ALLAHABAD HIGH COURT

Nagar Mahapalika of Kanpur

Vs.

Sri Ram

Criminal Appeal No. 173 of 1962

(D.S. Mathur and Gyanendra Kumar, JJ.)

08.05.1963

JUDGMENT

Mathur, J

1. This is an appeal under Section 417(3) Criminal Procedure Code by the Nagar Mahapalika Kanpur, against the order dated 22-7-1961 of the IVth Additional Sessions Judge, Kanpur, allowing the appeal of Sri Ram, respondent, and acquitting him of the offence punishable under Section 16 of the Prevention of Food Adulteration Act (to be referred hereinafter as the Act) for contravention of Section 7 thereof.

2. The facts, in brief, are that on 29-1-1960 the respondent, Sri Ram, was found selling laddoos in Mohaila Ashok Nagar of Kanpur City. The Food Inspector purchased laddoos and prepared three sealed samples thereof, one of which was sent to the Public Analyst for analysis and report, the other was handed over to the respondent and the third was retained in the office of the Medical Officer of Health, Kanpur. The Public Analyst submitted his report (Ex. Ka-4)) and expressed the opinion that the sample was colored with a coal-tar dye namely, metanil yellow, which was not one of the coal-tar dyes permitted for use in foodstuffs under Rule 28 of the Prevention of Food Adulteration Rules, 1951 (to be referred hereinafter as the Rules). The report of the Public Analyst shall be quoted in full at a later stage while considering whether such a report is admissible in evidence.

3. On receipt of the Public Analyst's report the Medical Officer of Health submitted the complaint (Ex. Ka-5) to the Magistrate 1st Class, Kanpur, on the basis of which the respondent was tried and convicted of the above offence. As the respondent had previously been convicted for a similar offence, he was awarded the sentence of one year's R.I., and a fine of Rs. 2000/-, in case of default another three months' R.I.

4. Sri Rani preferred an appeal before the Sessions Judge of Kanpur which has been allowed on two legal grounds firstly that in view of Section 20 of the Act, the magistrate could not take cognizance of the complaint, having not been made by a proper authority; and secondly, that the report of the Public Analyst was defective and was not admissible in evidence. The learned Sessions Judge was of opinion that on the day the complaint was submitted to the magistrate there was no Municipal Board of Kanpur and them could be no Medical Officer of Health of a nonexistent body like the Municipal Board of Kanpur. Reliance was placed upon the form of the complaint without reading it as a whole. With regard to the Public Analyst's report the learned Sessions Judge was of opinion that it was necessary for the Public Analyst to indicate in the report the tests applied by him for detecting metanil yellow coal-tar dye in the sample and as the report did not contain all the material data it was not a document which could be read in evidence under Section 13 of the Act.

5. It may at the very outset be observed that the Nagar Mahapalika of Kanpur was created with effect from February 1, 1960 and since that date the Municipal Board of Kanpur ceased to exist. The Medical Officer of Health of the Municipal Board, however, became the Medical Officer of Health of the Nagar Mahapalika; and in view of the provisions of the U.P. Nagar Mahapalika Adhiniyam, 1959, notifications issued with regard to the powers of the employees of the Municipal Board of Kanpur became applicable to the corresponding employees of the Nagar Mahapalika. The State Government had issued a notification authorizing the Medical Officer of Health of the Municipal Board of Kanpur to make complaint with regard to offences committed under the Act and by virtue of the provisions of the U.P. Nagar Mahapalika Adhiniyam, 1959, the Medical Officer of Health, who automatically became the Medical Officer of Health of the Nagar Mahapalika, could make such complaints which could be taken cognizance of by magistrates. In other words, the Medical Officer of Health of the Nagar Mahapalika of Kanpur was a person duly authorised by the State Government to make complaints as contemplated by Section 20 of the Act.

