

APPELLATE CRIMINAL

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

MUNICIPAL CORPORATION OF DELHI,—Appellant.

Versus

JAI DAYAL,—Respondent.

Criminal Appeal No. 33-D of 1964.

1964

May, 25th.

Prevention of Food Adulteration Act (XXXVII of 1954)—S. 13—Report of Public Analyst—Whether to be deemed superseded by a report of the Director of the Central Food Laboratory in case the latter report is found to be defective—Report of Public Analyst stating that the sample was kept in a refrigerator—Whether admissible in evidence—Code of Criminal Procedure (Act V of 1898)—S. 540—Power of Magistrate to summon witnesses—Duty of Court to summon witnesses for administering justice.

Held, that section 13 of the Prevention of Food Adulteration Act, 1954, clearly provides that it is only when a certificate from the Director of Central Food Laboratory is to be treated as final and conclusive evidence of the facts stated therein under the law that the report of the Public Analyst may be considered to be superseded and ignored. If, however, the certificate of the Director is not to be considered as final and conclusive evidence of the facts stated therein and is considered to be defective for the purpose of serving the object for which the certificate has been obtained, namely, for determining the issue of adulteration of the food-stuff in question, then the report of the Public Analyst cannot be ignored on the ground that having been superseded it is no longer evidence in the case.

Held, that the object of making the reports of the Public Analyst and the Director of the Central Food Laboratory admissible in evidence is to restrict or obviate the legal necessity or obligation of the Public Analyst and the Director of Central Food Laboratory appearing as witnesses for proving their reports in cases of food adulteration which must, from the very nature of things, be very large. The opinion of the Public Analyst must, from the very nature

of things, include the reasons which may be relevant for forming this final opinion on the declaration of the analysis. Now, if the declaration of the Analyst discloses adulteration of the food-stuff, he would clearly be justified in noting the fact that the sample had not been kept in a refrigerator or had no preservative in it and, therefore, it would not be safe for him to give the opinion in favour of adulteration on the basis of the result of the analysis. The fact of the sample having been kept by the Analyst in a refrigerator may equally legitimately and properly form part of his report and, therefore, admissible in evidence. This provision of law has to be construed from a rational, practical and common sense point of view, favouring the public interest.

Held, that the learned Magistrate himself had ample power in the interest of justice, if considered necessary, to summon the Public Analyst for the purpose of examining him about the fact of his having kept the sample in a refrigerator. The Courts, it must never be forgotten, exist for the purpose of doing justice and in matters relating to food adulteration, the responsibility of the Court is no less in seeing that mere technicalities do not hamper or defeat the cause of justice. Sale of adulterated food affects the society as a whole and the administration of welfare legislation affecting the health of the citizens demands a proper sense of responsibility on the part of the officials entrusted with it. If the learned Magistrate had any doubt about the admissibility of the fact stated in the report, which was otherwise of assistance to the Court in determining the point, which it was its duty to determine, the learned Magistrate himself should have summoned the Public Analyst and examined him as a Court witness. It is unnecessary to point that even the accused had a right to summon the Public Analyst or to request the Court to call him if he was desirous of challenging the evidentiary value of the report as a whole or of questioning the correctness of the facts asserted by the Analyst in the report.

Appeal from the order of Shri R. C. Misra, Magistrate Ist Class, Delhi, dated the 30th December, 1963, acquitting the respondent.

BISHAMBER DAYAL, ADVOCATE, for the Appellant.

GHANSHAM DAS, ADVOCATE, for the Respondent.

JUDGMENT

Dua, J.

DUA, J.—This is an appeal by the Municipal Corporation of Delhi against the order of a learned Maistrate 1st Class, Delhi, dated 30th December, 1963, acquitting the respondent Jai Dayal of an offence under section 7 read with section 16 of the Prevention of Food Adulteration Act (No. 37 of 1954) (hereinafter called the Act).

