(2004) 01 BOM CK 0015

Bombay High Court

Case No: Criminal Appeal No. 487 of 1987

The State of Maharashtra (at the instance of Shri S.B. Jadhav, Food Inspector)		APPELLANT
	Vs	
Shri Popat Panachand Shah and Shri Panachand Bhikchand Shah, Proprietor of Shah Kirana Stores		RESPONDENT

Date of Decision: Jan. 30, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 100, 100(3), 100(7), 196A, 197
- Evidence Act, 1872 - Section 114
- Prevention of Food Adulteration Act, 1954 - Section 11, 13(2), 14A, 16, 17
- Prevention of Food Adulteration Rules, 1955 - Rule 14, 16, 16(6), 3

Citation: (2004) CriLJ 2780

Hon'ble Judges: A.M. Khanwilkar, J

Bench: Single Bench

Advocate: B.H. Mehta, app, for the Appellant; Niteen V. Pradhan and Shubhada Khot for Respondents 1 and 2, for the Respondent

Final Decision: Dismissed

Judgement

A.M. Khanwilkar, J.

This Appeal is against Judgment and Order dated March 11, 1987 in Regular Criminal Case No. 26 of 1984, acquitting the Respondents of. the offences punishable u/s 16 read with Section 17 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the ''Act''). The prosecution case is that the complainant P.W.1 H.B. Jadhav, Food Inspector along with P.W.2 Dilip E. Chivate visited the shop of Respondents and collected a sample of tea powder from accused No. 1 for the purpose of test and analysis after disc losing the identity of P.W.1 and the purpose of visit. Accused No. 1 sold tea powder weighing 450 grams for Rs. 9/-,

which was purchased by P.W.1, for which, the accused No. 1 issued receipt on the letterhead of Swastik Machinery Stores (Exhibit 19). The said receipt bears signature of the Panch P.W.2. The complainant P.W.1 gave Form No. VI as well as notice u/s 14-A of the Act. The tea powder sample purchased from the accused No. 1 was divided in three equal parts and each part was kept in separate dry, clean and empty polythene bag, whereafter, it was sealed by fire of candle. Each sample part was kept in a separate thick brown envelope and the mouth of said envelopes were pasted by means of gum. Each of the samples were pasted with labels bearing No. SBJ/21/83. Suffice it to mention that necessary procedure as required by the Rules of Packing and Sealing was completed and memorandum of panchnama was prepared (Exhibit 23), which was signed by the complainant (P.W.1) and Panch (P.W.2). After following necessary procedure, one part of sample along with original memorandum in Form No. VII along with the covering letter in a sealed envelope were sent to the Public Analyst, Pune, by way of registered post parcel. The copy of the covering letter bearing signature of the complainant is at Exhibit 25. On the same day, a copy of Farm No. VII along with specimen impression of the seal and a covering letter, sealed in a separate envelope were sent to Public Analyst, Pune by registered post. The office copy of the said covering letter is at Exhibit 26. The remaining two counter parts of the said samples along with a forwarding letter dated 11th March 1983 sealed in an envelope were handed over to the Local Health Authority, Sangli by hand delivery. The copy of the said covering letter is at Exhibit 27 which bears the endorsement to the effect that one counter part of the said sample was sent to the Public Analyst, Pune on 11th March 1983 for analysis. The said letter was acknowledged by the Assistant Commissioner, FDA (MS), Sangli which is at Exhibit 27. Two copies of specimen impression along with the covering letter were sealed in another envelope and were also handed over to Local Health Authority, Sangli, separately by hand delivery. The report of analysis in respect of one part of sample dated 21st April 1983 was received by the Local Health Authority on 29th April 1983, which was, in turn forwarded to the Complainant. It mentions that the sample of food article did not conform the prescribed standard. The report is at Exhibit 31. Thereafter, on 2nd July 1983, a letter was sent to the accused No. 1 by registered post, calling upon him to submit information about the licence and partnership, if any, in respect of M/s. Shah Kirana Stores (Exhibit 32), No reply was received by the authority. It is stated that on 27th July 1983, all the relevant papers including Public Analyst report along with the covering letter for obtaining consent were sent by the Assistant Commissioner, FDA (MS), Sangli, to the Joint Commissioner, FDA, Pune Division Pune by registered post acknowledgement due, which is at Exhibit 34. The registration receipt is at Exhibit 35. The Joint Commissioner, Pune Division, Food and Administration, Maharashtra State, Pune, in turn, after considering the material placed before him and by applying his mind, cave his consent for prosecuting the Respondents/accused Nos. 1 and 2 for the alleged offences. It is apposite to reproduce the said order Exhibit 36 in its entirety, as one of the contention raised on behalf of the Respondents in the context of the

said order will have to be dealt with a little later* The. same reads thus:-

"In exercise of the powers vested in me u/s 20 of the Prevention of Food Adulteration Act, 1954, read with Government order, Urban Development, Public Health Department NO. FDA/1079/2943/PH-4 dated 21st October, 1980, I, N.R. Deshpande, Joint Commissioner (Pune Division), Food and Drug Administration, Maharashtra State, Pune 5 have gone through Public Analyst Report No. 1629/2433/dt.26-4-83 in respect of the food article "TEA POWDER" and relevant case papers and have come to conclusion that this is a fit case for prosecution u/s 7, Sub-section (i) of the Prevention of Food Adulteration Act. In exercise of the powers as above, I hereby give my consent for the prosecution of Shri Popat Panachand Shah (Vendor.), 2) Shri, Panachand Bhikchand Shah, Proprietor of M/s. Shah Kirana Stores, located at Savlaj, Tal-Tasgaon, Dist:Sangli, for an offence alleged to have been committed by them as regards stocking for sale and selling of food article under reference on or about 11-3-83 in contravention of Section 7(i) punishable u/s 16 of the said Act.