6. As already mentioned above, the complaint (Ex. Ka-5) was written on a form printed during the existence of the Municipal Board of Kanpur wherein the name of the complainant is printed as the Municipal Board, Kanpur, through its Medical Officer of Health. In the main body and also below the designation of the person signing the complaint the words "Municipal Board, Kanpur" are printed. When the complaint was made, no one cared to make suitable corrections in the form but what was done was to place the seal of the Health Department of the Nagar Mahapalika of Kanpur on the top left corner of the paper. It was vehemently contended on behalf of the respondent that the complaint had in fact, been made by the Municipal Board, Kanpur, through its Medical Officer of Health and not by the Medical Officer of Health himself and as the complaint was by a non-existent body through a non-existent officer, the Courts of law could not take cognizance of such a complaint, all the more when a bar had been imposed by Section 20 of the Act to the maintainability of a complaint except by the prescribed authorities or with their written consent.

7. It is true that in the heading of the complaint the complainant is shown as the Municipal Board, Kanpur, through its Medical Officer of Health, but if the document is read as a whole it shall be clear that the complaint was made by the Medical Officer of Health himself and not under the directions of the Municipal Board., Kanpur. The main body of the complaint begins with the words "I have the honour to submit". There is also nothing in the complaint to show that the same was being made under any resolution or authority of the Municipal Board. Whenever an officer sends a letter on his own, he generally writes the letter in the above form. Prior to 1947 he used to begin his letters with the words" I have the honour", and since 1947 words like" I am to say" or "I am to inform" are used; but where the officer sends the letter on behalf of, or under directions of a Corporation, he invariably begins the letter with the words "I am directed to say" or "I am desired to say". The word "directed" or "desired" makes it clear that the letter is being sent on behalf of or under the directions of the Corporation. A perusal of the complaint (Ex.Ka.5) makes it clear that it was not submitted under any resolution or direction of the Municipal Board Kanpur, and hence the complaint was made by the Medical Officer of Health on his own and, in the eye of law, the complainant is the Medical Officer of Health who signed the complaint.

8. Even if it could be held that the complainant was the Corporation, by virtue of the seal placed at the top of the complaint, the complainant shall be deemed to be the Nagar Mahapalika of Kanpur and not the Municipal Board, Kanpur.

9. It is a settled rule that the Courts of law can entertain a complaint which they are competent to take cognizance of, irrespective of who the complainant is, unless the jurisdiction has been; taken away under some valid enactment. Prohibitions are not to be presumed. In other words, the law restricting the jurisdiction of a competent Court must be strictly construed and when two opinions are possible the one in favor of the existence of jurisdiction shall be adopted. Further, the scope of a prohibitory clause cannot be extended and it must be given its ordinary meaning.

10. The jurisdiction of a magistrate in taking cognizance of an offence under the Act has been restricted by Section 20(1) thereof which runs as below :

> "No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a local authority or a person authorized in this behalf by the State Government or local authority."

11. Criminal proceedings under the Act can be initiated by only four kinds of persons or authorities the State Government, a local authority, a person authorized in this behalf by the State Government or a person authorized in this behalf by the local authority. It is not necessary that they must themselves make or sign the complaint; it is sufficient if the prosecution is instituted with their written consent. The State Government or Nagar Mahapalika could thus institute the prosecution through an official competent to make a complaint on its behalf or the complaint could be made by anyone after the State Government or Nagar Mahapalika gave its consent in writing for prosecution. Similarly, the person authorized in this behalf by the State Government or Nagar Mahapalika could himself make the complaint, or with his written consent the prosecution could be instituted by any other person.

12. Coming to the instant case, the complaint was moved by the Medical Officer of Health of the Nagar Mahapalika of Kanpur and he had himself signed the complaint. He was the person authorised by the State Government under Section 20 of the Act, to institute prosecution for an offence under the Act. Consequently, in his designation was correctly noted in the complaint, i.e., the words "Nagar Mahapalika" were substituted for "Municipal Board" at all the places, there would have been no controversy and the complaint could, without doubt, be entertained by the magistrates of Kanpur. However, as already mentioned above, the designation was wrongly noted, and the complainant was referred to as the "Medical Officer of Health of the

Municipal Board, Kanpur'. The matter in controversy is thus a simple one; are the Courts of law competent to take cognizance of a complaint for an offence under the Act if the designation of the complainant has been wrongly given, though he had been duly authorized by the State Government or a local authority to make such complaints.

