the Rent Controllers under sections 4, 10, 12 and 13 of the Act, before the Appellate Authority.

5. In this view of the matter, this petition succeeds and is allowed. The order of the Appellate Authority is set aside and that of the Rent Controller setting aside the *ex parte* proceedings against the tenant, dated October 27, 1983, is restored with no order as to costs. However, the parties have been directed to appear before the Rent Controller on March 15, 1985. Since the ejectment of the tenant is being claimed on the ground of personal necessity, it is directed that the hearing of the ejectment of the application be expedited.

H. S. B.

FULL BENCH

Before R. N. Mittal, K. S. Tiwana & S. S. Dewan, JJ.

STATE OF HARYANA,—*Appellant.*

versus

ISHER DASS,—*Respondent.*

Criminal Appeal No. 434-*DBA of* 1982.

March 14, 1985.

Prevention of Food Adulteration Act (XXXVII of 1954)—*Sections* 7 & 16—*Prevention of Food Adulteration Rules,* 1955—*Rules* 7, 17, 18 & 22-*A*—*Procedure for despatch of samples to a Public Analyst as contained in Rules* 17 *and* 18—*Provisions of these rules—Whether mandatory—Non-observance of these rules—Whether vitiates the entire proceedings.*

Held, that the procedure provided by rule 17 of the Prevention of Food Adulteration Rules, 1955 is very important and the formalities provided in it have to be observed. If any of these formalities is not complied with, then the entire proceedings are vitiated. The purpose of the rules is to ensure the identity of the sample till it reaches the Public Analyst for analysis. It has to be ensured that the sample is not tampered or changed during transit to the office of the Public Analyst. To ensure that the sample which was seized by the Food Inspector, reached the Public Analyst, it is provided in

Rule 17 that form VII has to be sent to the Public Analyst by the Food Inspector in a sealed parcel with sealed container of the sample. Rule 17 was amended in the year 1977 and when we read the old and the new rules it emerges that the new rule requires the Food Inspector to send the seized sample and Form VII in sealed condition immediately to the Public Analyst but not later than the succeeding working day. Even Form VII has to be sent in a sealed condition. Previously, it was only to be enclosed with the sample. The sample container and Form VII sealed in the manner provided in Rule 17(a) has to be deposited with the local (health) authority immediately, but not later than the succeeding working day. This amendment lays emphasis on steps to rule out any possibility of tampering with the sample. At every stage in this rule the word 'shall' has been used which does not leave any doubt the mandatory character of its language. If the Public Analyst does not find the sample in accordance with Rules 17 and 18 or finds any provision of the Rules vitiated, he will not examine the sample. He has to note the condition of the sample and the accompanying material in Form VII prescribed in the Rules. This counterchecking adds weight to the opinion that Rule 17 is mandatory. Similarly, Rule 18 is also mandatory and has to be strictly complied with.

(Paras 7 & 9).

1. State of Haryana *vs.* Mohan Lal, Cr. Appeal 1203 of 1977 decided on September 6, 1979.
2. Municipal Committee, Amritsar *vs.* Karnail Singh, 1978 P.L.R. 717.
3. State of Haryana *vs.* Ram Lal, Cr. A. No. 753 of 1979, decided on March 9, 1981.
4. State of Haryana *vs.* Sawan Ram, 1982(2) C.L.R. 97.

OVERRULED.

(*Case referred by a Division Bench consisting of Hon'ble Mr. Justice S. S. Sodhi and Hon'ble Mr. Justice R. N. Mittal to a larger Bench on 25th June,* 1982 *in case Criminal Misc.* 2741 *of* 1982 *now treated as Crl. Appeal No.* 434- *DBA of* 1982 *for the decision of an important question of law arising in this appeal and conflict of authorities of this Hon'ble High Court with regard thereto. The larger Bench consisting of Hon'ble Mr. Justice Rajendra Nath Mittal, Hon'ble Mr. Justice Kulwant Singh Tiwana and Hon'ble Mr. Justice S. S. Dewan finally decided the case on 14th March,* 1985).

Appeal against the order of the court of Shri Gorakh Nath, Additional Sessions Judge, Karnal, dated the 31*st October,* 1981 *reversing*

that of Shri J. D. Chandna, Sub-Divisional Judicial Magistrate, Panipat, dated 12*th* & 15*th September,* 1981 *convicting the respondent.*

R. K. Jhingan, Advocate, *for the Appellant.*

C. B. Goel, Advocate, *for the Respondent.*

JUDGMENT

K. S. Tiwana, J.

(1) Ishar Dass respondent deals in aerated water and sells it to public at his shop in the town of Panipat. On 3rd of June, 1975, Shri Jagan Nath Raheja P.W. 1, Food Inspector in the company of Dr. R. Mittal P.W.2 went to the shop of the respondent. Harbhajan Singh was also joined by him. The respondent has 55 bottles of aerated water under the name of Crown Cola for public sale. After disclosing his identity, the Food Inspector purchased nine bottles of Crown Cola against payment of Rs. 13.50. Nine bottles were divided into three different parts, each part constituting three bottles and they were duly wrapped, turned into parcels and sealed. Labels about their identity were affixed on the samples. One sample was given to the respondent against a receipt at the spot. One sample together with two copies of form VII was sent to the Public Analyst Haryana, through the Chief Medical Officer. The sample bore the specimen of the seal. One sample was deposited with the Senior Medical Officer, Incharge of the Civil Hospital, Panipat. The Public Analyst after analysis found the sample to contain B. Coli bacteria in it. The Public Analyst found the sample unfit for human use.