The sample of the food article under reference was taken under the Prevention of Food Adulteration Act by Food Inspector Sangli, Shri S.B. Jadhav, from the above said premises on 11-3-83."

2. On receipt of the Consent Exhibit 36 on 5th March 1984, the Complainant proceeded to file complaint in writing being Regular Criminal Case No. 26/1984 before the Judicial Magistrate, First Class, Tasgaon on 19th March 1984. The complainants thereafter, sent intimation to Local Health Authority about filing of the above said case before the Judicial Magistrate, First Class and requested Local Health Authority to give notice to both the accused u/s 13(2) of the Act. Copy of the Public Analyst Report dated 21st April 1983 along with the notice u/s 13(2) of the Act were sent to both the accused by the said Authority by registered acknowledgement due. On the basis of the complaint as filed, the learned Magistrate issued processes against both the accused, who in turn, appeared and furnished bail. At their request, one of the sample parts (out of two parts with the Local Health Authority) was sent to the Central Food Laboratory, Mysore for the purpose of analysis. The Central Food Laboratory gave its report dated 21st August 1985 which was received by the Judicial Magistrate First Class, Tasgaon which re-inforced the position stated in the earlier report that the sample does not conform to the prescribed standard. Before framing of charge, evidence of P.W.1 was recorded. Opportunity was given to the accused for cross-examinations however, that was declined. In the circumstances, charge was framed against the accused which was read over and explained to them in Marathi (Exhibit 43). The charge reads thus :

"I, W.K. Kanbarkar, Judicial Magistrate F.C., Tasgaon, hereby charge you:

1. Shri Popat Panachand Shah.

2. Shri Panachand Bhikchand Shah, Both of Savalaj Tal.Tasgaon, District Sangli.

as follows :

That on or about 11-3-1983 at about 11-30 A.M. you accused No. 2 being, the Proprietor of M/s. Shah Kirana Stores at Savalaj stored for sale the Food article Tea powder and you accused No. 1 sold the said tea powder to the Food Inspector Shri S.B. Jadhav and the same was found to be adulterated as it did not conform the prescribed standard as per the report of the Central Food Laboratory Mysore as per the P.F.A. Rules and thereby committed an offence punishable u/s 16 read with Section 17 of the Prevention of Food Adulteration Act and within my cognizance.

And I hereby direct that you be tried by me on the said charge.

Given under my hand and the seal of the Court.

Dated this 15th day of December 1986.

Sd/- W.K.K.

Judicial Magistrate F.C., Tasgaon.

The charge is read over and explained to the accused in Marathi.

Sd/- W.K.K.

15-12-1986. J.M.F.C., Tasgaon."

Accused pleaded not guilty and claimed to be tried. Their defence was of total denial. In addition, the defence of accused No. 2 was that he was not present at the relevant time. The evidence after charge was recorded. On analysis of the evidence on record, the lower Court by impugned Judgment and Order acquitted the Respondents accused of the offences punishable u/s 16 read with Section 17 of the Act and set them at liberty on the following reasoning. That there has been infraction of Section 11(c)(i) of the Act, in that, intimation of sample sent to the Public Analyst was not sent to the Local Authority; that there has been infraction of Rule 16(6) which was mandatory; there was no evidence that licence of the shop was standing in the name of accused No. 2 on 11th March 1983; tea powder was collected from the tin box which was without label and inspite of the accused No. 1 having told that the box was kept behind the row of cup boards where waste material was kept and the tea powder therein was not for sales; receipt Exhibit 10 purported to have been issued by the accused No. 1 was in the name of Swastik Machinery Stores and not Shah Kirana Stores; memorandum of panchnama Exhibit 23 does not bear the signature of accused No. 1; there is no evidence that copy of the Panchnama was given to the accused No. 1 after it was drawn; and lastly, there was material contradiction in the evidence of P.W.1 and P.W.2. For the aforesaid reasons, the Trial Court was of the view that the accused deserved acquittal by giving the benefit of doubt.

3. In this appeal against acquittal, learned Public Prosecutor contends that none of the conclusion reached by the Trial Court can be sustained, either on facts or in law. It was his argument that the finding reached by the Trial Court was perverse. According to him, there was ample material on record to register finding of guilt against the Respondents and it was not a case for acquittal at all.

4. On the other hand, according to the learned Counsel for the Respondents, no fault can be found with the view taken by the lower Court. He has supported the finding reached by the lower Court in every respect. It was vehemently contended on behalf of the Respondents that in fact, the entire proceedings are vitiated for want of valid sanction. It was lastly submitted that in any case 5 having regard, to the distance of time coupled with the fact that the appeal is one against the order of acquittal, this Court should be loath in interfering with the finding of fact returned by the Trial Court.

