sections 4 and 6 of Act respectively. We, however, make no order as to costs.

D. S. Tewatia, J.—I agree.

S.C.K.

Before C. S. Tiwana, J.

MAHIPAL,—*Petitioner.*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Revision No. 720 of 1977.

February 26, 1980.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 7, 12 and 16—Prevention of Food Adulteration Rules 1955—Rule 9(j)—Report of the public analyst not sent to the accused as required by rule 9(j)—Trial of the accused—Accused long after the conclusion of the prosecution evidence applying for examination of the sample kept by the public health authority—Sample found decomposed—Accused—Whether can take benefit of the non-receipt of the report in rule 9(j) and claim acquittal—Time limit laid down in rule 9(j)—Non-compliance therewith—Whether vitiates the trial.

Held, that it is difficult to hold that the time limit laid down in rule 9(j) of the Prevention of Food Adulteration Rules 1955 is so strict and rigid that non-compliance therewith necessarily vitiates all prosecutions. There are several rules relating to the taking keeping and sending of the samples obtained from different persons. The rules are so elaborate that the food inspectors are likely not to comply with one rule or the other which would lead to failure of justice in different cases if strict view of the rules were to be taken by the judicial Courts. Where the report of the public analyst is not sent to the accused under rule 9(j) but the whole evidence upon which the prosecution depended had been produced in court and the accused was not in any manner of doubt as to what was the case he was to meet and long thereafter he makes a prayer for sending of the sample kept with the local health authority for analysis and the same is found to have been decomposed by then, the accused cannot be allowed to take benefit of the delay for which he was responsible and he cannot claim acquittal on that ground. (Para 3).

Petition under section 401 Cr.P.C., for revision of the order of Shri R. L. Lamba, Additional Sessions Judge, Gurgaon, dated 24th August, 1977, affirming that of Shri R. C. Kathuria, Judicial Magistrate 1st Class, Ballabgarh, dated 3rd February, 1977, convicting the appellant.

Ram Sarup, Advocate, *for the Petitioner.*

R. K. Verma, D.A.G. Haryana, *for the Respondent.*

JUDGMENT

C. S. Tiwana, J.

(1) Mahi Pal, a milk-seller, has filed this revision against the judgment dated August 24, 1977, of the Additional Sessions Judge, Gurgaon, dismissing his appeal and upholding his conviction for an offence under section 16 of the Prevention of Food Adulteration Act recorded by the Judicial Magistrate, First Class, Ballabgarh, by judgment dated February 3, 1977. The petitioner had sold 660 ml of buffalo's milk to Shri S. P. Malik, PW 1, the Food Inspector, on October 20, 1973, and the Public Analyst by his report dated November 9, 1973, found it to be adulterated. Milk fat was eight per cent deficient and milk solids not fat were also eight per cent deficient of the minimum prescribed standard. The sentence which the petitioner has to undergo is rigorous imprisonment for six months and the payment of a fine of Rs 1,000 and that is the minimum prescribed for the offence alleged to have been committed by the petitioner.

2. The provisions of rule 9(j) of the Prevention of Food Adulteration Rules were admittedly not complied with by the Food Inspector who is the complainant in this case and thus the only point for determination in this revision is whether the failure on the part of the Food Inspector in this respect is fatal to the prosecution case. The answer to this point ultimately depends upon this fact whether the abovesaid rule is mandatory or only a directory one. It says that it shall be the duty of the Food Inspector to send by registered post a copy of the report received from the Public Analyst to the person from whom the sample was taken within ten days of the receipt of the said report. The petitioner in his defence made an application to the trial Court on March 18, 1976, praying that the sample of milk kept by the Local (Health) Authority should be examined by the Public Analyst over again.

This sample was then sent to the Public Analyst on September 19, 1976, and he sent this report dated October 18, 1976, that the sample was decomposed and was, therefore, unfit for analysis. If rule 9(j) referred to above is taken to be mandatory the petitioner is to derive benefit by the decomposition of the sample and it would not be possible to uphold his conviction.