(2) After the report of the Public Analyst and after following the necessary legal formalities, the respondent was prosecuted in the court of the Sub-Divisional Judicial Magistrate, Panipat. Jagan Nath Raheja, Food Inspector, P.W.1 and Dr. R. Mittal P.W.2 were examined in support of the prosecution case. They proved the taking of the sample from the respondent. Jagan Nath Raheja P.W. 1 testified to the giving of one sample to the respondent and sending the other to the Public Analyst through the Chief Medical Officer and the deposit of the third with the Senior Medical Officer at Panipat. Shri A. N. Mehta P.W.3, a Clerk of the office of the Chief Medical Officer, Karnal, proved the arrival of the sample in that office on 4th of June, 1975 and its onward transmission to the Public Analyst on the same day through a special messenger,

(3) The respondent in his statement under section 313 of the Code of Criminal Procedure, 1973, admitted the taking of the sample from him. He contended the sample was not sent to the Public Analyst after putting in ice. He pleaded that he used tap water supplied by the Municipal Committee. He questioned the authority of the Public Analyst to analyse and examine the sample for the purpose of bacteriological test in view of the notification issued by the Director of Public Health, Haryana. He pleaded that he was unemployed for the past five years and suffered eczema on both the legs and had heavy family obligations to discharge.

The accused examined his landlord Narain Dass as D.W.2 to depose that Municipal water tap was the only source of water available to the respondent in his premises on rent with the respondent.

Shri Balwant Singh, Assistant, in the office of the Chief Medical Officer, Karnal, D.W.1 tendered Exhibit D.A., copy of a letter issued by the Director of Health Services in May, 1976.

(4) The learned trial Magistrate accepted the case of the prosecution and convicted Ishar Dass respondent under sections 7/16 of the Prevention of Food Adulteration Act, (hereinafter referred to as the Act), and sentenced him to undergo rigorous imprisonment for six month and to pay a fine of Rs. 1,000. In default of payment of payment fine he has been further sentenced to undergo rigorous imprisonment for four months. Ishar Dass respondent preferred appeal against his conviction, which was heard by the learned Additional Sessions Judge, Karnal. The Additional Sessions Judge following *Bhagwant Dass* versus *State and other* (1) held that the bottles sent to the Public Analyst were not the representative sample of the food article, which was sold by the respondent. He also found that Rules 17 and 18 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the Rule) are mandatory and in this case were not followed. He observed in the following terms:—

> "It thus has not been established that the impression of the seal alone with the relevant memorandum had been sent to the Public Analyst separately from the sealed packet containing the sample."

Forming the view on these two points he accepted the appeal and set aside the conviction of the respondent recorded by the

(1) AIR 1962 Pb. 419

learned sub-Divisional Judicial Magistrate and acquitted him of the charge.

(5) The State of Haryana filed appeal against the judgement of the learned Additional Sessions Judge acquitting the respondent. It was pointed out at the motion stage that there is a divergence of opinion in this court as to whether Rules 17 and 18 of the Rules are mandatory or are only directory. In *Municipal Committee, Amritsar* versus *Karnail Singh* (2) a Division Bench of this court held that Rule 18 of the Rules is merely directory and not mandatory. Another Division Bench of this court in *State of Punjab* versus *Lachhman Dass* (3) was brought to the notice of the Motion Bench, in which a contrary view that this rule is mandatory was expressed. About the case reported as *Bhagwandass* versus State (4) it was observed that after the addition of Rule 22-A in the Rules, this case does not hold the field. The Bench hearing the case at the motion stage noticing a conflict of view in this court admitted the appeal to a Full Bench. It is for this reason that the appeal has come before us for decision of two questions. The first is whether Rules 17 and 18 of the Rules are directory or mandatory. The second is whether after the amendment of the Rules in 1962, adding Rule 22-A, the decision in AIR 1962 Punjab 419 still holds the field.

(6) Rules 17 and 18 of the Rules are as under:—

"17. *Manner of despatching containers of samples.*—The containers of the samples shall be despatched in the following manner, namely:—

(a) The sealed container of one part of the sample for analysis and a memorandum in form VII shall be sent in a sealed packet to the public analyst immediately but not later than the succeeding working day by any suitable means.

