

'employees' within the meaning of the Act and the Cinema-owner was held liable as the principal employer for their contributions. Consequently it follows that the Appellant-Corporation here is on wholly firm ground and all the four appeals therefore, must succeed and are hereby allowed. In view of some conflict of precedent on the point, we leave the parties to bear their own costs.

Kulwant Singh Tiwana, J.—I agree.
Harbans Lal, J.—I agree.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., K. S. Tiwana and S. P. Goyal, JJ.

STATE OF PUNJAB,—Appellant.

versus

BHAGWAN DASS JAIN,—Respondent.

Criminal Appeal No. 565 of 1978.

August 27, 1980.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 7 and 16(1) (a) (i)—Prevention of Food Adulteration Rules 1955—Rules 7, 17 and 18—Sample of foodstuff and memorandum in Form VII Appendix A packed in one parcel while specimen of the Form and seal in a separate parcel—Both packets sent through one person at the same time—Requirement of Rule 18—Whether violated—Word 'separately' as used in Rule 18—Meaning of.

Held, that the object of the rule making authority in providing for the sending of the copy of the memorandum and the facsimile of the seal 'separately, in rule 18 of the Prevention of Food Adulteration Rules, 1955 is that it wanted to ensure that the correct sample which had been collected by the Food Inspector from the accused reached the public analyst and that it was not substituted or tampered with in transit after its seizure during raid. In this light the language of rule 18 goes to show that the container of the sample has to be sent for analysis to the Public Analyst in a sealed packet and with it is to be enclosed the memorandum in Form VII. Rule 18 provides for the sending of the copy of the said memorandum and the facsimile of the seal used to seal the sample and the packets in rule 17 to the Public Analyst 'separately'. The word

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'separately' in rule 18 has been used in contradistinction to the words 'enclosed together' in rule 17 to highlight the mode of despatch to the public analyst. The word 'separately' as used in rule 18 in the context of rule 17 means not together with the container of sample but separate from it. It does not mean at a separate time or in a separate manner or through a separate person. Merely because the sealed sample container and the specimen seal sealed separately are carried to the public analyst by the same special messenger, it cannot be presumed unless some material is brought on the file by the accused that there is substitution of the sample or the tampering of the seals. As such, the provisions of rule 18 are not infringed if the sample of the fascimile and the memorandum in Form VII in one parcel and the impression of the seal as well the copy of the said form are sent to the public analyst through the same messenger or through any other mode given in this rule at one and the same time.

(Paras 10 and 11).

Harchand Gajpat vs. The State 1976(I) F.A.C. 99.

Mohanlal Maganlal and another v. State of Gujarat & another
1977 (11) F.A.C. 236.

DISSENTED FROM.

State of Haryana vs. Mohan Lal Cr. A. No. 1203 of 1977 decided on
6th September, 1979. **OVERRULED.**

Appeal from the order of Shri S. C. Gupta, Additional C.J.M. Hoshiarpur, dated 29th December, 1977, acquitting the respondent of the charge under section 7 read with 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954.

V. P. Prashar, A.A.G., Punjab.

P. S. Mann, Senior Advocate with T.P.S. Mann, Advocate, for
the Respondent.

JUDGMENT

K. S. Tiwana, J.

(1) The facts of this case are that on 28th of June, 1977, Dr. J. K. Bajaj, Food Inspector, P.W. 1 accompanied by Dr. Gian Parkash, District Health Officer, and his driver went to the premises of Bhagwan Dass Jain respondent in the town of Hoshiarpur. Piare Lal, a resident of Pahari Katra, Hoshiarpur, was also joined. The

respondent had in his possession 60 cups of golden milk ice for public sale in a metal box, which was put in a freezer. Disclosing his identity, the Food Inspector served notice Exhibit P.A. on the respondent and thereafter purchased nine cups of golden ice against cash payment of Rs. 9. Each cup weighed 90 grams. The golden milk ice was alleged to contain 10 kilograms of cow's milk, two kilograms of water, one kilogram of skimmed milk, 2 kilograms and 600 grams of sugar, 110 grams of G.M.S. and Alginite and apple colour (bush in traces). The contents of the nine cups were put together and melted in the sun. These were divided into three equal parts and each part was put in a dry clean bottle. 22 drops of formalin were added in each bottle as preservative. Each bottle was then tightly fastened, tied with a thread, sealed and labelled. One bottle out of these was handed over to the respondent. One was sent to the local Health authorities. The third sample along with the memorandum in form VII of Appendix A of the Prevention of Food Adulteration Rules (hereinafter referred to as the Rules) was sent to the Public Analyst through Gian Chand peon, a special messenger. A copy of the memorandum in form VII along with fascimile of the seal was separately sealed in a cover and sent through the special messenger to the Public Analyst. The Public Analyst found fat in the contents of the milk ice as 4.16 per cent against the maximum of 2 per cent prescribed in the Rules. He, therefore, opined that the sample was adulterated.

