
(1975) 02 BOM CK 0017
In the Bombay High Court

The State of Maharashtra

APPELLANT

Vs

Pirumal Khushaldas and Others

RESPONDENT

Date of Decision : 10-02-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 342
Prevention of Food Adulteration Act, 1954 — Section 16(1)(a), 7(i)

Citation : (1976) CriLJ 485 : (1975) MhLj 570

Hon'ble Judges : Shimpi, J

Bench : Single Bench

Judgement

Shimpi, J.—The State of Maharashtra challenges the order of acquittal passed by the Special Judicial Magistrate, First Class, Corporation, Nagpur, in Criminal Case No. 7928 of 1972 against 4 respondents who were charged that they, as partners of a partnership firm M/s. Khushaldas Deomal and Co. at Itwari, Nagpur, conducted business of edible oil and on 13th of September 1973 sold groundnut oil to Shri Kirtane, a Food Inspector, which on analysis did not conform with the standard laid down as per Prevention of Food Adulteration Rules 1955 and thereby committed an offence punishable u/s 7(i) read with Section 16(1)(a) of the Prevention of Food Adulteration Act.

2. The facts of the prosecution case in brief are as under:-

P.W. 1 Vijay Kirtane is working as Food Inspector in the districts of Vidarbha region. On 13th of September 1972 he along with witness Nilkanth Boghade, and Food inspector L.S. Asai, visited the shop premises of the firm situated at Maskasath, Nagpur. Accused No. 3 Ishwardas was present at the shop and within 5 minutes, according to Shri Kirtane, accused No. 1 Pirumal also came in the shop. Shri Kirtane disclosed his identity as Food Inspector to these persons. He had also taken panch has with him and informed them that he wanted a sample of edible oil, viz., ground-nut oil for analysis. The firm carries on whole-sale business of ground-nut edible oil. Ground-nut oil was stored in various drums which were then marked for identification as drums A, B, C, D, E, Shri Kirtane

purchased 600 grams of oil from each of the 5 drums. He collected sample and by following usual procedure which is not in dispute, divided the sample in three bottles, sealed them and after following the usual procedure of paying charges and handing over sealed bottle to the firm of each sample, he sent one sealed bottle of each sample for the examination of Public Analyst. In his evidence he has given the details, viz., that he had taken three clean dried bottles, the bottles were corked. However, that evidence is not in dispute. Hence I am not reproducing it, A panchanama of the same was also drawn. That panchanama is at Ex. 22, It appears that the sample from one of the drums marked "D" was found to be adulterated on the examination of the Public Analyst. Thereafter sanction was obtained from the Commissioner of Food and Drugs Administration to prosecute these accused, That sanction is produced at Ex. 27. In enquiry it was found that licence for dealing in edible oil was in the name of accused No. 1. It is also seen from his evidence, which is not challenged, that accused No. 3 had produced one copy of partnership showing that the four accused were the partners of the firm and the copy is signed by all the accused.

3. At the trial Kirtane examined himself and substantially deposed what I have stated as the prosecution case. Besides him, the panch was also examined but he was declared hostile. He accepted that he signed the panchanama. It appears that this panch has a shop situated in front of the shop of the accused. However, in his cross-examination he stated that the bottles were sealed in his presence. About 8 or 9 samples were taken. But the fact that the samples were taken and bottles were sealed is not disputed. Hence his evidence does not assume any importance. Liladhar Asai, another Food Inspector, has also given evidence and he has supported the evidence of Shri Kirtane. It is also seen that the samples were obtained by Shri Kirtane while complaint was lodged by one Armorkar who is also examined as P.W, No. 4, A contention was raised in the trial Court but Shri Manohar submitted that he would not agitate and raise that contention in this Court.

