

Kisan

Vs

State of Maharashtra

Criminal Appeal No. 41 of 1977

(Syed M. Fazal Ali, P. S. Kailasam JJ)

20.04.1979

JUDGMENT

1. This appeal is clearly concluded by a recent decision of this Court in *State of Kerala v. Alaserry Mohammed*. The point involved in this case is as to whether the amount of blood sent to the Public Analyst was below the minimum prescribed by the rules. It is true that under Rule 4 of the Bombay Prohibition (Medical Examination and Blood Test) Rules, 1959, it is required that the quantity of blood to be collected shall not be less than 5 c. c. But the definite report of the Public Analyst in this case is that for his purpose 5 c. c. was enough to determine the question whether the accused had consumed liquor. We are clearly of the opinion that the provisions of Rule 4 are merely directory and not mandatory and if the Public Analyst opined that the quantity below 5 c. c. was sufficient for the purpose of analysing the results, then the rule must be deemed to have been substantially complied with. This is the principle on which this Court in the aforementioned case held that even though the rule required a particular amount of food to be sent to Public Analyst, yet unless there was evidence to show that the Public Analyst wanted more, even a lesser quantity than specified was a sufficient compliance of the rules and would not vitiate the conviction. For these reasons, therefore, we find no merit in the appeal which is dismissed.

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