IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

CRIMINAL REVISION APPLICATION NO. 102 OF 2015
with
CRIMINAL REVISION APPLICATION NO. 103 OF 2015

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CRIMINAL REVISION APPLICATION NO. 102 OF 2015

APPLICANT : Jairam S/o Atmaram Shadija,
Aged 53 years, Occu. Business,
R/o Dayal Nagar, Wardha,
Tah. & Dist. Wardha.

VERSUS

NON-APPLICANT : State of Maharashtra,
At the instance of S. P. Nandanwar,
Food Inspector, Food and Drugs
Administration, Wardha,
Tah. & Dist. Wardha.

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Mr. J. J. Agrawal , Advocate for the applicant
Mr. S. A. Ashirgade, A. P. P. for the non-applicant/State.

CORAM : G. A. SANAP, J.
Date of Reserving Judgment : May 02, 2023.
Date of Pronouncement of Judgment : June 28, 2023

JUDGMENT

1. These two revision applications arise out of the same incident and therefore, they are being disposed of by this common judgment.

2. Challenge in these revision applications is to the order dated 28.08.2015 passed by the learned Sessions Judge, Wardha in Criminal Appeal Nos. 91 of 2012 and 90 of 2012, whereby the learned Sessions Judge dismissed the appeals and confirmed the order of conviction and sentence of the applicant awarded by learned Chief Judicial Magistrate, Wardha by his separate judgment and order dated 22.06.2012 in Regular Criminal Case Nos. 61/2010 (old R.C.C. No. 160/2003) and 357/2003.

3. Learned Chief Judicial Magistrate, Wardha, in R.C.C. No. 357/2003 had convicted the applicant for the offence punishable under Section 16(1) of the Prevention of Food Adulteration Act, 1954

(hereinafter referred to as "the Act of 1954" for short) and sentenced him to suffer rigorous imprisonment for six months and to pay fine of Rs.5,000/- and in default of payment of fine to suffer further imprisonment for two months. In R.C.C. No. 61/2010, the applicant was convicted for the offence punishable under Section 16(1-C) of the Act of 1954 and sentenced him to suffer rigorous imprisonment for one month and to pay fine of Rs.1,000/- and in default of payment of fine to suffer further imprisonment for 15 days.

4. The facts are as follows :

The applicant (hereinafter referred to as "the accused") was running a shop under the name and style as "Umesh Traders" at Sindhi Market, Wardha. On 02.12.2002 at about 1.00 p.m., Food Inspector Sudam Nandanwar along with panch witness Kishor Hirani paid visit to the shop of the accused. He found that four tins of "Swad Groundnut oil" were kept for sale in the said shop. The Food Inspector apprised the accused the purpose of his visit to the shop. He carried out inspection of the shop. After inspection, he disclosed his intention to draw sample of oil from the tins. The Food Inspector purchased 450 ml groundnut oil as a sample from the accused. By a notice in Form-VI,

the accused was informed that the sample was taken for the purpose of analysis. Food Inspector also issued notice under Section 14-A of the Act of 1954 to the accused and called upon him to disclose the name of the manufacturer of the groundnut oil.

5. The Food Inspector collected the purchased groundnut oil in clean, dry and empty stainless still pot. It was divided in three parts. Each part was then filled in clean, dry and empty glass bottles. The three bottles were packed, labeled and sealed. The three bottles were then wrapped separately in a thick brown paper. The paper slips bearing signature of Local Health Authority, Wardha was pasted on the same. The bottles were again vertically and horizontally tied by means of twill/thread and wax seal was affixed on the knot of the twill and at other three places of each sample packets. The Food Inspector obtained signature of the accused and panch on the paper slips. The Food Inspector drew memorandum panchanma of all the above events. The Food Inspector seized three groundnut oil tins.

6. The Food Inspector forwarded the samples to the Public Analyst by following the procedure. The Public Analyst on analysis

found that the samples of groundnut oil did not conform to the standard of groundnut oil as per the provisions of the Food and Drug Administration Rules, 1955 (hereinafter referred to as "the Rules of 1955" for short). Food Inspector forwarded the papers to the Joint Commissioner, Food and Drugs Administration for according sanction to prosecute the accused. On receipt of the sanction order, initially the Food Inspector filed the complaint against the accused for commission of offence under Section 16(1) of the Act of 1954. Later on, he filed separate complaint against the accused for the offence punishable under Section 16(1-C) of the Act of 1954.