2. On receipt of the result from the Public Analyst, which was communicated to the respondent, the Food Inspector filed a complaint in the Court of the Additional Chief Judicial Magistrate, Hoshiarpur. After summoning the respondent, the prosecution examined Dr. J. K. Bajaj, Food Inspector, as P.W. 1. After his examination, the respondent was charged for the commission of offence under section 16(1) (a) (i) of the Prevention of Food Adulteration Act, 1954, read with section 7 of the said Act (hereinafter referred to as the Act). The respondent pleaded not guilty to the charge and claimed trial. He further cross-examined Dr. J. K. Bajaj, P.W. 1. Dr. Bajaj recounted the same story in his statement as has been reproduced in the earlier part of the judgment. Dr. Hargobind Singh, Public Analyst, was examined as P.W. 3.

(3) When examined at the close of the prosecution case under section 313 of the Code of Criminal Procedure, the respondent denied the case against him and stated that Dr. J. K. Bajaj came to his

shop. On his enquiry, the respondent told him that he dealt in ice-cream, upon which Dr. Bajaj took 20/25 cups of ice-cream stating that he wanted to test the same to find out whether any poisonous element was present in this. He further stated that his signatures had been obtained on a blank paper and that one cup contained only 60 grams of ice-cream.

4. During the course of arguments before the learned Additional Chief Judicial Magistrate, Hoshiarpur, three points were raised on behalf of the respondent:—

(i) that rule 18 of the Rules was not complied within the sense that the packages containing the copy of the memorandum and the specimen of the seal were not sent separately from the package containing the sample.

(ii) that the sample was not of milk ice; and

(iii) that the weight of the sample was less than the quantity prescribed in rule 22.

(5) The learned Additional Chief Judicial Magistrate did not agree with the respondent on the first point and held that the sample as well as the specimen seal was separately sent. It was accepted that the prosecution had failed to prove that the sample was of milk-ice. On the third point raised before him, the learned Additional Chief Judicial Magistrate held that rule 22 had been violated and the respondent was prejudiced about the result of the sample. Basing his judgment on these two later points, he acquitted the respondent. The order of acquittal has been challenged by the State of Punjab,—*vide* this appeal.

(6) By the time this appeal came up for hearing before the Division Bench, case *State of Kerala, etc. vs. Allasserry Mohammad etc.*, (1) deprived the respondent of the argument that the provisions of rule 22 were violated by the short weight of the sample. Faced with this difficulty Shri P. S. Mann, learned counsel for the respondent, tried to defend the judgment of acquittal on the ground that rule 18, which is mandatory, has been violated in this case, as the package containing the sample and the package containing the copy of the memorandum

(1) A.I.R. 1978 S.C. 933.

in form VII and the specimen of the seal were not sent separately but sent through one person at the same time. Seeking help from the judgment of the Gujarat High Court in *Mohanlal Maganial and another vs. State of Gujarat and another* (2), he argued that the word 'separately' used in rule 18 of the Rules means that copy of the memorandum and the specimen impression of the seal have to be sent separately and not at the same time through one and the same person. He also referred to a Division Bench judgment of this Court in *The State of Haryana vs. Mohan Lal* (3), in which it was observed:—

“ but we find that the Food Inspector sent a copy of form VII, the specimen of the seal and the sealed bottle to the Chemical Analyst at one and the same time, Rule 18 of the Prevention of Food Adulteration Rules requires that the specimen of the seal should be sent separately. In this view of the matter we are unable to interfere with the judgment of acquittal passed by the learned Chief Judicial Magistrate”.

As the ratio of *Mohan Lal's case* (supra) is not in consonance with another Division Bench judgment of this Court report in *State of Haryana vs. Jagtar Singh*, (4), wherein on similar facts, rule 18 was taken to have been complied with, the matter was referred to a larger Bench. In this manner this Bench came to be seized of this appeal for decision.

(7) The question before this Bench is whether the provisions of rule 18 are mandatory and whether this rule is infringed if the copy of the memorandum in form VII and the impression of the seal are sent, though sealed separately, through the same messenger, or through any other mode given in this rule, at one and the same time.

