7. No other point has been urged.

8. For the foregoing reasons, this petition fails and is hereby dismissed. The question posed at the very outset is answered in the affirmative for the view taken heretofore.

N. K. S.

Before S. S. Sandhawalia, C.J. & K. S. Tiwana, J.

AMRIK SINGH,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 376 of 1979.

July 26, 1982.

Prevention of Food Adulteration Act (XXXVII of 1954) as amended by Act XXXIV of 1976—Sections 2(ia)(m) & 2(xii-a), 7 and 16(1)(a)(i)—Prevention of Food Adulteration Rules, 1955—Rule 22 and Appendix B. Art. A. 18.06—Art. A. 18.06 regarding an article of food not to contain more than five pieces of rodent excreta per Kilogram—250 grammes sample of primary food (Sabat Mash) found to contain inorganic matter more than the prescribed proportion— Analysis of one Kilogram of the food stuff—Whether necessary to establish the infraction of the statute—Deviation from prescribed standard in primary food whether due to natural causes and beyond human agency—Burden of proof under the proviso to clause (m)—Whether lies on the accused—Report of Public Analyst disclosing presence of inorganic matter more than the prescribed standard—Ingredients and nature of such matter—Whether necessary to be stated in the report to establish guilt of the accused ...

Held, that clause (v) of Art. A. 18.06 of Appendix-'B' of the Prevention of Food Adulteration Rules, 1955 itself, in terms mentions that rodent excreta shall not exceed 5 pieces per kilogram of the sample. The framers of the provision clearly had the sample and its quantum in mind whilst prescribing this standard. A reference to rule 22 of the Rules would show that the legislature had itself prescribed the quantity of sample to be sent to the Public Analyst and item 19 thereof, pertaining to pulses, cereals and the like specifically prescribes 250 grams as the approximate quantity to be supplied to the Public Analyst or the Director. Reading this provision together with clause (iv) of A. 18.06, it seems to be patent

that the law visualises only a sample of 250 grams for analysis by the Public Analyst on which data the prescribed standard per kilogram is to be arrived at. Once the statutory provision itself lays down a mandate, it is plain that it has to be complied with. It would follow that the sample to be sent to the Public Analyst in the present case had to be only 250 grams approximately and it cannot be contended that instead of that the sample of one kilogram in quantity should be sent and the result therefrom would alone be of validity as this would be directly against the mandate of rule 22 of the Rules.

(Para 6).

Held, that on a plain interpretation of clause (m) of section 2(ai) of the Prevention of Food Adulteration Act, 1954, it would appear that the proviso thereto is clearly in the nature of an exception. The main clause (m) prescribes the essentials which would bring the article within the net or the mischief of being adulterated. Plainly enough, the prosecution is, therefore, under an obligation to establish the ingredients thereof and the fact that it falls below the prescribed standard. Once that is done, the proviso is a clear Exception thereto which would exempt or take the matter out of the arena of criminality if its provisions are duly established. Inevitably, it would follow that the accused person who wishes to take the benefit of this Exception and extricate himself from the net of culpability, has to himself discharge the burden of establishing the ingredients of the proviso. Even otherwise, the larger rule of evidence is that the onus to prove the negative is not to be placed on a party. Clearly enough, the article of 'primary food' herein would be in the custody and possession of the accused person and it is within his special knowledge as to the peculiar natural causes inducing decay etc. (which would make the foodstuff sub-standard and further where these would be beyond the control of human agency) which he wishes to plead as defence. To place this burden on the prosecution would indeed be placing an impossible onus hardly capable of being ever discharged and thus virtually rendering the main provisions of clause (m) nugatory. On principle as well as on the plain construction of this provision, it appears that the burden of establishing the requisites spelt out in the proviso, lie squarely on the accused person and not on the prosecution.

(Para 9).

Held, that it is not necessary for the Public Analyst to specify precisely in his report the ingredients and nature of the matter which he describes as inorganic and it cannot be said that unless he does so, the prosecution would not have done its duty of establishing its case. Indeed, the prosecution is only obliged to bring its case within the requirement of clause (m). The standard prescribed is spelt out in clause (ii) of Art. 18.06 which in terms lays down that inorganic matter shall not exceed 1 per cent.

Therefore, when the Public Analyst unreserverdly opines that inorganic matter in the sample was far above the permitted 1 per cent deviation then the report if proved and accepted would establish that constituents are present in the quantity not within the prescribed limit of variability in the article. This opinion would conform to the statute and bring the matter within the net of clause (m). It would then be for the accused to belie the expert testimony or lead any evidence to cast a doubt therein.

(Para 11).