The facts leading to the prosecution of Jai Dayal, are that on 13th September, 1961, at about 8 a.m., Shri Bakhat Singh, Food Inspector, purchased from Jai Dayal, accused 24 ounces of curd of cow's milk for 0.75 Paisa out of the curd which the accused was selling. This purchase was as a sample after giving due notice to the accused for getting the same tested by the Public Analyst under the Act. The sample taken was immediately divided into three equal parts at the time and place of the purchase in the presence of the accused and other witnesses and put into three clean and dry bottles separately sealed. One of them was given to the accused as required by law. The sample was sent to the Public Analyst and,—*vide* his report dated 4th October, 1961 was found to be adulterated inasmuch as there was 1.4 per cent added water and 18.6 per cent fat deficiency. An inventory bearing the same date was also signed by Jai Dayal in which the facts stated above are admitted by him. The intimation under Rule 12 of the Prevention of Food Adulteration Rules 1955 (hereinafter called the Rules) made by the Central Government read with Form No. VI was also duly given to the accused on 13th September, 1961 and the accused also gave a receipt for 0.75 Paisa in which it was admitted that the sealed bottle had also been received by him. It was further admitted by him that the sample had been given

by him from the *Koonda* (earthen pot) containing curd prepared from cow's milk. The Food Inspector forwarded one sample to the Public Analyst, Municipal Corporation, Delhi, the same day in which it is noted that no preservative of any kind had been added to the sample. I mention this because almost the sole argument is based on this omission. On 4th October, 1961 the Public Analyst made his report in which he mentioned that he had analysed the sample sent on 19th September, 1961 and found it to contain fat to the extent of 2.8 per cent and non-fat solids to the extent of 8.38 per cent. It is expressly noted in the report that the sample had been kept in a refrigerator before analysis and in his opinion the same was found to be adulterated to the extent of 1.4 per cent added water and 18.6 per cent fat deficiency.—(*vide* Exhibit P.E.): This report was forwarded to Shri Bakhat Singh, Food Inspector, on 27th January, 1962. The Food Inspector recommended prosecution of the accused for an offence under section 7/16 of the Act. As a result, the prosecution was initiated on 16th May, 1962. The accused appeared in Court with his counsel and after handing over a copy of the complaint to him his statement under section 242, Cr. P.C. was recorded. The charge against him was explained and he pleaded not guilty and claimed to be tried.

At the trial on 6th September, 1963, P.W. 1, Shri Bakhat Singh, Food Inspector, deposed about the fact of his having taken the sample on 13th September, 1961 in accordance with the provisions of the Act and the Rules. He also proved the various documents showing various formalities having been observed by him. In cross-examination he explained that it was on account of the rush of work that the report was sent by him on 27th January, 1962, recommending prosecution of the accused. Shri Kanshi Ram, peon of the Food Inspector, appeared as P.W. 2 and has corroborated

Municipal
Corporation of
Delhi
v.
Jai Dayal
Dua, J.

Municipal
Corporation of
Delhi

v.
Jai Dayal

Dua, J.

Bakhat Singh. Shri Inder Singh, who instituted the complaint appeared as P.W. 3. Shri Jagdish Lal, A.S.I., Municipal Corporation Delhi appeared as P.W. 4 and he has also corroborated the testimony of Bakhat Singh.

On the conclusion of the prosecution evidence, the accused was duly examined in which he admitted that the sample had been taken from him and the writing, signatures and thumb impressions on Exhibit P.A. were his. He, however, denied having received the notice in Form VI under Rule 12 Exhibit P.B. which purports to bear the thumb impressions of the accused and also his signatures in Urdu. This is dated 13th September, 1961. He, however, admitted that there was impression of his signatures on the carbon copy. He denied having received any bottle containing a part of the sample Exhibit P.C. was also admitted by him. Finally he stated that he used to milk the cow in his presence and that he used to get that milk covered into curd. His case was, however, that the report of the Public Analyst was wrong. He desired to produce defence, but did not say anything else in his answer to the general question if he had anything more to say. The examination of the accused took place on 27th November, 1963. On 5th December, 1963, Shri Bakhat Singh, Food Inspector, produced the bottle containing sample of the curd of cow's milk taken by him on 13th September, 1961 and deposed that all the seals fixed thereon as also the wrapper were intact, the wrapper bearing the signatures of the accused. On 30th December, 1963, the accused made a statement that he did not want to lead any separate defence evidence, but he desired the report of the Director of Central Food Laboratory, Calcutta to be read in evidence.

It appears that the accused had desired the sample kept by the Food Inspector to be examined

by the Director, Central Food Laboratory, Calcutta, and it was on the receipt of the report from that Laboratory that the accused dropped the idea of leading defence evidence.

Municipal
Corporation of
Delhi
v.
Jai Dayal

Dua, J.

The learned Magistrate has observed in his order that two points fell for determination by him:—

- (1) Whether the sample in question had been taken in accordance with the rules, and
- (2) Whether it was adulterated.