5. Having considered the rival submissions and having adverted to the evidence on record including the Judgment passed by the Trial Court, with the assistance of the Counsel appearing for the parties, I would now proceed to analyse the principal contentions canvassed before me. I shall first proceed to dispose of the argument canvassed on behalf of the Respondents that the consent accorded in the fact situation of the present case u/s 20 of the Act is invalid. The argument is that the Consent given by the appropriate authority in favour of the complainant to institute prosecution against the Respondents/accused, does not per se indicate proper application of mind by the authority which is the quintessence for institution and continuation of any prosecution under the Act. It is then contended that the prosecution in the present case has only proved the document Exhibit 36. But that is not enough, as the prosecution is also obliged to establish that the Authority had applied its mind and considered every aspect of the case before recording satisfaction u/s 20 of the Act. It was argued that expression "Consent" as used in Section 20 of the Act was qualitatively same as expression "Sanction" as would appear in Section 197 of the Criminal Procedure Code, 1973. On that basis, it was contended that the rigours that would apply for a valid Sanction, would apply proprio vigore to Consent u/s 20 of the Act. In support of the meaning of expressions Consent and Sanction, reliance was placed on Strand''s Judicial Dictionary of Words and Phrases, The Law Lexicon by Justice T.P. Mukherjee, Shri P. Ramanatha Aiyar''s The Law Lexicon, Legal Thesaurus by William C. Burton, Besides the dictionary meaning of the said expression, reliance was placed on the decision of different High Courts reported in Sri Chunni Lal Vs. State, ; 1990 (2) PFAC 14 -- B. Raja Gowd v. The State through the Food Inspector, Nizambad; 1994 (1) PFAC 84 - State of M.P. v. Ghanshyamdas; 1995 (1) PFAC 14 - Deepchand Agarwala '' Deepak Agarwalla v. State of Orissa; 1993 Cri.L.J.35 Sham Sunder & Bros. v. State of H.P., Miss. Shakun and another Vs. Delhi Administration, Delhi, ; and of Supreme Court reported in A.K. Roy and Another Vs. State of Punjab and Others, . and Chittaranjan Das Vs. The State of Orissa, . All these authorities relate to Section 20 of the Act.

Besides, reliance was placed on other decisions which deal with the requirements of a valid sanction under other enactments such as Prevention of Corruption Act Jaswant Singh Vs. The State of Punjab, , Walchandnagar Industries Ltd. Vs. Ratanchand Khimchand Motishaw, ; Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, , AIR 1948 82 (Privy Council) ; 1993 M.L.J.731 Laxman Baliram Mali v. State of Maharashtra; 68 Bom.L.R. 228 (Bombay Division Bench) in the matter of Mr. D. & Mr. S., Advocates; and 1939 FCR 159 - Hori Ram Singh v. The Crown.

6. Per contra, learned A.P.P. submits that the law with regard to the requirements of a valid Consent u/s 20 of the Act is no more res integra. Relying on the decisions of the Supreme Court) it is submitted that it is well settled that there is perceptible difference in the "Consent" u/s 20 of the Act and "Sanction" u/s 197 of the Code of Criminal Procedure, 1973. The long line of authorities, no doubt, would provide that granting of written consent u/s 20 of the Act is not an empty formality, but at the same time, the rigours of requirements of a valid Sanction as is required under other enactments cannot be imported to Consent u/s 20 of the Act. Reliance is placed on three Judges'' Bench decision of the Apex Court in The State of Bombay Vs. Parshottam Kanaiyalal, , two Judges'' bench of the Apex Court reported in 1993 PFAC 404 - Dhian Singh v. Municipal Board, Saharanpur & Anr.; 1996 (1) PFAC 1 Suresh H. Rajput etc. etc. v. Bhartiben Pravinbhai Soni and Ors.; Food Inspector, Ernakulam and Another Vs. P.S. Sreenivasa Shenoy, . Reliance is also placed on two decisions of our High Court reported in 1978 (2) PFAC 62 - State of Maharashtra v. Janardan Ramchandra Narwankar and 1989 M.L.J.1042 - S.D. Nagdeve, Food Inspector, Amravati v. Sudhakar Raghunath Burange. Learned Public Prosecutor further contends that in the fact situation of the present case, applying the settled legal position in the aforesaid decisions relied by him, the Consent as granted by the Joint Commissioner, Pune Division (Exhibit 36) already reproduced above in its entirety, cannot be said to be invalid in any manner. He submits that the existence of the said document has been proved. The question of proving the contents did not arise, as the validity of sanction was not in issue, and in any case, it would have been necessary for the consenting authority to depose about the correctness of the contents, only if, on the face of the Consent order, it would appear that there was no application of mind, whereas, the order as passed clearly reflects proper application of mind by the consenting authority. It is submitted that the Trial Court has answered the Point No. 3 as to whether sanction order is proper, in favour of the prosecution, which needs no interference.

7. Indeed, Respondents have brought to my notice, decisions of several High Courts on Section 20 of the Act, to buttress their stand that the consent accorded u/s 20 of the Act in the present case was invalid, which vitiated the entire trial. However, I would prefer to straightway advert to the Supreme Court decisions as pressed into service by the learned Public Prosecutor. The Apex Court in the case of State of Bombay v. Parshottam Kanaiyalal (Supra) has considered the purport of Section 20 of the Act. The argument as is canvassed on behalf of the Respondents that there is

no distinction between "Consent" u/s 20 of the Act and "Sanction" under other enactment such as Section 197 of the Code of Criminal Procedure, was specifically considered by the Apex Court in this decision. In Para 13 that contention has been adverted to, and the Court went on to observe that it was unnecessary to compare the relevant scope of the two provisions. The Apex Court, however, preferred to rest the decision on the terms of Sect ion 20(1) of the Act itself. It has observed that the said provision was designed to prevent the launching of frivolous or harassing prosecutions against the traders. It therefore provides that the complaint should be filed either by a named or specified authority or with the written consent of such authority. It has then observed as follows:

"..... To read by implication that before granting a written consent, the authority competent to initiate a prosecution should apply its mind to the facts of the case and satisfy itself that a prima facie case exists for the alleged offender being put up before a Court appears reasonable, but the further implication that the complainant must be named in the written consent does not, in our opinion, follow....."