Case referred by a Single Bench/Honb'le the Chief Justice Mr. S. S. Sandhawalia to a Division Bench on 3rd September, 1981 for the decision of an important question of law involved in this case. The Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice Kulwant Singh Tiwana finally decided the case on 26th July, 1982.

Petition under section 401 Cr. P. C. for revision of the order of the court of Shri Daljit Singh Dhaliwal, Additional Sessions Judge, Hoshiarpur, dated the 7th March, 1979 affirming that of Shri Gurjit Singh Khurana, Additional Chief Judicial Magistrate, Hoshiarpur, dated 3rd October, 1978 convicting and sentencing the petitioner.

D. V. Seghal, Advocate with P. S. Rana and B. R. Mahajan, Advocate, *for the Petitioner.*

K. P. Singh Sandhu, Additional A.G., *for Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) The true import of the freshly added clauses (m) of Section 2(ia),—(*vide Act* 34 *of* 1976), of the Prevention of Food Adulteration Act, 1954, is the somewhat meaningful question which had necessitated this reference. Equally significant herein is the issue of the burden of proof under the proviso to clause (m) aforesaid.

2. On February 24, 1978, P.W. Dr. J. K. Bajaj invested with the powers of Food Inspector visited the premises of the petitioner and found him in possession of 5 kilograms of *sabat mash* for public sale, in a tin. A sample of 750 grams thereof was taken in accordance with the statutory provisions against the payment of Rs. 2.55,—*vide* receipt exhibit PB. This sample was divided into three equal parts and put in three clean and dry bottles which were duly labelled, stoppered and fastened. Subsequent analysis of the

sample by the Public Analyst,—*vide* his Report Ex. PD, was to the effect that there were two rat-droppings found by him in the sample and further that the foreign inorganic matter therein was 2.3 per cent against the prescribed limit of 1 per cent. The petitioner was brought to trial before the learned Chief Judicial Magistrate, Hoshiarpur and convicted under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter called 'the Act') and was sentenced to six months' rigorous imprisonment and a fine of Rs. 1,000/-. On appeal, the Additional Sessions Judge Hoshiarpur upheld both the conviction and the sentence of the petitioner.

3. This Criminal Revision had first come up before me sitting singly. Learned counsel for the petitioner had argued that the burden of proof lay on the prosecution itself in the first instance, to show that the variation from prescribed standard was not due to natural causes beyond the control of human agency. The true construction to be placed on clause (m) and the modus of proof for the prescribed standard were also put in issue. In view of the matter being as yet *res integra* and not wholly free from difficulty, the case was referred for an authoritative decision by the Division Bench.

4. Herein the article is undoubtedly primary food to which the proviso to clause (m) would be specifically attracted. 'Primary food' has been defined in Section (xii-a) as follows:—

> "Primary food" means any article of food, being a produce of agriculture or horticulture in its natural form:"

It was not disputed before us that *sabat mash* would come squarely within its definition and, therefore, the proviso clause (m) including the Explanation thereto would be plainly applicable. The issue has, therefore, to be examined against this consensual backgorund.

5. It seems apt to first dispose of a somewhat ingenious contention raised by Mr. D. V. Sehgal, learned counsel for the petitioner with regard to the presence of rodent excreta beyond the prescribed standard. To appreciate the contention, Art. A. 18.06 of Appendix-B of the Prevention of Food Adulteration Rules, 1955 (hereinafter called 'the rules') may be first read:—

> "A. 18.06—
>
> (i) * *

(ii) *Foreign matter*—Foreign matter means any extraneous matter other than foodgrains and will comprise inorganic and organic matter. Inorganic matter which includes sand, gravel dirt, pebbles, stones, lumps of earth, clay and mud shall not exceed 1 per cent whereas in case of paddy, it shall not exceed 3 per cent by weight. Organic matter which includes chaff, straw, weed seeds, inedible grain, oilseeds and other non-poisonous seeds shall not exceed 3 per cent by weight.

(iii) * * * *

(iv) * * * *

(v) *Rodent hair and excreta*—Rodent hair and excreta shall not exceed 5 pieces per kg. of the sample.

(vi) * * * *

On the basis of the aforesaid prescribed standard, counsel highlighted that clause (v) aforesaid exempts five pieces of rodent excreta per kilogram. It was sought to be argued that the sample under analysis being not more than 250 grams, the same either did not conform to the prescription of the statute or in any case it was impermissible to multiply the rodent excerta found in 250 grams of the sample with 4 in order to arrive at the figure for each kilogram. It was contended that this multiplication may lead to anomolous results because foodgrains generally, and in any case *sabat mash* in particular, cannot be made homogeneous and therefore, it may be a matter of accident that in the particular quantity of 250 grams of sample sent to the Public Analyst, the impurities found may be disproportionate to those in the bulk quantity. In essence, the stand was that unless one kilogram of sample was analysed and more than five pieces of rodent excreta were found therein, the infraction of the statute could not be established.

