# MUNICIPAL CORPORATION OF DELHI

*v.*

# GHISA RAM

*November* 23, 1966.

[M. HIDAYATULLAH AND V. BHARGAVA, JJ.]

*Prevention of Food Adulteration Act* (37 *of* 1954), *s.* 13(2), (3) *and* (5)—*Delay in filing prosecution—Sample given to accused vendor decomposed—Examination of sample by Director of Central Food Laboratory not possible—Accused, if prejudiced.*

The Food Inspector of the appellant-Municipality took a sample of curd from the respondent's shop for the purpose of testing whether there was any adulteration. The sample was divided into three equal parts, put in separate bottles and sealed. One bottle was handed over to the respondent and one was sent to the Public Analyst who analysed it and sent his report. On the basis of that report a complaint was filed, seven months after receipt of the report, against the respondent, for an offence under ss. 7 and 16 of the Prevention of Food Adulteration Act, 1954. During the trail, the respondent applied to have the sample given to him analysed by the Director of the Central Food Laboratory in accordance with s. 13(2) of the Act. The Director reported that the sample had become highly decomposed and could not be analysed. The trial Court acquitted the respondent accepting his contention that he could not be convicted after having been denied his right of obtaining the Director's certificate by the delay in launching the prosecution.

On the question whether he should have been convicted on the basis of the Public Analyst's report.

HELD : A right is conferred by s. 13(2) on the accused-vendor to have the sample, given to him by the Food Inspector, analysed by the Director *after* the prosecution was launched against him. It is a valuable right, because, he could for his proper defence, have that sample analysed by a more competent expert, whose certificate supersedes the report of the Public Analyst under s. 13(3), and is to be accepted by the Court as conclusive evidence of its contents under the proviso to s. 13(5). However, if for any reason, no certificate is issued by the Director, the report of the Public Analyst does not cease to be evidence of the facts contained in it. But, in a case where there is denial of this right on account of the deliberate conduct of the prosecution, the accused-vendor would be seriously prejudiced in his trial, and could not be convicted on the report of the Public Analyst, even though that report may be evidence in the case, of the facts stated therein. In the present case, the prosecution should have anticipated that there would be some delay, in the analysis by the Public Analyst and in the sending of his report, and consequently, the elementary precaution of adding a preservative to the sample given to the respondent should have been taken by the Food Inspector. If such a precaution had been taken, the sample given to the respondent would have been available for analysis by the Director, for a period of four months; and the prosecution could have been launched, after receiving the Public Analyst's report, well within time to enable the respondent to exercise his right under s. 13(2). The respondent was therefore denied a valuable right in defending himself, due to the inordinate delay in launching the prosecution, ad was prejudiced in his defence. [119 H; 120 A-B, F-H; 121 A]

A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 194 of 1966.

Appeal by special leave from the judgment and order dated November 9, 1964 of the Punjab High Court in Circuit Bench at Delhi in Criminal Appeal No. 30-D of 1964.

B *H. R. Gokhale, K. K. Raizada* and *A. G. Ratnaparkhi*, for the appellant.

*Frank Anthony, Ghanshyam Dass, Jitendra Sharma* and *V. P. Chaudhuri*, for the respondent.

The Judgment of the Court was delivered by

C **Bhargava, J.** The respondent, Ghisa Ram, is a Halwai dealing in milk and milk products, including Dahi, and holds a licence for running his shop in Defence Colony in New Delhi. On September 20, 1961, the Food Inspector of the Municipal Corporation of Delhi visited the shop of the respondent and took a sample of curd of cow's milk for the purpose of testing whether there was
D any adulteration. The curd was churned and divided into three equal parts. Each part was put in a separate bottle and sealed by the Food Inspector. One of the bottles containing the sample of the curd taken was handed over to the respondent. Out of the two remaining samples with the Food Inspector, one was sent to the Public Analyst who carried out the analysis on October 3, 1961. He then gave a certificate on October 23, 1961, in which he noted
E that the fat content in the curd was 11·6% and the non-fatty solids were 7·3%. The standard prescribed by the Rules framed under the Prevention of Food Adulteration Act, 1954 (No. 37 of 1954) (hereinafter referred to as "the Act") for curd of cow's milk was that it must contain a minimum of 3·5% fat and 8·5% non-fatty solids. Since the analysis showed that the content of non-fatty
F solids was 1·2% below the prescribed standard, the respondent was prosecuted for committing an offence under s. 16 of the Act for contravening section 7 of the Act. The complaint was filed before the Magistrate on behalf of the appellant, Municipal Corporation of Delhi, on May 23, 1962. On October 4, 1963, the respondent applied that the sample, which had been given to him by the
G Food Inspector, be sent for examination by the Director of the Central Food Laboratory in accordance with the provisions of s. 13 (2) of the Act. When the sample was received by the Director, he reported that the sample of curd sent to him had become highly decomposed and no analysis of it was possible. The case against the respondent had, therefore, to be tried in the absence of the report of the Director of the Central Food Laboratory.

