

in *Shivram Poddar v. The Income-tax Officer, Central Circle II, Calcutta and another* (9). It is, however, significant to note in this case that though it was not so mentioned in the writ petition, the case had gone right up to the Central Government which had also rejected the claim of the petitioners by order Annexure 'R-7', a copy of which has been placed on the record of this case by the respondents themselves.

(17) No other point having been argued before us in this case, the writ petition fails and is accordingly dismissed though without any order as to costs.

**K.S.K.**

APPELLATE CRIMINAL

*Before Shamsher Bahadur and Gopal Singh, JJ.*

MUNICIPAL COMMITTEE, AMRITSAR,—*Appellant*

*versus*

PARKASH CHAND,—*Respondent*

**Criminal Appeal No. 756 of 1966.**

July 9, 1968

*Prevention of Food Adulteration Act (XXXVII of 1954)—S. 16 (i)(a)(ii)—Prevention of Food Adulteration Rules (1955)—Rules 7(1), 15 and 20—Public Analyst—Whether must state in his certificate that he actually compared the seals—Failure to state so—Whether results in rejection of the certificate—The question of absence or inadequacy of preservative in a sample—Whether can be raised by a person where sample is taken for examination.*

*Held*, that under rule 7 of Prevention of Food Adulteration Rules, 1955, all that is required of the Public Analyst, who receives the package containing a sample, is to compare "the seals on the container and the outer cover with specimen impression" and he is required to make a note only about the "condition of the seals thereon." What he is required to record is the "conditions of the seals." He is not required in the form prescribed under rule 7(3) to say that he

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had made a comparison, indeed the conclusion that the seal was "found intact and unbroken" cannot be reached without a comparison. It must be presumed that the Analyst acted in accordance with law and in the absence of any evidence it is impossible to say that the failure of the Analyst to mention that he had made a comparison must result in the rejection of the certificate about the condition of the seals found to be intact and unbroken. (Para 13)

*Held*, that Rules 15 and 20 of the Rules only intend that sufficient quantity be sent to the Public Analyst to facilitate analysis of sample and that formal in has to be added to preserve original condition of the sample. If the Public Analyst has not made a grievance that the quantity was insufficient for purposes of analysis, nor has he stated that the quality of sample had deteriorated, no objection can be raised on this score. The question of absence or inadequacy of preservative in the sample should be raised by the Analyst himself and not by the person whose sample is to be examined. (Para 12)

*Appeal from the order of Shri Sher Singh Sandhu, the Judicial Magistrate, 1st Class, Amritsar, dated the 31st December, 1965 acquitting the accused respondent.*

ROOP CHAND, ADVOCATE, for the Appellant.

S. K. SANWALKA, ADVOCATE, for the Respondent.

### JUDGMENT

The Judgment of the Court was delivered by:

SHAMSHER BAHADUR, J.—This appeal of the Municipal Committee, Amritsar, is directed against the order of the Magistrate, 1st Class, Amritsar, acquitting Parkash Chand respondent of the charge under section 16(1)(a)(ii) of the Prevention of Food Adulteration Act, 1954.

(2) The respondent is a *Halwai* carrying on business in Bazar Parbhunjan in Qila Bhangian, Amritsar. At 10.45 a.m. on 18th of January, 1965, Pal Dass, Food Inspector, Amritsar Municipality, went to his shop and purchased 600 grams of what has been described as "cow curd" after payment of Re. 0.50 nP. which was its price. The receipt of payment was made by the respondent and this is Exhibit P.B. The curd which was brought by the Food Inspector was out of a bulk of 3 Kilograms of the commodity which was displayed for sale. The Food Inspector made it clear that he was buying this curd for the purpose of analysis and it was equally divided into three parts in dry clean bottles. 14 drops of formalin, which is a preservative, was added to the 600 grams of curd purchased by

the Food Inspector. The bottles are stated to have been labelled, stoppered, securely fastened and then wrapped in a strong thick paper which was secured by means of strong twine and sealed with five distinct seals. One sealed bottle of the sample was handed over to the respondent, the second one was sent to the Public Analyst, Municipal Committee, Amritsar, by hand and the third one was retained by the Food Inspector. A memorandum with specimen impression of the seal used in the packet was sent to the Public Analyst by hand and the sample was split in the three bottles in the presence of two witnesses, Gurbachan Singh and Om Parkash, who are both *Halwais* of the locality.

