

# ORISSA HIGH COURT CUTTACK

## GOVERNMENT APPEAL NO.8 OF 1990

From the judgment dated 24.05.1989 by Sri B.K.Nayak, Judicial Magistrate First Class, Titilagarh, in 2(c) C.C. Case No.37 of 1987 (T.R. No.95 of 1988).

State of Orissa ..... Appellant

Versus

Munadhar Agrawala ..... Respondent

For appellant : Addl. Govt. Advocate

For respondent : Mr. D.K.Misra

**PRESENT :**

**THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY**

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Date of hearing and judgment : 27.07.2006  
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**PRADIP MOHANTY, J.** This appeal is directed against the judgment and order dated 24.05.1989 passed by the learned Judicial Magistrate First Class, Titilagarh in 2(c) C.C. Case No.37 of 1987/T.R. No.95 of 1988 acquitting the respondent of the offence under Section 16(1)(a)(ii) of the Prevention of Food Adulteration Act (for short, "the Act").

2. The case of the prosecution is that the accused-respondent was running a retail grocery shop in the name and style of M/s Rajendra Stores at Hatpada, Saintala, in the district of Bolangir, where he used to store edible oils, cereals, pulses, sugar, spices, dust tea, etc., for sale. On 28.07.1987 at about 11.00 A.M., the Food Inspector of Titilagarh inspected the said shop in presence of the accused-respondent and witnesses. On

demand, the accused-respondent could not produce the food licence, as required under the Act. While verifying the different food articles stored for sale for human consumption, the Food Inspector suspected the Mahua oil and mustard oil kept in open tins to be adulterated and served notice on the accused-respondent disclosing his intention to take sample of the Mahua oil and mustard oil. Thereafter, he purchased 375 grams of each of the oils and obtained money receipt from the accused-respondent. He divided the sample oils into three equal parts and kept each part in a clean dry glass bottle, closed the bottle with stopper and made it air tight with wax, wrapped up the mouth of the bottle with thick paper fastened with thread and sealed the same. One sample bottle of Mahua oil and one sample bottle of mustard oil were sent for chemical examination by the Public Analyst, who, on examination, opined that the sample Mahua oil was adulterated and the sample mustard oil conformed the standard prescribed under the Act. On 28.10.1987, the Food Inspector placed the notice copy, money receipt, memorandum, Public Analyst's report, etc., before the C.D.M.O. for launching prosecution report. The C.D.M.O., after going through the documents, issued written consent for launching prosecution and also sanctioned the prosecution. On 31.10.1987, the C.D.M.O., Bolangir, forwarded the Prosecution Report to the Court.

3. The plea of the respondent was complete denial of the allegations.
4. In order to prove its case, prosecution examined as many as four witnesses including the Food Inspector (P.W.2) and the Vigilance Inspector (P.W.1) and proved sixteen exhibits. The defence did not choose to examine any witness. The learned Magistrate, after considering the evidence and materials available on record, by his judgment dated 24.05.1989 acquitted the accused-respondent of the offence under section 16(1)(a)(ii) of the Act.
5. Mr. Behera, learned Addl. Govt. Advocate, contended that the trial court ought not to have acquitted the respondent on the ground that the report of the Public Analyst was not received within the period of limitation prescribed by Rule 7(3) of the Prevention of Food Adulteration Rules, 1955, which, according to him, is not mandatory but directory. He also submitted

6. Perused the prosecution report, evidence of witnesses and the impugned judgment. P.W.1 in cross-examination stated that he was unable to say what procedure was followed by the Food Inspector in packing the bottles. He was also unable to say the name of the shop. In this case, the Public Analyst received the sample on 31.07.1987 and the same was examined on 03.09.1987 after lapse of 34 days. The report of the Public Analyst was received by the C.D.M.O. on 24.09.1987, i.e., much beyond the limit prescribed by Rule 7(3) of the Prevention of Food Adulteration Rules, 1955. The said Rule is quoted hereunder:-

(1)	xx	xx	xx
(2)	xx	xx	xx

(3) The Public Analyst shall, within a period of forty days from the date of receipt of any sample for analysis, send by Registered post or hand to the Local Health Authority a report of the result of such analysis in Form III.

XX XX XX."

7. From a reading of the above Rule, it is clear that the Public Analyst must send his report within forty days. In the instant case, however, it was more than 50 days. Moreover, there was non-compliance of the provisions of section 13(2) of the Act. The prosecution has also failed to prove that after receipt of the Public Analyst's report, notice was served upon the respondent for making an application to the Court within ten days from the date of receipt of the report for further examination of the sample by the Central Laboratory.

8. Considering the above aspects, the trial court has acquitted the respondent and this Court finds no illegality, irregularity or infirmity in the same warranting interference. The Government Appeal is devoid of any merit and the same is accordingly dismissed.

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**PRADIP MOHANTY, J.**

Orissa High Court, Cuttack  
July 27, 2006 / *Nayak*