3. There are several rules relating to the taking, keeping and sending of the samples obtained from different persons. The rules are so elaborate that the Food Inspectors are likely not to comply with one rule or the other and it would lead to failure of justice in different cases if strict view of the rules were to be taken by the judicial Courts. So far as the present case is concerned, the complaint had been filed on November 30, 1973, and the petitioner had made his appearance in Court on January 15, 1974. The whole evidence upon which the prosecution depended had been produced in Court by September 16, 1974. The petitioner was not in any manner of doubt as to what was the case he was to meet. He delayed the making of the prayer for sending of the sample for two years in the hope that either the sample with him or the one kept with the Local (Health) Authority would be rendered unfit for analysis. If in such like circumstances Public Analyst finds the sample to be decomposed the petitioner should not definitely gain any advantage by his own defaultion another prior occasion Dr. S. B. Madan, DW 4 had obtained a sample of milk from the petitioner and this is the finding given by the Additional Sessions Judge that the petitioner misled the trial Magistrate by producing a sealed bottle which related to the previous case and then tried to examine Dr. S. B. Madan, who had nothing to do with the sample of the case in which he was being tried. The petitioner is surely responsible for causing some delay in sending the sample in between the date upon which he filed an application for the purpose and the actual date upon which it was sent to the Public Analyst. Thus the conduct of the petitioner is of such a nature that he should not be given any advantage on account of the decomposition of the sample of milk. Supposing for a while the required notice under rule 9(j) had been sent by the Food Inspector and still the petitioner kept quiet and then after the expiry of two years he filed an application for the examination of the sample over again the result would have been the same. Thus the non-compliance rule 9(j) has at all not caused any prejudice to the

petitioner. Learned counsel for the petitioner placed reliance on a Single Bench ruling of this Court reported as *Labh Singh* v. *Union Territory, Chandigarh* (1). On the facts of that case a material prejudice was said to have been caused by the non-compliance of rule 9(j) and the revision was accepted and the conviction and sentence of the accused were set aside. The milk in the case had been purchased by the Food Inspector on October 30, 1968, the complaint was filed on January 2, 1969, and the accused made his appearance in Court on August 11, 1969, he furnished his bail bonds on August 19, 1969, and on that very day he made an application whereby he prayed that the sample supplied to him had been misplaced and the sample which was with the Food Inspector should be sent to the Director, Central Food Laboratory, Calcutta, for analysis. This sample was produced on August 21, 1969, and the same was sent on August 25, 1969. Then it was on September 26, 1969, that the Public Analyst expressed this opinion that the sample had become unfit for testing, as the same had decomposed. The petitioner had not at all committed that kind of default as in the instant case and for that reason the facts of the reported case are so distinguishable that the ratio of that authority cannot at all be applied to the facts of the present case. In this connection, the observations made in *M. M. Pandya, Food Inspector, Baroda* v. *Bhagwandas Chiranjilal and another* (2), are very much relevant. This view has been expressed that it is difficult to hold that the time-limit laid down in rule 9(j) is so strict and rigid that non-compliance therewith necessarily vitiates all prosecutions. The following quotation from the headnote may be reproduced with advantage :

> "It is necessary to note in this context that so far as the offences relating to food articles are concerned, there is on one hand the requ rements of social good or the health of the society and there is on the other hand the requirement of ensuring fair and just trial to an accused. It is thus antithesis between the welfare of an individual and the welfare of the society which must be so resolved as to

(1) 1973 C.L.R. 134.

(2) (1979) XX Gujarat Law Reporter 550 (F.B.)

cause no prejudice to the accused in defending himself without producing any social hazard.

So far as the late supply of a copy of the report is concerned, the delay may consist of a day or a year. Therefore, no hard and fast rule can be laid down in a matter of this type. Delay of a day is not likely to cause prejudice whereas the delay of a year may cause an accused some prejudice in defending himself. However, in a given case probability cannot be ruled out that whereas delay of a year may not be fatal, delay of a day may produce fatality for the prosecution case. Therefore, it all depends upon the fact of each case."

4. I thus take this view that in the present case non-compliance of rule 9(j) having caused no prejudice to the petitioner his conviction and sentence are not liable to be set aside. The revision is consequently dismissed.

N.K.S.

Before J. V. Gupta, J.

KAMAL ARORA,—*Petitioner.*

versus

AMAR SINGH and another,—*Respondents.*

Civil Revision No. 1161 of 1979.

February 28, 1980.

East Punjab Urban Rent Restriction Act (III of 1949)—*Sections* 2(*a*), (*d*), (*q*) & 11 *and* 13(2) (*ii*) (*b*)—*Premises let out initially for residence—Landlord acquiescing in the subsequent change of user as a non-residential building—Such change in user—Whether converts the premises into a non-residential building—Ground of personal necessity—Whether available to the landlord to seek ejectment.*

Held, that if the definition of the words "building' and 'non-residential building' and the provisions of section 13(2) (ii) (b) of the East Punjab Urban Rent Restriction Act, 1949 are read together, it is quite clear that the nature of the building cannot be determined