(3) The memorandum of recovery was prepared at the spot in accordance with the prevention of Food Adulteration Rules, 1955 (hereinafter called the Rules). This is Exhibit P.A. As already mentioned, the respondent executed a receipt of 50 nP. for the 600 grams of cow curd taken as a sample from him by the Food Inspector. Exhibit P.W. is a certificate which is signed by the witnesses that a sample of cow curd was taken by the Food Inspector on 18th January, 1965, at 10-45 a.m., from the respondent Parkash Chand and was put into three dry clean glass stoppered bottles on which five seals were affixed and one of these sealed bottles was handed over to the vendor respondent. This certificate is signed by the respondent as vendor.

(4) One of the samples was sent to the Public Analyst with a memorandum by the Food Inspector on 18th January, 1965. This memorandum which is under rule 17 of the Rules is Exhibit P.D. and it is specifically stated at item No. 5:—

“Nature and quantity of preservative, if any,  
 added to the sample: .. Formalin 14  
 drops.”

The memorandum is signed by the Food Inspector. Exhibit P.E. is another memorandum signed by the Food Inspector sent to the Public Analyst, also of 18th January, 1965, giving a clear impression of the seal used in packing.

(5) The Public Analyst submitted his report Exhibit P.F. on 25th of January, 1965, mentioning that the sample of cow curd sent for analysis “properly sealed and fastened” of which the seal having been found “intact and unbroken” was adulterated to an extent of 15 per cent.

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(6) On the strength of the report of the Public Analyst, the complaint Exhibit P.G. was filed in Court. It may be mentioned that a Public Analyst is appointed under section 8 of the Prevention of Food Adulteration Act, 1954 (hereinafter called the Act) and the Food Inspector has to adopt the procedure which is laid down in section 11. Under this provision, the Food Inspector has to notify his intention that a sample of food which is purchased is for analysis, and it is divided into three parts, marked, sealed and fastened. Under sub-section (7) of section 10 of the Act, the Food Inspector "shall call one or more persons to be present at the time when such action is taken and take his or their signatures".

(7) Reference may also be made at this stage to the relevant rules relating to the point which has arisen in this appeal. Under rule 7(1), the Public Analyst, on receipt of sample for analysis from the Food Inspector is enjoined to "compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seals thereon". Rule 12 gives the form of intimation of purpose of taking sample and there is no dispute that due notice was given to the respondent under this rule. Under rule 14:—

"Samples of food for the purpose of analysis shall be taken in clean dry bottles; or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture and shall be carefully sealed."

(8) Under rule 15, all bottles or jars or other containers containing samples for analysis have to be properly labelled and, *inter alia*, the label shall bear the nature and quantity of preservative, if any, added to the sample. Rule 16 deals with the manner of packing and sealing the samples. Under rule 17, the Public Analyst is to be sent the sample with a memorandum in Form VII. In Exhibit P.D., which is the memorandum sent to the Public Analyst in statutory Form VII, it is mentioned under item 5 that 14 drops of formalin were added to the sample. Finally, under rule 20:—

"The preservative used in the case of samples of any milk.. dahi.. shall be the liquid commonly known as 'formalin' ....."

(9) It is in the context of these statutory provisions that the evidence which was adduced in the case may be briefly examined.

The Food Inspector Pal Dass, as P.W. 1, stated that he gave an intimation notice in the presence of the witnesses Gurbachan Singh and Om Parkash whose signatures appear on the relevant document. He deposed that he had put 14 drops of formalin as mentioned in Exhibit P.D. and prepared three sealed parcels according to the statutory requirements, one of which was sent to the Public Analyst whose report is Exhibit P.F. The Food Inspector further stated that the respondent had been previously convicted of an offence under section 16 of the Act on 31st July, 1963, and this does not seem to have been challenged. He denied a suggestion of the defence that no formalin had been put in the sample as a preservative. Gurbachan Singh was examined as P.W. 2, and while he admitted the payment of 50 nP. for the cow curd which had been purchased from the respondent stated that "the Food Inspector did not put any medicine in it and sealed the bottles". Gurbachan Singh further stated that he did not know if there was any other witness present at the spot as he had left after putting his signatures. Om Parkash was not examined as a witness. In the statement made by the respondent before the Magistrate he admitted that the Food Inspector had taken sample from him but added that the curd had been taken from the material which was prepared as *Matha* and *Pakauris* were to be put in it and salt had been added. According to the respondent, the curd had been removed from the *dahi*. He further added that no formalin had been put in the sample.