In regard to the first point the Court came to the conclusion that the sample had been taken in accordance with the rules prescribed under the Act. On the second point, however, the Court noticed discrepancies between the report of the Public Analyst and the result of the analysis received from the Director, Central Food Laboratory, Calcutta, which it described to be "very wide". According to the Public Analyst, the fat and non-fat solids were found to be 2.8 per cent and 8.38 per cent, respectively, whereas according to the report of the Director, Central Food Laboratory, Calcutta, they were 3.9 per cent and 7.5 per cent respectively. The Court then proceeded to notice the contention that on account of the report of the Calcutta Laboratory the earlier report of the Public Analyst had been superseded and therefore, the latter was not admissible in evidence. In so far as the Calcutta report is concerned it was assailed before the Court below on two grounds namely:—

- (1) It was impossible for the third portion of the sample to remain in a fit condition for analysis after a lapse of more than 2-1/2 years, particularly when no preservative had been added to it and the bottle was not kept in a refrigerator, and

Municipal
Corporation of
Delhi
v.
Jai Dayal

Dua, J.

(2) there was a likelihood of the sample having been changed by the Food Inspector, because both the sample and the seal were with him.

The court, also referred to a decision of learned Single, Judge of this Court in R.C. Shaida v. Municipal Corporation of Delhi (1), in which the result of analysis of a sample of curd after six days was held to be unreliable. Relying on the ratio of this decision, the Court below felt that in the case in hand, the result of the analysis performed after more than 2/1-4 years could not be relied upon at all. The learned Magistrate proceeded further to observe that the report of the Calcutta Laboratory, showed an increase in milk fat and decrease in non-fatty solids. This, according to him, was not possible in view of the established scientific principle that bacteria present in curd consumes both the fat and the non-fatty solids. The learned Magistrate, however, considered this argument to be besides the point because, according to him, the sample of curd had been lying in an almirah of the Food Inspector for more than 2½ years without any preservative and without being kept in a refrigerator with the result that this sample could not possibly remain fit for reliable analysis. A reference was then made by the learned Magistrate to some other case tried by him in which the opinion of the Director, Central Food Laboratory, had been obtained which showed that the sample of curd kept under ordinary circumstances could remain in a fit condition for analysis only for a period of 10 to 15 days. The analysis by the Calcutta Laboratory was, therefore, considered by him to be wholly untrustworthy and unhelp-

(1) 1964 P.L.R. 537.

ful to the prosecution. The report of the Public Analyst, having been superseded, had, according to the Court below no value in the eye of law and, therefore, inadmissible in evidence in view of the provisions of section 13 of the Act. For these reasons, the accused was acquitted.

Municipal Corporation of
Delhi
v.
Jai Dayal

Dua, J.

On appeal before us, the learned counsel for the Corporation has forcefully contended that the view of the learned Magistrate that under section 13 of the Act, the report of the Public Analyst has become inadmissible in evidence is erroneous and is not supportable on the scheme and the language of the statutory provisions. Section 13 is in the following terms:—

“13. Report of Public Analyst.—(1) The public analyst shall deliver, in such 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.

(2) After the institution of a prosecution under this Act the accused vendor or the complainant may, on payment of the prescribed fee, make an application to the Court for sending the part of the sample mentioned in sub-clause (i), (ii) section (1) of section 11 to the Director 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 mark and seal or fastening as provided in clause (b) of sub-section (1) of section 11 are 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

Municipal
Corporation of
Delhi

v.
Jai Dayal

Dua, J.

the prescribed form within one month from the date of receipt of the sample, specifying the result of this analysis.

- (3) The certificate issued by the Director of the Central Food Laboratory under sub-section (2) shall supersede the report given by the public analyst under sub-section (1).
- (4) Where a certificate obtained from the Director of the Central Food Laboratory under sub-section (2) is produced in any proceeding under this Act, or under sections 272 to 276 of the Indian Penal Code (Act XLV of 1860), it shall not be necessary in such proceeding to produce any part of the sample of food taken for analysis.
- (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 (Act XLV of 1860):

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 is obvious that under sub-section (2) of this section the accused and the complainant both are entitled to have the sample mentioned in section