4. It appears that during the pendency of the criminal proceedings, an application was given on "behalf of the accused that the sample bottle with him viz. from the drum D be sent for the examination of the Director of Central Food Laboratory, Calcutta. It appears that the trial Magistrate, after following usual formalities, sent the sample bottle which was in the Court for examination of the Director of Central Food Laboratory under the provisions of Section 13 of Prevention of Food Adulteration Act. The certificate of the Director of Central Food Laboratory showed that the sample of the groundnut oil did not conform to the standards prescribed under the Prevention of Food Adulteration Rules, 1955 and was, therefore, adulterated. It has given the analysis or the data why the Director had come to that conclusion. While stating the data in Ex. 18. it was stated that the Bu-tyro-refractometer reading at 40 centigrade was 58 per cent, Saponification value was 194.4. Iodine value is 100.3. Free fatty acid as oleic acid 0.2%. Bellier Test {Turbidity Temperature Acetic Acid method} is 37.9 centigrade. Baudouin test for finding out whether there was sesame oil was

negated. When the test for cotton seed oil was made it was positive, however, slightly. The test for mineral oil, Linseed oil or added colour matter, was negative and absent.

5. The report of the Public Analyst (Ex. 26) dated 18th of October, 1972 showed Bu-tyro-refractometer 40 C. 57.8. Saponification value 188.0, Iodine value 113.8, Unsaponifiable matter 90%, F.F.A. as oleic acid 67%, Bellier's test 37 degree centigrade, test for argemone oil, mineral oil and castor oil negated. It does not show that any test for cotton seed oil was made. However, Shri Manohar drew my attention to the earlier part of the report that the Public Analyst stated that the sample is clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances or mineral oil. Accused No. 3 admitted his presence "but 4 denied to have committed any offence. Accused No. 1 admitted that the licence stood in his name and he looks after the entire day-to-day business of the firm. However, accused Nos. 2 and 4 stated that they were not looking to the business and they were partners only for the purpose of Income Tax, meaning thereby that they were only sharing the profit and loss but were not in the management of the business. The learned Magistrate held that the document of partnership which was produced, was inadmissible in evidence. It was not established "by the prosecution that all the four accused were partners and were dealing in the business of the partnership. However, in his opinion, accused No. 3 who was present and who gave the sample, was only present in the shop and it was he who sold the sample to the Food Inspector. The learned Magistrate further accepted the evidence of the prosecution that the Food Inspector has followed proper procedure in taking the sample, dividing it into three bottles and then sending it for examination of Public Analyst. However, reading the report of the Director of Central Laboratory, the learned Magistrate held "that there was only a difference of 1.3 in Iodine value. From that it cannot be said that the oil was adulterated one because there was possibility of experts committing errors in calculation, The learned Magistrate further observed that if there would have been much difference than 1.3 in Iodine value, then it could be said that it was not error arising in calculation. But as the difference was negligible, he held that it is not proved by the prosecution beyond reasonable doubt that accused No. 2 sold adulterated edible ground-nut oil. In that view he gave benefit of doubt and acquitted all the accused. Feeling aggrieved the State has filed this appeal.

6. In order to find out whether the article viz, ground-nut oil is adulterated, it is necessary first to refer to the definition relied in those reports about the adulterated substance. Section 2 defines adulterated article of food and the relevant definition for our purpose is in Sub-clause (1), which runs as under:-

(1) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability.

This definition, therefore, clearly shows that an article of food shall be deemed to

be adulterated if the quality of the article falls below the prescribed standard or its constituents in the sample are in excess of the prescribed limits of variability. We have, therefore, to find out what are the tests laid down under the rules to find out whether edible ground-nut oil is pure or adulterated. Rule A-17.03 relates to ground-nut oil (moongh-phalika-tel). It means the oil expressed from clean sound ground-nut (*Arachis hypogoea*). It shall be clear, free from rancidity, suspended or other foreign matter, separated water, added colouring or flavouring substances, or mineral oil. It shall conform to the following standards:

(See Table on next page)