13. Section 20(1) of the Act makes a reference to a person authorized by the State Government or a local authority to make a complaint for offences under the Act. A person can be so authorized by name or by virtue of his holding an office. If authorized by name, he can exercise the power wherever he may be posted, otherwise only for such period as he may be holding that office. In either case the person authorized is the individual. When the legislature laid stress on the person and not his designation, Courts of law can disregard any misdescription of designation provided that the person signing the complaint or giving his written consent to the prosecution, is a person duly authorised under Section 20(1) of the Act.

14. We can consider the matter from other angles also. Instances of a person holding two offices or exercising two distinct powers are not uncommon. In the State of Uttar Pradesh the Collector of a District is invariably the District Magistrate also and if he exercises the powers of 'Collector' but wrongly describes himself as 'District Magistrate' he shall be deemed to have functioned as Collector. Such a question came up for consideration before this Court in *Pearey Lal v. Rex,* [1] where the officer holding both the posts had described himself as 'District Magistrate' while according sanction for prosecution under Section 6 of the Prevention of Corruption Act, though in fact he was acting as Collector. The mistake in description was nut considered sufficient to vitiate the sanction, and it was held that the Courts of law could take cognizance of the complaint after the sanction was obtained. Similarly, a Court can be invested with additional powers not ordinarily exercisable by it. For example, a Civil Judge can be invested with the power to try suits of the nature of small causes, or a Judge of the Court of Small Causes may be appointed additional Civil Judge also. If the Civil Judge decides a small cause Court suit but gives his designation as Civil Judge and uses his ordinary seal of the Court of the Civil Judge, or the Judge Small Cause Court decides a regular Civil suit or appeal but describes himself as Judge, Small Cause Court and uses the seal of the Court of Small Causes his judgment shall not be without jurisdiction nor shall the nature of the suit change. In spite of the wrong description the suit shall be deemed to have been decided by him under the Small Cause Court Act or as Additional Civil Judge as the case may be. To put it differently, incorrect

description of the designation does not affect the validity of the judgment or order provided that the officer had the jurisdiction and was acting as such.

15. The same rule can be applied to a case where the officer holds only one office but wrongly describes his office by giving a non-existent designation. While he exercises the powers of the office in existence his acts shall be lawful and within jurisdiction, even though he misdescribes his office. There being no Municipal Board of Kanpur, the Medical Officer could function only as the Medical Officer of Health of the Nagar Mahapalika of Kanpur, with the result that he shall be deemed to have made the complaint as Medical Officer of Health of the Nagar Mahapalika, and the complaint could be taken cognizance of by the magistrates of Kanpur.

16. The above view can be upheld on the recognised maxim "falsa demonstratio non nocet cum de corpore constat" (mere false description does not vitiate if there be sufficient certainty as to the object). In Broom's Legal Maxims, Eighth Edition, the rule as to falsa demonstratio has been laid down as below :

> "Falsa demonstratio means an erroneous description of a person or a thing in a written instrument; and the above rule respecting it signifies that where the description is made up of more than one part, and one part is true, but the other false, there if the part which is true describes the subject with sufficient legal certainty, the untrue part will be rejected and will not vitiate the devise: the characteristic of cases within the rule being that the description, so far as it is false, applies to no subject at all, and, so far as it is true, applies to one only .....