11(1)(c)(i) or (iii) sent to the Director of the Central Food Laboratory for a certificate and the Director is bound thereupon to send the certificate to the Court in the prescribed form within one month from the date of the receipt of the sample specifying the result of his analysis. The certificate issued by the Director, according to sub-section (3) supersedes the report given by the Public Analyst under sub-section (i). Sub-section (5) provides that any document purporting to be a report sent 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, *inter alia*, in any proceedings under this Act. According to the proviso to this sub-section, any document purporting to be a certificate signed by the Director is final and conclusive evidence of the facts stated therein. The scheme of the Act seems to show that it is only when a certificate from the Director of Central Food Laboratory is to be treated as final and conclusive evidence of the facts stated therein under the law that the report of the Public Analyst may be considered to be superseded and ignored. If, however, the certificate of the Director is not to be considered as final and conclusive evidence of the facts stated therein and is considered to be defective for the purpose of serving the object for which the certificate has been obtained, namely, for determining the issue of adulteration of the food-stuff in question, then the report of the Public Analyst cannot be ignored on the ground that having been superseded it is no longer evidence in the case. Our attention has not been drawn to any precedent or judicial literature on this point; nor has any sound convincing argument been addressed persuading us to take a contrary view. The view just expressed appears to us to be both in consonance with the

Municipal
Corporation of
Delhi
v.
Jai Dayal

Dua, J.

Municipal
Corporation of
Delhi
v.
Jai Dayal
Dua, J.

scheme and object of section 13 as also designed to promote the cause of justice.

In so far as the report of the Public Analyst is concerned, the learned Magistrate has not discredited it. It has, however, been contended that the decision of the learned Single Judge in Shaida's case is an authority for the view that a sample of curd analysed after six days cannot be held to be reliable and the recital in the report that the sample had been kept by the Public Analyst in a refrigerator before analysis is inadmissible in evidence unless formally proved by the Public Analyst himself in the witness-box.

I find myself, with respect, unable to concur with this view. The object of making these reports admissible in evidence is to restrict or obviate the legal necessity or obligation of the Public Analyst and the Director of the Central Food Laboratory appearing as witnesses for proving their reports in cases of food adulteration which must, from the very nature of things, be very large. This view is not being controverted by the respondent. He admits that the result of analysis would be clearly admissible without the formal production of the expert, but it is his action in keeping the sample in a refrigerator before performing the analysis which, it is strongly contended, is inadmissible, being outside the purpose of the statutory provisions. Reference in support of this contention has been made to Rule 7 which prescribes the duties of the Public Analyst. Sub-rule (3) of this rule lays down that after the analysis has been completed, the Public Analyst or other officer mentioned in sub-rule (1) shall forth-with supply to the person concerned a report in Form III of the result of such analysis. That the sample was kept in a refrigerator before the analysis, so contends the counsel, does not relate

to the result of the analysis. Our attention has, in this connection been drawn to Form III, which lays down that the Analyst has to certify that the sample received by him was found to be properly sealed and fastened and that he had found the seal intact and unbroken. Then he is to declare the result of the analysis and his opinion thereon. In my view, the opinion of the Public Analyst must, from the very nature of things, include the reasons which may be relevant for forming this final opinion on the declaration of the analysis. Now if the declaration of the Analyst discloses adulteration of the food-stuff, he would clearly be justified in noting the fact that the sample had not been kept in a refrigerator or had no preservative in it and, therefore, it would not be safe for him to give the opinion in favour of adulteration on the basis of the result of the analysis. Considered from this point of view, I am of the opinion that the fact of the sample having been kept by the Analyst in a refrigerator may equally legitimately and properly form part of his report and, therefore, admissible in evidence. This provision of law has if I may so put it, to be construed from a rational, practical and common sense point of view, favouring the Public interest.

There is one other aspect to which I must also advert. The learned Magistrate has, it may be recalled, made a reference to an opinion of the Director of the Central Food Laboratory, Calcutta, in some other case, showing that in ordinary circumstances the sample of curd could remain in a fit condition for analysis for a period of 10 to 15 days. Without expressing any opinion on the propriety of considering evidence in another case to be evidence in this case, I, however, cannot help remarking that this opinion would certainly have rendered the Public Analyst's report of valuable assistance even without the sample having been

Municipal Corporation of
Delhi
v.
Jai Dayal
Dua, J.

Municipal
Corporation of
Delhi
v.
Jai Dayal

Dua, J.

kept in a refrigerator; but even otherwise I have little hesitation in holding that the insertion by the Analyst in the report itself of the fact that he had kept the sample in a refrigerator was admissible in evidence without the production of the Analyst as a witness.