H At the trial, the respondent admitted the taking of the sample of curd from his shop by the Food Inspector, but he pleaded that he had prepared the curd from pure cow's milk. The counsel for the

respondent challenged the correctness of the analysis of the sample made by the Public Analyst, and a further plea was taken that the respondent having been denied his right of obtaining the report of the Director of the Central Food Laboratory because of the delay by the appellant in launching the prosecution, the respondent could not be validly convicted. This defence was accepted by the Magistrate, and the respondent was acquitted. The appellant filed an appeal against this order of acquittal before the Delhi Bench of the Punjab High Court, but that Court upheld the order of the Magistrate. The appellant has now come up to this Court, by special leave, against that decision of the High Court.

In this appeal, the main contention on behalf of the appellant was that, though, under the Act, a certificate of the Director of the Central Food Laboratory has the effect of superseding the report of the Public Analyst, the absence of such a certificate for any reason whatsoever will not affect the value and efficacy of the certificate given by the Public Analyst. The proposition put forward on behalf of the appellant appears to be correct. Under s. 13(3) of the Act, the certificate issued by the Director of the Central Food Laboratory supersedes the report given by the Public Analyst. The proviso to sub-section (5) of s. 13 further lays down that any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein. These provisions of the Act are, however, only attracted when, in fact, an analysis of the sample sent to the Director of the Central Food Laboratory is made by him on the basis of which he issues a certificate. If, for any reason, no certificate is issued, the report given by the Public Analyst does not cease to be evidence of the facts contained in it and does not become ineffective merely because it could have been superseded by the certificate issued by the Director of the Central Food Laboratory. Further, there being no certificate issued by the Director of the Central Food Laboratory, no question can arise of his certificate becoming final and conclusive evidence of the report contained in it.

This aspect, however, does not conclude the matter so far as the question of the validity of the acquittal of the respondent is concerned. There can be no doubt that sub-s. (2) of s. 13 of the Act confers a right on the accused vendor to have the sample given to him examined by the Director of the Central Food Laboratory and to obtain a certificate from him on the basis of the analysis of that sample. It is when the accused exercises this right that a certificate has to be given by the Director of the Central Food Laboratory and that certificate then supersedes the report given by the Public Analyst. If, in any case, the accused does not choose to exercise this right, the case against him can be decided on the basis of the report of the Public Analyst. Difficulty, however, arises in

A a case where the accused does exercise the right by making a quest to the Court to send his sample for analysis to the Director of the Central Food Laboratory and the Director is unable to issue a certificate because of some reason, including the reason that the sample of the food article has so deteriorated and become decomposed that no analysis is possible.

B In the present case, we find that the decomposition of the sample, which the respondent desired should be analysed by the Director of the Central Food Laboratory, took place because of the long delay that had occurred in sending the sample to the Director. The sample was taken on September 20, 1961, while it was sent to the Director C after October 4, 1963, when the respondent made his application in that behalf. The submission on behalf of the respondent was that the appellant instituted the prosecution of the respondent on May 23, 1962, and consequently, under s. 13(2) of the Act, the right accrued to the respondent to have the sample sent for analysis only D thereafter. Section 13(2) specifically mentions that the accused vendor may make the application "after the institution of a prosecution under the Act." No right vested in the respondent to have the sample analysed in this case until the prosecution was launched on May 23, 1962.