(10) The learned Magistrate being of the view that there was a contradiction with regard to the mixing of formalin in the sample, has acquitted the appellant on a consideration of this aspect only, without going into the merits of the defence plea. Towards the end of the judgment the Magistrate also seems to have taken the view, which is clearly mistaken, that:—

"According to the law the Food Inspector is supposed to join two independent witnesses at the time of giving notice and taking the sample. From the statement of P.W. 2 very reasonable doubt exists about the presence of the other witnesses."

(11) The preliminary question for determination is whether the conclusion of the Magistrate is justified on evidence that no formalin was mixed with the sample? It is to be borne in mind that it is a requirement under the Rules that formalin has to be mixed. Exhibit P.D., which is a document executed contemporaneously

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with the preparation of the sample, mentions that 14 drops of formalin had been mixed. No complaint was ever made by the Public Analyst that formalin had not been mixed and in the absence of preservative the sample could not be properly analysed. The Food Inspector himself deposed that he had added formalin. This statement must be accepted as it is in conformity with the document Exhibit P.D. Can the solitary statement of Gurbachan Singh who had even denied the presence of Om Parkash whose signature appear on the relevant document as second witness, be accepted when Exhibit P.D., which is prepared in accordance with the statutory requirements, mentions that formalin had been added? We are clearly of the opinion that the learned Magistrate has misdirected himself on this point in throwing out the case for the prosecution.

(12) Mr. Roop Chand, the learned counsel for the appellant, has submitted that even if it be admitted that preservative was not mixed with the sample, the failure of the Food Inspector in this respect could not possibly affect the constituents of the product which was to be analysed. There can be no doubt that ample safeguards have been provided in the statute and the Rules thereunder to enable the vendor to check for himself whether, there has been any adulteration in the sample which has been taken from him. He always retains a sample for himself and a dealer if he is so minded could always get the sample examined himself. It is also significant that the Public Analyst never raised any objection with regard to the absence of formalin in the sample and its consequential effect on the curd whose constituents had to be analysed. In *Public Prosecutor, Andhra Pradesh v. Pasala Ram Rao* (1), Mohammad Mirza, J., held that the Rules only intended that sufficient quantity be sent to the Public Analyst to facilitate analysis of sample and that formalin has to be added to preserve original condition of the sample. If the Public Analyst has not made a grievance that the quantity was insufficient for purposes of analysis, nor has he stated that the quality of sample had deteriorated, no objection can be raised on this score. It seems to us that the question of absence or inadequacy of preservative in the sample should be raised by the Analyst himself and not the person whose sample is to be examined. Likewise, Sharfuddin Ahmed, J., in *Public Prosecutor v. Ediga Venkata Swami* (2), where the accused charged with the offence of selling

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(1) A.I.R. 1967 A. P. 49.

(2) A.R. 1967 A.P. 131.

adulterated milk on the basis of the report of the Public Analyst contended that as insufficient quantity of preservative was added to the sample, the opinion of the analyst should be discarded, it was held that the complaint should have emanated from the Public Analyst himself. The failure of the Food Inspector to fix formalin with the sample is the sole ground on which acquittal is based the observation of the learned Magistrate that the requirement of the law being that two or more persons should witness the recovery of the sample and there being a discrepancy on this score the whole evidence should be rejected, is an observation which is erroneous and has only been made in passing. The statutory requirement in respect of this matter has already been adverted to and under subsection (7) of section 10 of the Act the duty of the Food Inspector is to call one or more persons to be present at the time when such action is taken.

(13) Reference may also be made to an argument which has been pressed upon us by Mr. Sanwalka, the learned counsel for the respondent. It is contended by him that the certificate of the Public Analyst does not mention that he had actually compared the seals on the samples with the specimen impression which had been sent to him. Now, under rule 7 all that is required of the Analyst who receives the package containing a sample is to compare "the seals on the container and the outer cover with specimen impression" and he is required to make a note only about the "condition of the seals thereon". What he is required to record is the "condition of the seals". The Public Analyst in the certificate Exhibit P.F., in the printed Form III has stated that he found the "seal intact and unbroken". He is not required in the form prescribed under rule 7(3) to say that he had made a comparison indeed the conclusion that the seal was "found intact and unbroken" could not have been reached without a comparison. It must be presumed that the Analyst acted in accordance with law and in the absence of any evidence it is impossible to say that the failure of the Analyst to mention that he had made a comparison must result in the rejection of the certificate about the condition of the seals found to be intact and unbroken. Precisely the same point arose for decision recently before Nark, J., in *Krishna Rajaram Wani v. M. V. Koranne and the State of Maharashtra* (3), The learned Judge observed that the report of the Public Analyst in Form III need not mention that the

