Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad and another v. *Ajit Prasad Tarway* (12), Clause (c) of sub-section (1) of section 115 of the Code of Civil Procedure relating to exercise of jurisdiction illegally or with material irregularity has been interpretted to mean illegality or material irregularity committed in respect of the exercise of jurisdiction and not otherwise. Undeniably, the Courts below had the jurisdiction to grant or refuse the injunction in question and no illegality was pointed out in the exercise of the said jurisdiction.

(18) During the hearing of the revision, efforts were made to find an acceptable solution to the problem. One of the suggestions made on behalf of the plaintiff-respondents was that the building activity is carried on only through the North-Western staircase to the exclusion of the staircase situated on the South-Western side of the building. Though an agreed solution was not possible to reach, it appears quite fair that the injunction order should be made conditional upon the plaintiff-respondents using only the North-Western staircase for carrying on the building operation on the terrace on the second floor. It is also directed that the plaintiff-respondents shall file in the trial Court an undertaking, in writing, that in case the suit is ultimately dismissed, they will remove the offending construction at their own expense. The undertaking shall be filed within one month from the date of appearance in the Court. The revision petition is disposed of in these terms.

(19) The parties through their counsel are directed to appear in the trial Court on September 7, 1991, for further proceedings according to law.

S.C.K.

(FULL BENCH)

Before A. L. Bahri, A. P. Chowdhri & J. B. Garg, JJ.

STATE OF HARYANA,—Appellant.

versus

BANWARI LAL,—*Respondent.*

Criminal Appeal No. 640-DBA of 1986.

7th February, 1992.

Prevention of Food Adulteration Act, 1954-*Ss.* 7 & 16(1)(*a*)(*i*)—*Taking sample of Haldi—Requirement of mixing the total quantity of food—Such requirement, if mandatory.*

(12) A.I.R. 1973 S.C. 76.

Held, that there is no provision in the Act or the Rules that the food article must be stirred before taking the sample. It may be that in the case of mixture of articles having different specific gravity, a proper mixing and stirring would help in making the sample more representative but when the article kept for sale consists of a substance of the same structure and specific gravity, no such mixing or stirring is necessary. The requirement of stirring is not of universal application. (Para 4)

Held, that the principle of mixing the total quantity of food article before taking the sample cannot be extended to Wheat, Atta, Haldi Powder, Ajwain or similar other food articles. (Para 6)

1. Charanji Lal v. The State of Punjab 1983(1) FAC 169.
2. Sham Sunder v. The State of Haryana 1986(1) CLR 120.
3. Mohan Lal v. State of Punjab 1990(1) Recent Criminal Reports, 317.

(OVERRULED)

State of Haryana v. Hukam Chand 1984 FAJ 198.

(FOLLOWED)

(This case was referred to larger bench to decide an important question of law involved in this case by the Division Bench consisting of Hon'ble Mr. Justice J. S. Sekhon and Hon'ble Mr. Justice S. S. Rathor on September, 9, 1991. The Full Bench consisting of Hon'ble Mr. Justice A. L. Bahri, Hon'ble Mr. Justice, A.P. Chowdhri and Hon'ble Mr. Justice, J. B. Garg decided the question involved in the case,—vide their Lordship's judgment dated 7th February, 1992 and remitted the case and other connected appeals pertaining to same point before appropriate Bench for disposal according to law).

Appeal from the order of the Court of Shri B. L. Gulati, Learned Additional Sessions Judge, Hissar, dated 19th April, 1986 acquitting the accused.

Charge under Section 16(1)(a)(i) read with section 7 of Prevention of Food Adulteration Act.

ORDER:—Acquittal.