7. The common evidence was recorded in both the cases. The prosecution examined two witnesses. The accused examined one defence witness. Learned Chief Judicial Magistrate, on appreciation of the evidence held the accused guilty and sentenced him as above on both the counts. The appeals preferred by the accused against the conviction and sentence came to be dismissed by learned Sessions Judge, Wardha. The accused has, therefore, approached this Court by filing the above two revision applications.

8. I have heard Mr. J. J. Agrawal, learned advocate for the applicant and Mr. S.A. Ashirgade, learned Additional Public Prosecutor for the non-applicant/State. Perused the record and proceedings.

9. Learned advocate for the accused has questioned the correctness of the judgment and order passed by the learned Sessions Judge on more than one grounds. Learned advocate submitted that the methodology adopted by the Public Analyst, while analyzing the samples in question, was not placed before the trial Court by leading oral as well as documentary evidence. Learned advocate submitted that this was necessary inasmuch as the conviction and sentence of the accused is based on the report of the Public Analyst. Learned advocate further submitted that the report of the Public Analyst (Exh.39) was not in prescribed Form No. III and the name of the method used for testing was not stated by the Public Analyst. Learned advocate submitted that on this ground, the conviction and sentence has been vitiated. In order to substantiate the submissions, learned advocate has relied upon the following decisions :-

1] *Harshadkumar Somabhai Modi .vs. State of Gujrat and others*, reported at *2016(1) FAC 91*.
2] *State of Maharashtra .vs. Baburao Daga Suryawanshi,* reported at *1990(I) FAC 94*

10. Learned Additional Public Prosecutor submitted that most of the submissions advanced before this Court on behalf of the accused have been advanced for the first time. Learned APP submitted that the Courts below have found the report of the Public Analyst cogent, concrete and reliable to convict the accused.

11. It is to be noted that in this case, the Public Analyst was not examined. It is further seen on perusal of the record that the sample was not analyzed by the Public Analyst, who signed the report. The moot question that needs to be addressed is whether failure to place on record the methodology adopted by the Public Analyst while analyzing the sample can create a doubt about the very contents of the report ?

12. In *Harshadkumar Modi's* case (supra), the Division Bench of Gujarat High Court has held that failure to place on record, by oral as well as documentary evidence, the methodology adopted by the Public Analyst while analyzing the sample, can create a serious doubt as to the contents of the substance analyzed by the Public Analyst. It is held that it is necessary to mention the name of the test used for analysis. The detailed procedure followed by the Public Analyst while analyzing the

sample in question is required to be placed on record. It is further held that such a contention even if raised for the first time, cannot be rejected because the law point can be raised at any point of time. It is held that in such a case, the benefit of doubt is required to be given to the accused.

13. The coordinate bench of Bombay High Court in *State of Maharashtra .vs. Baburao Daga Suryawanshi's* case (supra) has considered the decision of the Hon'ble Apex Court in the case of *Kisan Timbak Kothule .vs. State of Maharashtra [1976 2 FAC 188]* and held that failure to mention the qualification of the Public Analyst and the process employed by the Public Analyst for analysis of the sample is fatal to the case of the prosecution. It is held that failure on the part of prosecution to mention these aspects would result into acquittal of the accused. In my view, the principle of law crystalized above is against the prosecution. The oral and documentary evidence is silent about the methodology adopted by the Public Analyst for analysis of the sample. In my view, the benefit of the same has to be given to the accused.

