F. B.

Before P. C. Jain, A.C.J., D. S. Tewatia & I. S. Tiwana, JJ.

BUDH RAM (deceased),—*Petitioner*

versus

THE STATE OF HARYANA,—*Respondent*

Criminal Revision No. 798 of 1980

July 30, 1984.

Prevention of Food Adulteration Act (37 of 1954)—Section 2(i—a), (1) & (m), 2(xii—a), 2(xiii), 7, 10, 16(1) and 16—A—Milk—Whether a primary food—Purchase of a sample by a Food Inspector of tea leaves, sugar or milk from a tea vendor—Such articles not stored for sale as such but for use in the preparation of tea—Such purchase—Whether amounts to a sale by the vendor within the meaning of the Act—Report of the public analyst containing only data regarding the measure of various constituents of the article of food and also the opinion of the analyst—Such report—Whether satisfies the requirements of a report within the meaning of the Act—Trial of offences under section 16(1)—Requirement of a summary trial—Whether mandatory.

Held, that agriculture when considered in its widest amplitude is held to include within its sweep horticulture, forestry, dairy farming etc. It must be assumed that the Legislature knew that the expression 'agriculture' carried both a narrow and a wider meaning. If the Legislature intended to use the expression 'agriculture' in wider sense then it was not necessary to mention the word 'horticulture' also because agriculture in its wider sense included horticulture also. Hence, there is no escape from the conclusion that the expression 'agriculture produce' has been used by the Legislature in a narrow sense as referring to natural produce from plant kingdom cultivated on land for human consumption in contra distinction to the produce of horticulture. In view of the above, the question of live stock, poultry, fishery, silk worms, reared on the land or fed on the produce of land as forming part of 'agricultural produce' does not arise. Such would be the case more tellingly in regard to the further produce derived from the aforesaid. Hence milk is not a primary food within the meaning of section 2(xii—a) of the Prevention of Food Adulteration Act 1954.

(Paras 31 & 59).

Held, that sale of adulterated article of food to the Food Inspector for the purpose of analysis is treated to be a sale for the purpose of this Act and if the article of food so sold on analysis is found to be adulterated then the offence is complete and it is not necessary on the part of the prosecution to prove further that the

article of food sold to the Food Inspector was intended by the vendor for sale. Thus, the purchase by the Food Inspector in terms of section 10 of the Act of a sample of milk or sugar or tea kept by a tea vendor not for sale as such but for being used in preparation of tea for being served to his customers amounts to a sale in terms of section 7 read with section 2(xiii) of the Act.

(Paras 32 & 59)

Held, that a report giving the measure of various constituents and then mentions that such constituents are below the prescribed standard or not present in a ratio prescribed by the law and further mentions the opinion of the analyst that the sample analysed was adulterated cannot be considered to be report containing an inadequate data. Such a report contains not merely the conclusions which would be the opinion that the sample is adulterated but also the data on which such a conclusion is based. Thus, a report of Public Analyst to be considered as admissible in law as such report, does not have to contain information regarding the mode and manner of tests that the Public Analyst had carried out in order to judge whether the sample was adulterated or not. It is enough if he indicates in the report the results of the tests carried out by him.

(Paras 51 & 59)

Held, that the Legislature intended that all offences under section 16(1) of the Act be tried summarily by specially authorised Magistrates, unless such a Magistrate in writing opines that the accused deserved greater dose of sentence and so he be tried in accordance with the procedure prescribed by Criminal Procedure Code. But the Judicial Magistrates can hold summary trial only if they are specially so empowered. So, unless, they are specially so empowered the question of their holding summary trial would not arise. However, once the Judicial Magistrates are specially so empowered, then they cannot discriminate between one case and the other and they shall have to try every offence under section 16(1) in the first instance in a summary way and if a given offence is such that the offender requires to be awarded greater sentence than could be awarded as a result of summary trial, then in that case after passing such an order in writing, could be entitled to try such offenders in accordance with the procedure prescribed by the Code for the given offence. Hence, the holding of Summary trial of offences under section 16(1) of the Act is not mandatory until such time Judicial Manistrates are specially empowered in this regard. Once they are so empowered, then every case under section 16(1) in the first instance shall mandatorily be tried in a summary way unless the Magistrate for the reasons mentioned in the said provision considered it necessary to try the offender in accordance with the procedure prescribed by the Criminal Procedure Code.

(Paras 58 & 59)

1. State of Haryana *v.* Ramesh
   1979 C.L.R. (Pb. and Hary.) 25.

2. State of Haryana *v.* Om Parkash
1983 Cr. L.T. 107
3. State of Punjab *v.* Ramesh Kumar
(1982) IX Cr. L.T. 377
4. State of Haryana *v.* Sewa Ram
(1982) IX Cr. L.T. 378

OVERRULED.

State of Maharashtra *v.* Shanker of Shanker Vilas 1979(1) F.A.C. 189.

Dissented from.

(*Case referred by Hon'ble Single Judge Hon'ble Mr. Justice M. M. Punchhi to a larger Bench preferably a Full Bench, to settle the important questions of law involved in this case on 8th October,* 1982. *The Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice M. M. Punchhi again referred to the larger Bench on 2nd February,* 1984. *The larger Bench consisting of Hon'ble the Acting Chief Justice Mr. Prem Chand Jain and Hon'ble Mr. Justice D. S. Tewatia, and Hon'ble Mr. Justice I. S. Tiwana after answering the relevant questions of law, again referred the case to the appropriate Bench for deciding the case on merits on 30th July,* 1984. *The Hon'ble Mr. Justice K. P. S. Sandhu finally decided the case on 22nd August,* 1984).

