

(1992) 02 CAL CK 0025**Calcutta High Court****Case No:** Criminal Revision No. 936 of 1984

Indian Sweets and Others

APPELLANT

Vs

State of West Bengal and Anr

RESPONDENT

Date of Decision: Feb. 5, 1992**Acts Referred:**

- Prevention of Food Adulteration Act, 1954 - Section 13(2)

Citation: 96 CWN 983**Hon'ble Judges:** A.M. Bhattacharjee, J; A.K. Nandi, J**Bench:** Division Bench**Advocate:** Pradip Ghosh, for the Appellant;

Judgement

A M. Bhattacharjee, J.

We are satisfied that the Revision must succeed and the, impugned order must be set aside and the accused petitioners shall have to be discharged. The reason that has very strongly weighed with us in coming to this decision is hereunder. The sample of Dahi was taken on 6-7-79. but the prosecution was launched only on 23-9-81 and the notice notifying that the sample of Dahi was found to be adulterated by the Public Analyst could be served on the petitioners on 23-11-81. The petitioners endeavored to exercise their right u/s 13(2) of prevention of Food Adulteration Act, 1954 even at that belated stage and the other sample was accordingly sent to the Director, Central Food Laboratory, but the later reported back that the sample was no longer in a condition fit for analysis.

2. It is common knowledge that Milk Product like Dahi undergoes changes very soon and decomposition starts, even when preservatives are added and precautionary steps are taken, if there is inordinate delay between the taking of the sample and its analysis. In the Supreme Court Case of Municipal Corporation of Delhi Vs. Ghisa Ram, there was similar delay of about 2 years and the Director, Central Food Laboratory, found the sample to be unfit for analysis. The Supreme Court ruled that

the accused was deprived of his valuable right of having the sample analyzed by the Director u/s 13(2) of the Act and was accordingly prejudiced in his defence and that his acquittal was justified. We also hold accordingly and hold that further proceeding in the case would be entirely useless and the prosecution thus should be quashed and the accused-petitioners must accordingly stand discharged and we direct accordingly.

Amulya Kumar Nandi, J.

I agree.