The opinion of one of the experts, Dr. Sat Parkash, given in E this case shows that in the case of a food article, like curd, it starts undergoing changes after a week, if kept at room temperature, without a preservative, but remains fit for analysis for another 10 days thereafter. On the other hand, if the sample is kept in a refrigerator, it will preserve its fat and non-fatty solid contents for purposes of analysis for a total period of four weeks. If a preservative F is added and the sample is kept at room temperature, the percentage of fat and non-fatty solids contents for purposes of analysis will be retained for about four months, and in case it is kept in a refrigerator after adding the preservative, the total period which may be available for making analysis, without decomposition, will be six months. In this case, when the Food Inspector handed over the sample to the respondent, the respondent was not expected to keep G it in a refrigerator. Consequently, without any preservative, the sample kept with him could have been analysed successfully during the next 17 days, whereas, if a preservative had been added, it could have been analysed successfully during the next four months.

It appears to us that when a valuable right is conferred by s. 13 H (2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that that right will not be denied to him. The right is a valuable one, because the

certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. Obviously, the right has been given to the vendor in order that, for his satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, even though that report continues to be evidence in the case of the facts contained therein.

We are not to be understood as laying down that, in every case where the right of the vendor to have his sample tested by the Director of the Central Food Laboratory is frustrated, the vendor cannot be convicted on the basis of the report of the Public Analyst. We consider that the principle must, however, be applied to cases where the conduct of the prosecution has resulted in the denial to the vendor of any opportunity to exercise this right. Different considerations may arise if the right gets frustrated for reasons for which the prosecution is not responsible.

In the present case, the sample was taken on the 20th September, 1961. Ordinarily, it should have been possible for the prosecution to obtain the report of the Public Analyst and institute the prosecution within 17 days of the taking of the sample. It, however, appears that delay took place even in obtaining the report of the Public Analyst, because the Public Analyst actually analysed the sample on 3rd October, 1961 and sent his report on 23rd October, 1961. It may be presumed that some delay in the analysis by the Public Analyst and in his sending his report to the prosecution is bound to occur. Such delay could always be envisaged by the prosecution, and consequently, the elementary precaution of adding a preservative to the sample which was given to the respondent should necessarily have been taken by the Food Inspector. If such a precaution had been taken, the sample with the respondent would have been available for analysis by the Director of the Central Food Laboratory for a period of four months which would have expired about the 20th of January, 1962. The report of the Public Analyst having been sent on 23rd October, 1961 to the prosecution, the prosecution could have been launched well in time to enable the respondent to exercise his right under s. 13(2) of the Act without being handicapped by the deterioration of his sample. The prosecution, on the other hand, committed inordinate delay in launching the prosecution when they filed the complaint on 23rd May, 1962, and no explanation is forthcoming why the complaint in Court was filed about seven months after the report of the Public Analyst had been issued by him.

A This, is, therefore, clearly a case where the respondent was deprived of the opportunity of exercising his right to have his sample examined by the Director of the Central Food Laboratory by the conduct of the prosecution. In such a case, we think that the respondent is entitled to claim that his conviction is vitiated by this circumstance of denial of this valuable right guaran-
B teed by the Act, as a result of the conduct of the prosecution.

Learned counsel for the appellant drew our attention to a decision reported in *Suckling* v. *Parker*(1). That case was concerned with similar law in England, but, there, the provision relating to the testing of the sample kept with the vendor was quite different. In England, there was no restriction that the vendor could not
C have his sample tested until after the prosecution was launched, nor did the subsequent report have the effect of completely superseding the earlier report of the Analyst.

In *Municipal Corporation, Gwalior*, v. *Kishan Swaroop*,(2) it was held that, where there was delay in launching the prosecution, it deprived the accused of the valuable right to challenge the report
D of the Analyst in the manner prescribed by s. 13(2) of the Act, and when this right was denied to the accused for no fault of his, but wholly due to the inordinate laches of the prosecution, no weight could be given to the report of the Public Analyst. That decision proceeded on the basis of the value of the report of the Public Analyst being affected by the fact that the accused had been deprived of his right to challenge that report by obtaining a certificate from
E the Director of the Central Food Laboratory. The report of the Public Analyst, as we have said earlier, does not cease to be good evidence merely because a certificate from the Director of the Central Food Laboratory cannot be obtained. The reason why the conviction cannot be sustained is that the accused is prejudiced in his defence and is denied a valuable right of defending himself
F solely due to the deliberate acts of the prosecution.

In these circumstances, the acquittal of the respondent was justified, and the appeal is dismissed.

V.P.S. *Appeal dismissed*

(1) [1906] 1 K.B.527.
(2) A.I.R. 1965 M.P. 180.