

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1080 of 2013

Kashinath Shaw

-Vs-

The State of West Bengal & Anr.

For the Petitioner : Mr. Abdul Hamid
Md. Abdul Halim

For the State : Mr. Avishek Sinha

Heard on : 27.3.2023, 03.04.2023, 07.08.2023.

Judgment on : 25.09.2023

Ananya Bandyopadhyay, J.:-

1. The instant criminal revisional application is filed by the petitioner praying for setting aside and/or quashing the impugned judgment and order dated 8th March, 2013 passed by Learned Additional District & Sessions Judge, Fast Track, 4th Court, City Sessions Court, Bichar Bhawan, Calcutta in Criminal Appeal No. 101 of 2007 whereby the Learned Additional Sessions Judge rejected the appeal and confirmed the judgment and order dated 20.08.2007 passed by Learned Senior Municipal Magistrate, Calcutta in Case No. 13D of 2003 whereby the Learned Magistrate convicted and sentenced the petitioner to suffer rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/- in default to suffer simple

imprisonment for 20 days holding the petitioner guilty for the offences under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954.

2. The prosecution case expressed on 29.04.2003, the Food Inspector came to the shop of the petitioner, found "Vanaspati" (Dalda) for manufacturing food, took some quantity as sample for examination and after 9 days, the sample was examined by Public Analyst and he opined that the same was adulterated at 10°C of melting point and thereafter prosecution case was initiated. At the completion of trial, by impugned judgment dated 20.08.2007, the Learned Senior Municipal Magistrate, Kolkata convicted the petitioner guilty of the offences under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 sentencing the petitioner to undergo rigorous imprisonment for six months and to pay fine of Rs.1,000/- in default to suffer further simple imprisonment for 20 days.
3. To prove it's case the prosecution had examined 2 P.W.s viz (1) Mr. Bikash Chandra Chattopadhyay – Food Inspector – complainant P.W. 1 and (2) Mr. Swapan Kumar Das – Head Assistant of L(H)A P.W. 2. The defence cited 2 witnesses.

The prosecution adduced the following in evidence which had been marked exhibits :-

- i. Notice in Form No. VI U/R 12 of the P.F.A. Rules, 1955 issued by the Food Inspector on 29.04.2003 to Kashinath Shaw – Prop. & Seller of "M/s. Laxmi Sweets" – marked exhibit 1, 1/1, 1/2.
- ii. The fourth part of the sample coupon form as to nature of article submitted for analysis dated 29.04.2003 at 12.55 p.m. and receipt of payment of Rs. 37/- in respect of price of 750 grams of "Vanaspati" by Kashinath Shaw (on reverse page of sample coupon form above) marked exhibits 3 & 2 respectively.

- iii. The Peon Book Leaf bearing Lab. Registration No. 165 dated 29.04.03 as to receipt of one sealed cover containing one part of sample of "Vanaspati", one seal cover containing, one copy of memorandum in Form No. VII etc. – marked exhibit 4.
- iv. The C.M.C. Peon Book Leaf bearing receive signature with date 29.04.03 in the office of L(H)A & C.M.H.O. the K.M.C. of (1) one sealed cover containing two parts of sample of "Vanaspati" (2) intimation to the L(H)A & C.M.H.O. Re: sending of sample to the Public Analyst K.M.C.
- v. The seizure list in Form No. IV U/R 10 of the P.F.A Rules, 1955 and keeping it with Mr. Kashinath Shaw Prop. & Seller of M/s. Laxmi Sweets dated 29.04.03 marked exbt. 6.
- vi. Memo. No. H/PFA/A/20 dated 30.05.2003 of the C.M.H.O & L(H)A the C.M.C. to Sri. B.C. Chattopadhyay, Food Inspector along with Public Analyst's Report No. RB/28/2003 dated 26.05.2003 marked exbt. 7 & 8 respectively.
- vii. The forwarding letter of B.C. Chattapadhyay – Food Inspector dated 24.6.03 to the L(H)A & C.M.H.O for written consent to prosecute the vendor under P.F.A. Act, 1954 and the consent of the C.M.H.O. & L(H)A dated 24.6.03 in writing therein marked exbt.9, 9/1.
- viii. The Petition of complaint of Bikash Chandra Chattopadhyay dated 24.6.03 bearing Case No. 13D/03 dated 26.4.03 against Kashi Nath Shaw – Prop. & Seller of "M/s. Laxmi Sweets" marked exbt.10.
- ix. The Postal Receipt No. 2211 dated 1.7.03 addressed to Kashi Nath Shaw above marked exbt.11.
- x. The A/D Card bearing letter No. H/PFA/A/26 dt. 1.7.03 in the name of above received by one Gopi Nath Shaw for Kashi Nath Shaw with date 3.7.03 marked exbt.12,
- xi. The letter of the C.M.H.O & L(H)A above to Kashi Nath Shaw above stating encl. copy of Public Analyst's Report No. RB/28/2003 dated 26.5.2003 marked exbt.13.

