (Health) Authority had done its duty enjoined upon it u/s 13(2) of the Act. It may be noticed that the only point agitated by the accused-respondent before the trial court was non-compliance of Section 13(2) of the Act.

38. Now the letter Ex. P.W. 3/A is addressed to "Sh. Bagu S/o Sakerdeen, village Raiudoo, P.O. Saboo. Teh. Chamba." The prosecution has produced Shri Kailash Chand. P.W. 3. who is a dealing assistant in the office of Local (Health) Authority, Chamba. He brought the record in court and proved the despatch of the letter Ex. P.W. 3/A under registered cover vide postal receipt Ex. P.W. 3/B. Now the whole defence is based on the postal receipt Ex. P.W. 3/B which does not have the full address of the addressee. It only mentions the name of the respondent and the name of his father and then mentions the post office. It is on the basis of this postal receipt that the court has come to the conclusion that there is nothing on the record to show that the cover was properly addressed. It is a notorious fact that the post office does not in its postal receipts write the full address of the addressee which is given on the covers and I will take a judicial notice of this fact. Moreover it is the case of the prosecution that this registered cover was never received back undelivered by the post office. It is true that the Local (Health) Authority had in addition to sending this cover under registered post had also sent an acknowledgment due Since the acknowledgment was not found on the record it was presumed by the trial court that there is nothing on the record to show that the registered cover had been received by the respondent.

39. Now the only duty as already stated, of the Local (Health) Authority is to send a copy of the report along with the necessary information about the court in which the prosecution has been launched in terms of Section 13(a) of the Act. Once this is done the provisions of law stand complied with. The non-delivery of this letter could not affect the prosecution. Moreover u/s 114. Evidence Act. it is to be presumed that official acts have been regularly performed, It may be noticed that no question was asked from the witness about the registered cover not being addressed in accordance with the address mentioned in letter, Ex. P.W. 3/A. The only question asked was that the postal receipt Ex. P.W. 3/B does not contain the name of the village of the respondent.

40. On the evidence before me I have no reason to hold that the cover did not have the address on it as was given in the Letter Ex. P.W. 3/B. I would, therefore allow the appeal and set aside the impugned judgment acquitting the respondent. I would convict the respondent u/s 16 read with Section 7 of the Act and award him a sentence of one year rigorous imprisonment with a fine of Rs. 1,000 in default of which he is directed to undergo rigorous imprisonment for six months.

Criminal Appeal No. 76 of 1982:

41. On 27-8-1979 the Food Inspector took a sample of cow's milk from the

respondent. Requisite drops of formalin were added. One of the samples was sent to the Public Analyst who found it adulterated since milk-solids-not-fat were found deficient by 41.0 per cent of the minimum prescribed standard. The report is D/- 1-9-1979 and is Ex. PF. The complaint was filed on 29-9-1979. A copy of the Public Analyst's report along with letter Ex. P.W. 3/A was sent under registered cover vide postal receipt Ex. P.W. 3/B on 3-10-1979. The registered cover was returned back undelivered with an endorsement that the addressee was not there. The defence of the respondent as disclosed in his statement u/s 313, Cr. P.C. was that the Food Inspector had thrown his milk though the Food Inspector had got his thumb impression on various documents as a token of the receipt of having thrown the milk. The respondent also stated that he got a copy of the report after eight months. The trial Court acquitted the respondent on the ground that it was doubtful that the sample was taken at the place and in the manner as deposed to by witnesses: that the milk was not stirred before taking the sample: provisions of Rule 16-D were not complied with since the Food Inspector did not secure the bottles by means of thread and also did not put the seals on the bottles: there was non-compliance of Rule 18: and a copy of the report with requisite information was given after about six months of the launching of the prosecution.

42. I find that the trial Court misdirected itself while holding non-compliance of Section 13(2) of the Act. The duty of the Local (Health) Authority was to send a copy of the report with necessary information as required u/s 13(2) of "he Act under registered cover in terms of Rule 9-A. The Local (Health) Authority did its duty in terms of law by sending the notice Ex. P.W. 3/A vide postal receipt Ex. P.W. 3/B on 3-10-1979. The cover was properly addressed as it contained the address given by the respondent when the sample was taken from him. The Local (Health) Authority went out of its way to send another information under another registered cover on 26-10-1979 which was again received back undelivered. Once again the intimation was sent on 6-2-1980 which was finally delivered to the respondent. But this does not mean that the Local (Health) Authority had failed to perform its duty. Indeed they had over-done it. The Magistrate was not justified in holding that it was the duty of the Local (Health) Authority to have sent the requisite information to the respondent at another address in another village since this was also the address given by the respondent. Where a vendor gives more than one address it is not necessary for the Local (Health) Authority to send the requisite information u/s 13(2) of the Act on all the addresses given by the respondent.

