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(5) On merits of the case, it transpires that the order Annexure P. 3 of the trial Court reveals that the local police itself had found on the allegations of Lachhman Singh and others Party No. 1 that Sucha Singh petitioner was in cultivating possession of the entire land. Thus the apprehension of breach of peace would arise only if Lachhman Singh Party No. 1 would take any steps to forcibly oust him. By no stretch of imagination can it be said that Party No. 2 Sucha Singh etc. who are in possession of the land would in any way be contributing towards breach of peace if Lachhman Singh did not take any steps to oust them forcibly. In other words, it can be well said that Sucha Singh etc. in such like contingency would be acting to preserve their *de facto* possession of the land.

(6) The matter does not rest here as the perusal of Annexure P. 4 clearly shows that in a suit filed by Sucha Singh against Lachhman Singh, the Civil Court,—*vide* order dated 23rd December, 1989 had directed the parties to maintain *status quo* regarding the property in dispute. Thus, under the above-referred circumstances, the order of *status quo* would assume importance, especially when both the parties are admittedly co-owners being the sons of Sohan Singh, the last male holder of the property.

(7) Consequently, parallel proceedings under section 145 of the Code and the civil suit regarding the same land would amount to abuse of the process of the Criminal Court. Therefore, the impugned order Annexure P. 1 instituting the proceedings under section 145 of the Code and the resultant proceedings therefrom including the order Annexure P.2 are ordered to be quashed by accepting this petition.

(8) It is, however, made clear that the above-referred observations will have no bearing on the merits of the civil suit pending between the parties.

S.C.K.

Before A. L. Bahri & S. S. Grewal, JJ.

STATE OF PUNJAB,—Appellant.

versus

ASHOK KUMAR,—Respondent.

Criminal Appeal No. 308-DBA of 1983.

29th May, 1991.

Prevention of Food Adulteration Act, 1954—Ss. 13(2), 16(1) (a)
(i)—Prevention of Food Adulteration Rules, 1956—Rl. 9-A—Sample

of milk—Report of Public Analyst—Report forwarded to accused by registered post—However, neither any evidence produced of its receipt by the accused nor any appraisal made of his right to get the second sample analysed from Central Food Laboratory—Such action is violative of S. 13(2)—Accused liable to be acquitted.

Held, that a reading of S. 13(2) of the Act makes it clear that copy of the report of the Public Analyst is to be forwarded to the person from whom sample of food was purchased and he is further required to move the Court within ten days from the date of receipt of such copy to get the sample of the article of food analysed by the Central Food Laboratory. Mere forwarding of the copy of the report by registered post is not enough. It is further to be established that copy of the report of the Public Analyst was received by the accused. It is only from such date that he can move the Court within 10 days for sending the sample to the Central Food Laboratory. Furthermore, as required under S. 13(2) of the Act, the accused was to be apprised of his right to get the second sample analysed from the Central Food Laboratory. This direction was conspicuously absent in the letter. That being the position, a valuable right granted to the accused under S. 13(2) of the Act was denied. The mandatory provision of S. 13(2) of the Act was thus violated and prejudice would be writ large.

(Para 5)

Appeal from the order of the Court of Shri B. C. Rajput, P.C.S., Sub-Divisional Judicial Magistrate, Muktsar, dated 30th November, 1982, acquitting the accused.

Charge Under Section 16(1)(a)(i) of Prevention of Food Adulteration Act.

ORDER : Acquittal.

CrI. Complaint No. 589-3/22nd September, 1980.

It has been prayed in the grounds of appeal, that, the appeal against acquittal may be accepted and the accused/respondent may be convicted and sentenced according to law.

It is further prayed that warrant of arrest of the accused u/s 390 Cr.P.C. may kindly be issued.

S. K. Sharma. DAG (Pb.), for the Appellant.

Nemo, for the Respondent.

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JUDGMENT

A. L. Bahri, J.

(1) Ashok Kumar was acquitted by Sub-Divisional Judicial Magistrate, Muktsar, on November 30, 1982, in a complaint filed under section 16(1)(a)(i) of the Prevention of Food Adulteration Act. The State has come up in appeal.

