

APPELLATE CRIMINAL

Before Ranjit Singh Sarkaria and C. G. Suri, JJ.

MUNICIPAL COMMITTEE, AMRITSAR,—*Appellant.*

versus.

KARAM SINGH,—*Respondent.*

Criminal Appeal No. 1157 of 1970.

May 12, 1971.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 13(2) and 16—Delay in instituting prosecution for food adulteration—Whether per se vitiates the trial—Right of an accused to get the sample of the food tested by the Director frustrated without any fault of the prosecution.—Such accused person—Whether entitled to acquittal on this score alone—Prevention of Food Adulteration Rules (1955)—Rules 4(5) and 7(3)—Whether mandatory.

Held, that delay in instituting the prosecution under section 16 of the Prevention of Food Adulteration Act, 1954, is *per se* not a ground that will vitiate the trial. No hard and fast rule can be laid down that after the expiry of a certain period, a certain foodstuff, even after the addition of formalin or other preservative, becomes decomposed and unfit for analysis. The quantity and the strength of the formalin used, the dryness, cleanliness or otherwise of the container, the effectiveness of the stoppering and sealing, the temperature and the condition in which it is stored and several other kindred factors which may vary from case to case, will influence a determination of this question of fact. Whether the delay has resulted in failure of justice, depriving the accused of his right under section 13(2) to get the sample with him tested by the Director, is basically a question of fact turning on the circumstances and merits of each particular case. No absolute rule of the thumb can be laid down that where there is delay of a specific period instituting the prosecution, it must be presumed that the sample with the accused had become decomposed and unfit for analysis. Nor can it be set down as an invariable proposition of law that in all cases where the right of the accused to get his sample tested by the Director is frustrated, he must be acquitted even if such frustration was the result of circumstances beyond the control of the prosecution, and not due to any lapse or negligence on its part. (Paras 13 and 27)

Held, that the word "shall" in rules 4(5) and 7(3) of Prevention of Food Adulteration Rules, 1955, has not been used in an imperative sense but only in a directory or permissive sense. It means no more than what is conveyed by the word "may". If the words "shall forthwith" in the rules are construed in a mandatory and restricted sense, they will not only impede and tend to defeat the object and aim of the parent statute and the Rules, but also make them unworkable. The Public Analyst and the Director are supposed to deal with numerous cases received by them from various places. To expect them to analyse, compile the data and send the result, the moment

they receive the samples, would be enjoining on them to perform magic tricks, quite divorced from the realities of the work-a-day world.

(Paras 23 and 24)

Appeal from the order of Shri Jagwant Singh, Additional Sessions Judge, Amritsar, dated 27th June, 1969, acquitting the respondent.

ROOP CHAND, ADVOCATE, for the appellant.

GIANI HARINDER SINGH, ADVOCATE, for the respondent.

Judgment

R. S. SARKARIA, J.—(1) This is an appeal by Special Leave under section 417(3), Code of Criminal Procedure, preferred by the Municipal Committee, Amritsar, against the order, dated June 27, 1969, of the Additional Sessions Judge, Amritsar, by which he acquitted Karam Singh, accused-respondent of a charge under sections 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the "Act").

(2) The material facts are that on December 25, 1957, Food Inspector Pal Dass (PW1) went to Bazar Bhoriwala, accompanied by Chirag Jamadar (PW3) and Dr. Baldev Chawla. Karam Singh, accused came to the shop of Waryam Chand Halwai (PW2) carrying a *Valtoha* full of milk. On enquiry, the accused told the Food Inspector that it was cow's milk for sale. The Food Inspector then disclosed his identity, and, after giving the necessary notice (in Form VI, under rule 12), Exhibit PA, purchased a sample of 660 millilitres of the milk, on payment of 60 Paise (*vide* receipt exhibit PB) from the accused, for analysis. The purchased milk was divided into three equal parts which were put in three dry bottles and 16 drops of formalin were added to each of them. The bottles were then labelled and sealed. One of those bottles was handed over to the accused,—*vide* receipt Exhibit PC. the second was sent to the Public Analyst on December 27, 1967 (along with the memo Exhibit PD and the specimen seal. Exhibit PE) and the third was retained by the Food Inspector, himself. The Public Analyst examined the sample on January 4, 1968, and reported that it was found adulterated. On March 16, 1968, the Food Inspector made the complaint, Exhibit PG, in the Court of the Judicial Magistrate 1st Class, Amritsar, for the prosecution of Karam Singh

accused under section 16 of the Act read with Rule 50 of the Prevention of Food Adulteration Rules, 1955.