Petition under section 401 *Cr.P.C. for revision of the order of the court of Shri O. P. Gupta, Additional Sessions Judge, Narnaul, dated 8th July,* 1980, *affirming that of Shri Tarlochan Singh, Judicial Magistrate, Ist Class, Rewari, dated the 28th May,* 1979, *convicting and sentencing the petitioner.*

Gopi Chand, Advocate, *for the Petitioner.*

I. S. Balhara, Advocate, *for AG* (*Haryana*).

JUDGMENT

D. S. Tewatia, J.

(1) Criminal Revision No. 798 of 1980 in the first instance came up for hearing before Punchhi, J. who referred it to the larger bench by his order dated 8th October, 1982. The case then came up for hearing before a Division Bench to which besides Punchhi, J. I was a party. We referred the case to the larger Bench by our order dated 2nd February, 1984.

(2) Criminal Revision No. 791 of 1983 which the admitting bench ordered to be heard along with Criminal Revision No. 798 of 1980 came to be placed before the Division along with the same and in view of the reference order in the latter revision petition the former too came to be referred to the larger Bench.

(3) Criminal Revision No. 1347 of 1982 was referred to the larger Bench by Bains, J. and the Division Bench comprising of Prem Chand Jain, Acting Chief Justice and I. S. Tiwana, J.,—*vide* their order dated 30th January, 1984, referred it to a still larger Bench. That is how all the three aforesaid criminal revisions are placed before us for decision of some legal questions only. Since the questions of law that require decision are identical in all the three revision petitions, a common judgment is proposed.

(4) The questions of law that arise for consideration of this larger Bench in the said three revision petitions when precisely formulated would read:—

1. Whether the 'milk' is primary food within the meaning of section 2(xiia) of the Prevention of Food Adulteration Act (hereinafter referred to as the Act)?

2. Whether the purchase by Food Inspector in terms of section 10 of the Act of a sample of milk or sugar or tea kept by a tea vendor not for sale as such but for being used in preparation of tea for being served to his customers amounts to a sale in terms of the provisions of section 7 read with section 2(xiii) of the Act?

3. Whether the report of the Public Analyst which merely contains the data regarding the measure of various constituents of the given article of food and the opinion whether the given sample was adulterated or not can satisfy the legal requirement of a report of a Public Analyst?

4. Whether the provision of section 16-A of the Act envisaging trial of offences under section 16(1) of the Act in the first instance in a summary way is mandatory in character?

(5) For the purpose of viewing questions Nos. 1 to 3 posed above in the perspective of facts, we may refer to the relevant facts in Criminal Revision No. 798 of 1980, which can be stated thus:

(6) Food Inspector, Rewari, Shri S. K. Sikri, along with the Senior Medical Officer Incharge Civil Hospital, Rewari, and one Om Parkash went to the shop of Budh Ram petitioner, a tea vendor,

on 10th October, 1977, at about 7.05 a.m. After giving notice in writing as envisaged under the Act, the Food Inspector purchased from the petitioner 600 ml. of milk for analysis, in lieu of Rs. 1.30 from a bucket containing 4 litres of cow's milk. The sample sent to the Public Analyst as per report of the Public Analyst dated 25th October, 1977, in Form III as provided in Rule 3 of the Prevention of Food Adulteration Rules, 1974 (hereinafter referred to as the Rules) contained milk fat 2.2 per cent and milk solids not fat 7.1 per cent. The milk fat was opined to be deficient by 45 per cent and milk solids not fat by 14 per cent of the minimum prescribed standards. The petitioner was tried by Judicial Magistrate Ist Class, Rewari, who found him guilty of offence under section 16(1) (a) (i) of the Act and sentenced him to six months' rigorous imprisonment and fine of Rs. 1,000, in default three months R.I. That sentence was the minimum imposable under section 16(1) (a) (i) of the Act. Petitioner's appeal failed which led him to file the present revision petition in this Court.

(7) The concept of primary food came to be introduced in the Act with effect from 1st April, 1976, by Act No. 34 of 1976 known as Prevention of Food Adulteration (Amendment) Act of 1976 (hereinafter referred to as the Amendment Act).

(8) The Amendment Act, *inter alia*, added two sub-clauses 'l' and 'm' to clause (ia) of section 2 which defines the expression 'adulterated'. The newly added sub-clauses are in the following terms:—

> 2(ia) "adulterated"—an article of food shall be deemed to be adulterated:—
>
> (l) 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, which renders it injurious to health
>
> (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 of purity of the article, being primary food, has fallen below the prescribed

standards or its constituents are present in 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."

(9) Sub-clause (xii-a) which defines expression 'primary food' was added by the Amendment Act after sub-clause (xii) and it reads:—

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

(10) The prohibitory provision in the Act is section 7 of the Act which too had undergone amendment, *inter alia,* with the addition of an explanation at the end. Section 7 after so amended reads as under:—

7. *Prohibition of manufacture, sale etc. of certain articles of food.*—No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute—

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;

(iv) any article of food the sale of which is for the time being prohibited by the Food (health) Authority (in the interest of public health);

(v) any article of food in contravention of any other provision of this Act or of any rule made thereunder; or

(vi) any adulterant.