14. Learned advocate for the accused submitted that the Public

Analyst has not been examined. It is submitted that in the report of the Public Analyst (Exh.39), the date of analysis of the sample has not been mentioned. It is pointed out that the sample was received by the Public Analyst on 03.12.2002 and the certificate and report of the Public Analyst is dated 31.12.2002. Learned advocate further submitted that the name of the person who had analyzed the sample has not been mentioned in the report. Learned advocate, relying upon the decisions in ***Shaikh Hamid S/o Sheikh Tarmohamad .vs. Dagu S/o Gangaram Limbhare and another***, reported at ***1979 Bom.C.R. 1565*** ; ***Nizamudin Siddikbhai Tigala .vs. State of Maharashtra***, reported at ***1985 (II) FAL 88 ;*** and ***State of Maharashtra .vs. Abdul Jabbar Haji and another,*** reported at ***2012 All M.R. (Cri.) 2818*** submitted that on this count the benefit of doubt is required to be given to the accused. Learned APP submitted that the prosecution has not concealed this fact from the Court. Learned APP in all fairness submitted that the sample was not personally analyzed by the Public Analyst, who had signed the report. Learned APP submitted that on this ground the accused is not entitled to get any benefit.

15. In order to appreciate the submissions, I have perused oral

and documentary evidence. The sample was drawn on 02.12.2002. It was received by the Public Analyst on 03.12.2002. The certificate of Public Analyst is dated 31.12.2002. It, therefore, goes without saying that there is a time gap of 28 days between the date of receipt of the sample and the date of the report. In the report at Exh.39, there is no mention of the date of analysis of the sample by the Public Analyst. It is undisputed that the sample was not analyzed by the Public Analyst himself. It is seen on perusal of the report that the Public Analyst had caused the sample to be analyzed by other officer. The name of the person who analyzed the sample as well as the condition in which sample was kept or stored, has not been mentioned in the report. There is no mention in the report (Exh.39), as to how and on how many times the sample was analyzed. The chain of custody form, which is required to be maintained by the analyst in the process of analysis of the sample, has not been placed on record.

16. The record reveals that the report is silent as to the date on which it was opened for analysis and the date on which it was actually analyzed. Similarly, the name and qualification of the person who had analyzed the sample is not mentioned in the report. The Public Analyst

was duty bound to mention the date of commencement of analysis and the date of completion of analysis. It was necessary to mention the name of the person who had actually analyzed the sample. It is, therefore, apparent that the report is not in prescribed form. The question is whether this flaw can be used against the prosecution to give benefit of doubt to the accused.

17. In *Shaikh Hamid Sheikh Tar Mohd.'s* case (supra), the coordinate bench of this Court has held that failure to mention the date of analysis of the sample is a crucial factor and as such it is a fundamental lacuna in the report of the Public Analyst. It is held that in such cases, it is difficult and unsafe to base conviction, *inter alia*, placing reliance on such a report, which contains flaws and lacunae. In *Nizamuddin Tigala's case* (supra) as well as in *Abdul Jabbar Haji's* case (supra), it is held that such a flaw and lacuna, found in the report of the Public Analyst, is sufficient to give benefit of doubt to the accused. It is held that all these particulars are necessary to be mentioned in the report because the changes are bound to occur in the sample with the passage of time. The delay can be fatal to the prosecution if the material particulars are lacking in the report.

18. In my view, the point raised by learned advocate hits at very root of the case of the prosecution. In my view, this is a fundamental flaw and lacuna in the case of the prosecution. There is no evidence on record, either oral or documentary, to overcome this flaw/ lacuna. It needs to be stated that the Food Safety and Standards Act, 2006 (hereinafter referred to as "the Act of 2006" for short), which has replaced the Food Adulteration Act and most of the provisions of the Act of 2006 came into force vide notification dated 29.07.2010. It is to be noted that as per the provisions of Section 42 sub-section 2 of the Act of 2006, it is mandatory for the Food Analyst to submit report to the designated officer within 14 days from the date of receipt of the sample, by specifically stating in the report the method of sampling and method of tests applied. In my view, failure on the part of the prosecution to meet this fundamental requirement has strengthened the defence of the accused. On this count also, the accused is entitled to get the benefit.