(8) Regarding the first part of the argument about rule 18 being mandatory, there is no divergence of opinion between the parties. The learned counsel on both the sides have frankly conceded that the rule is mandatory. The language of this rule does not leave any scope for any doubt about its nature. This Court also in *Jagtar*

(2) 1977 (11) F.A.C. 236.

(3) Cr. A. 1203/77 decided on 6th September, 1979.

(4) 1979 P.L.R. 553.

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Singh's case (supra) has held that rule 18 is mandatory. I am in respectful agreement with this judgment on this point. Even the other High Courts in the country have expressed the same view. The Gujarat High Court in *Harchand Gajpal vs. The State* (5), the Patna High Court in *Jamshedpur Notified Area Committee vs. Niranjana Paul and others*, (6), Bombay High Court in *Enayat Ali Nazar Ali Bhoori vs. The State of Maharashtra* (7) and Allahabad High Court in *Hirday Narain vs. State* (8), have taken the same view. Undisputably Rule 18 is mandatory.

(9) The next question relates to the compliance of rule 18. The argument of the respondent in this case is that there was no compliance of this rule when the package containing the container, copy of the memorandum and the impression of the seal were handed over to the same person for carrying those to the Public Analyst and thus were not sent 'separately' as this word is used in the rule.

(10) Chapter V of the Rules deals with the 'sealing, fastening and despatch of samples'. Rule 14 provides the manner of sealing of the sample sent for analysis. Rule 15 prescribes the manner in which the bottles and containers are to be labelled and addressed. Rule 16 deals with the packing and sealing of the samples. In this case we are concerned with the sending of the containers of the sample, the copy of the memorandum and the impression of the seal, which is prescribed in rules 17 and 18, Rule 7 deals with the duties of the public analyst for examining and comparing the seals on the two packages received by him for analysis and is relevant for examination with rules 17 and 18 in this case. These are reproduced as under:—

"Rule 7.—Duties of Public Analyst.—(1) On receipt of a package containing a sample for analysis from a Food Inspector or any other person, the Public Analyst or an officer authorised by him shall compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seals thereon.

(5) 1976 (I) F.A.C. 15.

(6) 1976 (I) F.A.C. 99.

(7) 1976 (II) F.A.C. 61=1976 Cr. L.J. 1887.

(8) 1980 (I) F.A.C. 436.

- (2) The Public Analyst shall cause to be analysed such samples of articles of food as may be sent to him by Food Inspector or by any other person under the Act.
- (3) After the analysis has been completed, he shall send to the person concerned two copies of the report of the result of such analysis in Form III within a period of forty-five days of the receipt of the sample.

Rule 17.—Containers of samples, how to be sent to the Public Analyst.—The container of sample for analysis shall be sent to the Public Analyst by registered post or railway parcel or air freight or by hand or by any other suitable means of transport available in sealed packet, enclosed together with a memorandum in Form VII in an outer cover addressed to the Public Analyst;

Provided that in the case of a sample of food which has been taken from Agmark sealed container, the label in Form VII shall bear the following additional information:—

- (i) Grade.
- (ii) Agmark label No./Batch No.
- (iii) Name of packing station.

Rule 18.—Memorandum and impression of seal to be sent separately.—A copy of the memorandum and specimen impression of the seal user to seal the packet shall be sent to the Public Analyst separately by registered post or delivered to him or to any person authorised by him.”

Rule 7 casts a duty on the Public Analyst or any other officer authorised by him, on receipt of the packages for analysis, to compare the seals on the container and its outer cover with the specimen seal impression received separately and note the condition of the seal. Unless the Public Analyst carries out this comparison, he cannot proceed to examine the sample received in the package. After such satisfaction and analysis, the Public Analyst has to note these facts in Form III (reproduced in a later part of the judgment) and send the copies of the report and the result to persons mentioned in sub-clause (3) of rule 7. The object of the rule making authority in providing for the sending of the copy of the memorandum and the

facsimile of the seal 'separately' in rule 18 is undoubtedly clear that it wanted to ensure that the correct sample or the same sample which had been collected by the Food Inspector from the accused has reached the Public Analyst and that it was not substituted or tempered with in the transit after its seizure. If the copy of the memorandum in Form VII and the facsimile of the seal are to be in the same packet, then the very purpose of rule 18 which prescribes a manner for cross-checking the identity of the sample, will be frustrated. This provision in the Rules is made in favour of the accused, so that the identity of the sample is ensured and that can be best achieved if the things mentioned in rules 17 and 18 are sent separately. It is also a check on the activities of the Food Inspector in case his action is motivated against the accused.

