

**(1969) 07 MP CK 0001**

**In the Madhya Pradesh High Court**

**Case No : Criminal Appeal No. 148 of 1965**

State of M. P.

APPELLANT

Vs

Chhotekhan Nannekhan Ghosi

RESPONDENT

**Date of Decision : 31-07-1969**

**Acts Referred:**

Prevention of Food Adulteration Act, 1954 — Section 16(1)(a)(ii), 7

**Citation : (1969) MPLJ 732**

**Hon'ble Judges : Surajbhan, J; P. K. Tare, J; K. L. Pandey, J**

**Bench : Full Bench**

**Advocate : M. V. Tamaskar, for the Appellant;**

## Judgement

K. L. Pandey, J.

This case comes before us on a reference made by Golvalker and Bhawe JJ. for examining the correctness of the view taken by Newasker and Sen JJ. in State of Madhya Pradesh v. Shankarlal Cri. Appeal No. 180 of 1966 decided on 25th August 1966. which was decided along with State of Madhya Pradesh v. Abbasbhai 1967 M P L J 872. The same question is raised in Ataul Hague v. State of Madhya Pradesh Cri. Rev. No. 431 of 1966. and Kundanlal v. State of Madhya Pradesh Cri. Rev. No. 591 of 1966. and, therefore, these two cases also are before us for the same purpose.

In the first case, the respondent Chhotekhan was convicted u/s 7 read with section 16(1)(a)(ii) of the Prevention of Food Adulteration Act, 1954, for selling adulterated milk and was sentenced to rigorous imprisonment for one year and a fine of Rs. 2,000 or, in default, to like imprisonment for a further term of six months. In appeal, the Sessions Judge acquitted Chhotekhan on the ground that there was no specific evidence to show which preservative had been added to the sample of milk sent to the Public Analyst and what was the quantity so added and, therefore, his report was of no value. In taking that view, the Sessions Judge relied upon Dattappa v. Buldana Municipality A I R 1951 Nag. 191. Against

that acquittal, the State filed this appeal, which came up for hearing before Golvalker and Bhawe JJ. They regarded Dattappa's case (5) decided by Mudholkar J. (as he then was) as overruled by *The State v. Sonabai* 1951 N L J 282 : A I R 1952 Nag. 83 (D. B ). and *Municipal Council, Multai v. Juggan Cri.* Appeal No. 495 of 1964 decided of 3rd October 1966 (D. B.). It was, however, argued that there was no specific evidence to show that a specimen of seal had been sent separately as required by Rule 18 of the Prevention of Food Adulteration Rules, 1955, or that the Public Analyst had compared the seal on the container with the one separately sent to him as required by Rule 7 of those Rules and, therefore, the report of the Public Analyst was not admissible in evidence. For this view, reliance was placed upon Shankarlal's case *Cri. Appeal No. 180 of 1966* decided on 25th August 1966. mentioned in the opening paragraph. Golvalker and Bhawe JJ. doubted the correctness of the view taken in that case and made this reference.

In the second case, Ataul Haque was convicted u/s 7 read with section 16(I)(a) (ii) of the Act for selling adulterated milk and sentenced to rigorous imprisonment for one year and a fine of Rs. 2,000 or, in default, to a further term of like imprisonment for four months. He has challenged his conviction inter alia on the ground that no evidence was led to show that the provisions of Rules 7 and 18 of the Prevention of Food Adulteration Rules, 1955, were complied with. In the third case too, Kundenlal was convicted u/s 7 read with section 16(1)(a)(i) of the Act for selling adulterated ghee and sentenced to rigorous imprisonment for one year and a fine of Rs. 2,000 or, in default, to like imprisonment for three months. He too has raised the point that Rules 7 and 18 *ibid* were not complied with.

