

Before Ujagar Singh, J.

RAJINDER SINGH,—Petitioner.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Criminal Misc. No. 490-M of 1987.

September 28, 1987.

*Prevention of Food Adulteration Act (XXXVII of 1954)—Section 13—Sample sent to Director—Such sample found broken—Director refusing analysis—Defence of Accused—Whether Prejudicial.*

*Held*, that the Director did not accept the sample for analysis because the seals of the outer cover of the sample parcel were in damaged condition. The court could not fall back on the report of the Public Analyst. The only method of challenging the report of the Public Analyst was by having the sample tested by the Director of the Central Food Laboratory. The petitioner has been deprived of his right to get the sample tested from the Director and, therefore, has been prejudiced in his defence.

(Paras 6 and 7).

*Petition under Section 482 Cr. P.C. praying that the order dated 8th November, 1986 annexure P/3 and the charge framed against the petitioner Annexure P/4 may kindly be quashed.*

*It is further prayed that the proceedings pending against the petitioner in the Court of J.M.I.C. Jagadhri may be stayed during the pendency of the petition.*

H. N. Mehtani, Advocate, for the Petitioner.

Randhir Singh, A.A.G. Haryana, for the Respondent.

#### JUDGMENT

*Ujagar Singh, J.*

The petitioner's shop was raided on 14th December, 1983 by the Food Inspector C. L. Sikri who was accompanied by Dr. A. K. Sethi, Medical Officer and Mohinder Singh PW. Iodised salt was lying there in 4 polythene bags. Out of the same a sample was taken by the Food Inspector against payment,—*vide* receipt. After completion of formalities of notices etc., sample was sent to the Public Analyst and his report Ex. PD showed contravention of the requirements. Complaint Ex. PE was filed against the petitioner by the Food Inspector. The petitioner appeared before the trial Court and

made an application for sending one of the sample to the Director, Central Food Laboratory, Ghaziabad. The sample was summoned from the local health authority and sent to the Director for analysis. This sample was reported to have been found broken,—*vide* report dated 28th March, 1984 although the seals on the sample and the container were intact. The Director required the third sample for analysis which was summoned by the Court for 18th May, 1984 and the same was sent to the Director for analysis. Again, the Director,—*vide* his order dated 12th July, 1987, did not accept the sample for analysis, because the seals of the outer cover of the sample parcel were in damaged condition. Ultimately, the trial Court had to rest content with the report of the Public Analyst. After an elaborate discussion and reference to various authorities, the trial Court came to the conclusion that if for any reason, no certificate was issued by the Director, the report given by the Public Analyst did not cease to be the evidence of the facts contained therein and it did not become ineffective, because it could have been superseded by the certificate by the Director. It was further held by the trial Court that there being no such certificate in this case, it could not be held that the report of the Public Analyst Ex PD had been superseded. In view of this, the petitioner was charged under section (16) (1) (a) (i) read with section 7 of the Prevention of Food Adulteration Act (the Act in short),—*vide* order dated 8th November, 1986. The charge was framed against him the same day.

(2) This order (Annexure P3) and the charge (Annexure P4) have been challenged in this criminal miscellaneous.

(3) The learned counsel has argued that whatever the reason, in case the two samples kept with the local health authority are not found to be fit for test, the accused is deprived of his right under section 13 of the Act. He has cited decided cases, as mentioned hereafter, and sought support from those cases for his view. Learned State counsel seeks support from the case, *Municipal Corporation Delhi v. Ghisa Ram*, (1) and has argued that in case, the prosecution is not at fault and the report of the Director is not available, there is no question of the report Ex. PA being superseded and the same remains as evidence which cannot be acted upon by the Court.

(4) I have considered the authorities cited by the parties and have gone through the order and the charge with their help.

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(5) In *Municipal Corporation's case* (supra), their Lordships laid down as under :—

“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 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.”