(11) The counsel for the parties are at variance as to what meanings have to be given to the word 'separately', as it occurs in rule 18, Rules 17 and 18 of Rules have to be read in the light of rule 7 to know the meanings of his word. The language of rule 17 goes to show that the container of the sample has to be sent for analysis to the Public Analyst in a sealed packet and with it is to be 'enclosed together' the memorandum in Form VII in the outer cover. Rule 18 provides for the sending of the copy of the memorandum in Form VII and facsimile of the seal, used to seal the sample and the packets in rule 17, to the Public Analyst 'separately'. Rule 17 contains the words 'enclosed together' in reference to the articles mentioned therein and rule 18 has the word 'separately'. In Shorter Oxford English Dictionary, Volume II, Third Edition, the word, 'separate' has been defined as: 'Parted, divided, or withdrawn from others; disconnected, detached, set or kept apart; to put apart'. In the Concise Oxford Dictionary, the meanings of the word 'separate' as given are "Make separate, sever, disunite, keep from union or contact; Distinct; individual". In Webster's Third New International Dictionary, Volume III, the meanings of the word 'separate' as given are: "to set or keep apart: Detach; divide, sever". In the same Dictionary the word 'separately' has been given the meaning: "in a separate manner; individually, independently". The ordinary dictionary meanings of the word 'separately' have to be taken in this case keeping in view the words 'enclosed together' in rule 17. The word 'separately' in rule 18 has been used in contradistinction to the words "enclosed together" in rule 17 to highlight the mode of despatch of the copy of the memorandum and the specimen of the seal. The word 'separately' as

used in rule 18 in the context of rule 17 means not together with the container of sample, but separate from it. It does not mean at a separate time or in a separate manner or through a separate person. The only safeguard is that the sample and the specimen of the seal should not be sent in the same packet. Both these rules provide for the modes of despatch, out of which the agency of the Post Office and special messenger are common. Post Offices act independently and no one in that department normally can be said to be interested in tampering with the samples. If the sample container and the sample of the seal are sent on the same day, the sample is taken, by handing over both the packages at the same time to the Post Office, it cannot be taken as violative of rule 18. If the argument to the converse is accepted, then it can be stretched even to the extent that it has to be inferred that both these things are not to be put in the same mail or should not be carried by the same postman for delivery to the Public Analyst. What has to be ensured is that the copy of the memorandum and the specimen of the seal should not be enclosed together with the sample but is to be sent separately. The word 'separately' does not mean and cannot be taken to mean that the specimen of the seal and the copy of the memorandum have to be sent to the Public Analyst at different times. This object cannot be achieved without doing violence to the language of rule 18 or frustrating the object of the rule making authority in prescribing this procedure. In a given case if the Food Inspector from the place of seizure despatches both the packets, though sealed separately, through the peon, who in his turn hands over those to the post office for delivery to the Public Analyst, then, in case the argument of the learned counsel for the respondent is accepted, still there will be a breach of rule 18, as packages have been sent on the same day and not through a separate person. I find it difficult to accept this argument, when the sealed sample container and the specimen seal sealed separately are carried to the Public Analyst by the same special messenger it cannot be presumed, unless some material is brought on the file by the accused, that there was substitution of the sample or the tampering of the seals.

(12) A Division Bench of the Bombay High Court in *Enayat Ali's case* (supra) considering the same question also took the same view. In that case the facts were similar and the Food Inspector had sent the sample container and the memorandum in Form VII together in a sealed packet and the specimen of the seal in a separate packet to the Public Analyst, through the same messenger. Differing with

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the view of Gandhi J., of the same Court in *Laxmandas Sarvottamdas Dosi and Co. v. The State of Maharashtra* (9), the Bench held:

“We are unable to accept the contention that where the cover containing the sealed packet of the sample for analysis enclosed together with a memorandum in Form VII is sent along with another packet containing the copy of the memorandum and specimen impression of the seal with the same peon, there will be any infraction of rule 18 of the Rules.”

After discussion and taking into consideration the dictionary meanings of the word ‘separately’ the same Bench held:—

“In view of the legal position set out above, we are, therefore, not inclined to accept the submission made on behalf of the accused that there was any non-compliance with the mandatory part of rule 18. In our view, since the Food Inspector had sent in a separate cover the sample box and the memorandum and in yet another cover he had sent the copy of the memorandum with the impression of the specimen seal along with the peon, there was no non-compliance with the provisions of rule 18 and we must, therefore, reject the contention that the conviction of the accused stands vitiated because of any non-compliance with the mandatory part of rule 18.