In Shankarlal's case *Cri. Appeal No. 180 of 1966* decided on 25th August 1966., the Division Bench relied upon *State of Gujarat Vs. Shantaben*, . and observed:

It cannot be doubted that the Report of the Public Analyst is admissible only under certain circumstances. It is admissible under the Prevention of Food Adulteration Act provided certain formalities are observed. If the formalities are not observed, the reports cannot be made admissible. That shows that the rules are mandatory. If the rules are mandatory, there cannot be a presumption that official acts have been properly performed. The fixing of the seal is no doubt an official act, sending the sample of the seal also is an official act, but the admissibility of the document depends on the performance of the official acts which should be proved by evidence. There is not an iota of evidence in this report. Section 13(5) of the Act says that the report signed by the public analyst can be used as evidence of the fact stated therein. It is therefore clear that the public analyst must mention in his report that he received the seal intact and he had compared the seal with the specimen seal that was sent to him by the Food Inspector and they tallied. If that is done, no other proof may be necessary.

Section 13(5) of the Act, which provides for use of report of the public analyst as evidence, reads:

Any document purporting to be a report signed by a Public Analyst, - unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code (Act XLV of 1860) :

Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein.

The distinction between relevancy or admissibility of a piece of evidence and the value to be attached to it is obvious and need not be elaborated. It is plain enough that sub-section (5) refers to admissibility of the report and leaves it to the Court to determine, in the light of the circumstances of the case, what value ought to be attached to it. It may be noted that there is nothing in this provision to indicate that the report would be admissible only if it is obtained in the manner prescribed by the rules made under the Act. So in *Mangaldas Raghavji Ruparel and Another Vs. The State of Maharashtra and Another*, , their Lordships observed:

This provision clearly makes the report admissible in evidence. What value is to be attached to such report must necessarily be for the Court of fact which has to consider it. Sub-section (2) of section 13 gives an opportunity to the accused vendor or the complainant on payment of the prescribed fee to make an application to the Court for sending a sample of the allegedly adulterated commodity taken u/s 11 of the Act to the Director of Central Food Laboratory for a certificate. The certificate issued by the Director would then supersede the report given by the Public Analyst. This certificate is not only made admissible in evidence under sub-section (5) but is given finality to the facts contained therein by the proviso to that sub-section. It is true that the certificate of the Public Analyst is not made conclusive but this only means that the Court of fact is free to act on the certificate or not, as it thinks fit.

In a subsequent case, *Municipal Corporation of Delhi Vs. Ghisa Ram*, , their Lordships laid down that the report of the Public Analyst does not cease to be good evidence even where a certificate from the Director of the Central Food Laboratory cannot be obtained for any cause and the conviction of the accused is unsustainable on the ground that, by reason of deprivation of the valuable right u/s 13(2) of the Act owing to lapse of time, he is prejudiced in his defence.

In this case, we are not required to consider what value should be attached to the report of the Public Analyst where it is established by evidence that a specimen of the seal had not been sent separately to the Public Analyst or he did not also compare the seal on the container with the other seal. In this situation, the Court may conclude that it was not established that the sample seized was examined by the Public Analyst. The limited question before us is whether there is, in view of illustration (e) u/s 114 of the Evidence Act, a rebuttable

presumption that official acts like sending a specimen seal separately and the comparison of the seal on the container with that seal so sent were properly performed.