7. The report of the Director of Central Laboratory "while stating the data as stated above, shows that there is difference in the Bu-tyro-refractometer reading of .099 per cent, because the variability difference is between 54.0 to 57.1 while the report shows it 58.0. Saponification value varies between 188 to 196 and the report shows that it is 194.4. There-

(a) Butyro-refractometer reading at 40° C-the variability limit prescribed is ... 54.0 to 57.1 (b) Saponification value ... 188 to 196 (c) Iodine value ... 85 to 99 (d) Unsaponifiable matter ... Not more than 1.0 per cent. (e) Free fatty acid as Oleic acid ... Not more than 3.9 per cent. (f) Bellier test ... 39° C to 41° C

fore, there is not much difference. In respect of Iodine value the rule says that it varies between 85 to 99 while the report of the Central Laboratory shows that it is 100.3. Thus there is difference of 1.3 in Iodine value. The test of unsaponifiable matter has not been carried out. As regards free fatty acid as oleic acid, prescribed limit is not more than 1.00 per cent. We have here only 9.2 per cent. The Bellier test varies between 39° C to 41° C while the report shows that there is difference because Bellier test shown here is 37.90, It will thus be seen that the examination or the data shows that in respect of 9, the report shows variations and it does not agree with the prescribed variations laid down under the rules. It was pointed out that there was only a difference of 1.3 of Iodine value and it may be a marginal error. But it appears from the report that at least the variations pointed out in the rule in respect of three examinations are different and they do not even comply other maximum or minimum rule, because in the case of Bellier test the minimum is 39° C to 41° C while in the report it is shown to be 37.90. Similarly, in respect of Butyro-refractometer reading at 40° C it is seen that the minimum and maximum prescribed is 54.0 to 57.1 while we have it here as 58.0.

8. The question for consideration would be, as will be evident from the submissions which I shall reproduce as urged by Shri Manohar on behalf of the respondent, whether these differences are in the nature of marginal error committed by the expert and whether on such a report it can be held by the Court, who has to finally decide, whether the article of food of which sample was collected, was adulterated.

9. In that respect before I state the submissions of Shri Manohar and discuss them, it is necessary to refer to Section 13 of the Prevention of Food Adulteration Act. Section 13 Sub-clause (1) deals with, report of the Public Analyst. The public analyst shall deliver, in such a form as may be prescribed, a report "to the Food Inspector of the result of the analysis of any article of food submitted to him for analysis. Sub-clause (2) deals with the right of accused or the complainant on payment of prescribed fee to 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 seal or fastening as provided in Clause (b) of Sub-section (1) of Section 11 in intact 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 his analysis. Sub-clause (5) of this section along with its proviso is necessary to be reproduced :

(5) 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:

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.

It, therefore, follows that the certificate signed by the Public Analyst may be used as evidence of the facts stated therein unless it has been superseded under Sub-section (3). It is also laid down that a certificate signed by the Director of Central Food Laboratory shall be final and conclusive evidence of the facts stated therein. In the instant case both the reports show that the article of food a sample of which they have examined, viz. the sample of ground-nut oil was adulterated.

10. However, it was contended before me by Shri Manohar. the learned Advocate for the respondents, relying upon certain authorities which I shall refer, that the data supplied by both Public Analyst as well as Director, especially in respect of iodine value differs to such a large extent that it is possible to hold that there may be a marginal error committed by the experts and under such circumstances the report relied upon cannot be read to hold that the sample examined was adulterated. He first drew my attention to a case reported in B.A. Sawant Vs. State, . It was a case in respect of a sale, of buffalo's unboiled milk in which, according to the prosecution, there was extraneous water to the extent of 17.7 per cent. It appears that sample bottle was examined both by Public Analyst as well as Director of Central Food Laboratory and in view of the difference in respect of added water in the reports the Court felt doubt with

regard to the contents of two bottles which were analysed. The relevant observation relied upon by Shri Manohar is on page 801 (of Bom LR) :at pp. 369-370 of AIR) as under:

Further a grave doubt arises with regard to the contents of the two samples which were analysed in this case because of the striking discrepancy between the analysis by the Public Analyst and the one "by the Director of Central Food Laboratory, with regard to the water contents of the two bottles. So far as milk fat is concerned, the difference is only of 0.1 per cent, in the report of the Public Analyst and the one given by the Director of Central Food Laboratory. With regard to the milk solids other than milk fat the difference is 0.3 per cent. These differences can be considered to be negligible. But it is difficult to understand how there could be one bottle with 21 per cent of water and the other with 17 per cent. The main question in this case is whether the accused can be convicted merely relying on the evidence of the Food Inspector and the report of the Director of Central Food Laboratory for holding that the accused sold adulterated milk. In view of the fact that the Food Inspector did not lead any evidence with regard to the following of the procedure under Rule 14 and did not try to explain how this difference in the two reports was caused, it will be difficult to convict the accused relying on the evidence of the Food Inspector alone. Further, a doubt is created in accepting his evidence because of the statement of the defence witness, Gopinath, who stated that he did not see the empty bottles.

It will, therefore, be seen that this case is distinguishable on fact from the present case. First of all this case is in respect of analysis of milk while the case "before us is in respect of edible oil, viz. ground-nut oil. Secondly that though there is a report of two authorities it only differs materially on the point of percentage of water i.e. extraneous material added water was found in the milk. One report stated that it is 17 per cent, while the other stated that it is 21 per cent. The sample was divided into three bottles and in that respect this Court had held that the Food Inspector did not lead any evidence with regard to the following of procedure under Rule 14 and a doubt also arose in the mind of the Court in accepting the evidence of the Food Inspector because statement of defence witness Gopinath showed that he did not see the empty bottles. The observations, in my opinion, are not applicable to the facts of the .present case. In respect of buffalo milk prescribed requirement under the rules is stated. At the time when the case was decided it appears that definition of buffalo milk was contained in A.1101.02. Buffalo milk was to contain not less than 5.0 per cent of milk fat except in Delhi. Punjab, PEPSU, Uttar Pradesh, Bihar, West Bengal. Assam, Bombay and Saurashtra where it shall not be less than 6 per cent. The milk solids other than milk fat, shall be not less than 9 per cent. There was no mistake in examining the contents of the milk but the mistake as was found out was in respect of extraneous material added. I am, therefore, inclined to hold that this case is not applicable to the facts of the present case and it does not help Shri Manohar to canvass that the difference in the report is a marginal difference caused by the mistake of the experts.

11. Shri Manohar then drew my attention to a case of Kerala High Court, a Criminal Appeal No. 387 of 1970, Gopinathan Nair v. Palani appearing in Prevention of Food Adulteration Cases 1972 page 410. A question whether the sample is adulterated had to be decided by the Court when data was supplied and in doing so the data supplied by the Central Food Laboratory will have to be given precedence in accordance with Section 13 (3) of the Act has been considered in that case, It was also laid down in this case that the Court, in forming its conclusion on the matter, can even look into other evidence made available before it. It is also a case in respect of adulterated milk. In the reported case of Kerala High Court, according to the report of the Public Analyst, the sample was adulterated because it did not conform with the standard prescribed for cow's milk under the Prevention of Food Adulteration Rules, 1955. The Analyst was further of the opinion that the sample contained 18.0 per cent of added water. The Director of Central Food Laboratory, on the other hand, has simply stated that the sample was adulterated. He has not given any particular reason for his conclusion. The relevant observations on which reliance is placed by Shri Manohar are to be found in paragraph 11, as under:

Thus under the Indian law when once the article is found to be below the standard prescribed by the Rules, it has to be presumed that the article is adulterated and the accused had no right to prove before Court that notwithstanding the deficiency in the standard, the stuff is, in fact, not adulterated. But the question raised in the present case is not whether the accused has the right to prove before Court that in spite of the deficiency in the standard, the milk is not adulterated; but the question is whether in the process of analysing the milk the agency analysing is prone to commit marginal errors and whether the benefit of such errors should not be given to the accused.