(13) I myself sitting singly in *Jaspal Singh vs. The Union Territory of Chandigarh* (10), following *Enayat Ali's case* (supra) took the same view. In *Jagtar Singh's case* (supra), a Division Bench of this Court, holding the Rule, as mandatory, did not go into the meanings of the word ‘separately’ as it was not raised, but the contention of the accused was negatived that the Food Inspector had not led independent evidence to prove that the packets were not sent separately to the Public Analyst.

(14) Coming to the contrary view, *Mohan Lal's case* of this Court comes to the notice first. In *Mohan Lal's case*, the Division Bench did not discuss the principle or any precedent and without any discussion accepting the argument on behalf of

(9) 1975 (II) F.A.C. 153.

(10) Cr. A. 631 of 72 decided on 5th May, 1977.

the accused held: "..... but we find that the Food Inspector sent a copy of form VII, the specimen of the seal and the sealed bottle to the Chemical Analyst at one and the same time. Rule 18 of the Prevention of Food Adulteration Rules requires that the specimen of the seal should be sent separately", and declined to interfere in the order of acquittal passed by the trial Magistrate: *Jaspal Singh's* and *Jagtar Singh's* cases (supra), which were decided earlier were not brought to the notice of the Division Bench in *Mohan Lal's* case (supra).

(15) In *Mohanlal Maganlal Sindhi's* case, (supra), a learned Single Judge of the Gujarat High Court held:—

"If both the food sample packets sent under rule 17 and the specimen impression of the seal along with the memorandum sent under rule 18 are sent with one and the same messenger, there is a danger of both being tampered with and in that event the Public Analyst will find that the seal on both the packet as well as the specimen impression tally. The mischief can be played while the messenger carried the food sample as well as the specimen impression of the seal after they are delivered to him by the Food Inspector and before they are delivered at the office of the Public Analyst. If in transit there is some mischief played and the seals on both are tampered with, the Public Analyst who receives both the food sample as well as the specimen of the impression of the seal will not be able to say that there is any difference in the seals. Therefore, the submission of Mr. Takwani that because the Public Analyst has been examined and the recital in the certificate issued by him indicates that the seal on the packet tallied with the specimen impression of the seal, it cannot be said that there was no possibility of any mischief being played in transit. I am, therefore, of the opinion that, in the instant case, the mandatory requirement of rule 18 has been clearly violated".

The learned Single Judge in this case drew support from the earlier Division Bench judgment of the same Court reported in *Harchand Gajpal vs. The State* (supra). That was a case under rule 4(3) of the Rules, which is more or less on the same lines as rule 18 and

pertains to the Director of Central Food Laboratory. Analysing certain situations, in that case it was observed:—

“Now, when the accused or the complainant applied to the Court for sending a food sample produced before the Court or in the possession of the accused to the Director of the Central Food Laboratory the packet, which the Court sends originates in the Court. Then it starts travelling from the place of its origin to the Central Food Laboratory. Its journey ends, before it is delivered to the Central Food Laboratory, at the post office which serves the Central Food Laboratory. We have, therefore, three stages through which such a sample passes. It originates in the Court which sends it, it travels from the place of its origin to the place of its delivery and before it is finally delivered to the Central Food Laboratory its journey ends at the post office which serves the Central Food Laboratory. Now, if any mischief or interference is committed at any of these three stages with the food packet, it will be difficult for the Director to discover it because whoever interferes with the seal on the container will also be able to interfere with the specimen impression of the seal enclosed therewith because both are available to him at one and the same time and they can be safely interfered with. It may happen at the place where it originates or in the course of its journey or at the post office where its journey ends and which will deliver it to the Central Food Laboratory. If the seal which the container bears and the specimen impression of the seal are found in one and the same packet, then any one who interferes with it will be able to successfully achieve his object because he will be able to interfere with both, both being available to him at one and the same time. That will not be the situation if the specimen impression of the seal has been sent separately either through a messenger or by registered post to the Director of the Central Food Laboratory because whoever interferes with the seal on the container will not have the specimen impression of the seal available to him for being interfered with since it must have been sent separately either through a messenger or by registered post. It is needless for us to add that whoever thinks of interfering with the seal on the container will also be able to successfully interfere with