(3) On the same day, the Magistrate made an order summoning the accused for April 9, 1968. Thereafter, the case was adjourned six times for different dates as the accused had not been served. Ultimately, the accused was served, and he appeared before the Magistrate on July 30, 1968. On August 17, 1968, the accused made an application under section 13(2) of the Act requesting that the sample of milk that had been given to him, be sent to the Director, Central Food Laboratory, Calcutta (hereinafter called 'the Director') for examination. That sample was accordingly sent. The Director's report, dated September 24/25, 1968, was received. It was to the effect, that the contents of the bottle received by him were found curdled and were not fit for examination. On the application of the Food Inspector on February 25, 1969, the third sample of the milk that had been retained by him on December 25, 1967, was also sent by the Court to the Director whose certificate, dated 19/20th March, 1968 was received. It substantially tallied with the report of the Analyst and the conclusion drawn was that the milk had been adulterated.

(4) At the trial, the prosecution examined Food Inspector Pal Dass (PW1), Waryam Chand Halwai (PW2) and Chirag Jamadar (PW3). It also tendered in evidence the report of the Public Analyst and the Certificate of the Director.

(5) Examined under section 342. Code of Criminal Procedure, the accused admitted that the sample of milk was purchased from him by the Food Inspector and was divided and put in three separate bottles. He, however, alleged that no medicine (for malin) was added to the contents of the bottles. He further questioned the correctness of the report of the Public Analyst and the Certificate of the Director with regard to the third sample sent to him.

(6) It seems that at the time of arguments before the trial Magistrate, it was not canvassed that the Food Inspector had not added formalin or other preservative in the three samples, presumably because that fact stood fully proved by the evidence of the Food Inspector Pal Dass (PW1) and Chirag Jamadar (PW3) and by the

recital of that fact in Exhibit PC, which was signed by the accused in token of the receipt of the sample. This point was not agitated before the First Appellate Court. The concurrent finding of the Court below that formalin, as a preservative, was added to all the three samples stands unassailed before us.

(7) The main contention of the accused before the trial Magistrate, was, that the delay in launching the prosecution had frustrated the right of the accused, under section 13(2) of the Act, to get the sample given to him, examined by the Director before decomposition sets in to make it unfit for examination. Stress was laid on the fact that the second sample, which was sent to the Director, was, according to the latter's report, dated September 24, 1968, found curdled and unfit for analysis. The learned trial Magistrate rejected this contention holding that this short delay of 2 months and 12 days in making the complaint did not cause any prejudice to the accused because the third sample sent to the Director, at the instance of the Food Inspector, by the Court was found fit enough for examination and the Certificate of the Director based on the analysis of that sample, almost tallied with the report of the Public Analyst. This circumstance, according to the Magistrate, goes to show that the accused had not kept his sample bottle in a proper condition; and that was why it had got curdled. He found no good reason to suspect that the Municipal Committee had changed the contents of the third sample bottle which was sent, at the instance of the Food Inspector, to the Director. In the result, the Magistrate convicted the accused and sentenced him to one and half year's rigorous imprisonment and a fine of Rs. 1,500, and, in default of payment of fine, to suffer five months further rigorous imprisonment.