It is further seen from the judgment of the Kerala High Court, that it has taken into consideration unreported decision of the Supreme Court delivered in Malwa Co-operative Milk Union v. Behari Lal. Criminal Appeals Nos 235 and 236 of 1964, D/- 14-8-1967 reported in 1973 FAC 375 (SC). In that (Supreme Court) case border line variation was 0.4 per cent. Such border line variation has been considered by S, N. Mitra of the Central Food Laboratory, Calcutta, in his address at 4th Indian Standards Convention delivered at Calcutta, wherein he described the margin of permissible errors as "tolerance" and on this basis Kerala High Court then proceeded to observe on page 416 as under:

A variation of 0.3 per cent in the milk solids not-fat in the present case has, therefore, to be treated a border-line variation and as was held in Municipal Corporation of Delhi v. Om Prakash 1970 Cri LJ 1047 (Delhi) the benefit of the doubt arising from the variation should go to the accused.

It will thus be seen that the facts of the case are distinguishable from the facts of the present case. First of all this was a case in respect of adulteration of milk. Secondly, evidence before the Kerala High Court showed that such marginal variations had occurred in examination of milk and they were called margin

of .permissible errors as tolerance. No such material is adduced in this case to show that in the examination of the oil there is such marginal error committed by the experts which can be treated as marginal error of toleranee. Reliance was only placed before me on the report of the Public Analyst and the report of the Director of Central Laboratory, Calcutta to show that these two experts have arrived at different percentage of Iodine value in the examination of the ground-nut oil samples. One came to the conclusion that it was 113.8 per cent while the other came to the conclusion that Iodine value was 100.3 per cent. It was, therefore, urged that it is quite possible that the Director of Central Food Laboratory, Calcutta, also may have committed a mistake of 1.3 per cent, and may have arrived at a wrong conclusion and such marginal error, if occurred in the report of an expert, then the benefit of doubt should go to the accused. I am unable to agree with this submission. It is true that so far as the data of Iodine value is concerned, it is shown in the Public Analyst's report as 113.8 while in the Director's of Central Food Laboratory, Calcutta, report it is shown as 100.3. But it will have to be remembered that other sample was examined on 18th of October 1972 while this sample was examined sometime after 9th of May 1973 and before 29th of May 1973. When the report of the Director of Central Food Laboratory is produced in a case then under the provisions of Prevention of Food Adulteration Act it has to be taken into account and the Act further laid down that it is final and conclusive. Particular data has been given in the report of the Central Laboratory. Calcutta in respect of examination of the sample of groundnut oil. There is no evidence before me that this data arrived at by the Central Laboratory is in any way wrong or it does not conform to the examination which has to be undertaken for examining the sample to find out whether it is pure or adulterated nor it has been pointed out from any evidence adduced in the case in the shape of treatises that such & marginal error of 1.3 per cent can take place in respect of Iodine value as tolerance error by an expert. I have also shown in the earlier part of my judgment that the sample which has been examined may the Director of Central Food Laboratory does not conform in respect of three examinations which I have already stated. Rules have laid down both maximum and minimum percentage to be found in the examination of ground-nut oil to ascertain whether it is a pure ground-nut oil or an adulterated ground-nut oil and in that light it is seen that this data given by the Director of Central Food Laboratory shows that detailed examination of the sample has been made. The conclusion arrived at by the Director, that sample of ground-nut oil does not conform to the standards prescribed under the Prevention of Food Adulteration Rules, 1955 and is, therefore, adulterated, is supported by the detailed examination carried out by the Laboratory. I am, therefore, inclined to hold that the learned Magistrate was in error in holding that such marginal errors can take place in examining sample by an expert, There was no material adduced before the Magistrate to arrive at this conclusion. It appears to be merely his conjecture. I have already given the definition which has been relied upon in the complaint to submit that the sample of the ground-nut oil is adulterated. The report of the Director of Central Food Laboratory does show that