The rule as to falsa dernonatratio has sometimes been stated to be that 'if there be an adequate and sufficient description with convenient certainty of what was meant to pass a subsequent erroneous addition will not vitiate it.' "
The scope of the above rule cannot be confined to an incorrect description existing at the end of the sentence; the rule applies to an incorrect description whether existing in the beginning, middle or end of the sentence. See *Cowen v. Truefitt, Ltd.,*[2]

17. In the instant case the Medical Officer of Health was described as that of the Municipal Board, Kanpur. Reference to Municipal Board in the description is

erroneous and is false, while the remaining part 'Medical Officer of Health, Kanpur is true. The part which is true gives "an adequate and sufficient description with convenient certainty" of the person making the complaint. Consequently, the erroneous part can be disregarded while determining whether the magistrates of Kanpur could take cognizance of the complaint.

18. The Food Inspector, H. Michael (P.W. 1), clearly deposed that the complaint (Ex.Ka-5) bears the signature of the Health Officer, Sri S.D. Kapoor. This was sufficient to prove that the complaint was made by the Medical Officer of Health of the Nagar Mahapalika of Kanpur, a person duly authorized by the State Government under Section 20(1) of the Act, and the magistrate rightly took cognizance thereof. But if the learned Sessions Judge felt hesitant in accepting the oral testimony of the Food Inspector, he could, if he so desired, record additional evidence under Section 428, Cri. P.C. to satisfy himself that the complaint was made by a duly authorized person. Admission of such extraneous evidence is permissible under the Evidence Act. Section 95 thereof provides that when the language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense. Similarly proviso 6 to Section 92 lays down that any fact may be proved which shows in what manner the language of a document is related to existing facts. The language used in the complaint is plain in itself, but is unmeaning in reference to existing facts there being no Municipal Board which was replaced by Nagar Mahapalika many months before. Evidence could, therefore, be admitted to understand in which sense the unmeaning words had been used.

19. The law with regard to admission of extraneous evidence in a case of the present nature can now be said to be beyond controversy. Section 6 of the Prevention of Corruption Act is similar to Section 20(1) of the Act. Section 6 lays down that no Court shall take cognizance of an offence punishable under Section 161 or Section 164 or Section 165, Indian Penal Code or under Sub-Section (2) of Section 5 of that Act, alleged to hive been committed by a public servant, except with the previous sanction of the authority specified therein. The absence of sanction divests the Courts of law of the; jurisdiction that they otherwise possess to take cognizance of any offence within their jurisdiction, in the same manner as no magistrate can take cognizance of an offence under the Act unless a complaint is made in accordance with Section 20(1) of the Act. In *Gokulchand Dwarkadas v. The King,* [3] the sanction was considered invalid when facts of the case were not referred to on the face of the sanction nor was it

proved by extraneous evidence, that they were placed before the sanctioning authority. In other words, where the sanction lacks in material particulars, evidence can be given to prove that there was no disregard of the law. This case was relied upon by the Supreme Court in *Biswabhusan Naik v. State of Orissa,* [4] In *Madan Mohan Singh v. State of Uttar Pradesh,* [5] the letter of sanction signed by the Personal Assistant of the sanctioning authority was held to amount to a valid sanction, though not in proper form, after the Personal Assistant proved the draft of the letter of which the sanctioning letter was a copy. Further, the burden of proving that the requisite sanction had been obtained in the instant case, the complaint is by a competent authority in accordance with Section 20(1) of the Act-rests on the prosecution which can, if necessary discharge the onus by extraneous evidence.

20. When the prosecution can give extraneous evidence to prove that the complaint was made by an officer duly authorized under Section 20(1) of the Act, the appellate Court can record additional evidence under Section 428, Cri. P.C. to satisfy itself that the complaint was, in fact, made by an officer duly authorized.

21. To sum up, the complaint Ex.Ka-5 when read along with the deposition of the Food Inspector makes it clear that the complaint was made by the Medical Officer of Health of the Nagar Mahapalika of Kanpur who was duly authorized to make a complaint for an offence under the Act, and such a complaint gave jurisdiction to the magistrate to try the case. However, as the appeal is being remanded for a fresh hearing it shall be open to the Session Judge to reconsider the matter, if necessary, in accordance with the law as laid down above.
22. The material portion of the report of the Public Analyst (Ex.Ka-4) runs as below :

> "I hereby certify that I. .....received.....a sample of Bundi ke laddoo ..... for analysis, properly sealed and fastened and that I found the seals intact and unbroken.