(b) The sealed containers of the remaining two parts of the sample and two copies of the memoranda in Form VII shall be sent in a sealed packet to the Local (Health) Authority immediately but not later than the succeeding working day by any suitable means:

(2) 1978 P.L.R. 717

(3) 1980 Chandigarh Cr. cases 28.

(4) A.I.R. 1962 Pb. 419.

Provided that in the case of a sample of food which has been taken from container bearing Agmark seal, the memorandum in Form VII shall contain the following additional information, namely: —

(a) Grade;

(b) Agmark lable No./Batch No.;

(c) Name of packing station.

18. *Memorandum and impression of seal to be sent separately.*—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 registered post or delivered to him or to any person authorised by him."

7. Rules 17 and 18 of the Rules are inter-linked and part of the same scheme. In *State of Punjab* Versus *Bhagwan Dass Jain,* (5) the Full Bench considered the matter of only Rule 18, but Rule 17 also came up for comparative study and its effect on the inter-linked Rule 18. The purpose of taking a sample of a food article by the Food Inspector is that it should be examined by an expert employed by the Government under the designation of public analyst to ensure that it is not sub-standard or is not unfit for human consumption or injurious to the health of human beings, who consume it. The legislature has provided for the mode of taking of the sample by the Food Inspectors and also the mode of the despatch of the sample in a fool-proof manner, so that these are not tampered with in the transit. In part IV of the Rules, qualifications and duties of the Public Analyst and Food Inspectors have been prescribed. In part V of the Rules, a comprehensive procedure is provided for the sealing, fastening and despatch of the samples. Rules 14 to 22-B find place in Chapter V of the Rules. Out of these we are concerned only with Rules 17 and 18. Out of these, Rule 18 will be taken up a little later. Procedure provided by Rule 17 is very important and the formalities provided in it have to be observed. If any of these formalities is not complied with, then the entire proceedings are vitiated. The purpose of the Rules is to ensure the identity of the sample till it reaches the Public Analyst for analysis. It has to be ensured that the sample was not tampered or changed during the transit to the office of the Public Analyst. To

(5) 1981 Cr. L.J. 48.

ensure that the sample, which was seized by the Food Inspector, reached the Public Analyst, it is provided in Rule 17 that form VII has to be sent to the Public Analyst by the Food Inspector in a sealed parcel with sealed container of the sample. In order to prevent any possible mischief in the office of the Food Inspector, Rule 17 was drastically amended and virtually recast on January 4, 1977. To see the effect of the amendment, a look on the old Rule 17 is necessary. Old Rule 17 was: —

"17. *Containers of samples how to be sent to the public analyst.*—The container of sample for analysis shall be sent to the public analyst by registered post or railway parcel or air freight, or by hand, in a sealed packet, enclosed together with a memorandum in Form VII in an outer cover addressed to the public analyst:

Provided that in the case of sample of food which has been taken from Agmark sealed container, the memorandum in Form VII shall bear the following additional information: —

(i) Grade.

(ii) Agmark label No./Batch No.

(iii) Name of packing station."

When we juxta-pose the old and the new rules for study, it emerges that the new rule requires the Food Inspector to send the seized sample and Form VII in sealed condition immediately to the Public Analyst, but not later than the succeeding working day. The other amendment in this rule is that even Form VII has to be sent in a sealed condition. Previously, it was only to be enclosed with the sample. The sample container and Form VII sealed in the manner provided in Rule 17(a) has to be deposited with the local (health) authority immediately, but not later than the succeeding working day. This amendment lays emphasis on steps to rule out any possibility of tampering with the sample. It is to be noted that at every stage in this rule the word, "shall" has been used, which does not leave any doubt about the mandatory character of its language.

Rule 7 prescribes the duties of a Public Analyst. We are concerned with Rule 7(1) only, as only this is the relevant clause. Rule 7(1) is as under:—

> "7. *Duties of public analyst.*—(1) On receipt of a package containing a sample for analysis from a Food Inspector or any other person the public analyst or an officer authorised by him shall compare the seal on the container and the outer cover with specimen impression received separately and shall note the condition of the seals thereon."

If the Public Analyst does not find the sample in accordance with Rule 17 and 18 or finds any provision of the Rules vitiated, he will not examine the sample. He has to note the condition of the sample and the accompanying material in Form VII prescribed in the Rules. This counter-checking adds weight to the opinion that Rule 17 is mandatory. In *Bhagwan Dass Jain's case* (supra) it was observed:—

> "Rule 7 casts a duty on the Public Analyst or any other officer authorised by him, on receipt of the packages for analysis, to compare the seals on the container and its outer cover with the specimen seal impression received separately and not the condition of the seal. Unless the Public Analyst carries out this comparison, he cannot proceed to examine the sample received in the package. After such satisfaction and analysis, the Public Analyst has to note these facts in Form III (reproduced in a later part of the judgement) and send the copies of the report and the result to persons mentioned in sub-clause (3) of Rule 7. The object of the rule making authority in providing for the sending of the copy of the memorandum and the *facsimile* of the seal 'separately' in Rule 18 is undoubtedly clear that it wanted to ensure that the correct sample or the same sample which had been collected by the Food Inspector from the accused has reached the Public Analyst and that it was not substituted or tampered with in the transit after its seizure. If the copy of the memorandum in Form VII and the *facisimile* of the seal are to be in the same packet, then the very purpose of Rule 18, which prescribes a manner for crosschecking the identity of the

sample, will be frustrated. This provision in the Rules is made in favour of the accused, so that the identity of the sample is ensured and that can be best achieved if the things mentioned in Rules 17 and 18 are sent separately. It is also a check on the activities of the Food Inspector in case his action is motivated against the accused."