the sample of ground-nut oil is adulterated. The report of the Public Analyst shows that the sample is adulterated u/s 2 Clause (1) of the Prevention of Food Adulteration Act, 1954 and the complainant relies for alleging the sample as adulterated on this definition as stated in Section 2, Sub-clause (1) of the Prevention of Food Adulteration Act, 1954. I, therefore, feel no hesitation in relying upon this report to hold that the sample taken by the Food Inspector from the shop was adulterated ground-nut oil.

12. Some passage was pointed out by Shri Manohar from the Journal section of Prevention of Food Adulteration Cases, 1973 pages 7 and 8. However, in my opinion, they have no direct bearing in the case. Therefore, it is not necessary to refer to them. I am, therefore, of the opinion that in the instant case prosecution has proved that the food article viz. groundnut oil, the sample of which was taken by the Food Inspector, was an adulterated ground-nut oil.

13. The next question that arises for consideration is whether all the four persons who were made accused on the "basis that they were the partners of M/s. Khushaldas Deomal & Co. Maskasath, Nagpur, can be held guilty for having committed the offences charged for. In that respect Shri Manohar drew my attention to a recent case of the Supreme Court reported in Smt. Manibai and Another Vs. The State of Maharashtra, . The facts of that case show that one Iranian and his mother Manibai were the persons carrying on the business. Manila, appellant No. 1, was the licensee of the shop while Pranjivan was co-licensee of the shop. Before the Supreme Court it was contended that conviction of Manibai was not justifiable on the ground that Manibai was admittedly not present at the time when coconut oil was purchased by the Food Inspector, Shri Mahajan, from Pranjivan accused. The High Court had held that Manibai was not in charge of the shop nor she was actually conducting the business carried out at the shop from which the Food Inspector purchased coconut oil. The Supreme Court, therefore, considered the question in the light of Section 17 of the Food Adulteration Act. The Supreme Court has observed:

"Company" has been defined in Section 17 to mean any body corporate and to include a firm or other association of individuals. "Director" in relation to a firm has been defined to mean a partner in the firm. There is nothing to show that the business carried on in the shop in question was that of a firm and that Manibai was- a partner of the said firm. Even if it may be assumed that the business was owned by a firm or an association of individuals and Manibai was a partner of that firm or member of that association of individuals, Manibai would be liable u/s 17 (1) of the Act for the sale which was made by her son Pranjivan only if it was shown that she was in charge of and was responsible for the conduct of the business which was carried on at the shop. There is no evidence to that effect on the record. In the absence of such evidence, no criminal liability for the sale of coconut oil by Pranjivan can be fastened on Manibai under the provisions of the Act.

It was, therefore, contended by Shri Manohar that in the instant case there was

no evidence first of all that all the persons were partners of a firm and even if for argument's sake it was held that the firm was carrying on the business and the respondents were the partners of that firm, still the prosecution will have to show that all the respondents were in charge of the business and were responsible for the conduct of the business which was carried on at the shop.