I further certify that I have analysed the aforementioned sample, and declare the result of my analysis to be as follows :

1. Butyro-refractometer reading of extracted fat at 4 % C. 51.5.
2. Saponification value, of extracted fat...194.5.
3. Iodine value, of extracted fat.. .69.27

4. Melting point of extracted fat.....31.6 oz

5. Baudouin's test with extracted fat, for the presence of til oil.....positive.

6. Test for the presence of coal-tar dye..... positive.

7. Coal-tar dye identified.... Metanil yellow and am of the opinion that the sample is colored with a coal-tar dye namely, Metanil yellow, which is not one of the coal-tar dyes permitted for use in foodstuffs under Rule 28 of the Prevention of Food Adulteration Rules, 1955.

No change had taken place in the constituents of the sample which would have interfered with the analysis".

23. The learned Sessions Judge did not place reliance upon the report as it did not contain any "observational data on which he had based his opinion that the coloring matter was "metanil yellow" and the report did not mention "what test had been adopted for detecting coal-tar dye ill the substance." The learned Sessions Judge has apparently made a confusion between the mode and details of analysis and the result of analysis. The analysis can be qualitative or quantitative; and consequently, the result of analysis shall in one case show the constituents of the article and in the other, the percentage by weight or volume of the constituents thereof. The method adopted for extraction or detection of the constituents is the mode of analysis, and the particulars of the test and the observations made are further details of the analysis. The result is what one finds after analysis. This point can be clarified by giving a few illustrations. Where selection is made for the award of scholarship for post-graduate studies or for training, the result of selection in which the applicants are interested is the list of applicants who have been awarded the scholarships. Where the authority awarding the scholarship also determines the place were the post-graduate studies or training shall be undertaken, the place selected for such studies or training is also a material part of the result. The mode of selection or procedure adopted before awarding the scholarship is not a part of the result of selection. The same can be said with regard to examinations. The result of examination invariably consists of the names of candidates coming out successful in the examination, but where the division or grade, or even the position secured in the examination, is of importance, the result of examination can include these details also. When one wants to know the result of examination, he is not interested how the candidates were examined and declared successful, whether on the basis of written test or mere interview. It will be found that the result is what one achieves or obtains and not how it was done.

24. It was suggested by the learned advocate for the respondent that the result of analysis should include other data also, how the result -was achieved not necessarily complete detail of the test. It was said that the result of analysis should indicate the nature of the test, for example, whether litmus paper (blue or red) was used or certain solution added, though it need not specify the nature or other particulars of litmus paper or the quantity of solution added. All these are matters of details and are a part of the mode of analysis. The result of analysis is the answer of the tests applied and not how the answer was obtained.

25. We can now consider the provisions of Section 13 of the Act which lays down what the contents of the report of the public Analyst shall be and to what extent the report can be used as evidence. Sub-Section (1) of Section 13 of the Act provides that "the Public Analyst shall deliver, in such form as may be prescribed, a report to the Food Inspector of the result of the analysis of any article of food submitted to him for analysis." The report has to be in the form prescribed and is to contain only the result of analysis. Rule 7 of the Rules lays down the duty of the Public Analyst. After the analysis has been completed he had to supply forthwith to the person concerned a report in Form III of the result of such analysis. A perusal of the form makes it clear that the Public Analyst has to give two certificates, (1) that the sample received for analysis was properly sealed and fastened and its seal was found intact and unbroken; and (2) that the sample was analyzed, and thereafter the result of analysis has to be noted in the report. In the end the Public Analyst has to give his opinion with regard to the sample. It will be found that in the Rules and also in the form the same words "the result pi analysis" have been used.