Defence had adduced 6 bills marked exbt.'A' collectively.

PW-1 had submitted his report to the L(H)A & C.M.H.O. along with the relevant documents of sampling for his opinion for filing the case against the vendor-cum-proprietor (exbt.9) who after perusal of such documents and the Forwarding Note, which gave his consent to prosecute the vendor-cum-proprietor of the shop in question (exbt.8/1).

PW-1 thereafter filled in the Petition of Complaint Form in his own handwriting and signed the same. Thereafter, he placed the filled in Petition of Complaint form before the L(H)A & C.M.H.O. for his consent. He consented and signed on the said form (exbt.10). Then he filed it before the Ld. Court of Sr. Municipal Magistrate through the Municipal Prosecutor. After filing of this case (13D/03) he reported the matter to the L(H)A & C.M.H.O. on 27.06.2003 and the said information in writing was received by one clerk of the L(H)A's office.

In cross-examination after charge PW-1 stated that the shop in question was not a "mudi shop" and different kinds of sweet-meats and "singara" etc. were sold therefrom. The "Vanaspati" was kept in the kitchen attached to the shop where the Sweet-meats and other food articles were prepared. He admitted his knowledge about Rule 22 but he could not say how much quantity of "Vanaspati" should be taken as sample from the container. He stated that it was not necessary to go through the Analyst Report except the portion which was necessary for filing the case. At that time there was 10/12 kgs of "Vanaspati" in the container stored in that shop. He took the signature of the local witness as well as the signature of the accused person in the document viz.

sample coupon form Form IV and Form VI at the time of taking sample. He did not take the signature of the accused person on the sample coupon Form. He could not say whether the sample witness had any shop at 35, A.J.C. Bose Road but he was present in the shop at the time of taking sample.

At that time many customers were present in the said shop. He approached Siraj Ahmed who was ready to be a witness in his sampling work and for that reason he had not approached any other customer present there. He was present in the shop for one and a half hours. He found the accused using the "Vanaspati", wherefrom he took the sample for frying "Singara". He had not seen the said "Vanaspati" exposed in that shop for sale for human consumption. He did not take any "singara" as sample because he got raw-materials used in frying the "Singara" which he suspected to be of sub-standard quality. He had admitted that the sample witness and the accused vendor had put their signatures on the documents as per his instruction. He took a quantity of "Vanaspati" from the container and kept the same in another container brought by him before keeping the sample in the sample bottles.

The only spoon which was used by the vendor for taking out the "Vanaspati" from the container was used by him for taking out the sample from the container. He did not notice whether that spoon was being touched with the Frying Pan by the cook. The "Vanaspati" which he had taken as sample was in semi solid state. The "Vanaspati" in question could be poured into the sample bottle used for taking sample directly from the container. He denied that the quantity of "Vanaspati" taken by

him for sample was not sufficient. He denied that the instruments used by him in taking the sample were not dry, clean and empty. He denied that he did not submit the necessary documents before the Sanctioning Authority for taking his sanction for prosecution. He had confirmed on other points stated in the deposition in chief.