From the dictum in the same paragraph, it is seen that the Apex Court has noted that the specified Authority or person filing the complaint has itself or himself to consider the reasonableness and propriety Of the prosecution and be satisfied that the prosecution is not frivolous and is called for. Whereas, when the complaint is to be filed by a person other than the specified authority or person, the emphasis is on the consent to the filing of the prosecution. Two principles emerge from the dictum of the Apex Court in this Judgment. Firstly, the Consenting Authority must be satisfied before giving consent that a prima facie case exists for the alleged offender to be put up before the Court, and secondly, the consent or sanction need not indicate as to in whose favour, the same is granted authorising institution of prosecution under the Act.

8. The next decision is of some significance in the case of Dhian Singh v. Municipal Board, Saharanpur (Supra). In that case, the finding of fact recorded by the Court was that the complaint was filed by the Municipal Board, Saharanpur, though it was signed by its Food Inspector. While considering the efficacy of Section 20 of the Act, the Apex Court observed in para 4 that the Board could have authorised its Food Inspector to file complaint an its behalf. In paragraph 5, the Court went, on to observe, while distinguishing the decisions relied upon by the accused in that case relating to the requirement of valid sanction under other enactments and held that the ratio of those decisions had no bearing on the facts of the case. It then observed thus:

"..... u/s 20 of the Prevention of Food Adulteration Act, 1954, no question of applying one''s mind to the facts of the case before the institution of the complaint arises as the authority to be under that provision can be conferred long before a particular offence has taken place. It is a conferment of an authority to institute a particular case or even a class of cases. That section merely prescribes that persons

or authorities designated in that section are alone competent to file complaints under the statute in question."

9. The next decision relied upon on behalf of the Appellant is in the case of Suresh H. Rajput etc. etc. v. Bhartiben Pravinbhai Soni and Ors. (Supra). In this case, the validity of consent accorded u/s 20 of the Act was put in issue on the argument that the same was a "cyclostyled order". It was argued that there was intrinsic material on record to show that the authority did not apply its mind to the facts constituting the offence. On that argument, the grant of sanction was said to be invalid in law. This contention is articulated in Paragraph 7 of this decision. The Court, however, rejected that argument. The Court has referred to the earlier decision of the Supreme Court in the case of A.K. Roy and Anr. v. State of Punjab and Ors. 1986 (3) FAC 66 : (1984) 4 SCC 326 u/s 20 of the Act and has explained the same in Paragraph 8 of this decision. In Paragraph 9, the Court has then adverted to the case of State of Bombay v. Parshottam Kanaiyalal (Supra) which was also in respect of Section 20 of the Act. In Paragraph 10, the Court has reproduced extract from the decision in State of Bihar and Another Vs. P.P. Sharma, IAS and Another, , which deals with the effect of sanction u/s 197 of the Code of Criminal Procedure. After referring to the said observation, in Paragraph 11, the Court went on to observe that at the stage of granting consent u/s 20 of the Act, it was not for the sanctioning authority to weigh pros and cons and then to find whether the case would end in conviction or acquittal or adulteration was abnormal or marginal etc. All these are not matters for the sanctioning authority to weigh and to consider the pros and cons of the case before granting sanction to lay prosecution against the Respondents. Accordingly, the opinion expressed by the lower Court came to be reversed to hold that the consent order in that case was valid. In other words, the Apex Court negatived the argument that the Consent order was invalid because of non-application of mind, cyclostyled though.

10. Reliance is also placed on the recent decision of the Apex Court in Food Inspector, Ernakulam v. P.S. Sreenivasa Shenoy (Supra). In Paragraph 10 of this decision, it is noted that a Notification was issued by the Government of Kerala, by which Food Inspectors of the State have been authorised to institute prosecution proceedings u/s 20 of the Act. However, the Court, has not examined as to whether such a general authority for consent can be given by the State to the Food Inspectors to institute prosecution proceedings u/s 20 of the Act. That is so because in that case, the issue that arose for consideration was whether it was necessary to obtain, fresh consent of the authority concerned after receipt of certificate from the Director of Central Food Laboratory posterior to the grant of consent, although the said certificate would alter the position obtained and found in the report of the Public Analyst on the basis of which, the Consent was accorded. The Apex Court has held that fresh consent was not required. In Paragraph 20, the Court has noted that once prosecution is instituted validly, the matter is in the hands of the judicial functionary and further proceedings can be controlled by such functionary. The

authority granting consent for institution of prosecution is in no way more suited for preventing unnecessary prosecution than judicial functionaries. Therefore, a switch back to the pre-institution stage is unnecessary and hence unwarranted.

11. Besides the decisions of the Apex Court referred to above, Appellant has also placed reliance on the decision of this Court in 1978 (2) PFAC 62 State of Maharashtra v. Janardan Ramchandra Narwankar. This decision is relied upon to support the argument that there is perceptible distinction between "consent" and "sanction". In Paragraph 54 of this decision, the Court observed thus:

"Besides, it must be remembered that u/s 20 of the Prevention of Food Adulteration Act only consent of the Commissioner is necessary and not sanction. There is obvious difference between ''consent'' and sanction. ''Consent'' implies mere concurrence of agreements whereas ''sanction'', confers authority on the person in whose favour sanction is granted. Therefore, the considerations applicable in the case of ''sanction'' would, in my opinion, not be applicable to a case where mere consent is required."