(2) On May 14, 1980, a sample of cows' milk was purchased from Ashok Kumar accused by Dr. Avtar Singh, a Food Inspector. After receipt of the report of the Public Analyst to the effect that the sample of milk purchased was not upto the prescribed standard, prosecution was launched by filing a criminal complaint. Copy of the report of the Public Analyst was alleged to have been sent to Ashok Kumar accused by registered post. In the report of the Public Analyst it was found that the sample of milk contained milk fat 3.5 per cent and milk solids not fat 7.6 per cent. According to the opinion of the Public Analyst there was deficiency of 12.5 per cent in the milk fat and 11.0 per cent in milk solids not fat. Sub-Divisional Judicial Magistrate, Muktsar, acquitted the accused on the ground that Rule 9-A of the Rules framed under the Act and the provisions of Section 13(2) of the Act were not complied with. Rule 9-A of the Rules was not complied with as immediately on receipt of the report of the Public Analyst, copy thereof was not sent to the accused. On account of delayed prosecution the accused was denied his right of making an application to the Court for sending the second sample to the Director, Central Food Laboratory. The sample was purchased on May 14, 1980. The Public Analyst submitted his report on June 6, 1980. The criminal complaint was filed on September 22, 1980 and copy of the report of the Public Analyst is stated to have been sent to the accused, on September 30, 1980. On this data the Sub-Divisional Judicial Magistrate came to the conclusion that Rule 9-A of the Rules was violated as immediately copy of the report was not sent to the accused. In support of this contention reliance was placed on the decision of the Kerala High Court in *Kannarath Valappil Kunhappa v. The Food Inspector* (1), and that of the Bombay High Court in *The State of Maharashtra v. Tukaram Baburao Mane* (2). In both these cases it was held that copy of the report of

(1) 1982 Cr.L.J. 778.

(2) 1982 Cr.L.J. 1462.

the Public Analyst was required to sent forthwith which was significant from the word "immediately" used in the Rules. The apex Court has taken a different view of the interpretation of Rule 9-A of the Rules and Section 13(2) of the Act in *Tulsi Ram v. The State of Madhya Pradesh* (3), wherein it was held "that non-compliance of Rule 9-A was not *per se* fatal. What section 13(2) of the Act required was that before commencement of the evidence, copy of the report of the Public Analyst should be made available in good and sufficient time to enable him to exercise his right of having the sample analysed by the Central Food Laboratory, if he so desired."

(3) The matter was considered by the Full Bench of this Court in *State of Punjab v. Deboo*, (1988) XV Cr.L.T. 476. In para 10 of the judgment it was observed as under:—

"But as it seems to us, the Supreme Court in *Tulsiram's case* (supra) was laying down the outer limit within which the aforesaid two requirements had to be met keeping in view the procedure applicable to the trial of offenders under the the Act. The earlier stage of his appearance in the Court and facing accusation much before the recording of the prosecution evidence, is also a stage in which an effective hearing takes place, before which he is to be given the report and made aware of his said right so that the Court machinery can be moved for the purpose. It is in this manner that the outer parameters of the requirement designed to be observed by the Local Health Authority have to be understood and laid."

In para 11 of the judgment the Full Bench held as under:—

"— — — — it is thus evident and plain that the prosecution cannot be allowed to succeed in a prosecution in which the Local (Health) Authority has not observed the essential requirement of forwarding of the report of the Public Analyst to the person concerned and simultaneously expressly informing him of his right to have the second opinion and in any case before the start of effective Court proceedings. The delay attributed to the Local (Health) Authority on any of these particulars may well be fatal

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to the "Prosecution if the accused can successfully show prejudice caused to him. But in case of no observance of these essential requirements altogether prejudice is writ large on the face of it and it *per se* would be fatal to the prosecution. This is our considered opinion keeping in view the case law on the subject noticed earlier as also hereafter."

In para 19 of the judgment it was held as under:—

"—————In our considered view, both the requirements of section 13(2) of the Act i.e. the sending of the report of the Public Analyst and drawal of specific attention of the accused to his right, are mandatory and non-compliance of both or compliance of one and not the other would in both events be fatal to the prosecution. So, this part of section 13(2) of the Act, we hold as mandatory non-compliance of which and in any event uptill the commencement of effective Court proceedings would vitiate the proceedings. The other parts of the provision where time schedule is laid or prescribed, or expedition expected, we hold as directory, fatal to the prosecution only if material prejudice can be shown to have been caused to the accused by delayed compliance or observance thereof and in that sense non-compliance. We hold accordingly."