P.W. 2 Swapam Kumar Das, Head Assistant to L(H)A Health, Food cell, Calcutta Municipal Corporation stated that on 01.07.2023 one forwarding letter of Dr. Sujit Kumar Ghosh the then L(H)A and C.M.H.O., C.M.C. vide No. H/PFA/A/26 dated 01.07.03 along with a copy of Public Analyst's Report vide no. R.B./28/2003 dated 26.05.03 was sent to Kashinath Shaw, Proprietor and Seller of M/s. Laxmi Sweets of 35A, A.J.C. Bose Road, Calcutta - 17 under registered post with A/D on 01.07.03 (exbt. 11). The A/D Card returned after service of the letter and the copy of Public Analyst's Report upon the accused person. One Gopinath Shaw received the said forwarding letter and the copy of the report of Public Analyst on behalf of Kashnath Shaw by putting his signature on A/D card on 03.07.03. The A/D card was filled in by Ramkrishna Kundu the then Assistant to L(H)A and he (P.W. 2) knew his hand-writing (exbt. 2).

The copy of the forwarding letter dated 01.07.03 in printed form filled in by Ramkrishna Kundu the then Assistant to L(H)A and signed by Dr. Sujit Kumar Ghosh, the then L(H)A and C.M.H.O. of C.M.C. He (P.W. 2) identified the handwriting and signature (exbt. 13).

In cross-examination after-charge he stated that in the year 2003, July he was posted at the Food Cell of the C.M.C. The forwarding letter

and the Public Analyst's Report were not sent by him. He had no personal knowledge as to the sending of the letter and the report to Kashinath Shaw. He did not know Gopinath Shaw. The said Ram Krishna Kundu was under suspension (as on 11.04.2005). He denied that the forwarding letter and the Public Analyst's Report were not sent to the accused Kashinath Shaw.

D.W. 1 accused Kashinath Shaw deposed he required "Vanaspati" (DALDA) for preparation of "Khasta-Kachuri" and he also prepared "Budia", "Ladoo", "Singara" etc. He used to purchased packed poly jar of 15 kgs. of "Dalda". The Food Inspector had taken sample from sealed poly jar by opening it. He had purchase bills and produced 6 bills issued by the son of Ram Swarup Shaw and Munshi. These bills were prepared in his presence but could not say whether those were written by Jiten Prosad or the Munshi. He did not know how to read or write English so could not state the contents of exbts. 1, 2, 6, 9. His shop was at 35, A.J.C. Bose Road. He had bill issued by the land-lord. Those bills were not prepared in his presence. He had factory bill of preparation of sweets. He also had Police Licence.

D.W. 2 Mr. Joy Prokash Shaw – a grocery shop dealer of 9B, Nasiruddin Road named "Laxmi Store" stated Ramswarup Shaw had a business of whole-sale grocery articles who had died. D.W.2 identified 6 cash Memos as that of the shop sold to Laxmi Sweets. "Dalda" was sold to the said Laxmi Sweets in sealed condition. He could not say the name of person who had put the initials on the 6 bills (Cash Memo). His father had not issued the same. The Manager (Munim) used to issue bills. In

April, 2003 Mr. Raj Kumar Shaw was the Manager but who had expired. The Cash Memos were marked exbt. A collectively.

In cross-examination he stated his shop was in existence since 8/10 years. His father's shop is at a distance of 2/3 km from his shop. He was not present at his father's shop when the 6 Cash Memos were written/issued. He had appeared before the Court on call by Kashinath babu and Voluntarily stated that his father was summoned by the Court.

4. In the judgment given by Additional District & Sessions Judge, Fast Track 4Th Court, City Sessions Court, Bichar Bhawan, Calcutta:-

"I also found from the cross-examination of the witness PW-1 he has stated that he was present there one and half hours and the accused was using the vanaspati where from he took the sample for frying singara. He did not find the said vanaspati exposed in that shop for sale for human consumption. He did not take any singara which he suspected to be of sub-standard quality...."

