

**(1983) 12 KL CK 0005**  
**In the High Court Of Kerala**

|                                          |            |
|------------------------------------------|------------|
| The Food Inspector, Palghat Municipality | APPELLANT  |
| Vs                                       |            |
| K.M. Moose and Others                    | RESPONDENT |

---

**Date of Decision :** 12-12-1983

**Acts Referred:**

Prevention of Food Adulteration Act, 1954 — Section 12, 13, 16, 23, 7

**Citation :** (1984) CriLJ 563 : (1984) 1 ILR (Ker) 795

**Hon'ble Judges :** M. Fathima Beevi, J;K.K. Narendran, J

**Bench :** Division Bench

---

**Judgement**

This Judgment has been overruled by : T.V. Usman Vs. Food Inspector, Tellicherry Municipality, Tellicherry, AIR 1994 SC 1818 : (1994) 1 JT 260 : (1994) 1 SCALE 179 : (1994) 1 SCC 754 : (1994) 1 UJ 365

M. Fathima Beevi, J.—This appeal has come up before us on a reference made by Bhat, J. by order dated 22-10-1932, as an important question involving the interpretation of Rule 7(3). Prevention of Food Adulteration Rules, 1955 arises for decision. The appeal is directed against an order of acquittal. The appellant is the Food Inspector. Palghat Municipality, who instituted the complaint against respondents 1 and 2 for offence punishable under Sections 16(1)(a)(i) and 16(1)(g) read with Section 7(1) prevention of Food Adulteration Act, 1954.

2. The complainant on 26-8-1978 collected for purpose of analysis a sample of "Karimasala" from the shop of respondent 2 and forwarded the same to the Public Analyst. The sample was received by the Public Analyst on 31-8-1978. The Public Analyst delivered the report Ext. P9 signed by him on 9-10-1978 to the Local (Health) Authority on 31-10-1978. The result of the analysis was that the sample did not conform to the standards prescribed for curry powder under Prevention of Food Adulteration Rules. 1955 and was therefore adulterated. On the basis of the report, the appellant instituted a complaint against the respondents, respondent 1 being the manufacturer as disclosed by respondent 2 the vendor.

3. The trial court found that public analyst had not delivered his report within the stipulated period of forty-five days provided under Rule 7(3). Prevention of Food Adulteration Rules, 1955 and acquitted the accused on the ground that the non-compliance with the mandatory provision is fatal to the prosecution.

4. According to the learned Counsel for the appellant Sub-rule (3) of Rule 7, Prevention of Food Adulteration Rules, is only directory and in the absence of proof of any prejudice having been caused to the respondents on account of the delay in delivering the report by the public analyst the violation of the rule cannot invalidate the report and thereby vitiate the prosecution. It was also pointed out that the analysis was completed on 9-10-1978 within the time limit of fortyfive days and the respondents have not chosen to challenge the report by getting the sample of article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory by making an application u/s 13(2) of the Act and. therefore no prejudice can be said to have been caused to the accused in this case.

5. In Food Inspector Vs. Moosa and Others, Janaki Amma, J., has held that Sub-rule (3) of Rule 7 is mandatory and any violation thereof must necessarily lead to an acquittal. The appellant's learned Counsel canvassed the correctness of this decision,

6. The question thus arising in the appeal is whether Rule 7(3). P. F. A. Rules, 1955 as it stood at the material time in 1978 is mandatory and non-compliance with which would prove fatal to the prosecution or whether the rule is directory and any infraction of the rule would not prove fatal in the absence of prejudice to the accused. Rule 7 prevention of Food Adulteration Rules, 1955, defining the powers and duties of the public analyst had been framed in exercise of the powers conferred by Clause (e) of Sub-section (1) of Section 23, of the P. F. A. Act. Sub-rule (3) as it stood in 1978 reads :

(3) The public analyst shall. within a period of forty-five days from the date of receipt of any sample for analysis. deliver to the Local (Health) Authority a report of the result of such analysis in Form III.

Provided that where any such sample does not conform to the provisions of the Act or these rules, the public analyst shall deliver four copies of such report to the said Authority :

Provided further that the public analyst shall forward a copy of such report also to the person who purchased an article of food and forwarded the same to him for analysis u/s 12 of the Act.

This rule required the public analyst to deliver the report of analysis to the Local (Health) Authority within 45 days of the receipt of the sample. In construing Sub-rule (3) of Rule 7, it is necessary to refer to the history of the rule. This rule as it originally stood read:

After the analysis has been completed he shall forthwith supply to the person

concerned a report in Form III of the result of such analysis.