12. Reliance is placed on one more decision of our High Court in S.D. Nagdeve, Food Inspector, Amravati v. Sudhakar R. Burange (Supra). In this case, the argument was that the order of consent was not "speaking". In that sense, it did not disclose the reasons in details and hence, not in conformity with the requirements of Section 20 of the Act, for which reason) prosecution has vitiated. The Division Bench of this Court on adverting to several decisions referred to in Paragraphs 12 to 14, observed thus :

"12. ..... Apart from the fact that validity of consent u/s 20 is a mixed question of law and fact and therefore, cannot be allowed to be normally raised for the first time at appellate stage, because prosecution with notice of such objection can adduce evidence to prove validity of consent, we do not see any merit in the contention. Grant or refusal of consent under this provision is essentially an administrative and not a judicial function. Its purpose is not to record a prima facie finding about guilt because the stage of evidence upon which the result of prosecution depends is yet to arise. What then is its purpose? Purpose is to see whether prima facie material exists for the alleged offender to put up for trial and whether trial is necessary in public interest. In other words, put check on frivolous and unnecessary trials. What is of essence is that the consenting authority must apply its mind to the facts of the case. In considering question of validity of consent order, there is one more aspect which has to be kept in view and that is about a presumption u/s 114 of the Evidence Act of official act having been regularly performed. In this connection the case of Tulsi Ram Vs. State of U.P., , though in the context of Section 196A Criminal Procedure Cades is to the point. Moreover, hypertechnicality should not come in the way of booking the offenders under the PFA Act considering its object."

13. .....

14 .....

"15. In our view, no conclusive inference can be drawn of non-application of mind by virtue of the only fact that in the consent order type of adulteration is not mentioned. All will depend upon facts and circumstances of each case. Applying any test to Exhibit 25, it does not appear that there has been non-application of mind. Exhibit 25 refers to the contents of the report of Public Analyst, other material documents and so also to the type of adulteration. We, therefore, see no substance even in this point."

13. Reverting to the decisions relied on behalf of the Respondents, I shall first deal with Chunni Lal''s case (Supra) of the Allahabad High Court. In that case, the Court found that there was internal evidence to show that the sanctioning authority had appended his signature without applying his mind, to the facts and, therefore, the sanction and consequent prosecution thereon were invalid. In the first place, that question does not arise in the present case. In any case, after the decision of the Apex Court in Suresh H. Rajput (Supra), this proposition seems to be doubtful, inasmuch as in Suresh Rajput''s case (Supra), the challenge to the sanction order before the Apex Court was on similar ground that the sanction was a "cyclostyled order" but the same was rejected.

14. The next decision is in the case of B. Raja Gowd (Supra). In Paragraph 3 of this decision, the Single Judge of the Andhra Pradesh High Court has no doubt observed that according to the latest law laid down by the Supreme Court, the sanctioning authority is not only required to apply its mind to the facts of the case, but it should satisfy itself that there is prima facie case and should also record reasons for launching prosecution and also specify that it is necessary in the public interest. However, no reference has been made to any specific decision of the Supreme Court. In any case, in view of the dictum of the Supreme Court decisions as relied by the Appellant already referred to above, this decision will be of no avail to the Respondents.

15. Even the decision of the Madhya Pradesh High Court in the case of State of M.P. v. Ghanshyamdas (Supra), would be of no avail. In Paragraph 7 of this decision, the Court has adverted to the decision in the case of Sukhram alias Bhile v. State of Rajasthan : 1992 (1) FAC 31, which had held that consent given on printed form with only blanks filled in bearing signature of the local authority given in different ink than the date, would indicate that there was no application of mind of the sanctioning authority. Again in view of the decision of the Apex Court in Suresh Rajput''s case (Supra), such a proposition is doubtful. As in Rajput''s case (Supra), the challenge to the sanction order was on the same lines that it was a "cyclostyled order". In paragraph 8 of this decision, the Court, while adverting to another decision, noted that sanctioning authority ought to enter into witness box to prove the sanction and disclose application of mind. In my opinion, the question of sanctioning authority requiring to enter the witness box would arise only when the

validity of the written consent is put in issue or when it is possible to demonstrate that the written consent as granted, on the face of it, suffers from non-application of mind. Whereas, prosecution can be instituted by the complainant on the basis of written consent u/s 20 of the Act.

16. In the case of Deepchand Agarwala '' Deepak Agarwalla (Supra), the finding of fact recorded is that the sanctioning authority in its sanction order has only stated that he perused the prosecution report and the relevant documents. On that finding, the Court went on to hold that the sanction order was invalid, as it cannot be held that requirement of Section 20 of the Act were satisfied. In Paragraph 3 of this decision, the Court was conscious of the legal position that, had the sanctioning authority mentioned that he has gone through the prosecution report along with all the documents referred to in the prosecution report, the case would have been different. Accordingly, that is & decision on the fact situation of that case. Whereas, in our case, it is seen from the consent order itself that it not only makes reference to the fact that the Authority has gone through the Public Analyst report, but also the relevant case papers forwarded to him before recording satisfaction that this is a fit case for prosecution under the Act.

17. Reliance was placed on the Supreme Court decision in A.K. Roy (Supra). That decision has already been explained by the Apex Court in the case of Rajput''s case (Supra) as referred to above. In this case, two main questions have been considered by the Apex Court. The first regarding the validity of Rule 3 of the PFA (Panjab) Rules, 1958, and the second is that assuming that Rule 3 was valid and could be regarded as a general order issued by the State Government, whether the Food (Health) Authority by Notification could, in turn, sub-delegate its powers to the Food Inspector, Faridkot. None of these questions arise for consideration in the present case.