In that case, the occurrence stated therein, the acquittal of the respondent-accused was held to be justified. Therein the main argument was that because there was delay in sending the sample for analysis, it had become decomposed and was no longer fit for test. In that situation, it was held that the accused was prejudiced and was deprived of the right to get the sample tested by the Director. The prosecution was held to have committed a default in causing delay for analysis, but there is a warning that different considerations may arise if the right gets frustrated for reasons for which the prosecution is not responsible. In the case of *Gurbachan Singh v. The State of Punjab*, (2) third sample which was kept by the Food Inspector was sent, but the bottle produced by the complainant was not found to be in good condition, as the contents thereof had leaked to some extent and the right of the accused was held to have been prejudiced for obtaining report of the Director and it was held that it was not safe to hold the accused guilty of the offence. In case *Hazara Singh v. The State of Punjab*, (3) following *Gurbachan Singh's case* (supra):—

“——It was the statutory obligation of the prosecution to enable the accused to exercise his right to have the sample of the milk tested by the Director of Central Food Laboratory, Calcutta, by taking such precautions, while despatching the third sample of milk which was reserved for that very purpose, that was not broken in the transit. But since the prosecution failed to discharge that statutory obligation, the accused-petitioner was deprived of his valuable statutory right of getting that sample tested

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(2) 1972 PLR 771

(3) (1973-77) Suppl. CLR 392

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by the Director of Central Food Laboratory, Calcutta, under section 13(2) of the Act.—”

In *Prabhu Dayal v. The State of Haryana*, (4) it was again held that if the sample bottle is found to have been broken, it can be assumed that the accused has been deprived of his valuable right and therefore, could not be convicted for an offence under section 16(1) (a) (i) of the Act.

(6) Before the trial Court, four judgments were referred to and the same are (i) *Joginder Singh v. State of Haryana*, (5) (ii) *State of Punjab v. Ramesh Kumar*, (6) (iii) *Narinder Singh v. State of Punjab*, (7) and (iv) *Chotu Mal v. State of M. P. and others*, (8) and instead of relying upon the authorities mentioned in *Re : Joginder Singh's case* (supra) and *Chotu Mal's case* (supra), the trial Court has relied upon 1951—1982 (a Digest of Supreme Court judgments under the Prevention of Food Adulteration and Drugs cases) FAC (SC) 93. This judgment has already been discussed by me above and it is equivalent to AIR 1967 SC 970. What was held in this judgment has been reproduced above and the trial Court did not minutely go through this judgment. In *Joginder Singh's case* (supra), Pritpal Singh, J., specifically held that delay in sending the second sample caused prejudice to the accused, because it resulted in the decomposition of the sample and it could not be analysed by the Central Food Laboratory and in those circumstances, it was held that the continuation of the trial of the petitioner on the complaint of the Food Inspector would certainly amount to abuse of the process of Court. Although the facts were a little different from those of the instant case, yet the principle of serious prejudice to the accused has been maintained. In *Chotu Mal's case* (supra), their Lordships of the Supreme Court observed as under :—

“——the Director had reported that ‘the specimen impression seal’ sent to him did not tally with the seal of the container in which the sample of oil was sent to him.

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- (4) 1972 (II) C.L.R. 580
- (5) 1984 (2) C.L.R. 353
- (6) 1985 (2) FAC 189
- (7) 1984 (II) FAC 85
- (8) 1981 C.L.R. 576

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The trial Court sustained the objection and held that the report of the Director should not be taken into account. The Trial Court, however, relied upon the report of the Public Analyst and convicted the appellant...

It is clear that the conviction cannot stand. Under section 13(3) of the Prevention of Food Adulteration Act, the report of the Public Analyst stood superseded by the certificate issued by the Director of the Central Food Laboratory. Having been so superseded, the report of the Public Analyst could not, therefore, be relied upon to base a conviction. The certificate of the Director of the Central Food Laboratory having been excluded from consideration because of the tampering of the seal, there was really no evidence before the Court on the basis of which the appellant could be convicted. The Court could not fall back on the report of the Public Analyst as it had been superseded. The only method of challenging the report of the Public Analyst was by having the sample tested by the Director of the Central Food Laboratory. In the present case the appellant was deprived of the opportunity to which he was entitled for no fault of his. It was not, therefore, open to the Court to fall back upon the report of the Public Analyst to convict the appellant..."

The trial Court committed a grave error in ignoring the cases of *Joginder Singh* and *Chotu Mal* (supra) although the same were cited before him and he has referred to these judgments in his order.

(7) In this view of the matter, I am of the opinion that clearly the accused petitioner has been deprived of his right to get the sample tested from the Director and therefore, has been prejudiced in his defence.

This petition is, therefore, accepted. Order Ex. P3 and the charge Ex. P4 are quashed. The petition is disposed of accordingly.

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S.C.K.