Explanation.—For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded

food or any article of food referred to in clause (iii) or clause (iv) or clause (v) if he stores such food for the manufacture therefrom of any article of food for sale.

(11) Section 10 which enumerates the powers of Food Inspector too has been amended as by a proviso to sub-section (2) of section 10 he has been prohibited from taking a sample of any article of food being primary food if the same was not intended for sale as such food. Sub-section (1) and sub-section (2) of section 10 which are relevant for the controversy after amendment read as under:—

10. *Powers of Food Inspectors.*—(1) A Food Inspector shall have power—

(a) to take samples of any article of food from—

(i) any person selling such article;

(ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee;

(iii) a consignee after delivery of any such article to him; and

(b) to send such sample for analysis to the public analyst for the local area within which such sample has been taken;

(c) with the previous approval of the Local Health Authority having jurisdiction in the local area concerned, or with the previous approval of the Food Health Authority to prohibit the sale of any article of food in the interest of public health.

Explanation.—For the purposes of sub-clause (iii) of clause (a) "consignee" does not include a person who purchases or receives any article of food for his own consumption.

(2) Any food inspector may enter and inspect any place where any article of food is manufactured or stored for sale, or *stored for the manufacture of any other article*

of food for sale, or exposed or exhibited for sale or where any adulterant is manufactured or kept, and take samples of such article of food or adulterant for analysis :

Provided that no sample of any article of food, being primary food, shall, be taken under this sub-section if it is not intended for sale as such food.

Section 16 which prescribes penalties too has been amended by the Amendment Act by, *inter alia,* adding the following proviso to sub-section (1)—

"Provided that—

(i) if the offence is under sub-clause (i) of clause (a) and is with respect to an article of food, being primary food, which is adulterated due to human agency or is with respect to an article of food which is misbranded within the meaning of sub-clause (k) of clause (ix) of section 2; or

(ii) if the offence is under sub-clause (ii) of clause (a) but not being an offence with respect to the contravention of any rule made under clause (a) or clause (g) of sub-section (1-A) of section 23 or under clause (b) of sub-section (2) of section 24.

the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term which shall not be less than three months but which may extend to two years, and with fine which shall not be less than five hundred rupees:

Provided further that if the offence is under sub-clause (ii) of clause (a) and is with respect to the contravention of any rule made under clause (a) of clause (g) of sub-section (1-A) of section 23 or under clause (b) of sub-section (2) of section 24, the court may, for any adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees.

(12) The relevancy of a finding that milk constitutes 'primary food' to the case of the petitioner becomes apparent from a look to the proviso added to section 16 and in a general way from a look to the amendment made to the definition of 'adulteration' and amendment made to section 7 and section 10 of the Act.

(13) The High Courts have not returned a uniform answer to the question whether 'milk' constitutes primary food as would be presently shown. In point of time Kerala High Court's view comes first. Poti, J. as he then was in *State of Kerala* vs. *Abdul Kader* (1) has subscribed to the view that milk constitutes primary food in terms of section 2(xiia) of the Prevention of Food Adulteration Act. A Division Bench of Gujarat High Court in *Natvarlal C. Shah Food Inspector* v. *Prabhatbhai Punjabhi* (2) too has endorsed the above view of Poti, J.

(14) Nearer home, this Court has taken consistently a view contrary to the Kerala and Gujarat High Courts. The judgments in point are *Kishen Lal* v. *State of Punjab* (3), *State of Haryana* v. *Jagdhish* (4). Allahabad High Court too in *Megh Singh* v. *State* (5) *and Mumtaz Khan* v. *State of U.P.* (5-A) has taken a similar stand.

(15) With respect, we find ourselves unable to concur in the view which the Kerala High Court in *Abdul Kader's case* (supra) and the Gujarat High Court in *Natvarlal's case* (supra) has taken.

(16) Poti, J. for the sustenance of his view has primarily drawn upon the ratio of Madras High Court judgment in *I. T. Commr.* v. *Sundara Mudaliar* (6) and Supreme Court decision in *Income Tax Commissioner* v. *Benoy Kumar* (7). Gujarat High Court's view is based upon his view and that of their Lordships in *Benoy Kumar's case* (supra).

(17) The Supreme Court in *Benoy Kumar's case* (supra) speaking through Bhagwati, J. who delivered the opinion for the Bench

(1) 1978 (II) F.A.C. 300.
(2) 1980 (I) F.A.C. 489.
(3) 1982 F.A.J. 361.
(4) 1983 (II) F.A.C. 331.
(5) 1979 (I) F.A.C. 59.
(5A) 1982(I) F.A.C. 96.
(6) A.I.R. 1950 Madras 566.
(7) A.I.R. 1957 S.C. 768.

has counselled against interpreting the expression 'agriculture' in its wider sense as would be presently shown.

(18) The question that arose before their Lordships in *Binoy Kumar's case* (supra) was whether the income derived from the Sal and Piyasal trees in the forest owned by the assessee which was originally a forest of spontaneous growth, not grown by the aid of human skill and labour, but on which 'forestry operations' described in the statement of case had been carried on by the assessee involving considerable amount of expenditure of human skill and labour is agricultural income within the meaning of section 2(i) and as such exempt from payment of tax under section 4(3) (viii) of the Indian Income-tax Act.