Shri S. K. Sharma, D.A.G. Punjab, appearing on behalf of the State has argued on the basis of the decision of the Supreme Court in *Babulal Hargovindas v. State of Gujarat* (4), that until the accused applies to the Court for sending second sample to the Director, Central Food Laboratory, it cannot be said that any prejudice was caused to him for non-compliance of section 13(2) of the Act. In para 6 of the judgment the Supreme Court observed as under:—

"... There is also in our view no justification for holding that the accused had no opportunity for sending the sample in his custody to the Director, Central Food Laboratory under section 13(2) because he made no application to the Court for sending it. It does not avail him at this stage to say that over four months had elapsed from the time the samples were taken to the time when the complaint was

filed and consequently the sample had deteriorated and could not be analysed."

(4) The contention of counsel for the State is that the aforesaid decision of the Supreme Court was not considered by the Full Bench in *Deboo's case* (supra) and following the ratio of the decision of the Supreme Court in *Babulal's case* (supra), acquittal of the accused be set aside as he did not move the Court for sending second sample to the Central Food Laboratory and thus no prejudice was caused to him. We have given due consideration to these arguments. However, the same cannot be accepted. In *Babulal's case* (supra) the question involved was of non-compliance of provisions of Section 10(7) of the Act in not joining independent witnesses at the time of purchasing sample of food. It was assumed in that copy of the report of the Public Analyst was delivered to the accused and he could move the Court for getting second sample of food sent to the Central Food Laboratory. In *Deboo's case* (supra) the Full Bench decided the mandatory or directory nature of the provision of Section 13(2) of the Act and prejudice, if any, caused for non observance thereof. Infact there is no conflict with the ratio of the decision in *Babulal's case* and the decision of the Full Bench of this Court in *Deboo's case*.

(5) In the present case it is not considered necessary to make further comment on the decisions referred to above as the acquittal of the accused can be maintained on another ground. A reading of section 13(2) of the Act makes it clear that copy of the report of the Public Analyst is to be forwarded to the person from whom sample of food was purchased and he is further required to move the Court within ten days from the date of receipt of such copy to get the sample of the article of food analysed by the Central Food Laboratory. Mere forwarding of the copy of the report by registered post is not enough. It is further to be established that copy of the report of the Public Analyst was received by the accused. It is only from such date that he can move the Court within 10 days for sending the sample to the Central Food Laboratory. P.W. 2 Parveen Kumar, Clerk from the office of Civil Surgeon, Faridkot, stated that copy of the report of the Public Analyst was forwarded to the accused by registered post. He produced postal receipt-Exhibit PH in this respect. He also produced copy of the letter of the Civil Surgeon, Faridkot,—vide which copy of the report of the Public Analyst was communicated to Ashok Kumar. Copy of the letter is Exhibit PG. He was cross-examined in this respect. He admitted that 'Acknowledgement Due' receipt (for short referred to as 'A.D. receipt) was

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not received in the office and no enquiry was made from the postal authorities regarding delivery of the registered cover. From the aforesaid evidence produced by the prosecution it cannot be said that the letter, copy of which is Exhibit PG, was received by Ashok Kumar accused. In the case of registered letters sent through A.D. receipt, a certificate from the postal authorities regarding delivery of the letter to the addressee could be obtained if A.D. receipt had not received back. Be that as it may, letter of the Civil Surgeon, copy of which is Exhibit PG, does not fulfil the requirement of Section 13(2) of the Act. The relevant portion of this letter is reproduced as under:—

“Complaint in this regard has been filed in the Court of C.J.M. Faridkot/J.M.I.C. Muktsar. If you want to challenge the report of Public Analyst, you are advised to appear before the C.J.M. Faridkot/J.M.I.C. Muktsar within ten days of the receipt of this letter.”

In fact the criminal complaint was filed in the court of S.D.J.M., Muktsar. At Muktsar there are two Judicial Magistrates. If the complaint was filed at Muktsar, there was no need to mention in the letter that Ashok Kumar could approach Faridkot Court. Exhibit PG is a proforma which has been filled and sent. This contained the words “C.J.M. Faridkot/J.M.I.C., Muktsar. The word “C.J.M.” was scored off but word Faridkot was not scored off as described above. It was not clear from this letter as to which Court was to be approached by Ashok Kumar for moving the application for sending the second sample to the Central Food Laboratory. The name of the Court was not mentioned.

Further more, as required under section 13(2) of the Act, the accused was to be apprised of his right to get the second sample analysed from the Central Food Laboratory. This direction was conspicuously absent in the letter Exhibit PG. That being the position, a valuable right granted to the accused under section 13(2) of the Act was denied. The mandatory provision of section 13(2) of the Act was thus violated and prejudice would be writ large.

(6) For the reasons recorded above, this appeal fails and is dismissed.

R.N.R.