In *State of Haryana* Versus *Jagtar Singh* (6) which has been approved in *Bhagwan Dass Jain's case* (*rule*) by the Full Bench a Divisional Bench of this court expressed the view in regard to Rules 17 and 18, that these rules are mandatory. The legislative intent to make the rule mandatory is manifest from the amendment and the language used. Rule 17 is mandatory and not directory.

8. So far as this court is concerned, the position regarding Rule 18 is settled by a Full Bench decision in *Bhagwan Dass Jain's case* (supra), holding that this rule is mandatory. In case, the question before the Full Bench was :—

"The question before this Bench is whether the provisions of Rule 18 are mandatory and whether this rule is infracted if the copy of the memorandum in Form VII and the impression of the seal are sent, though sealed separately, through the same messenger, or through any other mode given in this rule, at one and the same time."

9. The Full Bench in *Bhagwan Dass Jain's case* went into the question of mandatory nature of Rule 18 at length and noted the views expressed by this and other courts to hold in favour of mandatory character of this rule. No effective argument was addressed before us to differ with that decision. We are in agreement with the view in the said case.

10. The Full Bench in *Bhagwan Dass Jain's case* over-ruled a Division Bench judgement of this court in *State of Haryana* Versus *Mohan Lal* (7) in which the view similar to the view in *Karnail Singh's case* (supra) holding that Rule 17 and 18 are directory and not mandatory was expressed. In the Full Bench

(6) (1979) 81 Pun. L.R. 553

(7) Cr.A. 1203/77, decided on 6th September, 1979.

case a view of another Division Bench reported in *Jagtar Singh's case* (supra) holding Rules 17 and 18 to be mandatory was approved at the time when *Bhagwan Dass Jain's* case was decided, Division Bench case reported as *Municipal Committee Amritsar* versus *Karnail Singh* (8) expressing the same view as *State of Haryana* Versus *Mohan Lal* was not brought to the notice of the Bench, although this case was decided earlier than the Full Bench case. In para 11 of *Karnail Singh's case* (supra) the argument of the counsel for the respondent that copy of the memorandum and specimen impression of the seal used to seal the packet were to be sent separately to the Public Analyst, which was not done, was rejected by a short observation: "This argument is also to be repelled as no such question was put to the Food Inspector and that in any way Rule 18 was infringed. Moreover, we are of the opinion that Rule 18 is merely a directory and not mandatory". The conclusion of the learned Judges in *Karnail Singh's case* regarding sending of the facsimile of the seal, of course, was the same as of the Full Bench. The Judges in *Karnail Singh's case observed.*

> "The whole purpose of sending the memorandum and specimen impression of seal which was used to seal the packet is that the public analyst may be able to compare the memorandum and the impression of seal with each other; it is not that these are to be sent in separate bundles and separately by post or by messenger."

In *State of Haryana* Versus *Ram Lal,* (9) a Division Bench again took the same view as taken in *Karnail Singh's case* (supra). The observations of the Division Bench in this case are:—

> "The learned Magistrate had acquitted the respondent for non-compliance of Rules 17, 18 and 9 (j) of the Prevention of Food Adulteration Rules, holding that the Rules were mandatory. This view taken by the Magistrate seems to be erroneous. It has been held by this court that Rules 17, 18 and 9(j) of the Prevention of Food Adulteration Rules are directory and not mandatory and their non-compliance will not result in the acquittal of the accused."

(8) 1978 P.L.R. 717.

(9) Cr. A 753/79 decided on 9th March, 1981.

This view was based on *Karnail Singh's case*. Criminal Appeal No. 753 of 1979 was decided after the decision of the Full Bench reported in *Bhagwan Dass Jain's case* (supra) (1981 Crl. L.J. 48), but this was not brought to the notice of the Bench in this appeal. Again, another case came to be decided by a Division Bench of this Court reported as *State of Haryana* Versus *Sawan Ram,* (10) taking the same view as in the case of *Karnail Singh* and *Ram Lal* (supra). The decision of the Full Bench in *Bhagwan Dass Jain's* case was not brought to the notice of the Division Bench, in this case as well, though it was decided after the decision of the Full Bench. The Division Bench in *Sawan Ram's case* again took the view as :—