But this apart the learned Magistrate himself had ample power in the interest of justice, if considered necessary, to summon the Public Analyst for the purpose of examining him about the fact of his having kept the sample in a refrigerator. The Courts, it must never be forgotten, exist for the purpose of doing justice and in matters relating to food adulteration, the responsibility of the Court is no less in seeing that mere technicalities do not hamper or defeat the cause of justice. Sale of adulterated food affects the society as a whole and the administration of welfare legislation affecting the health of the citizens demands a proper sense of responsibility on the part of the officials entrusted with it. If the learned Magistrate had any doubt about the admissibility of the fact stated in the report, which was otherwise of assistance to the Court in determining the point, which it was its duty to determine, the learned Magistrate himself should have summoned the Public Analyst and examined him as a Court witness. It is unnecessary to point that even the accused had a right to summon the Public Analyst or to request the Court to call him if he was desirous of challenging the evidentiary value of the report as a whole or of questioning the correctness of the facts asserted by the Analyst in the report.

Some decided cases have been relied upon at the bar. I may briefly deal with them. Shaida's case, according to the learned counsel for the appellant, does not lay down the law correctly. This decision has relied upon a decision of the

Madras High Court in *In re. P. Mohammud Sheriff Saheb* (2). The facts of that case are however clearly distinguishable and do not by any means support the contention that where curd has been kept in a refrigerator, as is the case before us, the report of the Analyst must be discarded unless the evidence of its having been kept in a refrigerator is proved by oral evidence of the Analyst in Court. The appellant's learned counsel has eloquently contended that the learned Single Judge in *Shaidas* case has reproduced certain passages from the book called "Milk: Production and Control" by Harvey and Hill which had been relied upon and reproduced in a Nagpur judgment reported as *Dattappa Mahadappa v. Secretary Municipal Committee, Buldana* (3). The counsel has pointed out, in this connection, that a Division Bench of that Court in *State Government v. Sonabai* (4), did not agree with all the observations of *Dattappa's* case. But be that as it may, those decisions do not run counter to the view that has been taken by us that the fact of the sample having been kept in a refrigerator by the Public Analyst can lawfully be proved by the production of the report itself. *Municipal Corporation of Delhi v. Ram Nath, Cr. Misc. 403-D of 1961* decided by a Division Bench of this Court in January, 1962 has also been relied upon on behalf of the respondent. All that this decision discloses is that where a sample of curd taken on 31st October, 1960 was tested on 11th November, 1960 and there is no evidence of any preservative having been added and the Magistrate had held that the condition of the curd must have deteriorated during the period of 11 days, increasing thereby acidity resulting in deficiency of non-fat solids and gradual increase in the water contents, this Court felt disinclined to allow special leave to

Municipal Corporation of
Delhi
v.
Jai Dayal
Dua, J.

(2) A.I.R. 1962 Mad. 342.

(3) A.I.R. 1951 Nag. 191.

(4) A.I.R. 1952 Nag. 83.

Municipal
Corporation
Delhi
v.
Jai Dayal
Dua, J.

of appeal under section 417(3). Criminal Procedure Code. Without laying down an authoritative rule of law on the subject in the absence of any authority, since none was cited at the bar, the Division Bench was cautious enough to say that they were merely disallowing the petition on the ground that they did not see sufficient reason for setting aside the order of acquittal. Warning was, however, clearly given to the Corporation that where a sample of some perishable substance like curd is taken, it should be sent without any delay to the Public Analyst with a request for immediate analysis, or else, if there is any delay, the evidence should be forthcoming at the trial that the delay has not resulted in any essential change. Quite clearly, this decision also does not touch the point which falls for determination by us. Mohanlal Chhaganlal Mithaiwala v. Vipanchandra R. Gandhi (5), is of no greater assistance to the respondent. Apart from the question of constitutionality of section 13(5) of the Act, which does not concern us, the only other point on which that Court expressed its opinion is that finality or conclusiveness is attributed to the factual data in respect of the article contained in the certificate of the Director, but it is for the Court to determine after considering those facts whether the article of food in question is adulterated or not.

As a result of the foregoing discussion, in my opinion, the learned Magistrate was not right in acquitting the accused on the present record and we have no hesitation in setting aside the acquittal and convicting the accused for the offence charged under section 7/16 of the Act. The Public Analyst's report clearly discloses that the curd in question was adulterated. The appellant's learned counsel has also referred us to table V at p. 32 of the "Indian Indigenous Milk Products" by

(5) A.I.R. 1962 Gujrat 44.