26. It was contended on behalf of the respondent that the result of analysis must be distinct from the opinion and as it was for the Court to express an opinion, whether the article of food was or was not adulterated, the opinion to be expressed by the Public Analyst must be other than the opinion or finding to be recorded by the Court. It was consequently suggested that the opinion of the Public Analyst was what he found after analysis and the result of analysis to be entered in the form would be the readings and the tests applied. None of these contentions have any force. It is the Court which does in the end record a finding whether the article of food is or is not adulterated; but such a finding is based on evidence oral, documentary or circumstantial, adduced by the parties. Evidence admissible in evidence includes the opinion of an expert. Public Analyst is an expert who can express an opinion on the nature of the article examined

by him. Thus the Court records the finding after taking into consideration the opinion expressed by the Public Analyst and also the opinion of an expert if examined in defense. Of course, the report of the Public Analyst stands superseded by the certificate of the Director of the Central Food Laboratory in case another sample is sent to him for analysis and report on the request of the accused. In this connection it may be observed that the report of the Public Analyst is by itself admissible in evidence without his being examined in the case. The Court can examine him suo motu or on the request of the accused, if considered necessary. (Also see *Nagar Mahapalika of Lacknow v. Afaq Husain,* [6] When the report of the Public Analyst is by itself evidence in the case, he must express his opinion in the report in addition to the result of the analysis, so that the Court may duly consider his opinion also.

27. The opinion of the Public Analyst, whether the article is or is not adulterated, is an important part of the report considering that the contents thereof without such opinion may not, in majority of cases be of much assistance to the Court. The first certificate shall merely show that the sample when received was properly sealed and fastened and the seal was intact and unbroken; but if the sample was not taken properly or the sample was not properly stored, it may during the transit deteriorate and hence; at the time of analysis, may not correctly depict the article of food as it was at the time the sample was taken. In case such a sample does not conform to the prescribed standards, it cannot be opined that the article of food, sample of which was taken was adulterated. The Public Analyst is in the best position to judge all these factors. If he finds that the sample had not been properly taken or stored, or that changes had taken place due to improper storage or otherwise, he can, in spite of the adverse result of analysis, say that, for reasons to be indicated in the report, no opinion as to the nature of the article at the time the sample was taken could be expressed. Courts of law shall take the report, as a whole, into consideration and even though the result of analysis is against the accused the article of food may not be held to be adulterated.

28. The opinion to be expressed by the Public Analyst shall, therefore, be on points on which the Court shall later record a finding. In the circumstances, the result of analysis is none other than the data obtained after analysis on which the Public Analyst may base his opinion and not the test applied or further details of analysis.

29. In this connection a reference may also be made to the provisions of the Drugs Act, 1940, and the rules framed there under. Section 25 of the Drugs Act prescribes

the contents of a report to be submitted by the Government Analyst or the Director of the Central Drugs Laboratory. Under Sub-Section (1) the Government Analyst has to deliver to the Inspector a signed report in triplicate in the prescribed form. The form is probably Form No. 2 prescribed under Rule 6 of the U.P. Drugs Rule, 1945. It contains three clauses. Clause 1 relates to certification that the sample has been tested, analyzed and that the result of such test analysis is as stated below the certificate; clause 2 is to contain the condition of the seals on the packet on its receipt; and clause 3 is to contain the opinion of the Analyst, Below the certificate are to be noted the details of results of the tests or analysis with protocol of the tests applied. Sub-Section (4) of Section 25 of the Drugs Act governs the report to be submitted by the Director of the Central Drugs Laboratory after test or analysis of the sample of the drug. The Director has also to submit a report in writing of the result of test or analysis. Rule 6, however, lays down that the result of test or analysis together with full protocols of the test applied shall be supplied to the sender of the sample in Form 2, A consideration of the rule and the Form 2 shall make it clear that the result of the test or analysis is distinct from protocols of the test applied. The word 'protocol' has not been denned in the Drugs Act, nor in the U.P. Drugs Rules, and, consequently, it must be assigned its ordinary meaning. In Shorter Oxford Dictionary (Vol. II) the meaning of 'protocol' has been given below :-