> "So far as non-compliance of the provisions of Rules 9-A and 22 of the Rules are concerned, it is held by a Division Bench of this Court in *State of Haryana* Versus *Ram Lal,* Cr. A. No. 753 of 1979 decided on 9th of March, 1981, that Rules 17, 18 and 9(j) are directory and not mandatory. Similar view is taken by a Full Bench of this Court in *Kashmiri Lal* Versus *State of Haryana,* (11) wherein it is held as under:—
>
> 'To conclude we take the view that rule 9(j) even though framed in mandatory terms is in substance directory.'
>
> It is the respondent who has to show that any prejudice was caused by the non-compliance of the Rules. No such prejudice is shown by the respondent to have been caused for non-compliance of rule 9-A and 22 of the Rule. The learned Chief Judicial Magistrate fell in error in holding that these rules are mandatory. It seems that the aforesaid Division Bench and the Full Bench authorities were not brought to her notice. We accordingly hold that rules 9-A and 22 are directory and not mandatory."

In *Sawan Ram's case*, decision in Criminal Appeal No. 753 of 1979 and 1981 C.L.R.593 were followed as precedent. I may add here

(10) 1982 (2) C.L.R. 97.

(11) Cr. R 189/79 decided on 21st March, 1981 (1981 CL. R 593)

that in *Kashmiri Lal's case* (supra) Rules 17 and 18 were not involved. It concerned only with Rule 9(j). The learned Judges in *Sawan Ram's case* (supra) were under a mistaken impression that *Kashmiri Lal's case* concerned with the mandatory or directory nature of Rules 17 and 18.

11. In view of the decision of the Full Bench in *Bhagwan Dass Jain's case* (supra) with which we concur that Rule 18 is mandatory, the views expressed in *Ram Lal's case,* Criminal Appeal No. 753 of 1979 and *Sawan Ram's case* (supra) expressing the view that Rule 18 is directory and not mandatory are over-ruled. We may add here that any other Single Bench or Division Bench judgement of this Court, which has not been brought to our notice, expressing the view that Rules 17 and 18 are directory and not mandatory also stand over-ruled. The view expressed regarding the mandatory nature of Rules 17 and 18 of the Rules in *Lachhman Dass's case* (supra) is approved. The conflict of views in this Court so far as the nature of these Rules is concerned, is thus set at rest.

12. About the second question, there is no difficulty. In *Bhagwandass* versus *The State and another,* (supra), Falshaw, C.J. observed:—

> "It is not in dispute that the rules framed under the Act do not provide for any special cases as mentioned in Section 11(1) (b), but this is clearly an omission which requires to be rectified without delay. Obviously it is necessary to make some provisions for dealing with articles of food which are packaged in quantities too small to be divided into three parts so that each part will provide the minimum required for analysis in accordance with the provisions of Rule 22. In this table aerated water appears at No. 15 and the approximate quantity to be supplied for analysis is there stated to be 20 ozs. This figure was apparently substituted for the figure 12 ozs by a notification dated the 9th December, 1958. This rule appears to be almost impossible to comply with properly as regards aerated waters "which are not ordinarily sold in bottles containing more than 12 ozs, each and often as is the case of Coco Cola, less and thus the minimum requirement amounts to the contents of more than one ordinary bottle,

The sooner this omission in the rules is remedied the better it will be for all concerned."

The learned Chief Justice while allowing the criminal revision petition had suggested the amendment of the Rules for providing an appropriate provision regarding the samples in case of aerated water etc. This judgment was pronounced on 24th of January, 1962. The Rules were amended and Rule 22-A was added vide Notification No. GSR-1564, dated 17th November, 1962. After this amendment, the judgment in *Bhagwan Dass's case* (supra) has become inoperative as the lacuna in the Rules, the benefit of which had been allowed to the accused in that case, has been remedied, as suggested by the learned Chief Justice. This judgment can have no effect now.

13. After the decision on the two points referred by the Motion Bench, we come to the merits of the case. We find that the Additional Sessions Judge has acquitted the respondent only on two grounds: (1) on the basis of violation of Rule 18 of the Rules inasmuch as it is not established that the impression of the seal was sent along with the memorandum to the Public Analyst and (2) on the basis of Judgment in *Bhagwan Dass's case* (supra).

14. So far as the first ground is concerned, it is a mixed question of law and fact and has to be decided with reference to the evidence on record. Jagan Nath Raheja, Food Inspector, appearing as P.W.1 stated:—

> "One sample together with two copies of Form VII was sent to the Public Analyst, Haryana, through the Chief Medical Officer. It bore imprints of used seals."

Shri A. N. Mehta P.W. 3, Clerk in the office of the Chief Medical Officer, Karnal, P.W.3, with the help of the record deposed that the sample was received in that office on 4th of June, 1975 and it was further sent to the Public Analyst on the same day through Santokh Singh, driver, special messenger. Santokh Singh had brought back the receipt from the Public Analyst. The Public Analyst in his report Exhibit P.O. certified:—

> "I hereby certify that 'I, Jagdish Kishore, Public Analyst, for all the local areas of Haryana duly appointed under the provisions of the Prevention of Food Adulteration Act, 1954 received on the 4th day of June,

> 1975—from Shri Jagan Nath a sample of Crown Cola aerated water sweetened with sugar 75/JNR/62 seized from Shri Ishar Dass for analysis properly sealed and fastened and that I found the seal intact and unbroken. The seal fixed on the container of the sample tallied with the specimen impression of the seal separately sent by the Food Inspector and the sample was in a condition fit for analysis."

