

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3579 of 2014

M/S Dee Empresa Hotel & Ors.

-Vs-

The State of West Bengal & Anr.

For the Petitioners : Mr. Sanat Kumar Das
Mr. Sujan Chatterjee

For the State : Ms. Sreyashee Biswas
Mr. Goutam Dinda
Mr. Anindya Sundar Chatterjee
Ms. Puja Goswami

Heard on : 21.06.2023

Judgment on : 28.11.2023

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is filed against the impugned judgment and order dated 22.08.2014 passed by the Learned Additional District & Sessions Judge, 2nd Fast Track Court, Bichar Bhawan, Calcutta, in connection with Criminal Appeal No. 103 of 2012 arising out of judgment and order dated 08.10.2013 passed by the Learned Municipal Magistrate, 2nd Court, Calcutta in connection with Case No. 9D/10 under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 thereby dismissing the Criminal Appeal No. 103 of 2012 and affirmed the

judgment and order dated 08.10.2013 passed by the Learned Municipal Magistrate, 2nd Court, Calcutta in connection Case No. 9D/10 under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954.

2. The contentions in the petition reveal that petitioner no. 1 is a Private Limited Company which governing the business of operating a hotel of repute under the name and style of M/s Dee Empresa Hotel situated at 12/2A, Dr. Md. Isaque Road, Kolkata – 700016 (hereinafter referred to as the said 'premises'). The petitioner no. 2 is the Managing Director of the petitioner no. 1, the petitioner no. 3 and 4 are the directors of the petitioner no. 1, whereas the petitioner no. 5 is the person-in-charge of the petitioner no. 1's hotel. The petitioner 2 to 5 are not actively involved in the day to day business of the petitioner no. 1's hotel but are merely executives of the petitioner no. 1 Company.
3. On 9th December, 2009 one Ranjan Dutta on his arrival at the hotel premises disclosed himself to be the Food Inspector of the respondent no. 1. On inspection he found certain quantity of corn flour (hereinafter referred to as the 'said article') to be kept in the kitchen of the aforesaid hotel. The petitioner no. 5 was interrogated by the above-mentioned Food Inspector wherein he explained that the said article was merely stored in the said premises and was not meant for sale.
4. A sample of the said article was taken by the Food Inspector in three identical closed polythene packets of one kilogram each allegedly for the

purpose of testing, in the presence of one Dhananjay Sinha Mahapatra (being P.W. 3) as the sample witness, who was also a Food Inspector of the respondent no. 1. Despite the presence of local people and other nearby shop keepers the above-mentioned Food Inspector was chosen to be the sample witness. A part of such sample was to be sent to the public analyst for analysis, whereas the remaining two parts of the sample was to be sent to the Local Health Authority & Chief Municipal Health officer.

5. The Public Analyst's report bearing no. ND/81/09 dated 06th January, 2010 was received from the office of the Local Health Authority wherein it was allegedly reported that the said sample was misbranded and in violation of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'said Act').
6. The respondent approached the Learned Municipal Magistrate, 2nd Court, Calcutta and filed an application being Case no. 9D/10 under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 against the petitioner; praying for an order for issuance of summons against the petitioners for offences committed under the aforesaid Act for trial.
7. Subsequently, the Learned Municipal Magistrate, 2nd Court, Calcutta delivered the judgment on 8th October 2013, convicting the petitioners under Section 248(2) of the Code of Criminal Procedure for committing the offence punishable under Section 7 read with Section 16(1)a(i) of the Act on contest.

