



2026:CHC-AS:1556

Form J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction

Present :
The Hon'ble Justice Prasenjit Biswas

C.R.A. 73 of 1985

Municipal Corporation of Calcutta
Vs.
Mahadevi Oil Mill & Anr.

For the KMC/Appellant: Ms. Sreyashee Biswas
Ms. Puja Goswami

For the Respondents : Mr. Sumanta Ganguly
Mr. Mayank Kakrania

Heard on : 16.09.2026

Judgment On : 16.09.2026

(In Court:-)

Prasenjit Biswas, J.

1. The instant appeal has been preferred at the instance of the appellant, Calcutta Municipality (KMC), assailing the judgment and order of acquittal dated 20.09.1984 passed by the learned



Trial Court in connection with Case No. 509D of 1977, whereby the respondent/ accused was acquitted of the charge under Section 248(1) of the Code of Criminal Procedure. Being aggrieved by and dissatisfied with the said judgment and order of acquittal, the present appeal has been preferred by the appellant/Corporation seeking interference with the findings recorded by the learned Trial Court.

2. The prosecution case, in brief, is that on 15.11.1977, P.W.1, the Food Inspector, visited the shop/mill of the respondent/accused and collected a sample of mustard oil in discharge of his official duties. According to the complaint, the sample was subsequently sent for examination by the Public Analyst and, upon such examination, the mustard oil was reported to be highly adulterated and unfit for human consumption and, therefore, not conforming to the prescribed standard. On the basis of the said allegation and the report of the Public Analyst, the prosecution was initiated against the respondent/accused.

3. In support of its case, the prosecution examined three witnesses. P.W.1 was the Food Inspector who allegedly conducted the inspection and collected the sample, whereas P.W.2, Omprakash Agarwalla, was cited as a witness to the search and



seizure. The third witness was examined in support of the prosecution case.

4. The principal contention advanced by Ms. Sreyashee Biswas, learned Advocate appearing for the appellant/Corporation, is that the learned Trial Court failed to appreciate the evidence on record in its proper perspective and, on an erroneous assessment of the materials, arrived at the conclusion that the prosecution had failed to establish the guilt of the respondent/accused.

5. It is submitted on behalf of the appellant that, if the evidence of the prosecution witnesses is considered in its entirety, the involvement of the respondent/accused in the alleged offence would be apparent. Learned Advocate has further contended that the respondent/accused did not take any effective step to challenge the report of the Public Analyst in the manner contemplated under the relevant statutory provisions. According to the appellant, therefore, the Public Analyst's report remained substantially uncontroverted and the learned Trial Court ought not to have discarded the prosecution case merely on the ground of non examination of the Public Analyst. It is accordingly urged that the findings recorded by the learned Trial Court are erroneous and that the impugned judgment and order of acquittal ought to be set aside.



6. Per contra, Mr. Sumanta Ganguly, learned Advocate appearing for the respondents, has supported the impugned judgment and order of acquittal. At the outset, learned Advocate has drawn the attention of the Court to paragraph 3 of the written complaint, wherein it has been specifically stated as follows:

"The Public Analyst opined that the said food is highly adulterated/unfit and human consumption. The sale of the said food is prohibited in the interest of the public health as per report of analyst in the scheduled form being Report No. S/77/136."

7. It is submitted that the very foundation of the prosecution case, so far as the quality and nature of the alleged adulterated mustard oil is concerned, rests upon the report of the Public Analyst. However, the Public Analyst, namely, A. Mukherjee, was neither cited nor examined as a witness by the prosecution. According to learned Advocate, non-examination of the person who prepared the report deprived the respondent/accused of a reasonable opportunity to test the correctness, basis and methodology of the opinion contained in the said report. It is, therefore, contended that mere production and marking of the report as an exhibit could not, in the facts of the present case, cure the fundamental deficiency arising from the non-examination of its maker.



8. Mr. Ganguly, learned Advocate for the respondents has further drawn the attention of the Court to the evidence of P.W.1, who stated that two tins containing approximately 30 kilograms of mustard oil had been seized. It is contended that the said seized articles were not produced before the learned Trial Court and were not marked as material exhibits. According to the respondents, the non-production of the very substance from which the sample was allegedly collected assumes significance, particularly when the manner in which the sample was collected itself has been seriously challenged in cross-examination.

9. It is also submitted that P.W.1 stated that he had been working as a Food Inspector since the year 1960 and was aware of his powers, duties and responsibilities as a Food Inspector attached to the District Health Office. However, in cross-examination, the same witness stated that he was not a trained Food Inspector. According to the respondents, this aspect assumes relevance in assessing whether the prescribed procedure for collection and preservation of the sample was properly followed.