18. The next decision of the Apex Court relied on behalf of the Respondents is in the case of Chittaranjan Das (Supra). That is an authority on the proposition as to whether notification issued to authorise issuance of general orders of consent for prosecution u/s 20 of the Act. In this decision, the Court has examined the changed legal situation after amendment of Section 20 of the Act. To my mind, this decision is of no avail on the question that arises for our consideration in the present appeal.

19. The next decision relied on behalf of the Respondents is in the case of Miss. Shakun (Supra). In that case, from the facts noted in paragraph 5, it is seen that the concerned authority who had granted consent was examined by the prosecution in the precharge evidence, but was not made available for cross-examination. It is mainly on this basis, the Court proceeded to draw adverse inference, as can be seen from observations in Para 12 of the decision. Besides, the Court has found in that case, that there was no intrinsic evidence in the consent order that the concerned authority had before him, the report of the Public Analyst, Accordingly, that decision will be of no avail to the fact situation of the present case.

20. The next decision pressed into service on behalf of the Respondents was in the case of State v. Parshottam Kanaiyalal and Anr. reported in AIR 1960 Bom. 254 of the Division Bench of our High Court. However, this decision has been reversed by the Apex Court in the Judgment as reported in The State of Bombay Vs. Parshottam Kanaiyalal, . That decision is already relied on behalf of the Appellant and has been adverted to hereinbefore.

21. There is one more decision which needs to be mentioned as relied by the Respondents, pertaining to Section 20 of the Act, in the case of M/s Sham Sunder & Brothers (Supra). Again, that decision will be of no avail because the Court proceeded to examine the matter on the finding that it cannot be assumed that the sanctioning authority looked into the documents sent to it by the Food Inspector. In our case, the consent order clearly records the fact that the authority had perused the relevant. documents while recording its satisfaction. In the circumstances, even this decision will be of no avail to the Respondents.

22. The Respondents have then relied on other decisions which deal with the requirement of valid "sanction" under other enactments. However, to my mind, as has. been found by the Apex Court in State of Bombay (Now Gujarat) v. Parshottam Kanaiyalal (Supra), reference to analogy of the decisions rendered u/s 197 of the Code of Criminal Procedure would be of no avail, whereas, the decision should rest on the terms of Section 20 of the Act. Accordingly, applying the dictum in the decisions of the Supreme Court pressed into service on behalf of the Appellant, I have no hesitation in taking the view that although, it is well settled that granting consent u/s 20 of the Act is not an empty formality and the authority has to apply its mind, but at the same time, the rigours of requirement of a valid sanction under the other enactments cannot be invoked.

23. The next question therefore is, whether the consent in the present case discloses the application of mind? We have already adverted to the order passed by the Joint Commissioner while according consent u/s 20 of the Act, which has been proved as Exhibit 36. The existence of the said document has therefore been established in evidence. That means the existence or grant of consent as required by Section 20 of the Act stands established. On bare reading of the document, as is placed, on record, in my opinion, it clearly discloses application of mind by the concerned authority. It makes reference to the fact that the authority has gone through the Public Analyst Report as well as other relevant case papers placed before him before recording its satisfaction. In such a case, the question of examining the authority who had issued the said orders will not arise unless the validity thereof was put in issue at the instance of the accused on available grounds in law, which indeed is a mixed question of law and fact. And being so, it ought to be specifically raised at the trial. In the present case, no such attempt has been made either by s formal application or otherwise. Whereas, it is seen that P.W.1 in paragraph 2 of his deposition on page 12 of the paper book, has proved the said order which has been

exhibited as Exhibit 36. However, there is no cross-examination of this witness in that regard. It necessarily follows that the factum of existence of consent u/s 20 of the Act is not challenged, nor the question of its validity put in issue at the trial. Indeed, the Trial Court had formulated Point No. 3 as to whether the sanction order is proper. The Trial Court, in Paragraph 8 of the impugned decision, has adverted to the only argument canvassed on behalf of the Respondents that the Sanction order was not proper because it does not specifically speak about the alleged offence. That contention has been rejected and finding has been recorded that the order discloses application of mind by the sanctioning authority. On a fair reading of Exhibit 36, no fault can be found with the said conclusion reached by the Trial Court. Understood thus, the argument. canvassed on behalf of the Respondents that the Trial has vitiated for want of valid consent, is devoid of merits.

24. That takes me to the other aspects of the case. The Trial Court has held that there has been infraction of Section 11(c)(i) of the Act. To record that opinion, the Trial Court has found that the said provision requires that one of the sample should be sent to the Public Analyst coupled with the requirement that intimation for the same should be sent to the Local Health Authority. The Trial Court has found that neither the complaint Exhibit 1 nor the evidence of P.W.1 make any mention about the sending of such intimation to the Local Authority. The Trial Court has observed that the said requirement is mandatory. In my opinion, the basis on which the Trial Court has answered that issue, is error apparent on the face of the record. Whereas, it is seen from Paragraphs 4 and 5 of the Complaint Exhibit 1, that specific reference has been made regarding the fact that intimation has been sent to the Local Authority. Besides the express statement in the complaint, P.W.1 in his deposition at Page 11, has clearly deposed that two copies of Form No. VII and the covering letter were put in an envelope and were sealed and then were handed over to the Assistant Commissioner, FDA, M.S., Sangli, who is Local Authority, by hand delivery. The copies of the covering letter with the signature of the P.W.1 have been marked as Exhibit 21. There is no cross-examination in this behalf. Besides P.W.3, the Assistant Commissioner FDA (Administration) at Sangli, who was entrusted with the duties of the Local Health Authority, has been examined and even this witness has not. been crags-examined in this behalf. In the circumstances, the basis on which the lower Court proceeded to record that there has been infraction of Section 11(c)(i) is wholly untenable and unwarranted.