8. Being aggrieved and dissatisfied with the judgment and order dated 8th October 2013 passed by the Learned Municipal Magistrate, 2nd Court, Calcutta in connection with Case No. 9D/10, the petitioner herein filed an appeal under Section 374 of the Code of Criminal Procedure before the Learned Additional District & Sessions Judge, 2nd Fast Track court, Bichar Bhawan, Calcutta, in connection with Criminal Appeal No. 103 of 2012.
9. The Learned Additional District & Sessions Judge, 2nd Fast Track Court, Bichar Bhawan, Calcutta, was pleased to dismiss the said appeal being Criminal Appeal No. 103 of 2012 on consideration and further affirmed the judgment and order dated 8th October, 2013 passed by the Learned Municipal Magistrate, 2nd Court, Calcutta.
10. Being aggrieved and dissatisfied with the judgment and order dated 22nd August 2014 passed by the Learned Additional District & Sessions Judge, 2nd Fast Track Court, Bichar Bhawan, Calcutta in Criminal Appeal No. 103 of 2012, arising out of the judgment and order dated 8th October 2013 passed by Learned Municipal Magistrate, 2nd Court, Calcutta in connection with Case No. 9D/10, petitioner begs to move this instant application under Section 401 read with Section 482 of the Code of Criminal Procedure.
11. Learned Advocate for the petitioners submitted that-
 - i. The Learned Court below has acted illegally, mechanically and has erred both in law and in fact thereby causing severe prejudice to the petitioner.

- ii. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the sample witness is an office bearer in the Department of Food Inspection and has been regularly used in other proceedings for similar purposes.
- iii. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that neither of the three witnesses examined by the prosecution were independent witnesses.
- iv. The Learned Trial Court as well as the Learned Appellate Court below failed to appreciate that the petitioner nos. 2 to 5 did not have any active role in the day to day business of the petitioner no. 1's hotel the prosecution failed to adduce the sufficient evidence to establish the role of the petitioner nos. 2 to 5 in the ordinary course of business of the petitioner no. 1's hotel or any consent, connivance or neglect on their part as regards allegations made.
- v. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the trade license (Exhibit – 7) did not impute the petitioner no. 2 to 5's involvement in the ordinary day to day course of business of the petitioner no. 1's hotel.
- vi. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that corporate liability of the petitioner no. 1 couldn't be fastened on the petitioner nos. 2 to 5 in the absence of any proof of consent, connivance or neglect on their part.

- vii. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the prosecution has not produced any evidence to the effect that local people were called upon by the Food Inspector to volunteer as sample witness.
- viii. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that any independent third party was not made witness for proving the proper conduct of inspection as per the requirements and procedures under the Act. This was despite the presence of nearby establishments and restaurants as admitted in the evidence of P.W. 3.
- ix. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the samples were collected in polythene packets which are susceptible leakage.
- x. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the petitioners duly supplied necessary bills and invoices within the allotted time period to show that the packets of cornflower were purchased from a particular manufacturer and therefore any liability cannot be affixed on the petitioners. Non-consideration of such documents is indicative of willful suppression by the Food Inspector for the purposes of obtaining sanction for prosecuting the petitioners.
- xi. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the concerned Food Inspector did not take the

signatures of the accused persons and the sample witness on the Inspection Report. Such fact casts a doubt upon the prosecution case as there is no evidence to substantiate that the petitioners were present at the time of collection of the sample. Even otherwise, the sampling procedure is not as per law.

- xii. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the Public Analyst report bearing no. ND/81/09, dated 06.01.2010 was seriously challenged by the petitioners.
- xiii. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the complaint petition does not disclose any case of misbranding against the petitioners.
- xiv. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the accused persons are neither manufacturers nor dealers in respect of the Corn Flour which was seized.
- xv. The Learned Trial Court as well as the Learned Appellate Court below failed to consider the prosecutions inability to justify the use of Corn Flour in ordinary course of human consumption and sale for such purposes.
- xvi. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that no evidence was adduced by the prosecution for establishing the fact whether the Corn Flour found at the said premises was meant for human consumption.

- xvii. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the petitioners had produced all relevant documents to the Food Inspector, however, the Food Inspector failed to take any action against such manufacturer and dealer.
- xviii. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the Public Analyst was not brought before the Trial Court for deposing and proving the report tendered by him. In the absence of formal proof of the report furnished by the Public Analyst the same cannot be looked into for the purposes of affixing liability on the petitioners herein.
- xix. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the process of sampling took place in the presence of interested witness. Therefore, the fact of due compliance of sampling procedures could not be held to have been proved by the prosecution.
- xx. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the Food Inspector is not empowered to take raw materials used in the preparation of food materials under the Act.
- xxi. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that there was non-application of mind and non-consideration of relevant documents and reports by the Chief Municipal Health Officer and Local Health Authority at the stage of granting sanction.