It has been provided under Section 7 of PFA Act, 1954 that no: "No person shall himself or by any person on his behalf manufacture for sale, or store, sale or distribute –

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 purpose of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food refer to in Clause (iii) or Clause (iv) or Clause (v) if he stores such food for the manufacture therefrom of any article of the food for sale.

So far as this case is concerned, the accused/appellant stored the said 'vanaspati' for the purpose of manufacturing the food articles for human

consumption. That on the date of incident, the accused/appellant was frying the food article such as singara out of the said 'vanaspati' stored by him in his sweet meet shop named and styled as M/s Laxmi sweets for the human consumption. As such, there is no doubt to come to a finding that the accused/appellant has committed the offence under Section 7 of the PFA Act, 1954. That the accused/appellant has failed to produced any bills for purchasing vanaspati containing warrantee or guarantee of the company or manufacturer before this court in order to shift the liability from him to the manufacturer company."

5. The Learned Advocate for the petitioner relied upon the following judgments

(i) (2009) Supreme Court Today 205, (ii) 1995 Cr. LJ 3491, (iii) 1995 Cr. LJ (Supreme Court) 3638, and further submitted that:-

- i. On 29.04.2003, Food Inspector inspected the shop M/s Lakshmi Sweets and found "Vanaspati" stored for manufacturing the food. The petitioner was present who disclosed that the "Vanaspati" was kept for manufacturing food. This is the case of the prosecution as per petition of complaint.
- ii. In one hand it is proved that the "Vanaspati" was not opened and used and on the other hand it is proved that the said "Vanaspati" was not used for preparation of food.
- iii. Food Inspector took sample of the said "Vanaspati" weighing 750 gram in the presence of sample witness Mr. Siraj. The said Mr. Siraj was not produced as witness. As per Section 313 Cr.P.C. the petitioner said and submitted against question No. 18 that he signed without knowing the context and he does not know English. This was not considered by the Learned Court below in the impugned judgment. Against question No. 19, in Section 313 Cr.P.C., the

petitioner said that neither the spoon nor the steel pot was clean and dry in which the sample was taken. This was not considered in the impugned judgment. Against question No. 20 in under Section 313 Cr.P.C., the petitioner said that he wrote as per the direction of the Food Inspector and he did not received Rs.37/-. This was not considered in the impugned judgment.

- iv. Against question No. 21 in under Section 313, the petitioner said that no sealing was done in his presence. He got some signature on some forms papers and left the shop. He further said that the Inspector did not clean the glass bottles inside which he tool by powering it into bottles. The sample was not weighed. This aspect was not considered in the impugned judgment.
- v. Against question No. 22 in under Section 313, the appellant said that no wrapping of the sample was done in his presence and/or in his shop. This aspect was not considered in the impugned judgment.
- vi. Against question No.23, 24 and 25 of the Section 313, the petitioner said that no form was prepared in his shop. No sealing was done in his shop. Nothing was sealed in his presence and in his shop. The Food Inspector took sample and left. The above vital aspects were not gone into the impugned judgment and were not at all considered.
- vii. Against question No. 5 of under Section 313, the petitioner said that he had not adulterated the "Vanaspati" and he is innocent. This was not gone into the impugned judgment.

- viii. Against question No. 13 of under Section 313, the petitioner said that he purchased "Vanaspati" from the shop. Against question No. 14 of 313, the petitioner said that he had not received any letter. This above two aspects were not considered in the impugned judgment.
- ix. Against question No. 17 of under Section 313, the petitioner said that he purchased "Vanaspati" in poly pack jar from the shop of one "Ram Swarup Shaw" and he is innocent. This aspect was not considered.
- x. The Ld. Court ought to have considered the statement of the appellant u/s 313 of the Cr.P.C. Even no incriminating materials were put to the appellant under Section 313 of the Code. Even omnibus question were put to the appellant at the examination u/s 313 Cr.P.C. The adverse material and circumstances appearing against him were not specifically put to him during examination under Section 313 Cr.P.C.
- xi. Against question No.28, 29, 30, 31 of the 313, the appellant says that he did not produce "Vanaspati", he purchased from the shop of one "Ram Swarup Shaw", he did not receive any report of analysis, he purchased poly pack Jars containing "Vanaspati" of companies with label and guarantee. How he could know as to its adulteration. He is innocent. He further says that he has six Bills. All these above aspects were not judicially considered in the impugned judgment.
- xii. As per the petitioner the sample was taken from sealed packed jar, the pot in which sample was taken was not clean and dry, the

