

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Shantilal Kalidas Gujarathi

Crl.A.Nos.204, 216, 217, 218 and 278 of 1976

(Y. V. Chandrachud, P. K. Goswami and P. N. Shinghal, JJ.)

22.03.1977

JUDGEMENT

CHANDRACHUD, J. :-

1. These appeals raise an important question whether R. 22 of the Prevention of Food Adulteration Rules is mandatory and whether non-compliance with the rule is fatal to the prosecution. We are informed by the learned Additional Solicitor General that most of the High Courts have taken the view that the particular rule is directory and not mandatory so that, even if the rule is not strictly complied with, the prosecution is not liable to fail for that reason.

2. There is, however, a judgment of this Court in *Rajal Das Guru Namal Pamanani v. The State of Maharashtra*, (1975) 2 SCR 886 : (AIR 1975 SC 189) in which a Bench of four learned Judges, speaking through the learned Chief Justice, observed that "the shortage in quantity for analysis is not permitted by the statute". By reason of this observation, many High Courts have felt compelled to pass orders of acquittal, whenever the exact quantity mentioned in the rule was not obtained by the Food inspector by way of sample for being sent for analysis to the public analyst.

3. As stated earlier, the question is of far-reaching importance. Since, with great respect the observations made in Rajal Das's case, though not direct, cannot be ignored, it is necessary in the interest of justice that the question be examined by a larger Bench.

4. Accordingly, we direct that the papers of these appeals should be placed before the learned Chief Justice to enable him to refer these appeals to a larger Bench.

Order accordingly.