- xxii. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the prosecution has failed to prove statutory notice.
- xxiii. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the concerned Food Inspector (P.W. 2) had admitted in his evidence that he did not attempt to search out the carton in which the Corn Flour was packed. Such in-action on the part of the Food Inspector is indicative of his intention to falsely implicate the petitioners.
- xxiv. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the Food Inspector (P.W. 2) in his evidence admitted that he could not ascertain the address of the concerned manufacturer and consequently no action was taken by him.
- xxv. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the prosecution has failed to prove effective service of statutory notice.
- xxvi. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that absence of batch no., code no., on the article seized is indicative of manufacturing defect which is protected under the Act as manufacturer's warranty would apply.
- xxvii. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the Food Inspector did not obtain a sample of any food item prepared from such Corn Flour.

- xxviii. The Learned Trial Court as well as the Learned Appellate Court below failed to appreciate that the questions under Section 313 Code of Criminal Procedure placed before the accused persons were improper and did not give sufficient opportunity to explain the incriminating circumstances against them.
- xxix. The Learned Trial Court as well as the Learned Appellate Court below failed to appreciate that storing an adulterated article of food for the purposes other than for sale would not constitute an offence under the Act.
- xxx. The Learned Trial Court as well as the Learned Appellate Court below failed to appreciate that the Act does not give blanket powers to the Food Inspector to take samples from people who do not come within the ambit of the Act, the sample can only be taken from those articles which are meant for the limited purpose of sale for the purposes of human consumption. Any sample which is otherwise taken cannot be used by the prosecution.
- xxxi. The Learned Trial Court as well as the Learned Appellate Court below failed to appreciate that the Act cannot be misused in the absence of standardized procedures for sampling to become an instrument for pick and choose as per whims of the prosecution.
- xxxii. The Learned Trial Court as well as the Learned Appellate Court below failed to appreciate that in a complaint against a body corporate and its directors, the complainant has to indicate in the complaint itself as

to whether the directors concerned were responsible for the day to day management and conduct of regular business of the company. In the absence of any specific allegation in complaint as to the role of the directors in the day to day affairs of the company liability cannot be affixed on them.

xxxiii. The Learned Trial Court as well as the Learned Appellate Court below failed to consider that the prosecution failed to adduce any evidence to show that the article seized is an imitation or a substitute for such an article or that it resembles another article of food under the name of which it was sold, the report of the Analyst wherein he has only given the analysis of the content would not suffice to prove imitation or substitute.

12. The Learned Advocate for the State submitted that the public analyst report stated the misbranding of the commodities in contravention of the provisions of the aforesaid Act and accordingly the trial court had rightly convicted the petitioners and the instant revisional application shall be dismissed.

13. **"2. Definitions-** *In this Act, unless the context otherwise requires-*

*(i) "**adulterant**" means any material which is or could be employed for the purposes of adulteration;)*

*(ia) "**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 standards or its constituents are present in quantities not within the prescribed limits of variability, which renders it injurious to health;

(m) If the quality or purity of the article falls below the prescribed standards 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;”

14. **“7. Prohibition of manufacture, sale, etc., of certain articles of food-**

No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute-

(i) any adulterated food;

(ii) any misbranded food;

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

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority 1 [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;

(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 there from of any article of food for sale.”*

15. “13. **Report of Public analyst-**

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under section 14A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may 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 of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.”

16. “16. **Penalties-** (1) Subject to the provision of sub-section (1A) if any person –

(a) Whether by himself or by any other person on his behalf, imports into India or manufacturers for sale or stores, sells or distributes any article of food-

(i) which is adulterated within the meaning of sub-clause (m) of clause (ia) of section 2 or misbranded within the meaning of clause (ix) of that section or the sale of which is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority.