10. The evidence of P.W.2, Omprakash Agarwalla, has also been seriously assailed. He was cited as a witness to the search and seizure allegedly conducted in his presence. However, his evidence in cross-examination discloses circumstances which



create doubt regarding the manner and circumstances in which he was present at the place of occurrence and witnessed the alleged seizure. He stated that he had been called to the spot by the peon of P.W.1 and that he subsequently left with the tin containing the contents belonging to his employer. More importantly, he stated that the mug used for taking the sample was not checked in his presence and that the said mug was an old and used one. He further stated that he put his signature on the relevant papers subsequently at his shop and not at the place where the alleged search and seizure had taken place.

11. The cumulative effect of these circumstances, according to learned Advocate for the respondents, casts a serious doubt upon the prosecution version regarding the manner in which the sample was collected and the procedural safeguards allegedly followed at the time of inspection and seizure. It is, therefore, contended that the learned Trial Court was justified in extending the benefit of doubt to the respondent/accused.

12. I have considered the rival submissions advanced by the learned Advocates appearing for the parties and have carefully scrutinised the evidence available on record.

13. The evidence of P.W.1, the Food Inspector, requires careful consideration. From his deposition, it appears that pursuant to an order of his superior officer, namely, Dr. G.C. Das, he, along with



Dr. A.K. Chanda, visited the mill of the respondent/accused on 15.11.1977 for the purpose of inspection. Significantly, however, Dr. A.K. Chanda, who admittedly accompanied P.W.1 during the inspection, was not examined by the prosecution. His evidence could have been of considerable relevance in corroborating the version of P.W.1 regarding the actual inspection, collection of sample and seizure. No satisfactory explanation has been offered for withholding such a material witness.

14. P.W.1 further stated that, in due course, he received the report of the Public Analyst along with a forwarding letter from the Local Health Authority. According to his evidence, the report had been prepared and signed by the Public Analyst, A. Mukherjee. The said Public Analyst was not examined as a witness. The prosecution has not furnished any plausible explanation for not citing or examining the maker of the report.

15. This omission assumes particular significance because the report of the Public Analyst constitutes a material piece of evidence concerning the alleged adulteration of the mustard oil. The prosecution case that the sample was highly adulterated and unfit for human consumption substantially rests upon the opinion recorded in that report. In such circumstances, where the maker of the report was not examined, the respondent/accused was deprived of an opportunity to test the basis of the opinion



expressed therein by way of cross-examination. The mere marking of a document as an exhibit does not, by itself, dispense with the requirement of establishing its evidentiary foundation in accordance with law, particularly when the contents thereof constitute a material link in the chain of proof.

16. The evidence of P.W.1 also raises another significant concern. The witness stated that he had placed the relevant papers before Dr. G.C. Das and that the latter thereafter accorded consent for launching the prosecution. However, the so-called relevant papers which were allegedly placed before the superior officer have not been brought on record. The Court is, therefore, left without the necessary materials to ascertain what documents or materials were actually placed before the competent authority before the consent for prosecution was accorded. This omission further weakens the prosecution case concerning compliance with the procedure preceding the institution of the prosecution.

17. The experience of P.W.1 as a Food Inspector, by itself, cannot cure these deficiencies. It is true that the witness stated that he had been functioning as a Food Inspector since 1960 and had worked in different districts in the same capacity. His long experience may reasonably indicate familiarity with his official duties. At the same time, such experience does not dispense with the necessity of establishing, through reliable evidence, that the



prescribed procedure was actually followed in the particular case. Indeed, when the witness himself admitted in cross-examination that he was not a trained Food Inspector, and when his evidence is tested against the testimony of P.W.2 regarding the manner in which the sample was collected, the Court is required to examine the prosecution version with appropriate caution.

18. Coming to the evidence of P.W.2, Omprakash Agarwalla, who was projected as an independent witness to the seizure, his testimony does not provide the requisite assurance to the prosecution case. In cross-examination, he stated that he had been called to the spot by the peon of P.W.1. He further stated that the mug used for collecting the sample was not checked in his presence and that it was an old and used mug. The significance of this statement cannot be overlooked because the learned Trial Court specifically noticed that the sample had allegedly been collected through an uncleaned mug. In the absence of any satisfactory explanation from the prosecution regarding the condition and cleanliness of the utensil used for collection of the sample, the possibility of contamination cannot be said to have been completely ruled out.

19. The further statement of P.W.2 that he had put his signature on the relevant papers subsequently at his shop, rather than at the place of occurrence, also assumes significance. This



circumstance does not, by itself, necessarily render the entire seizure invalid; nevertheless, when considered along with the other discrepancies appearing in his testimony, it creates uncertainty regarding the actual manner in which the search, seizure and sampling proceedings were conducted. The prosecution was required to establish these foundational facts with reasonable clarity, particularly because the quality of the sample subsequently analysed constituted the basis of the criminal prosecution.