43. Rule 18 requires a copy of the memo and a specimen impression of the seal used to seal the packet to be sent to the Public Analyst separately by registered post or deliver to him or to any person authorised by him. The Food Inspector proved Ex. PE which is a letter sent to the Public Analyst conveying the specimen impression of the seal which the Food Inspector used to seal the sample and the outer cover. The respondent did not challenge this part of the statement in cross-examination. The report of the Public Analyst Ex. PF specifically states that "the

seals fixed on the container and on the outer cover of the sample tallied with the specimen impression of the seal separately sent by the Food Inspector and sample was in a condition fit for analysis". This shows that the Food Inspector had complied with the provisions of Rule 18 by sending the copy of the memo and the sample of the seals.

44. It may be recalled that it is Section 11 of the Act which requires the Food Inspector to, inter alia, "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 ... as may be prescribed." Rule 16 prescribes the manner of packing and sealing the samples. It reads thus:

16. All samples of food sent for analysis shall be packed, fastened and sealed in the following manner, namely:?

(a) The stopper shall first be securely fastened so as to prevent leakage of the contents in transit:

(b) The bottle, jar or other container shall then be completely wrapped in fairly strong thick paper. The ends of the paper shall be neatly folded in and affixed by means of gum or other adhesive:

(c) A paper slip of the size that floes round completely from the bottom to top of the container, bearing the signature and code and serial number of the Local (Health) Authority shall be pasted on the wrapper the signature or the thumb impression of the person from whom the sample has been taken being affixed in such a manner that the paper slip and the wrapper both carry a part of the signature or thumb impression:

Provided that in case the person from whom the sample has been taken refuses to affix his signature or thumb impression the signature or thumb impression of the witness shall be taken in the same manner:

(d) The paper cover shall be further secured by means of strong twine or thread both above and across the bottle jar or other container, and the twine or thread shall then be fastened on the paper cover by means of sealing wax on which there shall be at least four distinct and clear impressions of the seal of the sender, of which one shall be at the top of the packet, one at the bottom and the other two on the body of the packet. The knots of the twine or thread shall be covered by means of sealing wax bearing the impression of the seal of the sender.

The purpose of the rule is obviously to ensure that the sample of food which is Packed is sealed in such a manner that there is no leakage and there is no chance of any substitution. It is with that end in view that this clause specifically deals in Clause (d) as to how the twine has to be used on the packet and where it has to be sealed. Applying the test laid down by the Supreme Court in the case of Dalchand Vs. Municipal Corporation, Bhopal and Another, it cannot be said that the rule is mandatory. It is only directory. As long as the purpose has been achieved and there is no failure of justice, a breach of this rule will not lead to an

acquittal. In the instant case it may be repeated that the Public Analyst found the sample properly sealed and the seals were found intact and unbroken. It was found fit for analysis. All this shows that the sample had been properly fastened.

It may also be noticed that the Food Inspector had stated in detail how he divided the sample into three equal parts and put them into three clean and dry bottles in the presence of the witnesses. After adding formalin he closed the bottles with the stoppers and the bottles were wrapped with a strong paper. The slip of Local (Health) Authority and the thumb impression of the respondent were obtained thereon in such a fashion that half of it was on the paper wrapped around the bottle and the other half on the paper slip. In other words, he expressly talks of having faithfully complied with the provisions of Clauses (a), (b) and (c). Of course he does not specifically talk of complying with the provisions of Clause (d). However keeping in view the fact that he states that the sealed bottle of the sample was sent by registered parcel it is but apparent that the bottle was fastened and sealed before being sent by a registered parcel.

This fact coupled with the observations of the Public Analyst that the bottle was found properly fastened and sealed, leaves no doubt that the provisions of Sub-clause (d) were substantially complied with. The trial Court was, not, therefore, justified in concluding that simply because the Food Inspector failed to describe in detail how the twine or the thread was fastened on the paper and the places on which the seal was put showed a non-compliance of Rule 16 (d) which entitled the accused-respondent to acquittal. It may again be noticed that the statement of the Food Inspector that it was the sealed bottle which he had sent to the Public Analyst was not challenged in cross-examination by the respondent.