(ii) Other than an article of food referred to in sub-clause(I), in contravention of any of the provision of this Act or of any rule made thereunder, or”

17. **“19. 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.”*

18. **“Analysis Report :-**

(i) Sample Description : Corn flour (in closed packet label declaration as on packet)

(ii) Physical Appearance: Milk white soft powder in closed polythene packet of 1 kg. On the packet, it is embossed corn flour. Batch No./Code No./Lot No. & Mfg. dt. is not found anywhere on the packet. Hyacinth Products, Kolkata – 700016, E-mail stated.

(iii) Label : For soups, cakes etc. For industrial use only.

<i>Sl. No.</i>	<i>Quality Characteristics</i>	<i>Method of test used</i> <i>D.G.H.S.</i>	<i>Result</i>	<i>Prescribed Standards as per:-</i> <i>(a) Item A – of Appendix ‘B’</i> <i>(b) As per label declaration of proprietary foods</i> <i>(c) As per provisions of the Act and Rules for both above.</i>
1.	<i>Moisture</i>		<i>6.8%</i>	
2.	<i>Total Ash</i>		<i>0.03%</i>	
3.	<i>Ash insoluble in dil. Hcl.</i>		<i>Negligible</i>	
4.	<i>Alcoholic Acidity</i>		<i>0.27ml. NaoH per 100 gms. Of dried sample</i>	
5.	<i>Added colouring matter</i>		<i>Absent</i>	
6.	<i>Extraneous matter</i>		<i>Absent</i>	

Opinion :- The sample of Corn flour contravenes P.F.A. Rule 32 (e) & (f). Hence, it is misbranded.”

19. PW-1 deposed that the report of the Public Analyst was intimated to the petitioners through registered post and the endorsement marked as Exhibit-2. He also identified the documents marked as Exhibits-3, 3/1, 3/2. He further deposed to have communicated the post office of New Market a letter regarding non-receipt of AD card. However, post office did not reply. The said communication was marked as Exhibit-4. During his cross-examination he approved of his authority to serve the report of the Public Analyst through post office though he failed to produce any document to that affect. He further deposed that the appellants/petitioners refused to accept the report

of the Public Analyst and that he did not contravene all the provisions as enumerated in Section 13(2) of the Prevention of Food Adulteration Act.

20. PW-2 in his deposition, inter alia, stated to have noticed a kitchen and store room in the hotel premises being stacked with different kinds of raw pulses, paneer, powdered biscuits, wheat flour, corn flour, condiments etc. along with cooked foods which were sold to the customers being suspicious of the storage of the corn flour in sealed and labeled packets. PW-2 desired to obtain the samples of the same from the packets. The customers and the other local people present at the spot refused to cite themselves as witness at his request. Consequently, his colleague, Food Inspector Dhananjay Mahapatra agreed to sign the seizure list as a seizure witness. Thereafter, following the process of the seizure and he gleaned the samples in three packets which had word "hyacinth" depicted wherefrom the samples were seized into three distinct packets which were sent for Public Analyst. The Samples were collected on 9.12.2009. The samples were sent to Public Analyst on 10.12.2009.
21. DW-1 during his cross-examination stated though they were in possession of the purchase bills, vouchers of the food articles, purchase register, cash books, ledger books etc. of the hotel, the same were not produced before the Court or given to the lawyer.
22. DW-2, inter alia, deposed that he had submitted all the relevant documents in original before the concerned food inspector and asked for receipt of acknowledgement and which was denied to him.

23. The Public Analyst report has mentioned the samples examined by the Public Analyst to be misbranded. The samples were not adulterated.

24. Section 2(ix) of the Prevention of Food Adulteration Act defines the term misbranded as follows:-

“(ix)“misbranded”- an article of food shall be deemed to be misbranded-

- (a) If it is an imitation of, or is a substitute for, or resembles in a manner likely to deceive, another article of food under the name of which it is sold, and is not plainly and conspicuously labelled so as to indicate its true character;*
- (b) If it is falsely stated to be the product of any place or country;*
- (c) If it is sold by a name which belongs to another article of food;*
- (d) If it is so coloured, flavoured or coated, powdered or polished that the fact that the article is damaged is concealed or if the articles is made to appear better or of greater value than it really is;*
- (e)) If false claims are made for it upon the label or otherwise;*
- (f) If, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear his name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act;*
- (g) If the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents;*
- (h) If the package containing it or the label on the package bears the name of a factitious individual or company as the manufacturer or producer of the article;*
- (i) If it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed concerning*