the seal on the outer cover. Now, the important and valuable safeguard which has been conferred upon the accused will be lost and will become illusory if the seal on the container and the specimen impression of the seal, both available at one and the same time, have been interfered with by some unscrupulous mischief-monger because the Director who is not available to the accused for cross-examination will not be able to know in such a situation whether the seal on the container has been interfered with or not. The requirement of separately sending the specimen impression of the seal to the Director is, therefore, intended to show him the genuine seal of the Court with which he is required to compare the seal which the container bears. Since there is much less likelihood of any interference with the seal on the container and the specimen impression of the seal sent separately, there is a greater protection or safeguard which has been conferred upon the accused by sub-rule (3) of rule 4. Therefore, the requirement of sending separately the specimen impression of the seal serves a very laudable purpose of safeguarding and protecting the interests of the accused and ensures fair administration of justice to him. It is this special safeguard which the accused loses when the specimen impression of the seal is sent to the Director as an enclosure in the packet sent to him for analysis. We are, therefore, of the opinion that sub-rule (3) of rule 4 is so far as it lays down that the specimen impression of the seal and a copy of the memorandum shall be sent *separately* to the Director serves a special purpose for the accused. It assumes greater significance in cases under the Prevention of Food Adulteration Act where the fate of the accused depends upon the certificate issued by the Director the contents of which are final and conclusive evidence of the facts stated therein and which are not open to challenge by the accused in any manner whatsoever. Not only he cannot challenge the contents of the certificate by leading any other evidence but he cannot also challenge the contents by requiring the Director to be cross-examined by him. Once the Director issues a certificate that the food sample sent to him was adulterated, the fate of the accused is sealed. It is not open to him even to ask the Court to get back the food sample analysed by the Director for further analysis by

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his own expert. When the final and conclusive character attributed to the certificate issued by the Director produces such a far-reaching consequence as we have analysed above, we have no doubt in our mind that all provisions of law which relate to it and which confer even the smallest safeguard on the accused must be construed strictly and not liberally. We are, therefore, of the opinion that the provision of sub-rule (3) of rule 4 of the Prevention of Food Adulteration Rules, 1955, in so far as they require that a specimen impression of the seal used by the Court to seal the container and the cover and a copy of the memorandum shall be sent separately to the Director are mandatory and are required to be complied with strictly”.

In this case, the learned Judges of the Division Bench, if I may say so, presumed too much in favour of interference by way of mischief in the sample during transit. The Court has to presume that all official acts are carried out and done in a regular and lawful manner. In spite of that the legislature and the law-making body, in the cases governed by the Act and other similar laws, where the report of the Public Analyst, Chemical Examiner and other experts is *per-se* tendered in evidence has provided safeguards, like the manner of sealing and despatch of the incriminating articles and also for cross-checking the identify of the articles seized and sealed. So long as the acts performed by the Food Inspector and other officials are not shown to be motivated, nothing can be presumed in favour of the accused regarding the tampering or interference with the sample without any basis. If the accused wants an inference to be drawn in his favour, then he has to create circumstances in support of that as interference with the sample or its substitution is a question of fact. Unless there is a basis for such an inference, the Court, simply on the argument on behalf of the accused, cannot go to unreasonable limits to imagine imaginary possibilities of interference in the sample during transit to the Public Analyst after it leaves the hands of the Food Inspector. With due regard to the learned Judges in *Harchand Gajpal's case* (supra), I cannot persuade myself to agree to too much presumed and imaginary arguments taken into consideration in this case in favour of the accused. I, therefore, respectfully dissent with the view taken by the Gujarat High Court in *Harchand Gajpal case* which was followed in *Mohanlal-Madanlal Sindhi's case* (supra), *Mohan Lal's case* (supra), too does not lay down the correct law in view of the above discussion and is overruled.

(15) When rules 7, 17 and 18 are studied together, it becomes manifest that the rule-making authority wanted to ensure the identity of the sample and for that reason provided measures for cross-checking the same. This was sought to be achieved by insisting the copy of the memorandum and the facsimile of the seal being sent separately and the Public Analyst also certifying to that effect in his report in form III. The word 'separately' does not demand that these two packages are to be sent at different times or through different persons. What it means is that the sample and the memorandum in form VII are to be kept separate from the specimen impression of the seal. It is immaterial if both these packets are handed over to one and the same person or sent to the Public Analyst at one and the same time through one agency. The literal meanings of the word 'separately' used in the context also do not give any other indication.