25. The Trial Court has then recorded that there has been infraction of Rule 16 and that, the same was mandatory. The basis on which the Court has recorded that finding is that, P.W.1 is unable to tell as to when the packets in question were purchased; besides, corks were not put to the polythene bags and that the complaint does not speak that thick brown paper envelopes were used to preserve the samples. This finding clearly overlooks the evidence an record. P.W.1, in examination-in-chief, has clearly stated that the purchased tea powder was divided in three equal parts and each of the part was poured in separate dry, clean and

empty polythene bags and were thereafter sealed by fire of candle. He has further deposed that each of the packet was put in thick brown envelope and the mouths of those envelopes were pasted with gum. There is absolutely no cross-examination doubting the correctness of the statement made by P.W.1 that the polythene bags were kept in thick brown paper envelopes. The cross-examination is only to the effect that the polythene bags in which sample was collected were purchased by the Officer but the witness was unable to tall at what time they were purchased. The witness was then asked whether he was able to tell specification of standard of polythene bags. Understood thus, the basis on which the Court below proceeded to record that there has been infraction of Rule 16 of the Act, cannot be sustained. Besides, I find force in the submission canvassed on behalf of the Appellant that there has been substantial compliance of requirements of Rule 14 and Rule 16 of the The Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the ''Rules''). Rule 14 and Rule 16 of the Rules read thus:

"14. Manner of sending sample for analysis.-Samples of 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 the case of dry substance entrance of moisture and shall be carefully sealed."

"16. Manner of packing and sealing the samples.- All samples of food sent for analysis shall be packed, fastened and sealed in the following manner, namely :-

(a) The stopper shall first be securely fastened so as to prevent leakage of the contents in transit;

(b) The bottle, jar or other container shall then be completely wrapped in fairly strong thick paper. The ends of the paper shall be neatly folded in and affixed by means of gum or other adhesive;

(c) A paper slip of the size that goes round completely from the bottom to top of the container, bearing the signature and code and serial number of the Local (Health) Authority, shall be pasted on the wrapper, the signature or the thumb impression of the person from whom the sample has been taken being affixed in such a manner that the paper slip and the wrapper both carry a part of the signature or thumb impression:

Provided that in case, the person from whom the sample has been taken refuses to affix his signature or thumb impression, the signature or thumb impression of the witness shall be taken, in the same manner;

(d) The paper cover shall be further secured by means of strong twine or thread both above and across the bottle, jar or other container, and the twine or thread shall then be fastened on the paper cover by means of sealing wax on which there shall be at least four distinct and clear impressions of the seal of the senders of which one shall be at the top of the packets one at the bottom and the other two on

the body of the packet. The knots of the twine or thread shall be covered by means of sealing wax bearing the impression of the seal of the sender."

Rule 14 provides for the manner of sending sample for analysis and Rule 16 provides for the manner of packing and sealing the samples. On conjoint reading of the said provisions, it would appear that it provides for ensuring prevention of leakage, evaporation or entrance of moisture namely damage of any form to the contents of the samples in transit. If the prosecution is able to demonstrate that there is substantial compliance of the said requirement) and in particular, in the manner provided for in Rule 14 and Rule 16, then merely because the sample was not packed and sealed in a bottle, or it was not corked, does not mean that there has been any infraction of Rule 16 as held by the lower Court. Rule 14 permits preserving the sample in a "suitable container" so as to ensure that the sample is not distorted or damaged in any manner becoming incapable of being evaluated. In the present case, the sample was of tea powder and could be kept in polythene bags. Besides, the prosecution evidence clearly establishes that three parts of the sample were taken in clean, dry and empty polythene bags and mouths of the polythene bags were sealed by fire of candle. This evidence of P.W.1 is not shaken at all in the crass-examination. The suggestion in the cross-examination that corks were not put to the polythene bags is uncalled for because the corks are used for bottles or jars or any other similar container and not to polythene bag such as in the present case. In the present case, the sample was a tea powder and for which reason, its packing in polythene bags to ensure prevention of moisturisation in transit, would be substantial compliance of the said provision. In the circumstances, the finding as returned by the lower Court to hold that there has been infraction of Rule 16 in the present case, cannot be countenanced. Even though I have reversed the abovesaid findings of the trial Court that will make no difference to the final result of the case for the reasons I shall record a little later.

26. That takes me to the other finding returned by the Trial Court. The Trial Court has found that the prosecution has failed to establish in evidence that the licence of the shop was standing in the name of accused No. 2. It is not in dispute that accused No. 2 was not personally present when the sample of tea powder was allegedly purchased. Whereas, accused No. 2 has been implicated on the ground that he had obtained license for grocery shop from where the sample was procured from accused No. 1. The charge against him is also only of storing contaminated tea powder for sale. However, as rightly found by the Trial Court, the prosecution evidence does not establish the fact that accused No. 2 had obtained licence for the grocery shop in question. On the other hand, during the cross-examination, in Paragraph 5, P.W.1 has conceded that at present, he was not able to tell on what date the application for licence was made, an what date the fees for licence was paid and the 1icence was granted. Suggestion has been put to him that accused No. 2 applied for licence only after eight days after the incident and was granted licence thereafter. If that is so, there was no tangible material to prosecute accused No. 2 at

all. Indeed, in the cross-examination, in Para 55 P.W.1 has stated that he was ready to examine either Assistant Commissioner or any other responsible person from his office in connection with granting of licence. However, no such evidence has been adduced by the prosecution. Accordingly, the finding as returned by the Trial Court on this aspect in Paragraph 9 will have to be upheld. It necessarily fallows that accused No. 2 cannot be prosecuted for the alleged offence.

