N.K.Rasheed vs The Food Inspector on 17 November, 2015

Author: C.T. Ravikumar

Bench: C.T.Ravikumar

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1814 of 2002 ( )

AGAINST THE JUDGMENT IN CRA 186/1997 of ADDL.SESSIONS JUDGE (ADHOC-I), THALASSERY
AGAINST THE JUDGMENT IN STC 834/1992 of JUDICIAL FIRST CLASS MAGISTRATE,THALASSERY

REVISION PETITIONER(S)/APPELLANT/ACCUSED.:

N.K.RASHEED,
S/O.ERAMU, SUPER BAZAR, GROCERY SHOP
DOOR NO.18/112, T.C.ROAD, THALASSERRY.

BY ADVS.SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.T.P.SAJID

RESPONDENTS/COMPLAINANT & STATE:

1. THE FOOD INSPECTOR,
   THALASSERY MUNICIPALITY, THALASSERY.

2. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
   ERNAKULAM.

BY ADGP SRI.TOM JOSE PANDIJAREKKARA
BY PUBLIC PROSECUTOR SMT.V.H.JASMINE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17-11-2015 ALONG WITH CRL.R.P.NO.1518 OF 2003 & CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"C.R"

C.T. RAVIKUMAR & K.P. JYOTHINDRANATH, JJ.

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Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005

and

Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013

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Dated this the 17th day of November, 2015

O R D E R

C.T. Ravikumar, J.

This bunch of cases viz. Criminal Revision Petitions filed by the convicts who faced prosecution and Criminal Miscellaneous Cases filed by the accused who are facing prosecution, for offences under different Sections of the Prevention of Food Adulteration Act, 1954 (for short, "PFA Act") read with different rules of the Prevention of Food Adulteration Rules 1955 (for short, "PFA Rules"), relating to food adulteration were placed before us on orders of reference. All the Crl.M.Cs. except Crl.M.C.No.2755/2013 were referred as per order dated 25.9.2014 and all the other cases including Crl.M.C.No.2755/2013 were subsequently referred based on the order of reference dated 25.9.2014. Apparently, the order of reference dated 25.9.2014 was made in the wake of cleavage of opinion and divergent findings made by three learned Single Judges Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 regarding the ratio decidendi in the decision of the Hon'ble Apex Court in Pepsico India Holdings Pvt. Ltd. v. Food Inspector [2010 (4) KLT 706 (SC)], in different cases. The questions referred to the Division Bench are as follows:

> "(1) Could all the prosecutions under the Act of 1954 be stifled by raising a contention that the laboratories or methods of analysis were not defined?
>
> (2) Is it proper to hold that since Central Government has not taken steps to effectuate Sec.23(1A) (ee) and (hh) of the Act of 1954, no prosecution will lie under the Act of 1954 even if it is established that the standards prescribed for various food items have been flouted?

> (3). Whether the ratio in Pepsico's case (supra) can be applied to all cases of alleged food adulteration under the Act of 1954 irrespective of the fact whether or not standards have been prescribed for food items?"

2. Before answering the reference, it has become inevitable for us to consider another question of importance which could decide the width of jurisdiction while deciding the captioned cases received on reference. The question is whether a learned Single Judge could refer only one or some of the questions that arise/arises for consideration to the Division Bench and retain the case for consideration in all other respects or could decide any other question or Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 questions not referred, but involved in the referred case. In fact, that question is no more res integra in view of the decisions of a Division Bench of this Court in Kallara Sukumaran v. Union of India [1987 (1) KLT 226] and a larger Bench of this Court comprised of seven Honourable Judges in Babu Premarajan v. Supdt. of Police [2000 (3) KLT 177] (F.B.)]. As a matter of fact, those decisions were also considered by the learned Single Judge while passing the order of reference dated 25.9.2014.