(8) The convict went in appeal to the Sessions Court. The Additional Sessions Judge accepted the appeal and acquitted the accused on the sole ground that the unexplained delay of 2 months and 12 days in initiating the prosecution, coupled with the circumstance that when the accused after service of the summons appeared in the Court of the Magistrate on 30th July, 1968, for the first time, the period of four months for which formalin could keep the sample preserved and fit for examination, had expired, had seriously prejudiced the accused in the exercise of his valuable right given by section 13(2) of the Act. Support for the proposition that the

sample of milk decomposes after a period of four months, despite the addition of formalin of the requisite strength and quantity—was sought from the dictum of the Supreme Court in *Municipal Corporation of Delhi vs. Ghisa Ram* (1). The learned Additional Sessions Judge did not at all advert to the Certificate of the Director, which he had sent in March, 1969, after the analysis of the third sample, sent to him by the trial Court at the instance of the Food Inspector.

(9) Learned counsel for the appellant vehemently contends that the view taken by the learned Additional Sessions Judge was manifestly erroneous, and that the Supreme Court in *Ghisa Ram's case* (1) (*ibid*) did not lay down any such proposition of law that after a particular period, a sample of milk, despite the addition of formalin of requisite quantity and strength, becomes unfit for analysis. *Ghisa Ram's case* (1)—contends the counsel—turned on its own facts which were vastly different from those of the present case.

(10) Mr. Harinder Singh Giani, learned counsel for the accused-respondent, however, maintain that in the instant case, apart from the delay of 2 months and 22 days (counted from the date of the recovery of the sample) in making the complaint, a further period of 4 months and 14 days had elapsed before the accused could, on his appearance in Court after service, get an opportunity to exercise his right of getting the sample with him tested by the Director. There is ample authority, contends Mr. Giani, in support of the proposition that a sample of milk, even if preserved with formalin, is bound to get decomposed and defy analysis after the expiry of a period of four months from the date of its recovery. He cites *Om Parkash v. State of U.P.* (2), *Public Prosecutor v. Pilagala Rao* (3), and contends that according to the law laid down by this Court in *Mehar Chand vs. Punjab State* (4), even a delay of 2 months and 2 days in making the complaint, coupled with a delay by the Public Analyst in sending his report is fatal to the prosecution. Since in the instant case—stresses Mr. Giani—the sample of milk with the accused was actually found, by the Director, to be curdled and unfit for analysis, the lower appellate Court had rightly invoked the rule in *Ghisa Ram's case* (1), (*Infra*) in acquitting the accused.

(1) A.I.R. 1967 S.C. 970.

(2) 1969 A.L.J. 133.

(3) 1969 G.L.J. 1278 (A.P.).

(4) 1970 P.L.R. 1009.

(11) In all fairness, Mr. Giani concedes that there are some decisions of the Allahabad High Court,—*vide Babboo v. State* (5), according to which, milk preserved with formalin, retains, under normal circumstances, its original, character and qualities for 10 months. Counsel, however, finds no reason why the 'four-month rule' enunciated by the Supreme Court in *Ghisa Ram's case* (1) (if not the 'three-month rule' laid down by this Court in *Mehar Chand's case*) (4) be not uniformly applied in such cases.

(12) The fallacy in the arguments of the learned counsel for the accused is the result of a wrong approach to the matter and a mis-construction of the dictum of the Supreme Court in *Ghisa Ram's case* (1).

(13) As pointed out by the learned Judges of the Kerala High Court in *Gopalakrishna Kurup v. State of Kerala* (6), with whom we are in respectful agreement—the question as to how long milk or any other food-stuff can be preserved by the addition of formalin, is not a question of law but essentially one of fact to be decided on the circumstances of each case. The quantity and the strength of the formalin used, the dryness, cleanliness or otherwise of the container, the effectiveness of the stoppering and sealing, the temperature and the condition in which it is stored and several other kindred factors which may vary from case to case will influence a determination of this question of fact. No absolute rule of the thumb can be laid down that where there is delay of a specific period in instituting the prosecution it must be presumed that the sample with the accused had become decomposed and unfit for analysis. Nor can it be set down as an invariable proposition of law that in all cases where the right of the accused to get his sample tested by the Director is frustrated, he must be acquitted even if such frustration was the result of circumstances beyond the control of the prosecution, and not due to any lapse or negligence on its part. Their Lordships emphasised this point in *Ghisa Ram's case* (1), at page 972 of the Report, in these unmistakable terms:

“We are not to be understood as laying down that, in every case where the right of the vendor to have his sample tested by the Director of the Central Food Laboratory is frustrated, the vendor cannot be convicted on the basis of

(5) A.I.R. 1970 All. 122.