15. Rule 17 requires the person seizing the sample to despatch the seized sample collected and the memorandum in Form VII immediately to the Public Analyst or on the succeeding day. Rule 18 prescribes that a copy of the memorandum and a specimen impression of the seal used to seal the packets shall be sent to the Public Analyst separately by registered post or delivered to him or to any person authorised by him.

16. Explaining the purpose of these Rules and interpreting the word 'separately' as used in Rule 18, it was observed in *Bhagwan Dass Jain's case* (supra):—

> "When Rules 7, 17 and 18 are studied together it becomes manifest that the rule-making authority wanted to ensure the identity of the sample and for that reason provided measures for cross-checking the same. This was sought to be achieved by insisting the copy of the memorandum and the facsimile of the seal being sent separately and the Public Analyst also certifying to that effect in his report in Form III. The word 'separately' does not demand that these two packages are to be sent at different times or through different persons. What it means is that the sample and the memorandum in Form VII are to be kept separate from the specimen impression of the seal. It is immaterial if both these packets are handed over to one and the same person or sent to the Public Analyst at one and the same time through one agency. The literal meanings of the word 'separately' used in the context also do not give any other indication".

The Full Bench in *Bhagwan Dass Jain's case* (supra) also considered the effect to be given to the report of the Public Analyst in regard to the receipt of the memorandum in Form VII and the

facsimile of the seal required to be sent separately under Rule 17. It was observed:—

> "The report of the Public Analyst, according to Section 13(5) of the Act is evidence of its contents. The Public Analyst in the discharge of his statutory duties under Rule 7 is to find that the package and the container of the sample of the seal were sent to him separately by the Food Inspector. Unless anything is proved to the contrary, it has to be presumed that the Public Analyst acted in accordance with the Rules to find as is mentioned in the report, that the sample of the seal had been sent to him separately and it tallied with the seal of the container. In the case in hand, the Public Analyst, in his report in Form III, though the contents of it are printed, has found about the tallying of the seal with the specimen of the seal, sent to him separately."

17. As already stated above, in *Bhagwan Dass Jain's case* (supra), the word 'separately' has been interpreted to mean that these two things can be sent separately at one time or through one agency. The Food Inspector stated that he sent the sample and the copies of Form VII to the Public Analyst through the agency of the Chief Medical Officer. Shri A. N. Mehta P.W. 3 testified to the further despatch of the packages received from the Food Inspector to the Public Analyst on the same day. The sample was taken on 3rd of June, 1975 at 3.25 P.M. As the procedure for sealing, filling of the forms and doing of the other things conncted with the taking of the sample tikes time, their despatch to the Chief Medical Officer was delayed till the next day. The Public Analyst has to tell in what form and condition all the things were received in his office. In this case the report Exhibit P.D. of the Public Analyst containing the relevant particulars has been extracted and reproduced above, and the report categorically states that the sample of the seal was received and it was sealed separately. It cannot be said that since Exhibit P.D. was on a printed form no reliance should be placed on it. As held in *Bhagwan Dass Jain's case* (supra), this report of the Public Analyst is in the discharge of his public and statutory functions. It is a duty imposed upon him to see if Form VII, sample and the facsimile of the seal sent to him are in accordance with the provisions of Rule 18. This certificate is on the proforma

prescribed by the Rule in Form III under Rule 7(3). Whatever he found and noticed as correctly done was entered in Exhibit P.D. If there had been any violation of any provisions of Rule 18, he could have recorded it in his certificate. If he had not received the specimen of the seal at all or had received it in the same packet containing the sample and not separately, or had received it after delay, then such information, according to the situation, should have been mentioned in Exhibit P.D. All acts done by the Public Analyst in discharge of the duties imposed upon him by the Rules, when done regularly, have to be presumed to have been done correctly. The Public Analyst received the sample and the facsimile of the seal separately. Unless it had been sent separately by the Food Inspector, he could not have received it in that manner.