3. While dealing with the power of a Single Judge under Section 3 of the Kerala High Court Act,1958 (for short, "the Act") in contradistinction to the powers of a Division Bench under Section 4 of the Act, in Kallara Sukumaran's case (supra) a Division Bench of this Court held thus:-

> "It is clear from Section 3 of the Act that a Single Judge is empowered to adjourn the case for being heard and determined by a bench of two Judges. Section 3 does not confer any power on the Single Judge to refer only one of the questions that arises for consideration to the Division Bench. Section 4 of the Act, on the other hand, makes it clear that a Division Bench can refer the entire case or a question of law Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 to a Full Bench. If the legislature intended to confer power on a Single Judge to refer only a question of law to the Division Bench, it would have made a specific provision to that effect as has been done in Section 4 of the Act. There cannot, therefore, be any doubt that a Single Judge is not competent to refer only a question of law to the Division Bench. The Single Judge, can, if he so desires, refer the entire case to the Division Bench.
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> (emphasis added) In Babu Premarajan' case (cited supra) the Larger Bench held as follows:
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> "When a single Judge adjourns the case for being heard and determined by a Bench of two Judges under Section 3 of the Act, he passes a judicial order, though discretionary one. An order of adjournment is, therefore, a judicial order."

The Bench further went on to observe and held thus:

> "We are of the opinion that, in the scheme of the provisions of the Act, the words "adjourn it for being heard and determined by a Bench of two Judges" appearing in Section 3 must be construed narrowly, meaning thereby, a reference to another forum of two Judges for being heard and determined by them. The word "adjourn" cannot be given a wide meaning which would normally imply a single Judge adjourning it to himself or the matter coming before another single Judge due to change of sitting; a Division Bench adjourning a matter to its own forum or the matter coming before another Division Bench due to change of sitting. But when a matter is adjourned by a single Judge under Section 3 of the Act to a larger forum of two Judges, in our view, the word "adjourn" must be construed to mean "refer". The word "adjourn" in Section 3 must be construed narrowly, only to mean "refer".

4. Thus in the light of the aforesaid decisions, a Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 learned Single Judge (if opted to refer a case) while referring the case could neither decline to refer any other particular question (if it actually arises for consideration) nor decide any of the issues or any of the questions of law, involved in that referred case in and vide the order of reference. The reasons therefor are discernible from those decisions. In view of Section 3 as interpreted by this Court in the aforesaid decisions, a learned Single Judge can refer only the entire case to a large Bench of two Judges. True that, going by the said larger Bench decision, an order of adjournment passed under Section 3 of the High Court Act, though a discretionary one, it is a judicial order. But, when it is invoked the order cannot go beyond the bounds of its limited scope. For a proper understanding of the position the question what is the binding effect of a decision by a learned Single Judge on a question of law or an issue involved in the referred cases, while making a judicial order of reference of that case, has also to be looked into. The Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 answer to that question also lies embedded in Babu Premarajan's case (supra). Paragraph Nos.47 and 48 therein read thus:-

> Paragraph No.47:
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> "In the view that we have taken in the preceding paragraph on the latter part of Question No. (2) viz. that an order of reference by a single Judge to a Division Bench is not capable of being challenged in an appeal under S.5(i) of the Act, it is not necessary for us to discuss the decisions of the Apex Court on the question that a right of appeal is a substantive right and is a creation of statute. It cannot be taken away lightly. This position is settled in view of the decisions in (i) Garikapati Veeraya v. N. Subbiah Choudhry, AIR 1957 SC 540 (ii) Sankar Kerba Jadhav v. State of Maharashtra, (1969) 2 SCC 793 and (iii) U.P. Awas Evam Vikas Parishad v. Gyan Devi, (AIR 1995 SC 724), where the Apex Court relied upon a passage from Halsbury's Laws of England, 4th Edition, Vol. 37 pages 516 para 677 under the heading "Appeals to the Court of Appeal".

Paragraph No.48:

> "While there can be no doubt that a right of appeal is a creation of statute, in our view, the order passed by a single Judge u/S.3 referring the case for being heard and determined by a Bench of two Judges is not appealable and, hence, there is no question of any right of appeal being adversely affected. No rights are determined while the matter is referred by a single Judge to a Division Bench. A single Judge is only expected to give brief reasons for making the reference to a Division Bench. He should, preferably, frame the question of law, as has been done in Ombudsman's case referred to in para 4(IV) above. To the extent to which the Full Bench in 1985 KLT 769, holds that rights of parties are not being settled while adjourning a case u/S.3 of the Act, we are in respectful agreement with the view expressed by the Full Bench. We must, however, hasten to add that Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 even such an order of adjournment referring the case to be heard and determined by a Bench of two Judges, is a judicial order and is required to be in writing, indicating brief reasons therefor. To that extent, as indicated earlier, we regret our inability to agree with the view expressed by the Full Bench in 1985 KLT 769 and we are in agreement with the Division Bench view in 1985 KLT 738. The first two questions will, therefore, stand answered accordingly."