(6) (XV) 1971 M.L.J. Reports (Criminal) 11.

the report of the Public Analyst. We consider that the principle must, however, be applied to cases where the conduct of the prosecution has resulted in the denial to the vendor of any opportunity to exercise this right. Different consideration may arise if the right gets frustrated for reasons for which the prosecution is not responsible".

(14) It is to be seen in the light of the above observations, how far, in the present case, the prosecution was responsible for the delay that might have contributed to the frustration of the right of the accused under Section 13 (2) of the Act?

(15) The sample of milk was purchased from the accused on 25th December, 1967. That sample was sent to the Public Analyst on 27th December, 1967. It was analysed by the Analyst on 4th January, 1968. There is no material on record to show on what date he sent his report to the Municipal Committee. Presumably, it was sent on 4th January, 1968, or soon thereafter. The complaint was prepared by the Food Inspector on 15th February, 1968, but was actually made on 16th March, 1968, on which date, the Magistrate passed an order summoning the accused for 9th April, 1968. Despite repeated issue of process, accused could not be served for five successive dates (viz., 9th April, 1968, 25th May, 1968, 15th June, 1968, 6th July, 1968 and 20th July, 1968) to which the case had to be repeatedly adjourned. Sometime after 20th July, 1968, accused was served and he first appeared before the Magistrate on 30th July, 1968. On that date, he did not make any application that the sample with him be sent to the Director for testing. He made such an application after a delay of 18 days thereafter, on 17th August, 1968. The Magistrate, then sent that sample to the Director who made the report on 24th September, 1968, that the sample was found curdled and unfit for analysis.

(16) It is evident from the above data, that the prosecution was, at the most, responsible only for the delay of 2 months and 22 days, from 25th December, 1967 to 16th March, 1968, in launching the prosecution. Further delay of 4½ months for the period from 16th March, 1968 to 30th July, 1968—if not the result of evasion of service by the accused—was certainly not due to any default or laches on the part of the prosecution, the effecting of service being the responsibility of the process-serving agency of the Court. Delay for the

period, 30th July, 1968 to 17th August, 1968, was the sole responsibility of the accused. Thus the prosecution was not responsible for the major part of the delay in sending the sample with the accused to the Director. This means the decomposition of the sample, to which 16 drops of formalin of requisite strength had been added, was not the result of the short delay of 2 months and 22 days for which the prosecution was responsible. It may not even be wholly due to the further delay of 4½ months because the third sample which was sent to the Director at the instance of the complainant, about 14 months from the date of its purchase from the accused, was found fit enough for analysis. There were no circumstances to suspect that this sample with the Food Inspector had been tampered with. The rapid decomposition of the sample with the accused, therefore, might be due to its having been kept in an abnormally hot and humid place; while the sample with the Food Inspector had been properly stored in a cool dry place possibly in a refrigerator; so that it retained in an undecomposed form its original character and fitness for analysis. It will not be out of place to mention here that Mr. Giani has not challenged before us the correctness of the trial Court's observation that under section 13(2) of the Act, the accused-vendor as well as the complainant have an equal right to apply to the Court to get their respective samples sent to the Director for a certificate. We, therefore, do not feel the necessity of examining the scope and extent of the respective rights of the accused and the complainant under that provision.

(17) It is unfortunate that the learned Additional Sessions Judge, in his judgment, has not alluded even obliquely; to this Certificate of the Director, which under sub-section (3) of section 13 would supersede the report of the Public Analyst. Thus despite the frustration of the accused's right to have his sample tested by the Director, for reasons for which the prosecution was not responsible, no prejudice had been caused to the accused justifying his acquittal on the ground of delay, alone.