45. Adverting to the question whether the milk was stirred before the sample was taken. I find that the Food Inspector specifically states that he had stirred it. He has been disbelieved because he did not mention this fact in the inventory Ex. PC prepared at the time of taking the sample. Now, this inventory is a printed one with blanks to be filled in. There is no column to record the fact if the article of food had been, stirred. There is thus no mention of this fact. I do not find it a ground to disbelieve the Food Inspector. It is true that Chatru Ram, P.W. 2. says nothing about this fact but then his silence does not amount to a contradiction. Daulat Ram, P.W. 3 admits in cross-examination that the milk was stirred though he did not remember the manner of stirring it. It may be noticed that the witnesses were deposing after a lapse of about 13/4 years after the incident. With the lapse of time the memories do fade and for a man in the street the stirring of milk and the manner in which it is done may not be a material fact to remember. I, therefore, find that the trial Court was not correct in holding that the milk was not stirred before taking the sample.

46. In order to prove the taking of the sample the prosecution has examined the Food Inspector as well as the two witnesses whom he had joined. The Food Inspector as P.W. 1 deposes that he had gone to Sapri Bazar where he had found the respondent with the milk and that he had taken the sample in the presence

of the witnesses. In cross-examination he stated that he had taken the sample in the corner of Sapri Bazar where Chatru Ram Halwai's shop is situated. He also stated that the whole procedure relating to the taking of the sample lasted for about half an hour. It was not suggested to this witness that in fact he had taken no sample and had thrown away the milk of the respondent. Chatru Ram appeared as P.W. 2. He deposes that the Food Inspector was sitting in his shop when the respondent came with the milk and the sample was taken. Of course he stated that his shop is situated in Anand Mohalla and there are three or four other shops there.

It is also true that he stated that he does not own a shop in Sapri Bazar. However, it may be noticed that the respondent in his statement u/s 313 of the Criminal P.C. admitted that he was intercepted by the Food Inspector in Sapri Bazar. The other independent witness is Daulat Ram, P.W. 4. He also corroborates the other witnesses about the Food Inspector taking the sample from the respondent. Now, this witness states that he was sitting at, the shop of Chatru. P.W. in Sarara Mohalla. According to this witness the Food Inspector had thrown away the milk instead of taking the sample. He was declared hostile and was allowed to be cross-examined. This witness is a Matriculate. He admitted his signatures on all the documents prepared at the spot. Under the stress of cross-examination he admitted that 660 ml. of milk was purchased by the Food Inspector on payment of Rupees 1.17 paise. He also admitted that it was put in three dry and clean bottles and properly fastened.

47. Now, the three witnesses, that is, the Food Inspector. P.W. 1. Chatru Ram, P.W. 2, and Daulat Ram. P.W. 4. are unanimous that the sample of milk was taken at the shop of Chatru Ram. The only dispute is whether this shop is situated in Mohalla Sapri, or Sarara. or Anand. Evidently this shop could not be situated in all the three Mohallas unless the shop is very much near the junction of these three Mohallas. The Food Inspector states that it is situated in the corner of Sapri Mohalla. Much has been made by the trial Court about the fact that the witnesses talk of three different Mohallas and so it is not proved at what place the sample was taken. The judgment shows that the prosecution had advanced an argument that all the three Mohallas are situated adjoining to the shop of Chatru and the shop could be described in three Mohallas as the witnesses have done. Instead of finding out the fact even by inspecting the place where Chatru's shop is situated the learned Magistrate decided to hold that the prosecution has failed to prove the place where the sample was taken. As the place of taking the sample is established as Chatru's shop by all the three witnesses, it was immaterial whether it was situated in one or the other Mohalla. I have, therefore no hesitation in holding that the sample was duly taken by the Food Inspector at the shop of Chatru. Halwai. P.W. 2.

48. The result is that the appeal is allowed and the judgment of the trial Court acquitting the respondent is hereby set aside. The respondent is convicted u/s 7 read with Section 16 of the Act, He is sentenced to undergo rigorous

imprisonment for one year and a fine of Rupees 1,000 in default of payment of which he is directed to undergo further rigorous imprisonment for a period of six months.