6. The aforesaid contention does credit to the ingenuity of the learned counsel for the petitioner but does not seem to bear the scrutiny of a close logical analysis. What has to be borne in mind is that clause (v) itself, in terms mentions that rodent excreta shall not exceed 5 pieces per kilogram of the sample. The framers of the provision clearly had the sample and its quantum in hind whilst prescribing this standard. Now a

reference to rule 22 of the Rules would show that the legislature had itself prescribed the quantity of sample to be sent to the Public Analyst and item-19 therefore, pertaining to pulses, cereals and the like specifically prescribed 250 grams as the approximate quantity to be supplied to the Public Analyst or the Director. Reading this provision together with clause (v) of A. 18.06, it seems to be patent that the law visualises only a sample of 250 grams for analysis by the Public Analyst on which data the prescribed standard per kilogram is to be arrived at. Once the statutory provision itself lay down a mandate, it is plain that it has to be complied with. Significantly, learned counsel for the petitioner did not challenge the validity or the constitutionality of rule 22 even remotely before us. Once that provision holds the field, it would follow that the sample to be sent to the Public Analyst in the present case had to be only 250 grams approximately. Therefore, to contend that instead of that the sample of one kilogram in quantity should be sent, and the result therefrom would alone be of validity, is in fact contending directly against the mandate of rule 22 of the Rules which has not even been assailed. Indeed, Mr. K. S. Sandhu, learned Additional Advocate General, Punjab, was on plausible ground in contending that under the provisions, the Food Inspector is entitled only to purchase a sample in accordance with law, that is, 750 grams to be divided into three parcels of 250 grams each. He was equally right in his stand that on the petitioner's argument it would be necessary for the Food Inspector in the present case to purchase 3 kilograms in order to make three different sealed parcels thereof in accordance with the statutory provisions whereas he was not entitled as a matter of law to purchase a sample of more than 750 grams.

7. I must, therefore, hold that the aforesaid contention of the learned counsel for the petitioner is untenable in the face of the clear mandate of Art. A. 18.06, Appendix-B of the Rules and has consequently to be rejected.

8. To appreciate the second contention of the learned counsel for the petitioner, it is apt to read Section 2 (ia) (m) as under :—

"

"adulterated" — an article of food shall be deemed to be adulterated —

* * * *

* * * *

(m) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health:

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in the quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency; then such article shall not be deemed to be adulterated within the meaning of this sub-clause.

* * * *

Relying heavily on the aforesaid proviso, Mr D. V. Sehgal had then contended that the burden lies heavily on the prosecution itself to show that the deviation from the prescribed standard in the 'primary food' was not due to natural causes and beyond the control of human agency. The stand was that the prosecution herein had failed to discharge this onus and in particular, it was sought to be argued that the report of the Public Analyst exhibit PD had not specified or identified the nature of the inorganic matter which was opined to be beyond the limit spelt out in clause (ii) of Art. A.18.06. The pointed argument was that the Analyst must in detail particularise the nature of the matter and then establish that the same was inorganic and further that this was in no way the result of natural causes and beyond the control of human agency.

9. On a plain interpretation of clause (m) as a whole, it would appear that the proviso thereto is clearly in the nature of an exception. Indeed, Mr. Sehgal very fairly conceded that it is so. However, I am not basing myself on the concession but on the obvious construction of this provision and the manner in which it has been laid out by the legislature. The main clause (m) prescribes the essentials which would bring the article within the net or the mischief of being adulterated. Plainly enough, the prosecution is, therefore, under an obligation to establish the ingredients thereof and the fact that it falls below the prescribed standard. Once that is done, the proviso is a clear Exception thereto which would exempt or take the matter out of the arena of criminality if its

provisions are duly established. Inevitably, it would follow that the accused person who wishes to take the benefit of this Exception and extricate himself from the net of culpability, has to himself discharge the burden of establishing the ingredients of the proviso. Even otherwise, the larger rule of evidence is that the onus to prove the negative is not to be placed on a party. Clearly enough, the article of 'primary food' herein would be in the custody and possession of the accused person and it is within his special knowledge as to the peculiar natural causes inducing decay etc. (which would make the foodstuff sub-standard and further where these would be beyond the control of human agency) which he wishes to plead as defence. To place this burden on the prosecution would indeed be placing an impossible onus hardly capable of being ever discharged and thus virtually rendering the main provision of clause (m) nugatory. Nor can it be left out of mind that we are dealing herein with an anti-social offence. On principle as well as on the plain construction of this provision, it appears that the burden of establishing the requisites spelt out in the proviso, lie squarely on the accused person and not on the prosecution.