27. The Trial Court has then held that the tea powder was collected from one open tin box, which fact was admitted by P.W.1. On that tin box, nothing was written or painted, which fact is accepted even by P.W.2. The Trial Court then went on to observe that the accused No. 1 was mentioning to the complainant P.W.1 that he had taken that box, which was kept behind the row of cupboards, which was extremely towards the back side of the shop at the place where the waste material was kept. In so far as this aspect is concerned, there seems to be substance in the observation made by the Trial Court in that regard. That position is reinforced on close scrutiny of evidence of P.W.1 and P.W.2. Suffice it to point out that in the cross-examination, in Para 9, P.W.1 has deposed that he had taken inspection of the shop, but that fact was not specifically mentioned in the inspection report. It is then admitted that he did not felt it necessary to mention in the panchanama the size of tin box, how much tea powder was containing in that box and at what place that box was kept. He then concedes that he did not remember some small packets of Brook Bond and Lipton were kept in the shop for the purpose of sale. He admits that the tea powder was kept in the open tin box. What is intriguing to note is that he concedes that he "thought" that the tea powder in the tin box was kept for the purpose of sale. If this statement is juxtaposed with the suggestion put by the accused, that the sample collected by P.W.1 was from waste material; which fact is re-inforced from the cross-examination of P.W.2, where he admits that it is true that at the time he went along with P.W.1, one small tin box which was already taken was kept on the counter and that tin was old. Thereafter, the witness has deposed:
"..... It is true the accused No. 1'' was saying to the Food Inspector as he had taken that box which was kept behind the row of cupboards, extremely towards the backside in the snap, at the place of waste material.....".

From this evidences on preponderance of probabilities, the accused ought to be given benefit of doubts inasmuch as the Complainant P.W.1 has stated that he "thought" that the tea powder in the tin box was kept open for the purpose of sale and the possibility that the old tin box was taken out from behind the row of cupboards from a place where waste material was kept, would support the claim of the Respondents that the same was not for the purpose of sale. On the above reasoning, the finding under consideration recorded by the Trial Court in favour of the accused deserves to be upheld.

28. The Trial Court has then adverted to receipt Exhibit 1$ which would show that it was issued in the name of Swastik Machinery Stores. To my mind, it is not necessary

to burden this Judgment on that aspect because, besides the reasons already indicated above, the Respondents are right in contending that the opinion expressed by the Trial Court that the Panchnama does not bear signature of accused No. 1 and prosecution has failed to bring any evidence to show that the copy of that Panchnama has been given to the Accused No. 1 will have to be upheld. The consequence would be the Panchnama will have to be discarded, which will be fatal to the prosecution case. In so far as, the fact that Panchnama does not bear the signature of accused No. 1 is concerned P.W.1 in his evidence, has clearly accepted the position that accused No. 1 has not signed the memorandum of Panchnama Exhibit 23. Whereas, it was signed only by himself (P.W.1) and (P.W.2) being Panch. Whereas, Panch witness (P.W.2) has stated in his evidence that the Panchnama was also signed by accused No. 1. The original Panchnama Exhibit 23 clearly indicates that it has been signed only by P.W.1 and P.W.2. In the examination-in-chief of P.W.1, there is no mention of the fact that accused No. 1 refused to sign the memorandum of Panchnama. However, the explanation why accused No. 1 was unwilling to sign the memorandum of Panchnama has come on record during the cross-examination. It has been suggested during the cross-examination, as can be discerned from Para 9 of the testimony that the real situation was not noted in the Panchnama because of which accused No. 1 refused to sign the same. Be that as it may, as the memorandum of Panchnama was drawn after the search was carried out 5 it was obligatory to furnish copy thereof to accused No. 1 having regard to the mandate of Section 100(7) of the Code of Criminal Procedure. Sub-section (7). of Section 100 of the Code of Criminal procedure provides that when any person is searched under Sub-section (3) a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person. There is no evidence on record that copy of the memorandum of Panchnama Exhibit 23 was so delivered to the accused No. 1. If that is so, the Panchnama Exhibit 23 will have to disregarded. The consequence is that it will be fatal to the prosecution case. Indeed, the learned Public Prosecutor made an attempt to persuade the Court that provisions of Section 100 of Code of Criminal Procedure cannot be pressed into service in the present case, which is governed by the provisions of the Prevention of Food Adulteration Act, 1954. However, there is no express provision in the Act as to the manner of search and procedure to be followed. Nor there is express provision in the Act that the investigation or trial of offences under the Act will not be governed by the provisions of the Code of Criminal Procedure. Understood thus, obviously, reliance will have to be placed on the provisions of the Code of Criminal Procedure. Accordingly, the opinion recorded by the Trial Court in this behalf, will have to be upheld on the above reasoning.

29. The Trial Court has then observed that there is material contradiction between the versions of P.W.1 and P.W.2. However, it has not spelt out the nature of material contradictions. It is not necessary to burden this Judgment with that aspect, inasmuch as, for the reasons already recorded above, the ultimate conclusion

reached by the Trial Court will have to be upheld but for different reasons. This being an appeal against acquittal, the Court ought to be slow and observe circumspection. In the present case, for the reasons recorded above, the order of acquittal in favour of the Respondents will have to be upheld.

30. Accordingly, this Appeal fails and the same is dismissed.