By the Prevention of Food Adulteration (Amendment) Rules, 1968, Rule 7(3) was substituted by the Following Sub-rule :

After the analysis has been completed he shall send to the person concerned two copies of the report of the result of such analysis in Form III within a period of sixty days of the receipt of the sample.

The Sub-rule was again amended as it now stands providing that the public analyst shall within a period of 45 days from the date of receipt of the sample deliver the report of the analysis to the Local (Health) Authority. (emphasis supplied). The present rule is substituted by Notification No. GSR 3(E), dated 4-1-1977. w. e. f. 4-1-1977.

7. The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. An enactment mandatory in form might in substance be directory and the word "shall" conveying the idea of obligatory does not always conclude the matter. It is an accepted rule of interpretation that when a statute uses the word "shall," prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the legislature the Court may consider inter alia, the nature and the design of the statute and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the serious or trivial consequences that flow therefrom and above all whether the object of the legislation will be defeated or furthered, vide *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, .

8. The prevention of Food Adulteration Act has been enacted to curb the evil of food adulteration. The Act is meant to save the society and by repeated amendments the statutory determination to stamp out food offences is emphasized. The statutory rules framed in exercise of the powers conferred under the Act are supplementary to the provisions of the Act. In construing the rules the interpretation which is in keeping with the spirit of the law only can be accepted. When we examine the scheme of the Act, we find that the report of the public analyst is the foundation for the prosecution, which can be successfully demolished by the accused in a particular case by obtaining a certificate from the Central Food Laboratory, in accordance with the provisions contained in Sub-section (2) of Section 13. It is therefore in the interest of the prosecution and the accused that all the rules prescribing the procedure commencing from the stage of purchasing the article of food leading up to its analysis are strictly observed. Sub-rule (3) of Rule 7 as it originally stood did not prescribe any time limit for completing the analysis and only provided that after analysis the report shall be delivered forthwith. A time limit of sixty days was provided by amending the rule in 1968 and by the amended provision the public analyst was to deliver the

report within the time prescribed after completing the analysis within that time. The period provided was further reduced to forty-five days by the subsequent amendment by notification No. GSR. 285 dated 13-2-1974 w. e. f. 13-8-1974.

9. The object of fixing a time limit is manifold. If the analysis is done within a certain time prescribed, the fate of the accused will be decided early. Then, in cases of certain articles of food, it is highly desirable that analysis be done as early as possible before the article becomes unfit for analysis. Any delay occurring in analysis of the sample may defeat the very purpose of analysis and may also cause unnecessary and avoidable inconvenience. One of the important tests in determining whether a provision is mandatory or directory in character is to consider whether the non-compliance of the particular provision causes inconvenience or injustice and if it does then the Court would say that the provision must be complied with and that it is obligatory in its character. Sub-rule (3) of Rule 7 evidently relates to the essence of the thing to be performed and to matters of substance and is not merely a rule of convenience. The time limit has been prescribed in order that the article of food is analysed before the same gets deteriorated and the report is promptly delivered thereby enabling the authority to launch the prosecution in appropriate cases, and for safeguarding the interest of the accused in exercising the right provided u/s 13(2) in due course in such cases. Section 13 itself has been amended by Act 34 of 1976 changing the whole scheme of prosecution, minimising the chances of harassment of vendors and reducing the number of prosecutions. A time schedule is also seen to be envisaged in the scheme of the Act and the Rules. Wherever a time limit is prescribed, it can only be the outer limit within which the requirement is to be complied with indicating the imperative nature of the obligation.

10, The real intention of the framers of the amended Sub-rule (3) of Rule 7. P.F.A. Rules as gathered by carefully attending to the whole scope of the statute, thus appears to be to assign an imperative duty on the public analyst in completing the analysis and delivering his report within the minimum time required and prescribed. In the background of the legislation it. can only be held that the rule making authority intended to make a provision which is mandatory. In our opinion, the decision in Food Inspector Vs. Moosa and Others, does not require any reconsideration.