The observations in *State of Punjab* vs. *Lachhman Dass* (supra) to the effect that : "under these circumstances, it would rather be hazardous to hold merely on the basis of the above statement in the report of the Public Analyst that the specimen impression of the seal was separately sent to him" were referred to urge that mere report of the Public Analyst on a printed proforma is not sufficient compliance of Rules 17 and 18. The facts about the sending of the samples in that case were:—

> "It cannot be said that the Food Inspector has complied with the provisions of Rule 18 especially when according to Rule 17, the sample is required to be sent to the Public Analyst in Form VII, paragraph 2 of which has already been reproduced above. The above form seems to have been prescribed in order to ensure that a copy of the memorandum and a specimen impression of the seal used to seal the packet of sample were separately sent as contemplated by Rule 18. The Food Inspector has, however, not used the above form while forwarding the sample to the Public Analyst. It is true that in the printed report of the Public Analyst, among other things, it is stated "Seals affixed on the container of the sample tallied with the specimen impression of the seal separately sent by the Food Inspector and the sample was in a condition fit for analysis." Compliance with the provisions of Rule 18 being mandatory it was necessary for the prosecution to produce satisfactory

evidence on record to show that those provisions were complied with. But as observed above the Food Inspector has not produced any such evidence on record. Under these circumstances, it would rather be harardous to hold merely on the basis of the above statement in the report of the Public Analyst that the specimen impression of the seal was separately sent to him."

In *Lachhman Dass's case* (supra) the Food Inspector failed to comply with Rule 17 by not sending the memorandum in Form VII, prescribed under the Rules, with the sample to the Public Analyst. When the Food Inspector failed to fulfil the duties enjoined on him by the statute or the statutory rules, no help could be derived from the certificate of the Public Analyst. The observation in the case of *Lachhman Dass* (supra) was made on the basis of evidence of that case. The observation in *Lachhman Das's case,* in the context those were made, do not tend to lay down that in no case the certificate of the Public Analyst in the printed *pro forma* about the receipt of the sample and facsimile of the seals separately can be taken as good or sufficient compliance of Rules 17 and 18. In the case in hand, there is sufficient evidence available on the record and in the statement of the Food Inspector and the assertion in the complaint that the sample, form and facsimile of the seal were sent to the Public Analyst in accordance with Rules 17 and 18.

18. The contention of the learned counsel for tne respondent and the finding of the learned Additional Sessions Judge that Rule 18 was breached is against the record and also the interpretation of official acts performed in the discharge of official and statutory functions of the officers functioning under the Act, with the aid of Section 114 of the Evidence Act. This finding of the Additional Sessions Judge is set aside, as it could not be arrived from the facts on the record noticed above.

19. The second ground on which the acquittal of the respondent is based is *Bhagwan Dass's case* (supra) which is completely untenable in view of what has been noticed above in paragraph 12 (supra). The learned Additional Sessions Judge was not cognizant of the insertion of Rule 22-A and the circumstances in which it was added in the rules. He was labouring under the idea that the lacuna in the Act and the Rules, as pointed out by

the learned Chief Justice, still has not been filled by the legislature. He himself was remiss in making his knowledge of law up-to date, but was very uncharitable in his remarks against the learned trial Magistrate in para 9 of his judgment. These remarks were completely uncalled for and should have been avoided by the learned Additional Sessions Judge. The findings on the second ground too are set aside.

20. With the disposal of the grounds, on which the conviction was set aside by the learned Additional Sessions Judge, we come to the merits of the case against the respondent. He did not contest the taking of the sample of Crown Cola, which was for public sale, from his premises. The grounds urged in his defence are that the Public Analyst because of circular letter Exhibit D. 1 could not analyse the sample for bacteriological examination. We have gone through Exhibit D. 1. It was made on the basis of representation by Haryana Small Scale Soda Water Factories Union. Relevant part of Exhibit D. 1 is:—

> "Their request has been considered and it is decided that testing of soda water bottles for bacteriological test be suspended till such time proper arrangements are made for taking samples for bacteriological study and the staff is trained for seizing such samples. In the meantime all officials with food powers will take samples of soda water for chemical analysis only. Such Food Inspectors will however inspect the premises for proper cleanliness as well as proper arrangements for cleaning of bottles and also see that the water used is from proper source such as Municipal water supply or deep tubewell."

This circular nowhere says that the laboratories of the Public Analyst in Haryana are ill-equipped or there is no facility for bacteriological examination. It also does not say if the Public Analysts in Haryana are deficient in education or training or testing skill to carry out these tests. It only refers to the Food Inspectors, who were to be trained for taking such samples from soda water factories. Exhibit D. 1 does not deprive the Public Analyst of the duty to test the sample for bacteriological examination, if the sample, properly seized, reaches him satisfying all the conditions of the Rules. In this case there is no evidence nor even a suggestion if the sample was not properly seized or the

Food Inspector, Jagan Nath Raheja P.W. 1, was not qualified or trained to collect it. The samples in this case are the corked bottles of crown cola of aerated water. The corks were properly fixed and there was no scope for anything being put in the bottles from the time of their seizure by Jagan Nath Raheja P. W. 1 or anybody else till these were examined by the Public Analyst. The preservation of the sample of the aerated water is no argument. The absence of ice does not contribute to the growth of B—coli bacteria. Exhibit D. 1 is no impediment in the way of the Public Analyst to analyse the sample, once it is proved to be properly seized. We have no doubt in this case about the proper seizure and preservation of the sample by the Food Inspector. No cross-examination was directed on this aspect of the case of any witness. This contention has to be over-ruled.