sample was not sealed and packed in his shop and in his presence. The petitioner produced six bills of purchasing "Vanaspati". The above bills were never denied by the other witness namely "Prakash Shaw", son of Ramswarup Shaw (since deceased) from whose shop the said "Vanaspati" was purchased. The Learned Court below has not at all considered the vital deposition of the above two witnesses. The witnesses said something and the Court has taken something different in his impugned judgment. Apart from the above aspect, the sample was tested after 9 days. As the sample was not taken in dry and clean pot and was not sealed and was kept for 9 days for examination naturally air and water bacteria create contamination from which it may be adulterated. 9 days delay as mentioned above might have increased the melting point by 10°C i.e. the range beyond 31°C to 41°C. In the impugned judgment also at page 6 under heading "Decision with Reasons", the prosecution admits that delay in test can be caused "increase of melting point".

- xiii. In the impugned judgment, Learned Trial Court at page 7 hold that "Vanaspati" was being used whereas in the petition of complaint and also first page of the judgment evidenced that "Vanaspati" was stored for preparation of food which is contradictory.
- xiv. In this impugned judgment it was held that same was taken from open pack jar, sample taken in clean dry spoon and pot etc. those above things are denied by the petitioner. But the Learned Court failed to consider the same.

- xv. Analyst "Ram Dulal Biswas" was not produced as "witness" to substantiate the authenticity of the above report on which the petitioner was held guilty.
- xvi. Apart from the above aspect, the Food Inspector in his evidence admitted that he did not take any signature of the accused person on the sample coupon form.
- xvii. Apart from the above, the Food Inspector said in his evidence that he had not seen the said "Vanaspati" exposed in the said shop for sale of human consumption. He further said in his evidence that he did not notice whether the spoon was being touched with the frying pan by the cook. These above aspects were not considered by the Learned Court below.
- xviii. Ram Krishna Kundu, Assistant to L(H)A was not produced as witness when it was claimed that he wrote the A/D card of the letter of communication of report of Analyst when the petitioner denied to have received.
- xix. Swapan Kumar Das, PW-2 said in his evidence that he had no knowledge as to he had sent letter and report to Kashinath Shaw, the petitioner hererin. This aspect was not considered.
- xx. At page 12 and 13 of the impugned judgment, the Learned Trial Court recorded that Food Inspector, had taken sample from sealed poly jar by opening it. The petitioner produced six bills.
- xxi. DW-2 identified six cash memos which was sold to petitioner at page 13 of the impugned judgment.

- xxii. In cross-examination PW-2 said that he was not present when the bills were issued and/or written. This cannot be the ground of denial of the authenticity of the six bills. The Court below wrongly hold that PW-2 could not identify the six bills at page 14 last part. There is nowhere in the deposition and cross-examination that PW-2 said he could not identify. He said that he was not present when the bills were written and/or issued.
- xxiii. The Learned Court below wrongly held that the Court disbelieved that accused/petitioner did not purchase from the shop of “Ram Swarup Shaw”.
- xxiv. Learned Court ought to have considered that the accused/petitioner cannot produce sugar and/or “vanaspati”.
- xxv. The said Ram Swarup and/or the company was not impleaded as an accused.
- xxvi. Apart from the above, the petitioner is entitled benefit and protection within the domain of Section 19(1)(2) of the Protection of Food Adulteration Act, 1954, as the petitioner had purchased sealed poly jar containing “vanaspati”, he was ignorant about the nature, substance and quality. The Learned Court below wrongly denied to the said benefit.
- xxvii. Apart from above aspect, the Learned Court below wrongly hold that correctness of the Analyst report was not challenged u/s 13(2) of P.F. Act when it is clear that the Analyst report was not sent to the appellant.