> "(1) The original note or minute of a negotiation agreement or the like, drawn up by a notary, etc., and duly attested, which forms the legal authority for any subsequent deed agreement or the like, based upon it.
> (2) Spec. The original draft minute or record of a dispatch, negotiation, treaty or other diplomatic document or instrument; esp., a record of the propositions agreed to in a conference, signed by the parties, to be embodied in a formal treaty, 1697.
> (3) A formal or official statement of a transaction or proceeding, 1880.
> (4) In France, the formulary of the etiquette to be observed by the Head of the State in official ceremonies etc., the etiquette department of the Ministry of Foreign affairs; the office of the Master of the Ceremonies, 1896.
> (5) Diplomatics : The official formulae used at the beginning and end of a Chapter, papal bull etc., as distinct from the test which contains its subject-matter, 1908."
> 'Protocol', therefore, means not the result but how the result was arrived at. When no provision was made in the Rules similar to the one contained in Rule

6 of the U.P. Drugs Rules, the view already expressed above can be adopted with greater authenticity.

30. The report of the Public Analyst can, in view of Sub-Section (5) of Section 13 of the Act be used as evidence of the facts stated therein in any proceeding under this Act or under Sections 272 to 276, Indian Penal Code. Facts are distinct from opinion. The result of analysis must, therefore, contain facts, that is, data on which the Public Analyst bases his opinion. In other words, if the report does not contain the data, the opinion expressed shall be inadmissible in evidence, in the sense that it cannot be used against the accused without the Public Analyst being examined in the case. The data includes facts and figures from which it can be ascertained in what respects the sample varied from the prescribed standard. Standard has been prescribed in two manners, one may say, quantitatively or qualitatively, i.e., maximum, and minimum limits of the constituents or by way of prohibition or mandatory direction. We can first of all consider a case falling in the first group. Buffalo milk in Uttar Pradesh must contain not less that 6% of milk fat and not less than 9% of milk solids other than milk fat. If the report does not contain the percentage of milk fat and milk solid other than milk fat found in the sample, the opinion expressed by the Public Analyst shall be unsupported by facts (data), and the report being incomplete and devoid of material data shall be inadmissible in evidence. In any case, such a report cannot be made the basis of conviction unless the Public Analyst is examined and the Court considers his evidence reliable. In other words, the report based on quantitative analysis must contain not only the names of the constituents but also the percentage thereof. But if the law prohibits the use of a preservative or dye, or prescribes the preservative a; dye which alone can be used, the analysis used be qualitative and not quantitative, the material factor being the existence or non-existence of a prohibited or prescribed preservative or dye. Consequently, the report of the Public Analyst shall be admissible in evidence and can be used as such even if it does not give the quantity of prohibited or prescribed article found in the sample. The data to be incorporated in the report shall vary from case to case and shall also depend upon whether the analysis need be qualitative or quantitative.

31. Rule 28 of the Rules lays down the coal-tar dyes which can be used in articles of food. The rule runs as below : -

"No coal-tar dye or mixtures thereof except the following shall be used in

foods : -

	Colour	Common name	Colour index	Chemical class
1.	Red	Ponceau 4 R		
Carmoisine				
Red 6 B				
Red FB				
Acid Magenta II				
Fast Red E	185			
179				
57				
225				
692				
182	Azo.			
Azo				
Azo				
Azo				
Tripheny Imethane				
Azo.				
2.	Yellow	Tattrazine		
Sunset Yellow				
FCF	640			
?	Azo.			
Pyrazolone				
3.	Blue	Blue VRS		
Indigo Carmine	672			
1180	Tripheny Imethane			
Indigoid				
4.	Black	Brilliant BlackBN	?	Bisazao.