14. We have, therefore, to examine the evidence adduced on behalf of the prosecution to find out whether evidence has been adduced to show that these four respondents were the partners of firm which was carrying on business of edible ground-nut oil and whether all the respondents were in charge or responsible for the business of the firm. In that respect, I must confess, that the evidence of the prosecution, so far as respondents 2 and 4 are concerned, is not such convincing that they were in charge of or responsible for the business of the firm which was carrying on the business of sale of edible oil. In the instant case it was alleged that immediately after the samples were taken, Shri Kirtane made inquiry and asked respondent No. 3, who was accused No. 3, to produce copy of partnership deed, which was produced. The partnership deed does show that the four respondents are partners of a firm M/s. Khushaldas Deomal & Co. and they have signed the copy of partnership deed. It is true that the original has not been produced. But when ocular evidence of Shri Kirtane was led, there is no cross-examination in respect of his evidence that the four respondents were partners of the firm which carried on the business of sale of ground-nut oil. But that would not fasten the liability u/s 17 (1) on all the partners unless it was shown by the prosecution that all the persons were looking after the business, were in charge of the business or were responsible for the business carried on in the shop. In this case we find from the statements made by the accused that accused No. 3 accepted his presence in the shop. Accused No. 1" admitted that he came to the shop five minutes after the arrival of Shri Kirtane. He further admitted that licence of trading in edible oil was standing in his name and he was also looking after the business of the firm. These statements made u/s 342 of the Code of Criminal Procedure can be taken into consideration with the other evidence adduced on behalf of the prosecution. But respondents Nos. 3 and 4, who are accused Nos. 2 and 4, have stated that they were not responsible for any business; They were not present. They were" neither in charge of the business nor responsible for any of the transactions that took place in the business and they are partners for the purposes of accounting. They may for the purpose of Income Tax. Whatever that may be, the prosecution ought to have adduced evidence to show that these respondents were also in charge of the business or were responsible for the business. Admittedly they were not present when Shri Kirtane along with another Food Inspector took samples of ground-nut oil from the shop. It was the duty of the prosecution to have adduced that evidence to fasten criminal liability on respondents Nos. 2 and 4. I am, therefore, of the opinion, that they cannot be held liable for the offence u/s 7 (i) read with Section 16 (1) (a) of the Prevention of Food Adulteration Act.

15. However, different consideration, arises in respect of respondents 1 and 3. I

have already stated those facts. I need not repeat. The evidence, therefore, conclusively establishes that respondents Nos. 1 and 3 i.e. accused Nos. 1 and 3 have committed an offence u/s 7 (i) read with Section 16 (1) (a) of the Prevention of Food Adulteration Act, 1954. The learned Magistrate was in error in acquitting them. After having so held, the next question that arises for my consideration is what sentence I should award to these respondents 1 and 3. As regards the question of sentence, it is necessary to refer to Section 16 proviso (i). Proviso (i) states :

(i) if the offence is under Sub-clause (i) of Clause (a) and is with respect to an article of food which is adulterated under Sub-clause (1) of Clause (i) of section 2 or misbranded under Sub-clause (k) of Clause (ix) of the section:

** ** the court may, if there be any adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or of fine of less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees.

Shri Manohar has relied upon the observation from Allahabad High Court reported in State of U.P. Vs. Gauri Shanker, The relevant observation runs as under:

The court is empowered under the proviso of Section 16 to impose a sentence of imprisonment or of fine or of "both. It is not necessary that a sentence of imprisonment as well as of fine should be imposed upon the accused when the Court extends the benefit of the proviso to the accused.

Considering the circumstances of this case, viz. that it is a shop wherein edible oil is sold in whole-sale and "considering the fact that samples were taken from 6 drums which were marked as ABCDE F and only a sample in drum No. D is found to "be adulterated within the meaning of Section 2 Sub-clause (1). I am inclined to hold that in this case a sentence of fine would meet the ends of justice and it is not necessary to award a sentence of imprisonment to the respondents. I, therefore, pass the following order.

16. The appeal is partly allowed. Acquittal of respondents Nos. 2 and 4 is confirmed. Acquittal of respondents Nos. 1 and 3 is set aside. They are held guilty and convicted u/s 7(i) read with Section 16(1)(a) of the Prevention of Food Adulteration Act and each is sentenced to pay a fine of Rs. 250, or in default to suffer rigorous imprisonment for two months. The respondents are granted time to pay the amount of fine within 8 days from today on their executing the necessary bonds. Bail bond of respondents 2 and 4 are cancelled.