(18) The lower appellate Court failed to appreciate that the facts of *Ghisa Ram's case* (1), (which it purported to follow) were materially different from the instant case. There, the sample, taken was of curd of cow's milk and *no formalin had been added* to it as a preservative. Dr. Sat Parkash, an Expert, examined in that case, opined that a food article, like curd, starts undergoing changes after a week, if kept at room temperature, without a preservative, but remains fit for analysis for another 10 days thereafter; and that if the

sample is kept in a refrigerator, it will preserve its fat and non-fatty solid contents for purposes of analysis for a total period of four weeks. If a preservative is added and the sample is kept at room temperature the percentage of fat and non-fatty solid contents for purposes of analysis will be retained for about four months, and in case it is kept in a refrigerator after adding the preservative, the total period which may be available for making analysis, without decomposition, will be six months. There was a delay of seven-months in making the complaint for which the prosecution was responsible and the sample with the accused, when sent to the Director, was found decomposed. The sample with the complainant was not sent to the Director who consequently, had not issued any such Certificate as has been done in the present case—which would supersede the report of the Public Analyst. It was on the basis of the expert evidence and the peculiar facts of that case, that the Supreme Court acquitted the accused holding that the deliberate delay in prosecution as a result of which the sample got highly decomposed, had prejudiced the accused in the exercise of his right to get the sample examined by the Director. *Ghisa Ram's case* (1), was thus a precedent on its own facts.

(19) The lower appellate Court in the instant case, and the learned Judge of the Allahabad High Court in *Om Parkash's case* (2) *ibid*, seem to have wrongly assumed that their Lordships in *Ghisa Ram's case*, (1) had laid down a rigid rule of law that a sample of milk or like article of food, to which formalin has been added, loses, in normal circumstances, its fitness for analysts after the expiry of a period of four months. Indeed, Gupta J. who decided *Om Parkash's case*, (2) was frank enough to admit subsequently, in *Babboo v. State*, *ibid*, (3) that in the previous case, he was in error in adopting in regard to milk the schedule of time accepted by the Supreme Court in regard to curd.

(20) Stage is now set for noticing the Single Bench Judgment of this Court in *Mehar Chand v. Punjab State*, (4) *ibid*. In that case, 660 millilitres of unindicated milk for sale was purchased by the Food Inspector on 18th August, 1968. The milk was divided and sealed into three dry bottles after adding 16 drops of formalin into each of them. The Public Analyst received the sample on 18th August, 1968. The Analyst sent his report dated 30th September, 1966, presumably on the same date, to the Municipal Committee to the effect that the sample was found adulterated. In the report he did not mention the date on which he had analysed the same. The complaint

was filed in Court on 20th October, 1966. The trial Court convicted the accused who came in revision before this Court. The learned Single Judge accepted the same and acquitted Mehar Chand accused holding the trial to be vitiated on the two-fold ground, (a) that Rule 4(5) and 7(3) of the Prevention of Food Adulteration Rules, 1955 were mandatory, and the Public Analyst had violated these Rules inasmuch as he had delayed the analysis and the sending of his report by about 42 days; (b) that there was an unexplained delay of 2 months and 2 days in launching the prosecution which could have caused loss to the accused of his valuable right under Section 13(2) of the Act.

(21) On both these points, with due deference, we find ourselves in disagreement with the learned Judge.

Rule 4(5) concerns the Director. It reads:

“After test or analysis he certificate thereof *shall be supplied forthwith* to the sender in Form II.”

At the time material to this case, Rule 7(3) provided that ‘after the analysis has been completed, he (public analyst) *shall forthwith supply* to the person concerned report in the prescribed form of the result of such analysis.’

(22) It may be noted that Rule 7(3) as it stood before the amendment, published on 24th August, 1968 did not prescribe any specific period within which the report was required to be sent by the Analyst.

