

Before : A. L. Bahri & S. S. Grewal, JJ.

STATE OF PUNJAB,—Appellant.

*versus*

ASHOK KUMAR,—Respondent.

Criminal Appeal No. 273-DBA of 1983.

1st May, 1991.

*Prevention of Food Adulteration Act, 1954—Ss. 13(2) & 61(1)(a) (i)—Right to get sample of food re-analysed by the Director, Central Food Laboratory—Notice under S. 13(2) not specifying Court where complaint is filed—Accused in the dark as to which Court to approach for getting second sample of food sent for re-analysis—S. 13(2) is mandatory—Non-compliance thereof—Trial stands vitiated—Accused entitled to acquittal.*

*Held, that in Gurdaspur there were four Judicial Magistrates. From the notice served it could not be said as to which of the Judicial Magistrates was to be approached by the accused for getting the second sample of food sent to the Central Food Laboratory. The accused did not exercise a right to get sample of food re-analysed and, therefore, the defence was prejudiced as it was not mentioned in the notice that the cases were pending in the Court of Chief Judicial Magistrate to whom they could approach for sending samples for test. S. 13(2) of the Act is mandatory. Non-compliance of the same vitiates the trial. The trial Court was fully justified in acquitting the accused.*

(Para 1)

*Appeal from the order of the Court of Shri D. S. Chhina M.A. L.L.B, PCS Chief Judicial Magistrate, Gurdaspur, dated 24th November, 1982 acquitting the accused.*

**CHARGE :** *Under section 16(1)(a)(i) read with section 7 of the Prevention of Food Adulteration Act, 1954.*

**ORDER :** *Acquittal.*

*P.F.A. Act Case No. 124/1 of 1981.*

*It has been prayed in the grounds of appeal that appeal be accepted and respondent dealt with according to law and further praying that the warrants of arrest of the accused respondent under section 390 Cr.P.C. may kindly be issued.*

*S. K. Sharma, DAG, Punjab, for the Appellants.*

*T. P. S. Mann, Advocate, for the Respondent.*

## JUDGMENT

A. L. Bahri, J.

(1) *Vide* this order two Criminal Appeals (Nos. 273-DBA and 278-DBA of 1983) are being disposed of as common question of law is involved therein. In both these cases samples of food were purchased by the Food Inspector. On analysis by the Public Analyst they were not found upto the standard prescribed. Criminal complaints were instituted in these two cases in the Court of Chief Judicial Magistrate, Gurdaspur. Notices as required under section 13(2) of the Prevention of Food Adulteration Act were issued to the accused calling upon them, if they so desired, to send the second sample of the food kept with the Local (Health) Authority for analysis to the Central Food Laboratory within a period of 10 days by approaching the Court of Judicial Magistrate, Gurdaspur. This notice was held by the Chief Judicial Magistrate not in accordance with law and thus he acquitted the accused. The State of Punjab has come up in appeal in these cases.

Section 13(2) of the Act reads as under:—

“On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of 10 days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.”

The aforesaid provision would show that a valuable right is given to the person from whom the sample of food is purchased to get the same re-analysed, if he is not satisfied with the analysis made by the Public Analyst. The re-analysis is to be made by the Director, Central Food Laboratory and his report is to supersede the report of

Commissioner of Income-tax (Central), Ludhiana v. M/s New Suraj Transport Co. Pvt. Ltd., Amritsar (S. S. Sodhi, J.)

the Public Analyst. Such a person is to approach the Court where complaint was filed. In Gurdaspur there were four Judicial Magistrates. From the notice served it could not be said as to which of the Judicial Magistrates was to be approached by the accused for getting the second sample of food sent to the Central Food Laboratory. In the present cases the accused did not exercise such a right and their defence was prejudiced as it was not mentioned in the notice that the cases were pending in the Court of Chief Judicial Magistrate, to whom they could approach for sending second samples for test. Section 13(2) of the Act is mandatory. Non-compliance of the same vitiates the trial. The trial court was fully justified in acquitting the accused on this ground. Both the appeals are dismissed.

R.N.R.

Before : S. S. Sodhi & N. K. Kapoor, JJ.

COMMISSIONER OF INCOME-TAX (CENTRAL), LUDHIANA,—  
Applicant

versus

M/S. NEW SURAJ TRANSPORT CO. PVT. LTD., AMRITSAR.—  
Respondent.

Income-tax Reference No. 24 of 1980.

28th May, 1991.

*Income-tax Act (XLIII of 1961)—Ss. 41(2) & 45—Route permit for Stage Carriage acquired for the first time in a self-generated asset—Sale of route permits alongwith buses—Consideration of sale is not amenable to Capital Gains Tax—Transfer of route permit is akin to transfer of 'Goodwill' and, therefore, not an asset within the meaning of S. 45.*

*Held, that the route permit acquired for the first time must be treated as a self-generated asset, the consideration for the sale of which is not amenable to Capital Gains Tax.*

(Para 6)

*Income Tax Reference from the order of the Income Tax Appellants Tribunal, Amritsar, dated 3rd November, 1979 arise out of R.A. No. 121 (ASR)/79 and Arising out of I.T.A. No. 238/78-79. Assessment Year 1974-75.*