(16) After deciding the above legal question I propose to decide the case on merits, to which counsel have also agreed. Coming now to the merits of the case, it is to be seen whether there is sufficient material on the file to arrive at a conclusion whether these two packages were sent separately. Dr. J. K. Bajaj, Food Inspector, appearing as P.W. 1 stated: "One of these bottles was sent to the Public Analyst, Punjab, along with memorandum in form VII and specimen impression of the seal used through Shri Gian Chand peon, special messenger. Copy of form VII together with seal impression was sent in a separate sealed cover through messenger to the Public Analyst". The *pro forma* of form III as provided in the Rules is as under:—

"FORM III

(See rule 7(3))

Report by the Public Analyst

I hereby certify that I _____ Public Analyst for _____ duly appointed under the provisions of the Prevention of Food Adulteration Act, 1954, received on the _____ a.m./p.m. _____ day of from _____ 19 , as sample of _____ for analysis properly sealed and fastened and that I found the seal intact and unbroken. The seal fixed on the container of the sample tallied with the specimen impression of the seal separately sent by the Food Inspector and the sample was in condition fit for analysis.

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I further certify that I have/I have caused to be analysed the
aforementioned sample and declare the result of my analy-
sis to be as follows:—

_____ and am of the opinion on

that _____,

signed this

day of 19

Address

(Signatures),
Public Analyst.”

(17) A duty, as stated earlier, is enjoined on the Food Inspector to ensure and then certify that the packets were received separately by him and also that the seals on the wrapper and the container were intact and those tallied with the specimen of the seal sent to him separately. Section 13 of the Act makes it necessary for the Public Analyst to send his report to the local authorities. Section 13(5), which is relevant to the point in consideration, is as follows:—

“13. Report of Public Analyst.

- (5) Any document purporting to be a report signed by a Public Analyst unless it has been superseded under sub-section (3), or any document purporting to be a certificate issued by the Director of the Central Food Laboratory may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code (Act XLV of 1860) :

“Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory not being a certificate with respect to the analysis of the part of the sample of any article of food referred to in the proviso to sub-section (1-A) of section 16 shall be final and conclusive evidence of the facts stated therein.

Explanation.—In this section, and in clause (1) of sub-sec. (1) of section 16, Director of the Central Food Laboratory shall include the officer for the time being in charge of any Food Laboratory by whatever designation he is known recognised by the Central Government for the purposes of this section.”

The report of the Public Analyst, according to section 13(5) of the Act is evidence of its contents. The Public Analyst in the discharge of its statutory duties under rule 7 is to find that the package and the container of the sample of the seal were sent to him separately by the Food Inspector. Unless anything is moved to the contrary, it has to be presumed that the Public Analyst acted in accordance with the rules to find as mentioned in the report, that the sample of the seal had been sent to him separately and it tallied with the seal of the container. In the case in hand, the Public Analyst, in his report in form III, though the contents of it are printed, has found about the tellying of the seal with the specimen of the seal, sent to him separately. The Food Inspector testified about the separate sending of the packet containing the specimen of the seal in his evidence, which has been extracted for reference above and which was not challenged in cross-examination. This finds support from the report of the Public Analyst in form III. It has, therefore, to be found as a fact that the container of the sample and the copy of the memorandum and the facsimile of the seal were sent separately and there is no infraction or infringement of rule 18.

(18) The respondent has been acquitted by the learned Additional Chief Judicial Magistrate on the ground that in place of 300 grams of the milk to be taken as a sample as contained in rule 22, the Food Inspector sent only 200 grams of sample for analysis to the Public Analyst. In the view of the learned trial Magistrate, this short weight of the sample prejudiced the respondent. In view of the observations of the Supreme Court in *Alasserry Mohammad's case* (supra), the view of the learned trial Magistrate cannot be upheld. In rule 22 the last column does not contain the net weight, but provides only for the approximate weight to be sent. The Supreme Court in *Alasserry Mohammad's case* (supra) held:—

“We may also advert to one more aspect of the wording of the Rule to find out whether it is directory or mandatory and that is the use of the word ‘approximate’ in the second column of the list. The use of this term does indicate the directory nature of the Rule, but does not necessarily militate against the view that the Rule is mandatory. The expression ‘approximate quantity’ is meant to convey that the quantity to be supplied must be in the close vicinity of the quantity specified. So long it is so there is no infraction of the Rule at all. But the question of non-compliance with the Rule comes in when the quantity

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supplied is not in close vicinity of the quantity specified and is appreciably below it. Even so, if the quantity supplied is sufficient and enables the Public Analyst to do his duty of making a correct analysis, it should be inferred that the Rule has been substantially complied with, as the purpose of the Rule has been achieved”.