(23) In our opinion, the word “shall” in the above-quoted Rules 4(5) and 7(3) does not appear to have been used in an *imperative* sense but only in a *directory or permissive* sense. It means no more than what is conveyed by the word “may”. If the words “shall forthwith” are construed in a mandatory and restricted sense they will not only impede and tend to defeat the object and aim of the parent statute and these Rules, but also make them unworkable.

(24) The Public Analyst and the Director are supposed to deal with numerous cases received by them from various places. To expect them to analyse, compile the data and send the result, the moment they receive the samples, would be enjoining on them to perform magic tricks, quite divorced from the realities of the work-a-day world. We wonder if it would be possible for them to give such an

instant out-turn even if their laboratories were equipped with electronic computers'. In *Ghisa Ram's case*, (1) their Lordships of the Supreme Court were alive to this aspect of the matter, when they observed :

"It may be presumed that some delay in the analysis by the Public Analyst and in his sending his report to the prosecution is bound to occur."

The main objects of the Act and the Rules made thereunder, are to ensure purity of food and the maintenance of public health by eradicating the evil of adulteration of food. These objects are likely to be frustrated if the words "shall forthwith" in the aforesaid Rules are ascribed a narrow, mandatory connotation because the slightest delay on the part of the Public Analyst in analysing or sending the report, would vitiate the trial enabling many a person guilty of this social crime to go scot-free.

(25) The practical bearing of the distinction between a provision which is mandatory and one which is directory is that while the former must be strictly observed, in the case of the latter, it is sufficient that it is substantially complied with (See *Hari Vishnu Kamath v. Ahmad Ishaque*, (7).

(26) Since the words "shall forthwith" in the said Rules, are merely directory, a liberal interpretation has to be put on them. The underlying object of this provision is that since the samples are of a perishable nature, the analysis should normally be conducted within a reasonable time without unnecessary delay, keeping in view the probable life-span of the sample prolonged by the addition of the preservative.

(27) In *Mehar Chand's case* (4), it was overlooked that 16 drops of formalin of the requisite quality and strength had been added to the sample. Further, the date of conducting the analysis had not been given in the Report. The learned Judge simply assumed that the date of the Report should be taken as the date of the analysis. The best course as suggested in *Public Prosecutor v. Ediga Venkata Swami* (8), was to send for and examine the Analyst and clear the

(7) A.I.R. 1957 S.C. 233.

(8) A.I.R. 1967 A.P. 133.

doubt. In *Mehar Chand's case* (4), according to the finding of the learned Judge there was a delay of 42 days in analysing and sending the Report, which was fatal to the prosecution. It will be of interest to note that subsequently per Notification 1533, dated 8th July, 1968, published in the Gazette of India, dated 24th August, 1968, Rule 7(3) was amended and a period of sixty days of the receipt of the sample has been prescribed within which the Analyst has to send his report. In a way, this amendment recognised the need of construing the words "shall forthwith" in the old Sub-Rule (3) of Rule 7 in a liberal and wider sense, treating them to be directory. In the absence of prejudice to the accused, therefore, the delay of 42 days in sending the report, could not affect the validity of trial.

(28) As regards point (b) in the judgment in *Mehar Chand's case* (4), if the intention of the learned Judge was to lay down a principle of law that an unexplained delay of 2 months and 2 days (or even three months) in launching the prosecution, in all cases, causes decomposition of the milk sample (despite the addition of formalin) and consequent prejudice to the accused, we must, with utmost respect, record our disagreement with that view. We are clearly of the opinion that delay in instituting the prosecution is *per se* not a ground that will vitiate the trial. No hard and fast rule can be laid down that after the expiry of a certain period a certain food-stuff, even after the addition of formalin or other preservative, becomes decomposed and unfit for analysis, with consequent frustration of the right of the accused to get the sample with him, tested by the Director. Whether delay has resulted in failure of justice, depriving the accused of his aforesaid right under Section 13(2) is basically a question of fact turning on the circumstances and merits of each particular case. (In *Mehar Chand's case* (4), the accused never applied to get the sample with him, tested by the Director. Thus there was no material to hold that the short delay of 2 months and 2 days had actually caused decomposition of the sample).