20. Another important aspect is the non-production of the seized mustard oil before the learned Trial Court. P.W.1 stated that two tins containing mustard oil had been seized, but the prosecution did not produce the said articles as material exhibits. When the manner of sampling itself is under challenge, the absence of the seized articles assumes greater significance. The prosecution ought to have explained why the seized material was not produced and how the identity and integrity of the sample sent for analysis were maintained from the stage of collection until its examination. In the absence of such satisfactory evidence, the possibility of doubt regarding the identity and condition of the sample cannot be completely excluded.

21. The Court must also take note of the fact that Dr. A.K. Chanda, who accompanied P.W.1 at the time of inspection, and A.



Mukherjee, the Public Analyst who prepared the report relied upon by the prosecution, were both withheld from examination. These are not inconsequential omissions. The former could have corroborated the evidence concerning the inspection and collection of the sample, while the latter was the author of the scientific opinion upon which the prosecution substantially relied. No reasonable or plausible explanation has been offered by the prosecution for their non-examination.

22. It is true that the appellant has contended that the respondent/accused did not challenge the Public Analyst's report in the manner contemplated by the statute. However, that circumstance cannot, by itself, relieve the prosecution of its primary obligation to establish the foundational facts necessary to prove the alleged offence. The burden of proving the ingredients of the offence remains upon the prosecution. The absence of an effective challenge by the accused cannot automatically convert an otherwise unproved or insufficiently proved prosecution document into conclusive evidence of guilt. The Court is required to consider the prosecution evidence as a whole and determine whether it establishes the charge beyond reasonable doubt.

23. In the present case, the deficiencies are not confined to a single isolated circumstance. The prosecution has failed to examine the officer who accompanied P.W.1 during the



inspection; the Public Analyst who prepared the material report was not examined; the documents allegedly placed before the competent authority for obtaining consent for prosecution were not produced; the seized mustard oil was not produced as a material exhibit; the evidence of P.W.2 regarding the utensil used for sampling creates a possibility of contamination; and his evidence regarding the execution of the seizure documents also gives rise to doubt regarding the manner in which the alleged seizure proceedings were conducted. These circumstances, when considered cumulatively, materially affect the reliability of the prosecution case.

24. It is a settled principle governing an appeal against acquittal that the appellate Court is entitled to reappraise the evidence, but an order of acquittal carries with it the benefit of the presumption of innocence in favour of the accused. Where the view taken by the learned Trial Court is a reasonably possible view on the evidence, interference is not warranted merely because another view may also be conceivable. In the present case, upon an independent assessment of the evidence, I find that the learned Trial Court's appreciation of the material circumstances cannot be characterised as perverse or manifestly erroneous.



25. In particular, the finding of the learned Trial Court regarding the use of an uncleaned mug for collecting the sample cannot be brushed aside as a minor irregularity. In a prosecution founded upon the alleged adulteration of a particular sample, the integrity of the sampling process is of fundamental importance. Unless the prosecution satisfactorily establishes that the sample tested by the Public Analyst was properly collected, preserved and connected with the commodity allegedly seized from the respondent/accused, the subsequent analytical report cannot, standing by itself, conclusively establish the guilt of the accused.

26. Similarly, the Public Analyst's report, though marked as an exhibit, cannot be treated in isolation from the circumstances in which the sample was collected and the evidentiary foundation upon which the report is sought to be relied upon. The respondent/accused was entitled to test the prosecution evidence concerning the preparation and correctness of the report, particularly when the Public Analyst himself was not examined and no adequate explanation for such non-examination is forthcoming.

27. On an overall assessment of the evidence, therefore, I find that the prosecution has failed to establish its case against the respondent/accused with the degree of certainty required in a criminal proceeding. The contradictions, omissions and procedural



deficiencies appearing in the prosecution evidence are material and go to the root of the prosecution case. The learned Trial Court, therefore, cannot be said to have committed any illegality or material irregularity in extending the benefit of doubt to the respondent/accused and recording an order of acquittal.

28. Accordingly, I find no sufficient ground to interfere with the impugned judgment and order of acquittal dated 20.09.1984 passed by the learned Trial Court in Case No. 509D of 1977.

29. Consequently, the appeal preferred by the appellant/Calcutta Municipality stands **dismissed**.

30. The impugned judgment and order of acquittal dated 20.09.1984, passed by the learned Trial Court in connection with Case No. 509D of 1977, is hereby affirmed.

31. Let a copy of this judgment, together with the Trial Court Records, be transmitted forthwith to the learned Trial Court for information and necessary action.

32. Urgent Photostat certified of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Prasenjit Biswas, J.)

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