- its vitamin, mineral, or other dietary properties in order sufficiently to inform its purchaser as to its value for such uses;*
- (j) If it contains any artificial flavouring, artificial colouring or chemical preservative, without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made thereunder;*
- (k) If it is not labelled in accordance with the requirements of this Act or rules made thereunder;”*

25. In the case of ***Alkem Laboratories Limited Vs. State of Madhya Pradesh and Another***¹, the Hon’ble Supreme Court observed as follows:

“19. However, upon a comparison of Section 2(ia) of the 1954 Act which defines ‘adulterated’ and Section 2(ix) which defines ‘misbranded’, we find that there is an overlap between the two provisions. Section 2(ia)(a) includes within the definition of ‘adulterated’ a case where a food article is ‘not of the nature, substance, or quality which it purports or is represented to be.’ Whereas Section 2(i)(ix)(g) includes within the definition of ‘misbranded’ the following:

“2.(i)(ix)(g) if the package containing it, or the label on the package bears any statement, design or device regarding the ingredients or the substances contained therein, which is false or misleading in any material particular; or if the package is otherwise deceptive with respect to its contents.”

Therefore for example, in cases where it is found that a food article contains an additional ingredient which is not advertised on its packaging, or vice versa, where a food article is found to be missing an ingredient which is purported to be included in the contents thereof in the labelling/packaging of the article; or where the food article has used an inferior quality substitute but the labelling purports to use the superior

¹ (2020) 20 SCC 174

quality original ingredient, it would be a case of both adulteration and misbranding.

20. This is not an exhaustive list of examples, but it suffices to say that in certain situations, even for the purpose of proving the offence of 'misbranding', samples of the article would have to be taken according to the procedure prescribed under Sections 1113 of the 1954 Act. This is because in such cases it would not be possible to conclude whether or not the manufacturer, marketer or vendor has put a deceptive label/package on the food article, without making a finding as to whether there has been any adulteration in the contents thereof.

21. The question which arises then is, what is the procedure to be followed in cases where proving 'misbranding' requires testing of the relevant food samples, but the corresponding charge of 'adulteration' has not been made? Section 13(2) is unfortunately silent in this regard. It is a settled principle of statutory interpretation that any ambiguity in a penal statute has to be interpreted in favour of the accused. It would be absurd and discriminatory for the prosecution to, on one hand, rely on the report of the Public Analyst under Section 13(1) for proving the offence of 'misbranding', and on the other hand, claim that the accused cannot avail of their right to challenge the said report as per Sections 13(2) and 13(3) because it is not a case of 'adulteration'. In such a scenario, the word 'adulterated' in Section 13(2) would have to be read as including 'misbranded' in so far as it relates to the ingredients of the concerned food article, and the relevant clauses of Section 13 have to be complied with in their entirety.

22. Hence we are of the considered opinion that where examination of the contents/ingredients of the food article is integral to proving the offence 'misbranding', the procedure prescribed under Sections 1113 of the 1954 Act has to be complied with, regardless of whether 'adulteration' is alleged

or not. This includes the right to obtain a second opinion from the Central Laboratory under Section 13(2). The same test would apply in respect of any other offence for which penalty is prescribed under the 1954 Act.”

26. In the case of **State of M.P. Vs. Prakash Singh Chauhan and Others**² the Hon’ble Supreme Court held as follows:

“4. “Misbranding” has been defined under Section 2(ix) of the Act. For the purpose of facts of this case, the relevant sub-clause reads thus:

“2.(ix) ‘misbrand’ – an article of food shall be deemed to be misbranded –

*(a)-(d) * * **

(e) if false claims are made for it upon the label or otherwise;

*(f)-(j) * * **

(k) if it is not labeled in accordance with the requirements of this Act or rules made thereunder;”

27. The Learned Trial Court while disposing of point no. 7 stated that:

“According to the accused persons, they are neither the manufacturers nor the dealers, in respect of the said article of food. The said article of food were properly stored in the accused No.1/Hotel, in the same state in which they were purchased. So, they can not be made liable for the offence of ‘misbranding’ of the said article of food.