19. The next submission advanced by the learned advocate is with regard to the contravention of the mandatory provisions of Rule 14 of the Rules of 1955. Learned advocate submitted that in this case,

there was no compliance of the provisions of Rule 14 of the Rules of 1955. Learned advocate submitted that the panch witness has not been examined by the prosecution. Learned advocate submitted that evidence of Food Inspector (PW1) falls short to prove the compliance of Rule 14 of the Rules of 1955. Learned advocate pointed out that there is no evidence about sealing of mouth of the sample bottles after putting cap over it. Learned advocate pointed out that this fact has not been mentioned in the panchanama, complaint as well as in the evidence of Food Inspector (PW1). Learned advocate submitted that on this ground also the accused is entitled to get the benefit. Learned advocate, in order to substantiate his submission that burden is on the prosecution and therefore, the accused at any stage of the proceeding can raise the plea of non-compliance, has relied upon the decision in *Nizamuddin Tigala's* case (supra). Learned advocate in order to substantiate his submission on the point of non-compliance of Rule 14 of the Rules of 1955, has relied upon the decision in ***Bhojumal Dhanumal Kundal and another .vs. Shirpur Warwade Municipal Council, Shirpur and another***, reported at ***1986 Cri.L.J. 931*** ; ***State of Maharashtra .vs. Vilas Madhaorao Tundulwar***, reported at ***2018 All M.R. (Cri.) 2100*** ; and ***The Nagpur Municipal Corporation .vs.***

Vipinchandra Wadilalji Wakhariya and others, reported at *2017 (2) FAC 257*.

20. Learned APP submitted that the failure to examine the panch witness cannot go against the prosecution. Learned APP submitted that to substantiate the compliance of Rule 14 of the Rules of 1955, evidence of Food Inspector (PW1) is sufficient. Learned APP took me through the evidence of PW1 and pointed out that in his evidence, with necessary details, he has stated about the process followed by him while drawing the sample, packing the sample and sealing of the sample.

21. In *Bhojumal Dhanumal Kundal's* case (*supra*), it is held that the provisions contained in Rule 14 of the Rules of 1955 are mandatory and breach of the same vitiates the order of conviction. It is held that absence of the evidence to show compliance of Rule 14 is a serious lapse. In *Vipinchandra Wakhariya's* case (*supra*), it is held that as per rule 14 of the rules of 1955, sample of the food for the purpose of analysis, shall be taken in clean, dry bottles or jars or in other suitable containers, which shall be closed sufficiently

tight to prevent leakage, evaporation or in case of dry substance, entrance of moisture. It is further held that if there is no evidence of packing and sealing of the samples as provided in Rule 14, it can vitiate the entire prosecution.

22. Perusal of the complaint and the evidence would show that mouth of the sample bottles were not sealed by means of sealing wax. There is no mention about putting cap over the sample bottles. In view of the law laid down in the above cases and the mandate of Rule 14 of the Rules of 1955, failure to do so is contrary to the law and the rules. In the facts and circumstances, in my view, in this case the evidence lacks the particulars with regard to proper sampling, packing and sealing of the samples. On this ground also the accused is entitled to get benefit.

23. Learned advocate for the accused further submitted that delay in filing the complaint has prejudiced the accused. Learned advocate submitted that the accused has been denied the right to get the sample re-analyzed by the Director of Central Laboratory under Section 13(2) of the Act of 1954 within the Best Before Date. Learned

advocate pointed out that in this case, the accused did not opt for re-analysis of the sample. However, the same could not be the reason to deny the benefit accrued to the accused on this count. Learned advocate submitted that this action has prejudiced the accused inasmuch as re-analysis of the sample would not have been within the Best Before Date. Learned advocate submitted that inordinate delay has not been explained and on account of inordinate delay the accused has been prejudiced. In order to substantiate this submission, learned advocate has relied upon the following three decisions :

1] ***State of Maharashtra .vs. Bhagwandas Gopaldas Bhate*** *reported at* ***1977 (1) FAC 123***
2] ***Shivkumar alias Shiwalamal Narumal Chugwani .vs. State of Maharashtra****, reported at 2010 (2) FAC 239*
3] ***Municipal Corporation of Delhi .vs. Gheesaram,*** *reported at* ***1975 (1) FAC 186****.*

24. Learned APP submitted that the accused did not opt for re-analysis of the sample and therefore, this defence is not available to him. Learned APP further submitted that on this count, no prejudice has been caused to the accused. Learned APP pointed out that the courts below have properly appreciated this point and recorded the finding against the accused.