(19) Section 2(1) of the Act defines agricultural income and the relevant portion thereof reads as under:—

"(1) 'agricultural income' means :

(a) any rent or revenue derived from land which is used for agricultural purposes, and is either assessed to land-revenue in the taxable territories or subject to a local rate assessed and collected by officers of the Government as such:

(b) any income derived from such land by—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent in kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him in respect of which no process has been performed other than a process of the nature described in sub-clause (ii)....."

(20) Since there was no definition of the word 'agriculture' or 'agriculture purpose' in the Act, so it became necessary to determine as to what was the connotation of the said terms. Their

Lordships felt that since the terms 'agriculture' and 'agricultural purpose' had not been defined in the Indian Income Tax Act, so out of necessity one shall have to fall back upon general sense in which the said expression had been understood in common par lance. 'Agriculture' in its root sense, their Lordships observed, means ager, a field and culture, cultivation, cultivation of field which of course implied expenditure of human skill and labour upon land. Their Lordships were aware that the terms 'agriculture' and 'agricultural purpose' had acquired a wider meaning which is to be found in the various dictionary meaning ascribed to it. Their Lordships then quoted from various dictionaries the meaning of expression 'agriculture' or 'agricultural purpose' after being fortified by the following observations of Lord Coleridge in R. v. Peters 7(A) :

> "I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well known rule of Courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books."

and Cozens-Harby, M.R. in *Camden* (Marquis) v. *Inland* Revenue Commrs., (7-B) :

> "It is for the Court to interpret the statute as best it may. In so doing the Courts may no doubt assist themselves in the discharge of their duty by any literary held they can find, including of course the consultation of standard authors and reference to well known and authoritative dictionaries."

(21) After referring to the various dictionary meaning of the term 'agriculture' their Lordships then in their quest for the true meaning of the term 'agriculture' turned their attention to various decided cases.

(22) From the ratio of the decided cases which were brought within the scrutiny of their Lordships and the dictionary meaning of the term 'agriculture' which was referred to in those cases, the resultant position that emerged was that the term 'agriculture' in the narrow sense when applied in relation to agricultural operations carried on the land meant cultivation of the land in the

(7-A) (1886) 16 Q.B.D. 636.

(7-B) 1914—1 K.B. 641.

strict sense of the term, meaning thereby the tilling of the land, sowing of the seeds, planting and similar operations on the land which their Lordships have categorised as *'basic operations'*. The wider meaning of the term 'agriculture' in terms of agricultural operations however soon come to include such 'agricultural operations' as are performed after the produce sprouts from the land for example, weeding, digging the soil, removal of undesirable under growth and all other operations which foster the growth, preserve the same not only from insects and pests but also from depredation from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market. These later operations came to be categorised by their Lordships as *'subsequent operations'*. The term 'agriculture' in relation to produce in the narrower sense was restricted to the food production for human beings and beasts. In the wider sense the term 'agricultural produce' came to include not only such products as grains and vegetables of fruits which were necessary for the sustenance of human beings but also included plantations, groves or grass and pasture for consumption of beasts or articles of luxury such as betel, coffee, tea, spices, tobacco etc. or commercial crops like cotton, flax, jute, hemp, indigo etc.

(23) The term 'agriculture' in its widest sense came to include all activities in relation to the land or having connection with the land including breeding and rearing of livestock, dairy farming butter and cheese farming, poultry farming etc.

(24) From amongst the decided cases their Lordships then pointed out that the narrow construction on the term 'agricultrue' was adopted by Ghashyam Ayyangar, J. in *Murugesa Chetti* v. *Chinnathambi Goundan* (8) and the widest connotation thereof was advocated by Reilly J. in *Chandrasekhara Bharathi Swamigal* v. *Duraisami Naidu* (9) and by Vishwanatha Sastri, J. in *Commr. of Income-tax, Madras* v. *K. E. Sundara Mudaliar* (10).

(25) Their Lordships also noted judgments which understood the term 'agriculture' as including all activities in relation to land, (*Emperor* v. *Alexandar Allan* (11). The question that arose in that

(8) I.L.R. 24 Mad 421.
(9) A.I.R. 1931 Mad 659.
(10) A.I.R. 1950 Mad 566.
(11) I.L.R. 25 Mad 627.

case was as to whether the land was used solely for agricultural purpose. For his conclusion that the term 'agriculture' included the using of land for rearing livestock reliance was placed upon the definition of agriculture term given in Murray's New Oxford Dictionary. Vishwanatha Sastri, J. too relied upon the wider definition of the term 'agriculture' of Murray's New Oxford Dictionary and Webster's Dictionary and held as under:—

> "Pasture land used for the feeding and rearing of livesstock is land used for agricultural purposes : ILR 25 Mad 627 at pp 629, 630 (V). Rearing of livestock such as sows, buffaloes, sheep and poultry is included in "husbandry". These animals are considered to be the products of the soil, just like crops, roots, flowers and trees, for they live on the land and derive their sustenance from the soil and its produce : 1938-6 ITR 502 at p. 509 (AIR 1938 Rang 260 at p. 261) (FB) (X); 1833 A C 618 (HL) 638 (Z). It is therefore not legitimate in my opinion to confine the word "agriculture" to the cultivation of an open field with annual or periodical crops like wheat, rice, ragi, cotton, tabacco, jute etc. Casuarina is usually raised on dry lands of poor quality and it is usual to find the same land used alternatively for the cultivation of ordinary cereal crops like groundnut, gingerlly, chotam, kambu, etc. and for the raising of Casuarina plantations. The land bears the dry assessment whatever be the nature of the crop raised".