S. S. Gauripuria, AAG, (Hr.), *for the Appellant.*

D. S. Bali, Sr. Adv. with Shallu Bali, Advocate, *for the Respondent.*

JUDGMENT

A. P. Chowdhri, J.

(1) Banwari Lal respondent was tried under section 7(i) read with section 16(1) (a) (i) of the prevention of Food Adulteration Act, 1954, (hereinafter referred to as the 'the Act'). He was convicted and sentenced by the Judicial Magistrate 1st Class, Fatehabad. In appeal, his conviction was set aside by the Additional Sessions Judge, Hissar. mainly on the ground that the prosecution failed to prove that the article of food, *Haldi* powder in in this case, had been properly mixed before taking the sample. In coming to this conclusion, the lower appellate Court relied on two Single Bench decisions in *Charanji Lal* v. *The State of Punjab* (1) *and Sham Sunder* v. *The State of Haryana* (2) sought to distinguish a Division Bench decision to the contrary in *State of Haryana* v. *Hukam Chand* (3). The State preferred an appeal against the acquittal, which came up for motion hearing before a Division Bench consisting of J. S. Sekhon and S. S. Rathor, JJ. The learned Judges pointed out that the Division Bench decision in *Hukam Chand's case* (supra) related to sample taken from Atta which was lying exposed to dust, and expressed a doubt whether the law laid down therein i.e. in *Hukam Singh's case*, applied where the sample of food article was taken from a proper container. In the opinion of the Bench, the point kept arising frequently and needed to be authoritatively decided by a larger Bench. The question referred is as follows:—

> "Whether mixing up of the Haldi powder or wheat flour (Atta) to make it homogeneous before taking its sample is required under the provisions of the Act and the Rules framed thereunder ?"

We have heard Mr. S. S. Goripuria, Assistant Advocate-General, Haryana, for the appellant, and Shri D. S. Bali, Senior Advocate, for the accused.

(2) It may be stated at the outset that there is no provision in the Act or the Rules that the food article must be stirred before

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(1) 1983 (1) F.A.C. 169.
(2) 1986 (1) C.L.R. 120.
(3) 1984 F.A.J. 198.

taking the sample. As a result of case law, however, it has been held that in case of milk, the same must be stirred to make it homogeneous before taking the sample. In *Food Inspector, Municipal Corporation Baroda* v. *Madan Lal Ram Lal Sharma and another* (4), it was observed that in milk and milk preparations, including curd, it was distinctly possible that the fat settled on the top and in order to find out whether the milk or its preparation, such as, curd, had the prescribed content, the sample must be homogeneous and representative one, so that the analysis could furnish reliable proof of the nature and content of the article of food under analysis. It was, therefore, pointed out that churning is one of the methods of making the sample homogeneous and representative.

(3) The question which falls to be determined is whether in the case of Atta or Haldi powder etc. there is any requirement of stirring in order to make the same homogeneous before taking the sample, either on principle or on precedent ?

(4) On principle, the case of milk and certain other liquids is evidently distinguishable from that of other food articles, such as Atta and Haldi powder. It may be that in the case of mixture of articles having different specific gravity, a proper mixing and stirring would help in making the sample more representative but when the article kept for sale consists of a substance of the same structure and specific gravity, no such mixing or stirring is necessary. The requirement of stirring is not of universal application. Two examples may be readily given where the requirement of stirring had no application. These are : (1) In *Gopalpur Tea Co. Ltd.* v. *Corporation of Calcutta* (5), the food article concerned was 25 bags of tea. The Food Inspector took the sample from one of the bags selected at random. The contention was that the sample was not representative of the contents of 25 bags. It was held that the doctrine of representative sample does not in such a case require that tea from all the boxes must first be mixed up together and thereafter the representative sample should be taken. It was further held that each bag was a separate entity by itself. In the second instance, in *Alotium Wilson and others* v. *Food Inspector and another* (6), the case related to taking of sample from out of about 100 KG of ice-cream. It was argued that the sample was not a representative

(4) A.I.R. 1983 S.C. 176.
(5) A.I.R. 1966 Calcutta 51.
(6) 1981 (1) F.A.C. 183.