11. Though there has been a little controversy over the question, whether Rule 7(3) is mandatory or directory, the preponderance of authorities is in favour of the view that the rule is mandatory. In State Public Prosecutor Vs. Meenakshi Achi and Others, the Madras High Court held that Rule 7(3) is mandatory, with the following reasoning:

If this rule is to be considered as directory this would constitute as a complete negation of the valuable right embodied in Section 13(2) of the Act. In my view the outer limit for sending the result of the analysis to the municipality is sixty days of the receipt of the sample. Undoubtedly the terms of Rule 7 are mandatory in every sense of the term and in no event and under no

circumstances full rigour of Rule 7 should be permitted to be relaxed otherwise this would even result in effective deprivation of the valuable right u/s 13(2) conferred on the accused by the Parliament.

12. In a series of decisions the Bombay High Court held a consistent view that Rule 7(31. Prevention of Food Adulteration Rules, is mandatory. In *State of Maharashtra v. Deepchand Khushal-chand Jain* 1983 1 FAC 174 following the earlier view that Rule 7(31 of the Rules is mandatory, the court upheld the acquittal on the ground of non-compliance with that rule. *State of Maharashtra v. Chandanmal Sharindwal* (1979) 1 FAC 235 *State of Maharashtra v. Trilokchand Sivrai Jain* 1979 2 FAC 14. *State of Maharashtra v. Ramzan Abdul Desai* 1980 1 FAC 1581. *State of Maharashtra Vs. Zamandas Vansimal Paryan*, Bom are the earlier decisions of the Bombay High Court. The Puniab & Haryana High Court in *State of Puniab v. Jai Gopal* 1983 1 FAC 1401 Interpreting Sub-rule (3) of Rule 7 said thus:

In other words, the stand taken is that the violation of Rule 7(31 vitiates the proceeding only if prejudice is made out. I am unable to agree to the above interpretation. No doubt in the present case the respondent did not choose to send the sample for analysis to the Central Food Laboratory but the omission need not be a ground for exonerating the Public Analyst from the consequences of the violation of his duty under Rule 7(3). This provision of the Rule before amendment contemplated forwarding of such report within 60 days and that has now been reduced to 45 days after amendment, and the present case is covered by the said amended provision. To hold that Rule 7(3) is only directory is to encourage slackness on the part of the Public Analyst to the detriment of the accused. The very fact that the period stands reduced to 45 days shows that the framers of the Rule were keen that the Public Analyst should discharge his duties within the period prescribed. Rule 7(3) is mandatory and that violation of the Rule vitiates the prosecution.

13. The Patna High Court has held in *Daitari Mahto Vs. State*, that Rule 7(3). PFA Rules, is mandatory in nature and any non-compliance with the same makes the conviction illegal. Reference can also be made to decisions in *The Administrator Silliguri Municipality Vs. Hiralal Goala*, and *P.P. Azeez v. Food Inspector* 1982 KLJ 140 : 1982 CriLJ 11251.

14. A contrary view has been indicated by the Delhi High Court in *Municipal Corporation v. Chhote Lal* 1973 FAC 363 and it was held that Sub-rule (31 of Rule 7 before its amendment in 1968 cannot be held to be of mandatory nature and non-compliance with which would prove fatal for the prosecution. It was pointed out that the object of the above Sub-rule obviously was to ensure that the public analyst acts with promptitude after analysing a sample in supplying the report so that action on the report might be taken by the authorities concerned, interpreting the word "forthwith" employed in the Sub-rule to mean with reasonable speed and expedition and without avoidable delay." The language of the Sub-rule has been substantially changed by the subsequent amendments

and this decision cannot therefore govern the present case. Rule 7(3) as it stood after the amendment in 1963 has not been interpreted in *State Vs. Satyabadi Jena*, and *G. Chandramouli and Another Vs. The State, Andh Pra* referred to by the appellant's learned Counsel. Janaki Amma. J., in *Food Inspector Vs. Moosa and Others*, has pointed out that the purpose of the rule is to see that official entrusted with the work of analysis and despatch of certificate does his work promptly and expeditiously so that the accused concerned may get the full benefit of Section 13(2) of the Act and to hold that Rule 7(3) is only directory is to encourage slackness and lethargy on the part of the public analyst to the detriment of the accused.

15. Keeping in view the tests relevant in the context of interpretation of the Rule, we have adverted to already we are of the opinion that Rule 7(3), Prevention of Food Adulteration Rules, 1955, is mandatory and that any infraction of the rule is fatal to the prosecution. In this view we have only to confirm the order of acquittal of the respondents.

16. The further question whether respondent 1 could be held liable on the basis of Ext. D1 bill purported to have been obtained by respondent 2 on purchasing articles of food subjected to analysis does not survive in view of the above decision we have taken. We are not, therefore, going into the merits of that contention.

In the result the appeal is dismissed.