(26) Cautioning in regard to the acceptance of narrower or wider meaning of the term 'agriculture' their Lordships observed that whether the narrower or the wider sense of the term 'agriculture' should be adopted in a partciular case depends not only upon the provisions of the various statutes in which the same occurs but also upon the facts and circumstances of each case. The definition of the term in one statute did not afford a guide to the construction of the same term in another statute and the sense in which the term had been understood in the several statutes did not necessarily throw any light on the manner in which the term should be understood generally.

(27) In the light of above test their Lordships in *Benoy Kumar's case* (supra) held that for a produce to be considered 'agricultural produce' it was not enough that the produce had been raised by

employing agricultural operation as had been categorised 'subsequent operations'. Their Lordships held that unless "basic operations" had been taken in raising the produce on the land the said produce could not be considered to be the agricultural produce. Their Lordships were prepared to accept the widening of the meaning of the term 'agriculture' to include within its scope the 'subsequent operations' regardless of the nature of the products raised on the land. These products could be grains or vegetables or fruits or plantations or articles of luxury or commercial crops already indicated.

(28) Their Lordships then focussed attention on the question as to whether there was any warrant for the further extension of the term 'agriculture' to all activities in relation to the land or having connection with the land including breeding and rearing of livestock, dairy farming, butter and cheese making, poultry, poultry farming etc., which extension is based on the dictionary meanings of the term and the definitions of 'agriculture' collated in Wharton's Law Lexicon as also the dicta of Lord Cullen and Lord Wright in 1933 A C 618 (HL) 638 (Z). Their Lordships apparently disagreeing with the view based upon the aforesaid dictionary meaning of the term 'agriculture' and subscribed to by Derbyshire, C.J. in Moolji Sicka & Co. (11-A) and Vishwanatha Sastri, J. in *K. E. Sundara Mudaliar's case* (supra) gave the following answer:—

> "We are, however, of opinion that the mere fact that an activity has some connection with or is in some way dependent on land is not sufficient to bring it within the scope of the term and such extension of the term 'agriculture' is unwarranted.
>
> ** ** ** ** **
>
> There is no warrant at all for extending it to all activities which have relation to the land or are in any way connected with the land. The use of the word agriculture in regard to such activities would certainly be a distortion of the term."

(29) Their Lordships then observed that there is present all throughout, the basic idea that there must be at the bottom of it

(11-A) (1939) VII—I.T.R. 493.

cultivation of land, in the sense of tilling of the land, sowing of the seeds, planting and similar work done on the land itself. *In other words, their Lordships held that the produce so raised would alone be deemed as agricultural produce.*

(30) A comparison of the definition of the 'agricultural income' given in section 2(1) of the Income Tax Act and the definition of 'primary food' already reproduced would show that even the limited extended meaning of the term 'agriculture' or 'agricultural produce' adopted by Bhagwati, J. in *Binoy Kumar's case* (supra) would not be warranted acceptance in the case in hand much less the acceptance of still wider meaning of the said term so as to include dairying, poultry etc. with the expression 'agricultural produce' which extension Bhagwati, J. had frowned upon as already observed.

(31) Agriculture when considered in its widest amplitude is held to include within its sweep horticulture, forestry, dairy farming etc. It must be assumed that the Legislature knew that the expression 'agriculture' carried both a narrow and a wider meaning. If the Legislature intended to use the expression 'agriculture' in wider sense then it was not necessary to mention the word 'horticulture' also because agriculture in its wider sense included horticulture also. Hence, there is no escape from the conclusion that the expression 'agriculture produce' has been used by the Legislature in a narrow sense as referring to natural produce from plant kingdom cultivated on land for human consumption in contra distinction to the produce of horticulture. In view of the above, the question of live stock, poultry, fishery, silk worms, reared on the land or fed on the produce of the land as forming part of 'agricultural produce' does not arise. Such would be the case more tellingly in regard to the further produce derived from the aforesaid. Hence, 'milk' cannot be considered to be primary food.

(32) Coming now to the second proposition it may be observed that sale of adulterated article of food to the Food Inspector for the purpose of analysis is treated to be a sale for the the purposes of this Act and if the article of food so sold on analysis is found to be adulterated then the offence is complete and it is not necessary on the part of the prosecution to prove further that the article of food sold to the Food Inspector was intended by the vendor for sale. In this regard following observation of their Lordships in

Food Inspector, Calicut v. *C. Gopalan,* (12) can be usefully noticed:—

> "To sum up we are in agreement with the decisions in AIR 1964 All 199 and AIR 1965 Mad. 98 to the extent to which they lay down the principle that when there is a sale to the Food Inspector under the Act of an article of food, which is found to be adulterated, the accused will be guilty of an offence punishable under S. 16(1) (a) (i) read with section 7 of the Act. We further agree that the aritcle of food which has been purchased by the Food Inspector need not have been taken out from a larger quantity intended for sale. We are are also of the opinion that the person from whom the article of food has been purchased by the Food Inspector need not be a dealer as such in that article. We are not inclined to agree with the decisions laying the contrary propositions."