25. The relevant facts necessary for addressing this point need to be stated. The samples were drawn on 02.12.2002. The samples were received in the laboratory on 03.12.2002. The date of the report of Public Analyst is 31.12.2002. The date of proposal for sanction is dated 28.02.2003. The consent/sanction was accorded vide Exh.49 on 27.05.2003. The complaint was filed on 19.07.2003. An intimation to the accused under Section 13(2) of the Act of 1954 at Exh.68 is dated 21.07.2003. The intimation was served to the accused on 23.07.2003. The Best Before Date of six months expired on 03.06.2002. It is, therefore, seen that sample of groundnut oil was collected on 03.12.2002 after opening packed tin of Swad Brand groundnut oil. On the said tin, it was specifically mentioned "Best Before Six months months from the date of packing". It is seen that the date of packing was not mentioned on the label of groundnut oil tin. It is to be noted that even if the period of six months is counted from the date of sample, the Best Before date would end on 03rd June, 2003. In this case, therefore, the complaint should have been filed before 03.06.2002 and the accused should have been informed about his right under Section 13(2) of the Act of 1954 to get the samples re-analyzed by the Director, Central Food Laboratory, much prior to 03.06.2002. It is seen on

perusal of the record that though the report of Public Analyst is 31.12.2002, the proposal for obtaining the consent to initiate prosecution against the accused was submitted on 28.02.2003. It is, therefore, apparent that the proposal for consent was submitted by the Food Inspector after 1 month and 28 days from the date of the report of the Public Analyst. The consent was accorded by the Joint Commissioner, Nagpur on 27.05.2003 i.e. after three months from the date of submission of the proposal. On receipt of the consent, the complaint was filed on 19.07.2002. It is apparent that the complaint was filed after 1 month and 13 days from receipt of the consent. The intimation letter to the accused under Section 13(2) of the Act of 1954 along with the report of the Public Analyst was sent on 21.07.2003 vide letter at Exh.68. It was served on the accused on 23.07.2003. It, therefore, goes without saying that the complaint was filed after 7 months and 15 days from the date of sample. It is also seen that the complaint was filed after more than one month and fifteen days after expiry of the Best Before Date of the sample. In the backdrop of the above stated undisputed facts, it has to be held that the accused was deprived of his right to get the sample re-analyzed before the expiry of Best Before Date. It would be necessary to consider the consequences

of the same.

26. In *Bhagwandas Gopaldas Bhate's* case (supra), the Coordinate bench of this Court has held that even if the accused has failed to exercise his right to get the sample re-analyzed, such an exercise conducted after the Best Before Date, is a futile exercise. It is nothing but denial of right of the accused and as such prejudicial to the accused. An opportunity of re-analysis of the sample before Best Before date is necessary because the sample can get decomposed or deteriorated. The exercise of right by the accused after Best Before Date would, therefore, be the exercise in futility. In this case, it is held that in such cases, failure on the part of the accused to exercise his right cannot go against him. In *Shivkumar alias Shiwalamal Narumal Chugwani's* case (supra), the Coordinate bench of this Court has held that a complaint must be filed well in advance before shelf life of the sample or before expiry date of the sample and the accused must be granted an opportunity to opt for re-analysis of the sample. It is held that the delay on any count, much less on administrative ground, can not be an excuse for denying this valuable right to the accused. In *Municipal Corporation of Delhi .vs. Gheesaram's* case (supra), it is held that the right conferred under

Section 13(2) of the Act of 1954 on the vendor to have sample given to him analyzed by the Director of the Central Food Laboratory, is a valuable right and it is expected on the part of the prosecution that the right of the accused is not denied.

27. In this case, the only fault of the accused is that he did not opt for re-analysis of the sample. However, it cannot stand in his way to claim the benefit of non-compliance of the mandatory provisions of Section 13(2) of the Act of 1954. In this case, the complaint was filed after expiry of shelf life of the groundnut oil. Even if the accused had exercised his right, the said exercise would have been a futile exercise. Undisputedly, the Best Before Date was six months from the date of packing. The date of packing was not mentioned on the tin of the groundnut oil. Therefore, in this case, the inaction of the prosecution, which has denied the valuable right of the accused, could get stamp of approval by the Court. Such inaction in all respect has to be held to be prejudicial to the paramount right of the accused. In my view, on this count also the accused is entitled to get the benefit.