The D.W.1 and the D.W.2, appears to have stated in their evidence that they had produced all relevant documents to the concerned Food Inspector, but he did not take any steps against the concerned manufacturer or the dealer of the said article of food.

Ld. Lawyer for the accused persons tries to argue that the concerned Food Inspector (P.W.2) has admitted in his evidence that he did not try

² (2003) 12 SCC 406

to search out for the cartoons, in which the said article of food were packed. According to him, had the concerned Food Inspector noticed the cartoons of the said article of food, then he could have definitely identified the manufacturer of the said article of food. But, as the concerned Food Inspector was reluctant to take any steps against the concerned manufacturer of the said article of food and was only intending to implicate the present accused persons in this case, so he did not think it necessary to collect necessary information about the manufacturer of the said article of food.

I have already mentioned, that the P.W.2 has specifically stated in his evidence that he had ask the accused No.5 to produce relevant documents to him regarding purchase of the said article of food, but the said accused could not produce any such document to him. The said accused, even, could not supply him any such document within a period of 15 days from the date of his visit to the accused No.1/Hotel. He has also stated that as he could not ascertain the address of the concerned manufacturer of the said article of food, so he could not take any steps against him under the present Act.”

28. The Ld. Trial Court failed to notice the report of the Public Analyst in its entirety where the name and address of the manufacturer along with the email was given. The burden of proof primarily rests on the prosecution. The prosecution failed to comply with the aforesaid Sections of the Act which inter alia categorically stated that the copy of the report of the analysis must be informed to the concerned persons in a prescribed manner. Mere production of the document of dispatch as well as a letter communicated to the concerned authority by PW-1 stating that the petitioners refused to accept the report of the Public analyst does not obliterate the responsibility of the complainant to inform the petitioners about the Public Analyst report.

Mere oral submission without concrete evidence cannot be considered to be sacrosanct in cases where criminal liability is involved. Moreover the A.D. Card was not received by the document. No endeavour was routed to supply the public analyst report to the petitioners personally.

29. The evidence of the prosecution witness establishes the storage of the corn flour and not the sale of the same. The prosecution did not attempt to unravel the manufacturer of the corn flour. Apart from storing the corn flour for the purpose of preparation of food articles to be sold by the petitioners, the manufacturer of the same was not attributed to the petitioners. The prosecution also did not examine the existence of the brand name "Hyacinth" as embossed on the packet of the corn flour to have been deceitful or deceptive in accordance to the Rules 32 (e) and (f) of the Prevention of Food Adulteration Rules.
30. The petitioners being the purchaser of an article as a layman would not venture into the intricacies involved in branding a commodity for sale. It was incumbent on the part of the complainants to inspect the source of manufacture of the corn flour to indict the real perpetrator if at all.
31. The petitioners were not the manufacturer or the marketeer of the corn flour and therefore not privy to the ingredients or the branding procedures. The prosecution did not take any steps to indict the distributor, dealer or manufacturer of the food article concerned. Moreover, the petitioners were not informed of the report of the Public Analyst to find out the marketeers,

manufacturers, distributors or the dealer of the corn flour which was evidently not manufactured by the petitioners.

32. Accordingly, the instant criminal revisional application being C.R.R. 3579 of 2014 is allowed.
33. The impugned judgment and order dated 22nd August, 2014 passed by the Learned Additional District & Sessions Judge, 2nd Fast Track Court, Bichar Bhawan, Calcutta in Criminal Appeal No. 103 of 2012 affirmed the judgment and order dated 8th October, 2013 passed by the Learned Municipal Magistrate, 2nd Court, Calcutta in connection Case No. 9D/10 under Section 7 read with Section 16(1) a (I) of the Prevention of Food Adulteration Act, 1954 is set aside.
34. There is no order as to cost.
35. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
36. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)