W. L. Davies which gives a chart of the composition of *dahi*. It is stated therein that *dahi* contains 85.88 per cent water, 5.8 per cent fat, 3.2-3.4 per cent protein, 4.6-5.2 per cent lactose, 0.70-0.75 per cent ash, 0.5-1.1 per cent lactic acid, 0.12-0.14 per cent calcium and 0.09-0.11 per cent phosphorus. I, however, do not consider it necessary to pursue this matter because as already observed, the report of the Analyst is clear evidence of the curd being adulterated and the view of the Court below holding this report to have been superseded as erroneous. The order of acquittal is, therefore, clearly unsustainable. The question which now arises is as to what sentence is to be imposed. The offences under the Food Adulteration Act are, in my opinion, serious because they have a far reaching effect on the health of the nation but at the same time, the offence in the instant case was committed as far back as September, 1961, and the accused was acquitted in December, 1963. I do not consider it to be appropriate in these circumstances to sentence the accused to imprisonment, with the result that, in my opinion, as sentence of fine of Rs. 100 would serve the ends of justice; in default of payment of fine, the accused will have to undergo simple imprisonment for one month. The fine would be paid within two weeks from today.

Municipal Corporation of
Delhi
v.
Jai Dayal

Dua, J.

Before finally closing the judgment, a few observations are called for. Apart from the facts of this case in which we have decided to set aside the order of acquittal and convict the accused, it appears to us to be of some importance to emphasise that cases under the Prevention of Food Adulteration Act demand a much more prompt action on the part of the prosecutor and the Public Analyst than what we have found to be the general practice in the capital. Seeing the magnitude which adulteration of food has assumed in our country, it is incumbent on the authorities concerned to become

Municipal
Corporation of
Delhi
v.
Jai Dayal

Dua, J.

little more serious and earnest in taking all legitimate steps in their power to suppress the mischief of sale of adulterated food stuff to the unsuspecting and innocent citizens. This legislation is extremely vital to the health of the nation on which depends not only its future, but its very existence. We have recently come across quite a few cases under this Act and we regret to note that the Act is not being administered as satisfactorily as its administration demands in the interest of public health. It was suggested at the bar that the Municipal Corporation was short of staff. This excuse has not satisfied us. With the high index of taxation citizens of this Republic demand from the authorities concerned proper adjustment of expenditure and elimination of wastage and mal-adjustment—if any—so that basic public needs, which call for priority, are given their due position. It is extremely distressing to find and melancholy to reflect upon the alarming proportion of adulterated or unwholesome articles of food fraudulently sold in the market to the unwary helpless citizens in this Republic. That it should so happen in the capital town of the Union is tragic; it does seem to me to tend, to some extent, to shake the citizens' faith in the welfare nature of our set-up—a result the dangerous potentialities of which, we believe, everyone is aware and must strive to guard against. It is hoped that the authorities concerned would properly tone up the department entrusted with the solemn duty of preventing food adulteration and the officers in charge would henceforth act with both reasonable promptitude and requisite efficiency in administering this important welfare legislation. We need not repeat the warning given by the Bench in Ram Nath's case, which we fully endorse, and we expect that in future such inordinate delays would not occur. The citizens must also see that this legislation is properly enforced, for the eye of the public is bound to make

the official active, diligent and conscientious. I may also point out that a penal law loses its deterrent effect by reason of the frequency with which the offenders escape discovery and conviction; this is illustrated by the ineffectuality, in our experience, of laws, that have lacked vigorous public enforcement. Finally, the far reaching baneful effects, on the life of the entire community, of this anti-social and anti-democratic offence must be brought home to the offenders by rationally and persuasively explaining to them that a seller or supplier of one adulterated article of food committing fraud thereby on his innocent fellow-beings, who happen to be his customers, can scarcely—if at all—escape being himself the victim of similar fraud at the hands of other similar-minded sellers or suppliers of other articles of food, of which he or his relations may be in need. Cheating in this respect begets cheating and the vicious net may begin to stretch itself in other directions as well. It is, therefore, to his own larger interest, as also to that of the whole nation, to be honest in this matter. This importance of this educative process to the very existence, and *a fortiori*, to the healthy growth of our democratic set-up, in which laws call for obedience because they are good for the progressive orderly welfare society and not merely because their breach entails penalty, deserves to be more effectively recognised. Each person's welfare in a democracy is as sacred as that of every other person, and should never be sacrificed except when necessary to avoid a worse harm to someone else or an equal harm to a greater number of persons. Offences like the present, it is not less important to keep in view, also betray and expose the low standard of our business morality and depravity of sense of fair dealing.

D. K. Mahajan,—I agree.

B. R. T.

1341 HC—1000—7-9-64—C., P. & S., Pb., Chandigarh.

Municipal
Corporation of
Delhi
v.
Jai Dayal

Dua, J.