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Analyst had compared the seal on the packet with the specimen seal sent separately. The omission is not of any vital importance, in the view of the learned Judge. In reaching this conclusion, the learned Judge dissented after a full discussion from the view taken in a Single Bench decision of Tukol, J. in *Mary Lazrado v. State of Mysore and another* (4), as also a decision to the same effect in *State of Gujarat v. Shantaben* (5). The earlier Gujarat view to the contrary was considered by A. S. Sarela, J., in *Manka Hari v. The State of Gujarat* (6), and while expressing his dissent, the learned Judge concluded thus:—

“When all the provisions in the law are read together they negative the argument that the absence of paper seal must of necessity lead to the inference that the sample could have been tampered with that question depends upon the facts of each case.”

(14) The learned counsel has placed very strong reliance on the decision of Bedi, J., in *Tilak Raj v. The State* (7), in which the learned Judge has followed the decision of the Mysore High Court in *Mary Lazrado v. State of Mysore* (4). Bedi, J., agreed with Tukol, J., of the Mysore High Court that “where the report of the Public Analyst merely shows that the seals were intact and unbroken, but it does not show that the seals on the container were compared with the specimen seals sent by post to the Public Analyst, the Court cannot be sure that the sample which reached the Public Analyst was not tampered with on the way”. With great respect, we are unable to agree with the view propounded by Tukol, J., and followed by Bedi, J. We think that the statutory requirements do not lay down this duty on the Public Analyst. We are in respectful agreement with the opinion of Naik, J., as it appears to be in conformity with the language used in the statute. As observed by Anna Chandy, J., in *Food Inspector, Cannanore Municipality, Cannanore v. Pandavalappil Kannan* (8), if the accused vendor feels that a sample bottle forwarded to Food Analyst was tampered with, he should take steps to send the sample which is with him for analysis.

(4) A.I.R. 1966 Mysore 244.

(5) A.I.R. 1964 Guj. 136.

(6) A.I.R. 1968 Guj. 88.

(7) 1967 P.L.R. 942.

(8) A.I.R. 1966 Kerla 70.



The learned Judge had also taken a different view from the one adopted by Gujarat High Court in *State of Gujarat v. Shantaban* (5).

(15) We will, therefore, allow this appeal and set aside the order of acquittal. As the learned Magistrate has acquitted the accused only on the ground that no formalin had been mixed with the sample taken, we would remand this case to him for a fresh decision on merits. The counsel have been directed to cause the parties to appear before the trial Judge on 29th of July, 1968.

K.S.K.

REVISIONAL CIVIL

*Before Mehar Singh, C.J., and Bal Raj Tuli, J.*

THE AMBALA BUS SYNDICATE (P) LTD.,—*Petitioner*

*versus*

M/S INDRA MOTORS,—*Respondents*

**Civil Revision No. 335 of 1966.**

July 10, 1968

*East Punjab Urban Rent Restriction Act (III of 1949)—S. 13—Jurisdiction of the Rent Controller under—Denial of relationship of landlord and tenant—Such denial—Whether ousts the jurisdiction of the Rent Controller to decide an eviction application—Finality attaching to the order of the Rent Controller—When can be questioned in a civil Court.*

*Held*, that although, the East Punjab Urban Rent Restriction Act does not say anywhere that when the tenant denies the relationship of landlord and tenant, this matter is to be decided by the Rent Controller, yet it would be reading much too much in the statute to say that on the mere raising of such a plea in defence by the tenant the jurisdiction of the Rent Controller in an eviction application is ousted and such application must be thrown out and dismissed off hand. In such a case dispute arises as to the relationship between the parties *qua* the demised premises, the landlord definitely alleging that the opposite side whose eviction he seeks is his tenant and the latter denying any such relationship. Mere such denial cannot oust the jurisdiction unless it is specifically