In Shankarlal's case Cri. Appeal No. 180 of 1966 decided on 25th August 1966, it was observed that since the rules were mandatory, there could be no presumption that the procedure as therein prescribed, being official acts, were properly followed. For that view, reliance was placed upon the observations of the Gujrat High Court in State of Gujarat Vs. Shantaben, . There is, however, nothing in the judgment of Raju J. delivered in the Gujrat case to indicate that he considered the applicability of section 114 of the Evidence Act and illustration (e) thereunder to the acts of the Food Inspector and the Public Analyst. That aspect of the question was not considered in Mary Lazrado v. The State AIR 1966 Mys. 244; State of Rajasthan Vs. Kapoor Chand, and Belgaum Borough Municipality v. S. Shanker AIR 1968 Mys. 196 also, although the view taken in the Gujrat case was adopted. A contrary view was, however, taken in Municipal Board, Faizabad v. Lal Chand AIR 1968 All. 199; The State Vs. Uma Charan Ram, ; Laxman Sitaram v. The State AIR 1967 Mys. 33; and Nawal Kishore v. State AIR 1969 Del 198 without referring to the presumption u/s 114 of the Evidence Act and also in Food Inspector, Cannanore Municipality, Cannanore Vs. Pandavalappil Kannan, , Jammu Municipality v. Faquir Hussain A I R 1968 J&K. 17 and Krishna Rajaram Wani Vs. M.V. Koranne and the State of Maharashtra, on the basis of the presumption under the section. In many of these cases, the Gujrat case was specifically distinguished or dissented from. The contrary view taken in these cases is supported by the following observations of the Supreme Court in K. K. Pookunju v. K. K. Ramakrishna Pillai Cri. Appeal No. 29 of 1968 decided on 2nd December 1968:

The only point of any substance which has been pressed before us by the learned counsel for the appellant is that the Rules framed under the Act had not been complied with inasmuch as it has not been proved that the specimen impression of the seal used had been sent to the Public Analyst. Rule 18 of the Prevention of Food Adulteration Rules, 1955, provides that a copy of the memorandum and a specimen impression of the seal used to seal the packet shall be sent to the Public Analyst separately by post. The High Court was not at all impressed with the contention based on Rule 18. It relied on the report of the Public Analyst Exh. P-9 which was in Form III as prescribed by the Rules in which it was stated, inter alia, that the Public Analyst had received from the Food Inspector a sample of compounded asafoetida marked No. C. 2/65 for analysis, properly sealed and packed and that he had found the seal intact and unbroken. The contention which was pressed and which has been reiterated before us is that it is nowhere stated in Exh. P-9 that the Public Analyst had compared the specimen impression of the seal with the seal on the packet of the sample. The High Court relied on the principle that official acts must be presumed to have been regularly performed. Under Rule 7 the Public Analyst has to compare the seal on the container and the outer cover with the specimen impression received separately

on receipt of the packet containing the sample for the analysis. The High Court considered that it must be presumed that the Public Analyst acted in accordance with the Rules and he must have compared the specimen impression received by him with the seal of the container.

We do not find any error in the decision of the High Court on the above point.

The principle embodied in illustration (e) u/s 114 of the Evidence Act is that when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that the formal requisites for its validity have been complied with. As we have indicated elsewhere, if the statute itself had provided that certain regulations and formalities must be complied with before the report of the Public Analyst could be admitted in evidence, the position would have been different, for, in that case, it would be necessary to specifically establish that those regulations and formalities were duly observed. In the absence of such a provision, what purports to be report signed by a Public Analyst is, without any other proof, admissible in evidence and the presumption arising u/s 114 of the Evidence Act to the regular performance of official acts also applies to it. The accused is not thereby prejudiced. He may rebut the presumption by cross-examining prosecution witnesses or leading other evidence. He has also been given under sub-section (2) of section 13 of the Act the right to show, if possible, that the report is incorrect. So, in *Municipal Corporation of Delhi Vs. Ghisa Ram*, , the Supreme Court observed:

Obviously the right has been given to the vendor in order that, for his satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence.

For all these reasons, we are of opinion that the view taken in *State of Madhya Pradesh v. Shakerlal Cri. Appeal No. 180 of 1966* decided on 25th August 1966 and *State of Madhya Pradesh v. Abbasbhai* 1967 M P L J 872 is not correct. In our opinion, the presumption u/s 114 of the Evidence Act and illustration (e) thereunder in relation to regular performance of official acts applies to the report of a Public Analyst. It is however, a rebuttable presumption. That being so, such a report is not inadmissible only because it has not been specifically established by evidence aliunde that the requirements of Rules 7 and 18 of the Prevention of Food Adulteration Rules, 1955, were duly complied with. Reference answered accordingly.