(33) The facts of the case before their Lordships were that a sample of sugar was taken from a tea stall by Food Inspector and husband and wife, who were Manager and owner respectively thereof were prosecuted when the sample was found to be adulterated. The District Magistrate, who in the first instance dealt with the case though found as a fact that the sample purchased by the Food Inspector was adulterated but he acquitted the accused on the ground that in order to hold that the accused had committed an offence, it must be established that the accused were selling sugar as such in the tea stall which was not the fact in that case. What the accused were selling was tea and the sugar was being kept for tea which was sold to the customers and that the sugar as such was not sold at the tea stall of the accused. The Kerala High Court on an appeal sustained the acquittal of the accused on the very ground on which they were acquitted by the District Magistrate. On an appeal to the Supreme Court, their Lordships reversed the judgment of High Court as also of the District Magistrate.

(34) Reliance is, however, placed on behalf of the petitioner on a later decision of Supreme Court rendered in *Muncipal Corporation of Delhi* v. *Laxmi Narain Tandon etc.* (13). In that case their

(12) A.I.R. 1971 S.C. 1725.
(13) A.I.R. 1976 S.C. 621.

Lordships held that expression 'store' used in Section 7 of the Act as meaning 'storing for sale' and further held that storing of an adulterated article of food for purposes other than for sale would not constitute an offence under section 16(1) (a).

(35) In my opinion, ratio of *Laxmi Narain Tandon's case* (supra) in no way would derogate from the ratio of the decision of *C. Gopalan's case* (supra) because the selling of an adulterated food of article per se constitutes an offence as does the storing of an adulterated article of food. In any case, the construction placed by their Lordships on the word 'store' in *Laxmi Narain Tandon's case* (supra) is of least help to a dealer or holder of adulterated articles of food in store if that article of food was intended to be used for manufacturing another article of food which was intended to be sold as would be presently seen in the following paragraph.

(36) In *Laxmi Narain Tandon's case* (supra) samples of ice-cream, milk, curd and butter were taken by the Food Inspector for analysis from M/s Associated Hotels of India Ltd. The defence taken on behalf of the accused was that the sold articles of food which were stored were not intended for sale. The prosecution case on the other hand was that the articles of food in question were used for preparing of other articles of food which were served to customers. The Full Bench of Delhi High Court held that the food made available to a resident customer in a hotel by a hotelier against a consolidated charge for all the services and amenities does not amount to sale of article of food for the purpose of the Prevention of Food Adulteration Act. Their Lordships reversed the said decision and held that supply or offer of food by a hotelier to a customer when consolidated charge is made for residential accommodation and other amenities, including food, amounts to 'sale' of an article of food for the purposes of the said Act. When judged in the light of the decision of their Lordships in *Laxmi Narain Tandon's case* (supra) as to what amounts to sale, there is no escape from the conclusion that milk kept in store by a tea vendor for being used for preparation of tea to be served to his customers would be treated to have been stored for the purpose of selling.

(37) We may now notice the judgments in which the ratio of *Laxmi Narain Tandon's case* (supra) has been followed.

(38) A Division Bench of this Court in *State of Haryana* v. *Ramesh* (14) following the ratio of *Laxmi Narain Tandon's case* (supra) held that where a person did not store a particular commodity for sale in normal course of his business which he did not voluntarily sell, it would not be open to the Food Inspector to insist that the said person should sell a part of that commodity to him for the purpose of the Act. Even if such a commodity is found to be sub-standard, the penal consequences of the Act would not visit him.

(39) In this case a sample of Khandsari sugar was purchased by the Food Inspector from a Halwai. The trial Court held that the accused was not carrying on the business of sale of sugar, so the purchase of sugar made by the Food Inspector did not come within the definition of 'sale' as mentioned in section 2(xiii) of the Act. The appeal preferred against that judgment by the State was dismissed by the Division Bench. The Division Bench did so even though *Mangal Das* v. *State of Maharashtra* (15) was cited before it for holding to the contrary.

(40) A Judge of Bombay High Court in *State of Maharashtra* v. *Shankar of Shankar Vilas, Hindu Hotel* (16) understood the ratio of *Laxmi Narain Tandon's case* (supra) in the similar way as did the Division Bench of this Court already noted. The learned Judge felt that *Laxmi Narain Tandon's case* (supra), which was decided by a larger Bench of three Judges, in view of the ratio of the decision in *Union of India* v. *K. R. Subramanian* (17) would command acceptance over earlier view reported in *Food Inspector, Calcitut* v. *Cherukattil Gopalan,* (18) wherein their Lordships had specifically observed that it was not necessary for a person to be a dealer in particular to come within the mischief of the Act.

(41) In this case a sample of milk was taken from a restaurant. The trial Court acquitted the accused by holding that the milk was not meant for sale but only for being used as ingredient of tea

(14) 1979 C.L.R. (Punjab and Haryana) 25.
(15) A.I.R. 1966 S.C. 128.
(16) 1979(1) F.A.C. 189.
(17) 1976 (3) S.C.C. 671.
(18) 1972 F.A.C. 9.

which he was selling. The appeal against the said acquittal by the State was dismissed by the High Court.

(42) A Division Bench of this Court in *State of Haryana* v. *Om Parkash* (19) stuck to the view expressed in *Ramesh's case* (supra).

(43) In this case a sample of milk was taken from a tea vendor. The defence of the accused was that he was not selling the milk as such but the milk was meant to be used for preparing tea to be served to his customers.

(44) Two further Division Bench decisions of this Court, namely, *State of Punjab* v. *Ramesh Kumar,* (20) and *State of Haryana* v. *Sewa Ram,* (21) in short judgments of one paragraph each, too have subscribed to the same view.