28. In this case, learned advocate submitted that the

prosecution has failed to establish that the quality or purity of the article was below the prescribed standard and also to prove that it rendered injurious to health. This argument has been advanced by relying upon the report of the Public Analyst. Learned advocate submitted that the sample was found lacking on certain counts, but it was not found to be adulterated. Learned advocate submitted that this fact has not been taken into consideration by the Courts below. Learned APP submitted that though the report is negative on certain aspects, it cannot be said that the aspects, which are found against the accused, can be brushed aside.

29. In order to appreciate the submissions, I have perused the report of the Public Analyst at Exh.39. As per the report, the test for presence of Argemone oil, Caster oil, Mineral Oil, Linseed Oil, Cotton Seed oil, Til oil and test for Rancidity, Test for presence of colour was negative. It, therefore, goes without saying that the Public Analyst did not find any adulterant in the sample nor the sample was rancid. The sample in this case was groundnut oil. As per the report at Exh.39, the sample failed to satisfy certain parameters only.

30. Learned advocate, in order to substantiate his submission, has relied upon the decision in *Nizamuddin Tigala's* case (supra). In this case, the Coordinate bench has considered the definition of 'adulterated food' and held that under sub-clause (m) of Section 2 of the Act of 1954, the article could be adulterated 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. In my opinion, on this ground also the accused is entitled to get benefit.

31. The next important question is with regard to the non-compliance of the provisions of Section 14-A by the accused and thereby commission of offence punishable under Section 16(1-C) of the Act of 1954. Learned advocate for the accused submitted that all the tins were having labels as *"Swad Grounnut oil, 15 KG, nett (16.48 L), SOPL, शुद्धता की पहचान, Maximum Retail Price Rs. (inclusive of all taxes), Batch No. , Packed on , Best Before 6 months from the date of packing"*. The said packed tin was having metal tickly labeled as "Swad Oils, Shantilal Oils Pvt. Ltd., Maskasath, Nagpur" and the said tickly was covered with aluminum foil hologram. Learned advocate

submitted that the accused cannot be held liable for punishment merely because of non-compliance of the requisitions of the notice issued to the accused under Section 14-A of the Act of 1954. Learned advocate submitted that in this case, there was non-compliance of Rule 9(f) of the Rules of 1955. Learned advocate submitted that this provision has been incorporated with an object to reach out to the actual manufacturer and take care of such adulterated product by taking appropriate action as per the Act and the Rules. Learned advocate submitted that there is no explanation on the part of the prosecution for non-compliance of Rule 9(f) of the Rules of 1955. Learned advocate submitted that since the particulars of the manufacturer were available on the label, the Food Inspector was not in any manner handicapped to detect the manufacturer for the purpose of further action. In order to substantiate this submission, learned advocate has relied upon following two decisions :

1] ***Gurumukhadas Hotchand Bhojawani .vs. State of Maharashtra,*** reported at ***2017 All M.R. (Cri.) 2020.***
2] ***Chidambara Rajan .vs. State***, reported at ***1988 (II) FAC 122.***

32. Learned APP submitted that non-disclosure of the information by accused, despite receipt of the notice from the Food Inspector to disclose the name etc of the person from whom the food

articles were purchased and to provide the purchase bills, is the substantive offence. Learned APP submitted that though the particulars with regard to the name, address etc. of the manufacturer were available on the tins, it would not exonerate the accused from facing the consequences provided under Section 14-A of the Act of 1954.

33. It is to be noted that as per Section 14-A of the Act of 1954, on being enquired, the accused is under an obligation to disclose to the Food Inspector the name, address and other particulars of the person from whom he had purchased the article of food. Failure on the part of the accused to provide such information is punishable under Section 16(1-C) of the Act of 1954. Section 14-A has been enacted with an object that in case of adulterated food, the Food Inspector or the officials of the Food and Drugs department must be able to detect the manufacturer, storage and sale of the food article in contravention of the Act and the Rules framed thereunder. Rule 9(f) of the Rules of 1955 provides for such an enquiry and inspection by the Food Inspector. In this case, it is undisputed that on four packed tins of groundnut oil, the details and particulars of the manufacturer were provided. The Food Inspector in his evidence has admitted that the

details and particulars of the manufacturer of Swad groundnut oil were provided on four tins, which were packed. It is true that in this case notice was issued to the accused in terms of Section 14-A of the Act of 1954. The accused did not provide the information. The accused only stated that he did not have the purchase bills.