- xxviii. At page 22, the Learned Court wrongly held that the petitioner was silent about the receiving by one Gopinath Shaw. The petitioner had said that he does not know any person by name “Gopinath and there have no person in the shop by name Gopinath”.
6. The Ld. Advocate for the State submitted on proper appreciation of evidence both the Ld. Trial Courts had convicted the petitioner.
7. The Food Inspector deposed on visiting the sweet-meat shop of the petitioner, he detected “vanaspati” kept in an open-poly packjar being used for the purpose of preparing food items sold from the shop. PW-1 thereafter on suspicion of the “vanaspati” to be adulterated, collected a sample of the same following necessary procedures in consonance with Form VI to be sent to the Public Analyst for assessment and analysis report. Subsequently the report of the Public Analyst determined the sample to be adulterated.
8. Section of 2 of **‘The Prevention of Food Adulteration Act, 1954’** stated as follows:

“In this Act unless the context otherwise requires,—

- (i) **"adulterant"** means any material which is or could be employed for the purposes of adulteration;
- (ii) **"adulterated"**—an article of food shall be deemed to be adulterated—
- (a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;
- (b) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof;

- (c) if any inferior or cheaper substance has been substituted wholly or in part for the article so as to affect injuriously the nature, substance or quality thereof.*
- (d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof ;*
- (e) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health;*
- (f) if the article consists wholly or in part of any filthy, putrid, , rotten, decomposed or diseased animal or vegetable substance or is insect-infested or is otherwise unfit for human consumption;*
- (g) if the article is obtained from a diseased animal;*
- (h) if the article contains any poisonous or other ingredient which renders it injurious to health;*
- (i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;*
- (j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability;*
- (k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;*
- (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, but 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 or 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.

Explanation - *Where two or more articles of primary food are mixed together and the resultant article of food—*

(a) is stored, sold or distributed under a name which denotes the ingredients thereof; and

(b) is not injurious to health, then, such resultant article shall not be deemed to be adulterated within the meaning of this clause;”

9. Section 7 of **‘The Prevention Of Food Adulteration Act, 1954’** stated as follows :-

“Prohibitions 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.*”

10. Section 19 of ‘**The Prevention Of Food Adulteration Act, 1954**’ stated as follows :-

“Defences which may or may not be allowed in prosecutions under this Act —

- (1) *It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.*
- (2) *A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves—*
- (a) *that he purchased the article of food—*
- (i) *in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,*
 - (ii) *in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and*
- (b) *that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.*
- (3) *Any person by whom a warranty as is referred to in section 14 is alleged to have been given shall be entitled to appear at the hearing and give evidence.”*

11. The petitioner denied to have received the notice under Section 13(2) of the said Act. The copy of the report of the Public Analyst was not received by him. However, the said claim was refuted through the A/D card marked Ext.

12 which revealed one Gopinath Shaw to have received the Public Analyst report on behalf of the petitioner, Kashinath Shaw. The petitioner has been able to prove that the “vanaspati” was purchased by him attracting the provision under Section 19(2) of the said Act. DW-2 admitted the purchase of “Vanaspati” from their shop as per the bills issued by the concerned person of the shop. DW-2 further stated the death of his father to have occasioned in the meantime. The Ld. Trial Court should have considered the testimony of DW-1 in essence of admission rather than negating the same, disregarding the fact of lapse of time, disabling the defence witnesses to categorically state the exact signatories to the issuance of bills. The explanation to Section 2 of the said Act provides the end product prepared out of the article claimed to be adulterated must be injurious to health. In the instant case, the petitioner did not produce or sell or market the “vanaspati” but procured the same for preparation of “singara” to be sold. The petitioners on a regular basis prepared and sold the “singara” from his sweet-meat shop without any complaint of such food items being injurious to health. The Public Analyst report did not state the presence of any ingredient of ‘adulterant’ in the sample deteriorating its value of consumption injurious to health due to contamination. The “Vanaspati” was not substituted by any inferior or cheaper substance or kept under insanitary conditions. PW-1 was present in the shop for more than 1 hour. In the process of taking samples in the presence of the customers in the shop, PW-1 was not complained of the degradable standard of food items/savouries sold by the appellant. The change in temperature of melting point cannot be attributable to the

existence of any ‘adulterant’ in absence of specific explanation and identification of the same.