(45) A Division Bench of this Court in *Municipal Committee, Amritsar* v. *Lachhman Dass,* (22) however, without noticing *Laxmi Narain Tandon's case* (supra) following the ratio of *Mangal Dass's case* (supra) held that the sale of any article of food for analysis amounts to sale and that it was not necessary to prove that the accused also sold that article of food to others and, therefore, the plea taken by the accused-respondent that he did not sell milk but sold tea could not afford him any protection. It was further held that it was enough to establish that he had sold milk to the Food Inspector who had notified the purpose of the purchase of milk.

(46) In my opinion, the ratio of *Laxmi Narain Tandon's case* (supra) did not warrant the view which this Court in *Ramesh's case* (supra) and Bombay High Court in *Shankar of Shankar Vilas, Hindu Hotel's case* (supra) had taken. The learned Judges who decided those cases, it appears, merely focussed their attention upon the ratio of that decision in so far as it related to the meaning of the expression 'store' and did not advert to the view expressed by their Lordships in regard to the meaning of the word 'sale'. Their Lordships in that case held, as already discussed above, that the articles of food of which the sample had been taken in that

(19) (1983) Cr. L.T. 107.
(20) (1982) IX Cr. L.T. 377.
(21) (1982) IX Cr. L.T. 378.
(22) 1978(1) F.A.C. 210.

case were to be used in preparation of other food articles which were intended to be sold and, therefore, the said articles of food kept in store satisfied the definition of the expression 'store' given by their Lordships in the earlier part of the judgment. Their Lordships set aside the acquittal and remitted the case for retrial. I am, therefore, of the view that *Ramesh's case* (supra), *Om Parkash's case* (supra), *Ramesh Kumar's case* (supra), *Sewa Ram's case* (supra) and *Shankar of Shankar Vilas Hindu Hotel's case* (supra), with respect, do not lay down the correct law, and therefore, these decisions, expecting *Shankar of Shankar Vilas Hindu Hotel's case* (supra); are hereby overruled and in any case these decisions and the view expressed by the Supreme Court in *Laxmi Narain Tandon's case* (supra) in regard to the meaning of the word 'store' would be of no avail as would be presently shown in cases arising after 1st April, 1976.

(47) It appears that the construction placed on the word 'store' used in section 7 by their Lordships in *Laxmi Narain Tandon's case* (supra) ran counter to the legislative intent and it was for that reason that by the amending Act the Legislature not only added the following explanation to section 7 but also added "or stored for the manufacture of any other article of food for sale" in sub-section (2) of section 10 which referred to the sample taking powers of the Food Inspector :

> "Explanation:—For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in clause (iii) or clause (iv) or clause (v) if he stores such food for the manufacture thereform of any article of food for sale."

(48) In view of the above the construction placed by their Lordships in *Laxmi Narain Tandon's case* (supra) on the expression 'store' used in section 7 would have no relevance to cases arising after Ist April, 1976, the date from which, *inter alia,* the aforesaid amendment of sections 7 and 10 had become operative.

(49) Now coming to the third proposition, it may be observed that the matter stands concluded authoritatively by their Lordships in *Mangaldas's case* (supra) and the following observations

of their Lordships in this regard are in point:—

> "Mr. Ganatra then contended that the report does not contain adequate data. We have seen the report for ourselves and quite apart from the fact that it was not challenged by any of the appellants as inadequate when it was put into evidence, we are satisfied that it contains the necessary data in support of the conclusion that the sample of turmeric powder examined by him showed adulteration. The report sets out the result of the analysis and the tests performed in the public health laboratory. Two out of three tests and the microscopic examination revealed adulteration of the turmeric powder. The microscopic examination showed the presence of pollen stalks. This could well be regarded as adequate to satisfy the mind of a Judge or Magistrate dealing with the facts."

(50) Their Lordships had again an occasion to examine such a contention in *Dhian Singh* v. *Saharanpur Municipality* (23) and again stuck to the earlier view expressed in *Mangaldas's case* (supra). Their Lordships observed that the correct view of the law on the subject is as stated in the decision of the Allahabad High Court in *Nagar Mahapalika of Kanpur* v. *Sri Ram,* (24) wherein it is observed:—

> "that the report of the public analyst under section 13 of the Prevention of Food Adulteration Act, 1954, need not contain the mode or particulars of analysis nor the test applied but should contain the result of analysis namely, data from which it can be inferred whether the article of food was or was not adulterated as defined in section 2(1) of the Act.

(51) Hence in my view a report giving the measure of various constituents and then mentions that such constituents are below the prescribed standard or not present in a ratio prescribed by the law and further mentions the opinion of the analyst that the sample analysed was adulterated cannot be considered to be a report containing an inadequate data. Such a report contains not merely

(23) A.I.R. 1970 S.C. 319.
(24) A.I.R. 1964 All. 270.

the conclsions which would be the opinion that the sample is adulterated but also the data on which such a conclusion is based.

(52) In order to deal with the 4th and last proposition, it would be in the first instance necessary to notice the statutory provision of section 16-A which is in the following terms:—

> "16-A. *Power of Court to try case summarily*—Nothwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) all offences under sub-section (1) of section 16 shall be tried in a summary way by a Judicial Magistrate of the First Class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of Sections 262 to 265 (both inclusive of the said Code shall, as far as may be, apply to such trial:—
>
> Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year.
>
> Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code."