21. The taking of the sample is admitted by the respondent. The report of the Public Analyst is clear that the sample contained B—coli bacteria and was unfit for human use. An effort was made to state that the respondent uses only tap water. Narain Dass D.W.2, the landlord of the premises in which the respondent carries on his business for manufacture and sale of the aerated water, was examined to state that the respondent has Municipal tap as the only source of water supply. It was not proved if the Municipal water contains this bacteria or that was not present in the material used for the filling of the bottles, or if the premises where the process of filling is carried on, were hygienic at the time the bottles were filled. There is no scope for the argument that the respondent had no control over the water or could not avoid this particular bacteriological growth. He prepares aerated water at his premises and sells it to public. It is he who has to take all the precautions that his product, which is meant for human consumption, should be fit for that purpose and should be free from bacteriological growth, like B—coli, etc.

22. The sample seized from the respondent on 3rd of June, 1975 by Jagan Nath Raheja P.W. 1 is thus proved to be adulterated within the definition provided in the Act. We, therefore, accept the appeal, set aside the order of acquittal and convict the respondent under sections 7/16 of the prevention of Food Adulteration Act, as he was charged by the trial Magistrate.

23. The learned counsel for the respondent next argued that the respondent is a poor man, who has young children to support

and has eczema on both the legs. He urged that in the matter of punishment he should be leniently dealth with. He canvassed for the imposition of fine only.

24. B—coli is a bacteria, which is not conducive to human health. The respondent through his preparation of Crown Cola was selling this infection to the public. It is a health-hazard and its likely damage cannot be over-looked and the danger to the public health cannot be under estimated. In view of this we do not find any ground for leniency in punishment to reduce it from the minimum prescribed under section 16 of the Act. Eczema on the legs or large family is hardly a mitigating circumstance. The learned counsel for the respondent relied on judgment of the learned Single Benches of this Court, like *Umed Singh* vs. *The State of Haryana* (12), Criminal Revision *Karam Singh* vs. *The State of Union Territory* (13), *Surinder Singh* vs. *The State of Punjab* (14), and *Om Parkash* vs. *The State of Haryana* (15), in which lesser sentence than the minimum prescribed was awarded. Reference was also made to *Umrao Singh* vs. *State of Haryana* (16), for support to urge that only the sentence already undergone and fine be imposed. *Umrao Singh's case* (supra) does not contain the facts of the case. The learned Judges were, however, satisfied that the circumstances existed for lenient punishment. So far as the judgments of the learned Single Judges of this Court are concerned, those do not provide any reason for mitigation of the sentence and the fact of those cases seem to have influenced the mind of the learned Judges dealing those cases. Section 16 provides for the minimum sentence, if an offence under the Act is made out, Court cannot opt to pass lesser sentence by devising reasons, which do not fall within the frame-work of the provisions of Section 16. The policy of the statute is to pass deterrent sentence against the adulterators of food, who are a risk to the public health. With this intent, the legislature barred the application of the provisions of the Probation of Offenders Act and Section 360 of the Code of Criminal Procedure to the cases tried under this Act. In spite of the changing concept of penology, the provisions of the Probation

(12) Cr. R 3/82 decided on 31st August, 1984.
(13) Cr. R 1199/83 decided on 12th September, 1984.
(14) Cr. 1337/83 decided on 18th September, 1984.
(15) Cr. R 1386/83 decided on 29th August, 1984.
(16) A.I.R. 1981 S.C. 1723.

of Offenders Act have been excluded from application to the Act. This has been done and minimum sentence has been provided with an idea to deter the adulterators of food from playing with the health of the people. Only those accused can be visited with lesser sentence, whose cases fall within the purview of the proviso to section 16 and to others, whose cases do not fall within its ambit, no leniency can be shown. We do not find if the case of the respondent falls under any of the exceptions provided by the proviso to Section 16 of the Act. In this case, we do not agree with the learned counsel for the respondent to take the protracted litigation as a ground for lesser sentence.

25. We, therefore, sentence the respondent to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000. In default of payment of fine he shall undergo further rigorous imprisonment for four months.

Rajendra Nath Mittal, J—I agree.

S. S. Dewan, J—I also agree.

N. K. S.

FULL BENCH

Before P. C. Jain, A.C.J., S. P. Goyal & I. S. Tiwana, JJ.

MANOHAR LAL AND ANOTHER,—*Appellants.*

versus

DEWAN CHAND AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1263 *of* 1975.

April 24, 1985.

Hindu Law—Mitakshra School—Sale of coparcenary property by the Karta—Sale neither for legal necessity nor for the benefit of the estate—Suit by the sons challenging the sale—Sale—Whether liable to be set aside in toto—Vendor—Whether bound by the sale to the extent of his share.

Held, that where a member of the Joint Hindu Family governed by Mitakshra Law sells or mortgages the joint hindu family property or any part thereof without the consent of the coparceners,