(29) Reverting to the present case, the further question that remains to be considered is, whether the acquittal should be set aside merely because we are disposed to take view of the evidence and the law on the point different from that taken by the lower appellate Court. For an answer to the question, it will be pertinent to recall the observations of Their Lordships of the Supreme Court (in *Khedu*

Mohoton v. State of Bihar (9), that “unless the conclusions reached by the lower Court are palpably wrong” or “are likely to result in grave injustice, the High Court should be reluctant to interfere with its conclusions.”

(30) The case before us is one which is to a large extent, covered by the maxim: *de minimis non curat la* (law does not take care of trifles). As will be presently discussed the adulteration, if any, was marginal.

(31) According to the report of the Public Analyst, the sample of milk examined by him, contained—

- (a) Milk Fat—4.6 per cent (as against the requisite 4 per cent).
- (b) Milk Solids and not fat—8.0 (instead of the requisite 8.5 per cent).

(32) The Certificate of the Director, which had superseded the report of the Public Analyst, shows that in the sample, ‘milk fat’ was 4.6 per cent and ‘milk solids not fat’ were 7.7 per cent. Ignoring the difference of 0.3 per cent regarding “solids” between the report of the Analyst and the Certificate of the Director—which difference might be due to the time-lag between the two examination, the latter having been conducted as long as 14 months after the purchase of the sample—it will be seen that the ‘milk fat’ was in excess of the prescribed percentage, by 0.6 per cent, while the ‘milk solids not fat’ were deficient by about 0.5 per cent. Off-setting the 0.6 per cent excess of ‘milk-fat’ against the 0.5 per cent deficiency of ‘milk-solids’, the over-all deficiency works out to hardly 0.1 per cent. Since this deficiency is negligible, no grave injustice will be perpetuated if the acquittal is not set aside. In *Malwa Co-operative Milk Union Limited v. Bihari Lal* (10), the Supreme Court refused to set aside the acquittals when there was a deficiency of 0.1 per cent in one case, and 0.4 per cent in the other, of the solids in the milk. Similarly, in *Municipal Corporation of Delhi and another v. Om Parkash* (11), Division Bench of Delhi High Court, in an appeal by the complainant

(9) A.I.R. 1971 S.C. 66.

(10) Crl. A. Nos. 235-236 of 1964 decided by Supreme Court on 14th August, 1967.

(11) 1970 Cr. L.J. 1047.

with special leave under Section 417(3) Cr. P.C., declined to set aside the acquittal, though it had been proved that there was a deficiency of 0.3 per cent of the Analysis.

(33) The ratio of these decisions applies with greater force to the facts of the instant case.

(34) In the result, the appeal fails and is dismissed.

C. G. SURJ, J.—I agree.

K.S.K.

REVISIONAL CIVIL.

Before Harbans Singh, C.J.

HARI SINGH.—*Petitioner.*

versus.

MOHAR SINGH.—*Respondent.*

Civil Revision No. 1177 of 1970.

May 14, 1971.

Code of Criminal Procedure (Act No. V of 1898)—Section 145—Proceedings under—Persons interested in the possession of the land in dispute, having notice of the proceedings but not parties thereto—Whether bound by the result of the proceedings—Respondent put in possession as Sapurdar during pendency of such proceedings—Magistrate finding the applicant to be in possession of the land on the date of the application or within two months period thereto—Such Magistrate—Whether can order the delivery of the possession to the applicant.

Held, that the binding character of an order passed under section 145 of the Code of Criminal Procedure, is not under all circumstances to be confined to persons who were actually made parties to the proceedings. Persons who are interested in the possession of the land in dispute and have notice of the proceedings even though they were not parties, will be bound by the order. (Para 5)

Held, that where during the pendency of proceedings under section 145 of the Code, the respondent is put in possession as Sapurdar and thereafter the Court comes to a conclusion that the applicant was in possession on the