Metanil yellow has not been included in the coal-tar dyes detailed in Rule 28. In other

words metanil yellow cannot be used for coloring sweet-meats and if this dye is detected in the sample the article of food shall, in the eye of law, be adulterated. In such a case only qualitative analysis is necessary. The Public Analyst analyzed the sample in question and found therein metanil yellow, a coal-tar dye prohibited under Rule 28. In the eye of law, therefore, laddoos which the respondent was selling was an adulterated article of food.

32. The above view is not in conflict and in fact is in consonance with the earlier decisions of this Court. The learned Advocates for the Parties invited our attention to a few reported decisions of this Court, but they relate to those articles of Food for which a standard has been prescribed. Our attention was not drawn to any casa laying down that the Public Analyst must indicate the percentage by weight or volume of a prohibited constituent. In *Din Dayal v. State,* [7] the Public Analyst merely reported that the sample of ghee sent to him for analysis was grossly adulterated. The data on the basis of which the opinion was expressed was not contained in the report. Similarly, in *State v. Nathu Lal,* [8] the report merely contained an opinion as to the sample of ghee sent for analysis. The Public Analyst bad reported that, in his opinion, the sample was adulterated and contained in small proportion fat or oil which was different from pure ghee. In *Municipal Board Ganpur v. Mohali Lal,* [9] the report of the Public Analyst contained the analytical data, namely the percentage of non-fatty solids from which the quantity of water added could be calculated, and also the opinion based on the above data that the sample sent for analysis was adulterated. Such a report was considered admissible in evidence and conviction based thereon.

33. The well-settled view of this Court is that the report of the Public Analyst under Section 13 of the Act need not contain the mode or particulars of analysis, nor the tests applied, but should contain the result of analysis, namely, data from which it can be inferred whether the article of food was or was not adulterated as denned in Section 2(1) of the Act. We find no reason to depart from that view. In fact, we are in respectful agreement with the law as laid down in the earlier decisions of this Court.

34. Though the report of the Public Analyst is admissible in evidence without his being examined in the case, the Court can, if considered necessary, examine the analyst, on commission or otherwise to satisfy itself that a proper test was applied and the opinion expressed is one which can be accepted. Where it is found that standard books on Chemistry do not lay down any reliable test for qualitative or quantitative

analysis, for determination of the existence or the percentage of the constituents, it shall be desirable for the Public Analyst to indicate in his report the test he had applied otherwise the Court may consider necessary, suo motu or on the application of the accused, to summon the Public Analyst to make a statement on oath with regard to the test applied and the result of analysis. This is a rule of propriety necessary for expeditious disposal of cases without dislocating the day to day work of the Public Analyst; but it cannot override the clear and unambiguous provisions of the Act.

35. To sum up, the learned Sessions Judge took a wrong view of the law when he held that in view of Section 20(1) of the Act the magistrate could not take cognizance of the present complaint; and that the report of the Public Analyst was defective and was not admissible in evidence for want of analytical data. The order of acquittal, being based upon incorrect appreciation of the law, deserves to be set aside. The complaint appears to have been made by the Medical officer of Health of the Nagar Mahapalika of Kanpur, and consequently he alone, and not the Nagar Mahapalika, could prefer an appeal to challenge the order of acquittal. The present appeal being by the Nagar Mahapalika of Kanpur is not maintainable, but this Court can set aside the order of acquittal in exercise of its revisional jurisdiction. Also see *Municipal Board, Kanpur v. Indra Mohan,* [10]

36. The appeal (treated as revision) is hereby allowed, the order of acquittal of Sri Ram, respondent, is set aside and the Criminal Appeal is remanded to the lower appellate Court for a fresh hearing in accordance with the law after registration at its original number.

Case remanded.

Cases Referred.

1. AIR 1950 All 507
2. 2 Ch 309
3. AIR 1948 PC 82
4. AIR 1954 SC 359
5. AIR 1954 SC 637
6. 1962 All LJ 392: (AIR 1962 All 517)
7. 1956 All LJ 276: (AIR 1956 All 520)

8. 1956 All LJ 340
9. 1960 All LJ 419
10. 1961 All LJ 105