34. The question that needs to be addressed is whether non-disclosure of the name of the manufacturer and the distributor in the above factual position would make the accused to face the consequences. It is undisputed that all the groundnut oil tins were packed and the name and address of the manufacturer was specifically mentioned on the label. In the facts and circumstances, therefore, issuance of notice to the accused and calling upon him to provide the information and particulars of the manufacturer would have been a mere formality. The object of this provision is to enable the Food Inspector to reach out to the manufacturer for taking further appropriate action. In the absence of information of the manufacturer with other particulars, it becomes difficult for the Food Inspector to take further action against the manufacturer. In this case, on the basis of available information, the Food Inspector was fully satisfied that the

groundnut oil was manufactured by Shantilal Oils Pvt. Ltd.

35. In this case, the Food Inspector, on being confronted with the manufacturer, was duty bound to visit the company, ascertain the manufacturer, take samples from the said company and fix the liability appropriately. It was his duty to seize all the stock forming part of the same batch of production and call upon the vendors of the same product to surrender the stock available with them and inform the prospective consumers. It is apparent on the face of record that the Food Inspector rested content with the purchase of sample from the accused. The Food Inspector in his evidence has not placed on record the plausible explanation for not taking action against the manufacturer. The manufacturer in this case would have been the principal offender. Failure on the part of the Food Inspector to take action against the manufacturer would have definitely encouraged the manufacturer to produce and distribute adulterated groundnut oil. It is not the case of the Food Inspector that either the information on the tins about the manufacturer was incomplete or pursuant to the said information, he did not find such company or manufacturer in existence.

36. It is to be noted that the accused is a retail vendor. He has stated that the bills were not issued by the distributor. In this case, since the basic purpose of the Food Inspector was served, notice to the accused in terms of Section 14-A of the Act of 1954 was mere a formality. Without such notice, the Food Inspector could have spread the dragnet around the manufacturer. It is, therefore, apparent that failure to spread the dragnet of law around the manufacturer and the distributor, has spared them from serious action in the form of criminal prosecution. The coordinate bench of this Court in *Gurumukhdas Hotchand Bojawani's* case (supra) has considered similar issue and held that non-disclosure of the name of manufacturer and distributor by the vendor, cannot be used against him unless and until the prosecution is launched against the manufacturer or distributor for storage and sale of adulterated food article. It is held that once the Food Inspector has information indicating the manufacturer or origin of the article, then the vendor for non-compliance of notice under Section 14-A of the Act of 1954, cannot be prosecuted. He has to be exonerated. In my view, in this case, very purpose of the provision of law has been frustrated in view of inaction on the part of the Food Inspector. The Food Inspector failed to comply the provisions of Rule 9(f) of the Rules of 1955. In my

view, therefore, on this count also the order passed by the Sessions Court, confirming the order passed by learned Chief Judicial Magistrate convicting and sentencing the accused, cannot be sustained. In this case, for the reasons recorded above, I am of the view that the Courts below have not considered all these aspects in proper perspective. The Courts below have committed an error in holding the accused guilty, without considering the above stated provision of law. In my view, therefore, the accused is entitled to get the benefit of doubt.

37. Accordingly, the revision applications are allowed.

(i) The judgment and order dated 22.06.2012 of conviction and sentence passed by learned Chief Judicial Magistrate, Wardha in Regular Criminal Case Nos. 61/2010 (old R.C.C. No. 160/2003) and 357/2003, is quashed and set aside. Also, the judgment and order dated 28.08.2015 passed by the learned Sessions Judge, Wardha in Criminal Appeal Nos. 91 of 2012 and 90 of 2012, confirming the judgment and order passed by learned Chief Judicial Magistrate, Wardha, is quashed and set aside.

(ii) Applicant/Accused – Jairam S/o Atmaram Shadija, is acquitted of the offence punishable under Sections 16(1) and 16(1-C)

of the Prevention of Food Adulteration Act, 1954.

(iii) Fine amount, if any, deposited by the applicant/accused, be refunded to him.

(iv) The revision applications are disposed of. Rule is made absolute accordingly.

(G. A. SANAP, J.)

Diwale