one as the ice-cream had not been thoroughly mixed up before taking the sample. The contention was repelled with the observation that the Act and the Rules did not contemplate that in such a situation the entire mass of ice-cream or food article concerned must be stirred before any portion is sold as sample to the Food inspector. If it were held otherwise, it would lead to an impossibility of taking a sample for analysis at all. In the case of ice-cream, for instance, it is well known that if it is melted, it cannot be brought back to its former state. This is apart from the fact that it will require a fairly big plant to mix such a huge quantity of ice-cream to make it homogeneous. The question how a sample would be representative in a given case must, therefore, necessarily depend on the nature of the goods sold and the usual mode of supply to the customer when he comes to purchase the same. If there is normally a practice of stirring and mixing when the food stuff concerned is sold to the customer from time to time, representative sample would be that which is taken after such stirring and mixing. If, on the other hand, the usual mode of sale is to take out the food article portion by portion without any such stirring or mixing, there can be no complaint that the sample sold is not a representative one."

(5) In *State of Kerala etc.* v. *Alasserry Mohammed etc.* (7), it was laid down by the apex Court that the requirement of representative and homogeneous sample was not applicable to every article of food. It was observed that a representative sample has different connotation, meaning and purpose depending on the context in which it is relevant. It was further observed that if the food article sold to the Food Inspector was proved to be adulterated, it was immaterial whether the sample purchased by him was a representative sample or not of the entire stock in possession of the person. Having regard to the ingredients of the offence under section 7 of the Act, a person who 'stores' or 'sells' such a sample was liable to be punished under section 16 (1) (a) (i) of the Act. From the foregoing discussion it follows that certain peculiar reasons which make it necessary to stir the milk before taking sample have no application at all to the case of Atta or Haldi powder. No reason could be advanced in support of the view that such stirring is required.

(6) Coming to the precedents, we find that there are three decision of a learned Single Judge of this Court in *Charanji Lal's case*

(7) 1978 (1) F.A.C. 145 = A.I.R. 1978 S.C. 933.

(supra), *Sham Suder's case* (supra), and *Mohan Lal* v. *State of Punjab* (8), holding that stirring was necessary in the case of Haldi powder and Ajwain. Contrary view was, however, taken by a Division Bench of this Court (M. R. Sharma and S. S. Kang, JJ.) in *Hukam Chand's case* (supra). It was held that the principle of mixing the total quantity of food article before taking the sample cannot be extended to wheat Atta. No reasoning is given in any of the Single Bench decisions for the conclusion that the Haldi powder or Ajwain must be mixed before taking sample. In fact, these judgments proceed on the assumption that such is the requirement of law. We have carefully examined this question and we have no doubt in our minds at all that there is no such requirement either in the Act or the Rules or the case law. We are, therefore, constrained to hold that the law on the point of stirring the food article before taking the sample in so far as Haldi powder or Ajwain or a similar food article is concerned, has not been correctly stated in the aforesaid Single Bench decisions. These are hereby overruled. On the contrary, we fully agree with the conclusion reached in *Hukam Chand's case* (supra) and hold that the principle of mixing the total quantity of food article before taking the sample cannot be extended to wheat Atta, Haldi powder, Ajwain or similar other food article and the analogy of stirring of milk before taking sample does not at all apply to such cases.

(7) For the foregoing reasons, we answer the question posed in the reference in the negative and direct that the present appeal as also other connected appeals pertaining to the same point shall be listed before the appropriate Bench for disposal according to law.

S.C.K.

Before : S. S. Sodhi & Ashok Bhan, JJ.

COMMISSIONER OF INCOME-TAX, JULLUNDER,—*Petitioner.*

versus

M/S SURINDER KUMAR PARMOD KUMAR AND OTHERS, JULLUNDER,—*Respondents.*

Income-tax Reference No. 161 *of* 1980

28th August, 1991

(1) *Income-tax Act,* 1961—*Ss.* 139 (2) *proviso* & 271 (1) (*a*)—*Furnishing of returns—Assessee seeking extension of time for filing of return after the expiry of due date—Validity of such application.*

(8) 1990 (1) Recent Criminal Reports 317.