In 1977, rule 22(B) was added to the Rules, which is as under:—

“Quantity of sample sent to be considered as sufficient.—Notwithstanding anything contained in rule 22, the quantity of sample sent for analysis shall be considered as sufficient unless the Public Analyst or the Director reports to the contrary”.

Holding rule 22-B as retrospective in *Alasserry Mohammad's case* (supra), the Supreme Court observed that this rule has been added for the purpose of clarifying the law and not amending it. In this way, rule 22-B, in other words, was given a retrospective effect.

(19) In view of *Alasserry Mohammad's case* (supra), the order of acquittal of the respondent by the learned trial Judge on the ground of shortage of the weight of the sample cannot be upheld and is, therefore, set aside.

(20) The last is the observation of the learned trial Magistrate to the effect:—

“It would, thus, appear that it cannot be said with certainty that the article out of which the sample was taken was milk ice and not milk ice-cream”.

The case of the prosecution against the respondent is that he was selling milk ice, which he denied at the trial and stated that the Food Inspector had taken 20 cups of ice-cream from him on the ground that those were to be tested to satisfy about the presence of any poisonous element. Milk ice is defined in rule A. 11.02.09 of Appendix 3 to the Rules as under:—

“A.11.02.09—Milk Ices or Milk Lollies mean the frozen product obtained from milk, skimmed milk or milk products with or without the addition of cane sugar, eggs, fruits, fruit

juices, nuts, chocolate, edible flavours and permitted food colours. It may contain permitted stabilisers not exceeding 0.5 per cent of the product. The mixture shall be suitably heat-treated before freezing. The product shall contain not more than 2.0 per cent milk fat, not less than 2.5 per cent proteins and not less than 20.0 per cent total solids."

Exhibit P.A. is the form of intimation for the purpose of taking sample under rule 12 in form VI, which was served by the Food Inspector on the respondent. It was prepared at the time of taking of the sample. It is signed by Bhagwan Dass respondent in English, and it reads:—

“* * * * *

Details of food

9 cups of golden milk ices each weighing 90 grams (3 of them put into one bottle after melting in the sun). Alleged to contain the following articles in the ratio:—

Cow's milk	... 10 Kg.
Water	... 2 Kg.
Skimmed milk powder	... 1 Kg.
Sugar	... 2 Kg. 600 grams.
G.M.S. and Alginite	... 110 grams.
Green Apple colour- (Bush)	... Traces.

Received Notice Sd./- J. K. Bajaj."

Sd./- Bhagwan Dass Jain. _____

This form VI is signed by the respondent, who appears, from the signatures, to be an educated person and serves as a proof that the sample was taken of the commodity, which was described by the respondent himself as golden milk ice. He also gave the constituents,

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which were noted in this form. Unless the particulars of the constituents had been supplied by the respondent, the Food Inspector could not know those and their percentage. The inability of the Food Inspector to differentiate between milk ice and ice-cream from taste will not help the respondent when he himself described it as golden milk ice and gave the weight of its constituents in the whole material, which he was offering for sale. This is sufficient to hold that it was milk ice, which the respondent was selling. The learned trial Magistrate overlooked this part of the record to return a finding quoted above to acquit the respondent. This finding of the trial Magistrate being wholly unreasonable cannot be sustained and is hereby reversed and it is held that the respondent was selling milk ice.

(21) The test carried out by the Public Analyst revealed that the milk fat of the constituents of the sample was 4.16 per cent as against the maximum prescribed standard of 2 per cent and on that ground it was found to be adulterated. The sample does not conform to the definition of the milk ice and the constituents given therein. The respondent is thus guilty of an offence for selling adulterated food article.

(22) For the foregoing reasons, the order under appeal acquitting the respondent is set aside and Bhagwan Dass respondent is convicted of the offence under section 16(1)(a)(i) of the Act read with section 7. He is sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs. 1,000. In default of payment of fine he shall further undergo rigorous imprisonment for two months.

S. S. Sandhawalia, C. J.—I agree.

S. P. Goyal, J.—I also agree.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., Harbans Lal and S. S. Kang, JJ.

GURMEJ SINGH and others,—Petitioners,

versus

FINANCIAL COMMISSIONER and others,—Respondents.

Civil Writ Petition No. 85 of 1973.

September 17, 1980.

Punjab Security of Land Tenures Act (X of 1953)—Section 14-A (ii)—Punjab Security of Land Tenures Rules 1956—Rule 22 (2)—Application by a landlord for recovery of rent—Statutory notice in