10. What appears to be otherwise plain, seems to be equally so on the solitary precedent which was very fairly brought to our notice by Mr. Sehgal himself. With comendable candour, he brought to our notice *C. Janardhanan Nair* v. *A. Mohammandkunju,* (1), wherein a learned Single Judge of the Kerala High Court has taken a view contrary to what was canvassed on behalf of the petitioner. Therein, whilst construing these very provisions, it was observed as follows :—

> "..... The prosecution cannot be expected to prove that the fall in the standards is not due to natural causes or beyond the control of human agency. It is for the accused who has been dealing with the article in question to adduce proof or rely on other material to show that the fall in standards is solely due to natural causes and beyond the control of human agency. In this regard, no part of the burden of proof rests on the prosecution and the entire burden rests on the defendant ....."

Significantly, Mr. Sehgal, learned counsel for the petitioner did not himself attempt to challenge the rationale in *C. Janardhanan Nair's*

(1) 1981 Crl. L.J. 528.

case (supra). I have already independently arrived at a similar conclusion and on the perusal of this judgment, I am inclined to wholly agree with the line of reasoning therein.

10. To conclude on this aspect on principle, on the construction of the provision and on precedent, it must be held that the burden of establishing the requisites spelt out in the proviso lie squarely on the accused person and not on the prosecution.

11. Again I am not impressed by the argument that the Public Analyst in his report must specify precisely the ingredients and nature of the matter which he describes as inorganic and unless he does so, the prosecution would not have done its duty of establishing its case. Indeed as has been said earlier, the prosecution is only obliged to bring its case within the requirement of clause (m). The standard prescribed is spelt out in clause (ii) of Art. 18.06 which in terms lays down that inorganic matter shall not exceed 1%. Therefore, when the Public Analyst unreservedly opined that inorganic matter in the sample was 2.3 per cent and therefore, far above the permitted 1 *per cent* deviation then the report if proved and accepted would establish that constituents are present in the quantity not within the prescribed limit of variability in the article. This opinion would conform to the statute and bring the matter within the net of clause (m). It would then be for the accused to belie the expert testimony or lead any evidence to cast a doubt thereon. It is worth recalling that the report of the Public Analyst is admissible and may be used as evidence in the trial specifically under Section 293 of the Code of Criminal Procedure. Sub-section (2) thereof empowers the court whenever it thinks fit to summon and examine any such expert as to the subject-matter of his report. The accused person, if he can make out an adequate case, can, therefore, seek by way of cross-examination of the expert to show that what was designated as inorganic matter was not in fact so. Consequently, if an accused person seeks to assail the opinion of the expert and to ascertain precisely the ingredients and the nature of the inorganic matter, then it would be open to him to establish the same by either challenging or belying the report of the expert by way of cross-examination or leading any defence evidence to the contrary. Herein it is common ground that the petitioner did not move his little finger for making any challenge to the opinion of the expert,—*vide* report exhibit PD. No attempt was even made

to have the second sample, in his possession, analysed. In this context it hardly lies in the mouth of the accused to say that the report of the Public Analyst does not satisfy the statutory prescription.

12. Learned counsel for the petitioner raised no other argument whatsoever on merits of the case and indeed it was common ground before me sitting singly as also before us that only the aforesaid legal issues were involved which have been decided against the petitioner. Affirming the findings and the reasonings of the courts below, we up-hold the conviction and the sentence of the petitioner and dismiss this Revision Petition.

N. K. S.

Before S. S. Sandhawalia, C.J. & I. S. Tiwana, J.

GOPAL DUTT,—*Petitioner.*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Revision No. 1294 *of* 1981.

July 27, 1982.

Prevention of Food Adulteration Act (XXXVII of 1954)—*Sections* 11(3) *and* 16(1)(*a*)—*Sample of milk deficient in solids but not in fat—Fat found in excess of the prescribed limit—Accused—Whether guilty of adulteration—Marginal delay in the despatch of the sample to the Public Analyst—Such delay in the absence of proof of prejudice to the accused—Whether material—Provisions of section* 11(3)—*Whether directory.*

Held, that it seems to be plain that no resort can be had to the process of any addition or substraction of the percentages of deviation from the prescribed standard for arriving at a conclusion that the article is not adulterated or that marginal deviation from the prescribed standard could be ignored.

(Para 4)

Jagat Ram *v.* State of Haryana 1981, Chandigarh Law Reporter 684 (Pb. & Haryana).