12. The Hon’ble Supreme Court in **Narayana Prasad Sahu vs. State of Madhya Pradesh**¹ observed that:

“6. Under Sub-section (2) of Section 13, it is mandatory for the Local (Health) Authority to forward a copy of the report of the Public Analyst to the person from whom the sample of the food has been taken in such a manner as may be prescribed. Further mandate of Sub-section (2) of Section 13 is that a person to whom the report is forwarded should be informed that if it is so desired, he can make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample analysed by Central Food Laboratory. The report is required to be forwarded after institution of prosecution against the person from whom the sample of the Article of food was taken. Apart from the right of the Accused to contend that the report is not correct, he has right to exercise an option of sending the sample to Central Food Laboratory for analysis by making an application to the Court within ten days from the date of receipt of the report. If a copy of the report of the Public Analyst is not delivered to the Accused, his right Under Sub-section (2) of Section 13 of praying for sending the sample to the Central Food Laboratory will be defeated. Consequently, his right to challenge the report will be defeated. His right to defend himself will be adversely affected. This Court in the case of Vijendra (supra) held that mere dispatch of the report to the Accused is not a sufficient compliance with the requirement of Sub-section (2) of Section 13 and the report must be served on the Accused.

7. Perusal of the judgments of the learned Magistrate and Sessions Court show that the clerk who dispatched the report was examined by the prosecution. Though the prosecution has relied upon the remarks made by the Postman on the postal envelope, the Postman who has allegedly made the said remarks was admittedly not examined by the prosecution.

¹ (2022) 1 SCC 87

8. Rule 9B of the said Rules reads thus:

9B. Local (Health) authority to send report to person concerned--The Local (Health) Authority shall [within a period of ten days] after the institution of prosecution forward a copy of the report of the result of analysis in Form III delivered to him Under Sub-rule (3) of Rule 7, by registered post or by hand, as may be appropriate, to the person from whom the sample of the Article was taken by the food inspector, and simultaneously also to the person, if any, whose name, address and other particulars have been disclosed Under Section 14A of the Act:

Provided that where the sample conforms to the provisions of the Act or the Rules made thereunder, and no prosecution is intended Under Sub-section (2), or no action is intended Under Sub-section (2E) of Section 13 of the Act, the Local (Health) Authority shall intimate the result to the Vendor from whom the sample has been taken and also to the person, whose name, address and other particulars have been disclosed Under Section 14A of the Act, within 10 days from the receipt of the report from the Public Analyst.

More than one mode was prescribed by Rule 9B for serving the report of Public Analyst on the Accused. In the present case, after the postal packet was returned, not even an attempt was made to personally serve the report on the Appellant.”

13. The Public Analyst's report was not served upon Kashinath Shaw from whom the sample was collected. The Post Master was not cited as a witness to authenticate the service of notice upon Gopinath Shaw. The existence of Gopinath Shaw to have received the said notice was not proved. Therefore the provision under Section 13(2) of The Prevention of Food Adulteration Act, 1954 was not complied with.

14. In view of the above discussions, the impugned order of conviction in Criminal Appeal No. 101 of 2007 passed by the Court of the Learned

Additional District & Sessions Judge, 4th Court, City Sessions Court, Bichar Bhawan, Calcutta as well as Learned Senior Municipal Magistrate, Calcutta in Case No. 13D of 2003 are accordingly set aside.

15. This criminal revision application being CRR 1080 of 2013 is allowed.
16. There is no order as to cost.
17. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.
18. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)