(53) The only decision, to which our attention has been invited, that has examined the provisions of section 16A is the Supreme Court decision rendered in *T. Barai* v. *Henry Ah Hoe and Another* (25). That was a case in which the question that arose was as to whether the accused was to be tried for the offence under section 16(1) (a) read with section 7 of the Prevention of Food Adulteration Act as amended by the Prevention of Adulteration of Food,

(25) (1983) 1 S.C. Cases 177.

Drugs and Cosmetics (W. B. Amendment) Act of 1973, or he had to be tried summarily in view of the provisions of section 16A, which was introduced by the Parliament in the Food Act with effect from Ist April, 1976 by Amending Act 34 of 1976. The provisions of section 16A became operative after the prosecution against the accused in that case had been launched in August 16, 1975. The Amending Act had prescribed, *inter alia,* three years rigorous imprisonment as the maximum sentence for an offence under section 16(1) (a) and the further question that arose for consideration in that case was as to whether the said amendment had the effect of reducing the maximum sentence of life imprisonment as provided by the West Bengal amendment of section 16(1) (a) and if that be so then as to whether the pending proceedings would be governed by the procedure under section 16A.

(54) Their Lordships held that the Amending Act 34 had impliedly repealed the West Bengal Amending Act with effect from Ist April, 1976.

(55) Before the trial Magistrate, in that case, a preliminary objection was taken that he was not competent to try the case as the case was triable by Court of Session. The trial Magistrate sustained the objection in view of the Single Bench decision of the Calcutta High Court in *B. Manna* v. *State of W. B.* (26). The matter was taken to the Division Bench which disagreeing with the decision in *B. Manna's case* (supra) held that after the Central amendment came into force with effect from Ist April, 1976, all pending proceedings for trial of offences punishable under section 16(1)(a) as amended by West Bengal Amendment Act which had not been concluded, would cease to be governed by the West Bengal Amendment Act and would come within the purview of the Act as amended by the Central Amendment Act and therefore, such offences even though committed prior to such amendment were triable in accordance with the procedure prescribed by Section 16-A of the Act as amended by the Central Amendment Act. The Bench accordingly set aside the order of the trial Magistrate and directed him to proceed with the trial. The Division Bench judgment then came to be challenged before the Supreme Court. The Supreme Court dismissed the appeal.

(26) (1977) 81 C.W.N. 1075.

(56) In the judgment there is no discussion as to the mandatory or directory character of the provision of Section 16-A. Their Lordships were primarily concerned in determing as to whether the central amendment repealed the West Bengal Amendment Act in so far as the quantum of sentence is concerned.

(57) In view of the above, the question of construction of Section 16-A is at large and shall have to be attempted on first principles. The Legislature, in my view, introduced summary trial primarily for the reason to enable the Courts to expeditiously bring to book the offenders. Only a quick retribution can serve the objective of deterring the would-be offenders from committing the given crime which was not only highly unsocial in character but it exhibited the tendency of assuming menacing proportions. Since the summary trial inherently happens to be less fair than regular trial the Legislature proceeded to provide one benefit to offenders who are tried summarily that in their case the maximum dose of sentence would not increase more than one year rigorous imprisonment but if the offence was such that it require a dose of sentence higher than what could be awarded as a result of summary trial the Legislature authorised the Magistrate to say so in writing and then proceed to try the offender in accordance with the procedure prescribed by the Criminal Procedure Code.

(58) From the above, it is quite clear that the Legislature intended that all offences under section 16(1) of the Act be tried summarily by specially authorised Magistrates, unless such a Magistrate in writing opines that the accused deserved greater dose of sentence and so he be tried in accordance with the procedure prescribed by Criminal Procedure Code. But the Judicial Magistrates can hold summary trial only if they are specially so empowered. So, unless they are specially so empowered the question of their holding summary trial would not arise. However, once the Judicial Magistrates are specially so empowered, then they cannot discriminate between one case and the other and they shall have to try every offence under section 16(1) in the first instance in a summary way and if a given offence is such that the offender requires to be awarded greater sentence than could be awarded as a result of summary trial, then in that case after passing such an order in writing, would be entitled to try such offenders in accordance with the procedure prescribed by the Code for the given offence.

(59) For the sake of clarity, it would be desirable to enumerate the answer that has been proposed for the propositions set down in the beginning of the judgment. We hold that:—

(1) Milk is not a primary food within the meaning of section 2(xiia) of the Prevention of Food Adulteration Act.

(2) The purchase by the Food Inspector in terms of Section 10 of the Act of a sample of milk or sugar or tea kept by a tea vendor not for sale as such but for being used in preparation of tea for being served to his customers amounts to a sale in terms of the provisions of section 7 read with section 2(xiii) of the Act.

(3) A report of Public Analyst to be considered as admissible in law, as such report, does not have to contain information regarding the mode and manner of tests that the Public Analyst had carried out in order to judge whether the sample was adulterated or not. It is enough if he indicates in the report the results of the tests carried out by him.

(4) The holding of summary trial of offences under section 16(1) of the Act is not mandatory until such time Judicial Magistrates are specially empowered in this regard. Once they are so empowered, then every case under section 16(1) in the first instance shall mandatorily be tried in a summary way unless the Magistrate for the reasons mentioned in the said provision considered it necessary to try the offender in accordance with the procedure prescribed by the Criminal Procedure Code.

(60) With the said answers we remit these three criminal revision petitions to be placed before the appropriate Bench for decision on merits in the light of the law laid down in this judgment.

Prem Chand Jain, Acting Chief Justice,—I agree.

N. K. S.