Justice J.B. Koshy in a dissenting judgment virtually concurred with the majority on the point that no rights of parties are determined in an order of reference. It was opined that since by an order of adjournment the lis pending between the parties is not decided and the order is not appealable or amenable to judicial review the observations or reasons in the adjournment order are not binding on any person notwithstanding what is stated in the reference order and the Division Bench could decide the entire matter ignoring the reasons for reference. It was also held that in many cases no purpose would served by indicating reasons in the adjournment order. Thus, on scanning of the decisions in Kallara Sukumaran's case (supra) and Babu Premarajan's case (supra), rendered Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 after referring to Sections 3 and 4, it is evident that under Section 3 of the Act a learned Single Judge could only refer the entire case and he is not empowered to refer only a question/questions of law involved in any particular case and also that while referring the case/cases no rights of parties or any other questions of law involved therein could be the decided under the order of reference. Thus, the position emerged is that the observations, reasons or findings, if any, in such an order of reference passed under Section 3 of the Act, are not binding on the parties and it will be open to the Division Bench to consider the entire matter.

5. In this case, evidently, the order of reference would reveal that the senior counsel appearing for the petitioners in Crl.MC. Nos.2105, 2106, 2932 and 3128 of 2011 sought reference of another question also to the Division Bench. It was based on Section 89 of the Food Safety and Standards Act, 2006 (for short, "FSS Act") that Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of

2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 such a submission was made. The learned Senior Counsel canvassed the position that since the lifting of the samples in those cases are effected after the coming into force of the 'FSS Act' prosecution of the petitioners in those cases under the PFA Act is unsustainable in law. For considering its tenability the learned Single Judge considered the provisions under Sections 89 and 97 of the FSS Act. Both the Sections came into effect on 29.7.2010. The order of reference would also indicate that the learned Single Judge virtually decided the said question relying on the decision of this court in Narayana Reddiar v. State of Kerala [2012 (3) KLT 408]. In the said case the question raised for consideration was whether the prosecution under the provisions of the PFA Act and PFA Rules were sustainable in respect of offences detected on and after 29.7.2010. Virtually, it was found therein that the PFA Act was repealed only as per the notification issued by the Central Government dated 4.8.2011 by virtue of powers under Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Sections 97 (1) of the FSS Act. It was held that it should be borne in mind that the PFA Act figuring in 2nd Schedule to FSS Act was repealed only with effect from 5.8.2011. It was further held therein that although Sections 89 & 97 of the FSS Act came into existence by a single notification dated 29.7.2010 it could not be said that PFA Act got automatically repealed even without a notification as required under Section 97 (1) of the FSS Act. The learned Single Judge in the order of reference dated 25.9.2014 concurred with the finding in Narayana' Reddiar's case that there shall not be any vacuum created by repeal of an existing statute, especially in a field like food safety and consequently, did not find any reason to deviate from the view taken by the learned single Judge in Narayana' Reddiar's case and declined to refer the aforesaid question based on Section 89 of the FSS Act. By virtue of what we have held hereinbefore in the light of Sections 3 and 4 of the High Court Act and in the light of the decisions in Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Kallara Sukumaran's case (supra) and Babu Premarajan' case (supra) we have no hesitation to hold that despite the finding of the learned Single Judge in the order of reference dated 25.9.2014 as regards the aforesaid question, in case, ultimately it is found that for a proper disposal of the captioned cases consideration of the aforesaid question is also essential we will proceed to consider the same notwithstanding such findings and observations. The question whether we should consider that aspect would certainly depend upon the answers to the three questions referred as per the order dated 25.9.2014, as extracted above.

6. We ween that the referred questions could not be answered without properly understanding the exact ratio decidendi in Pepsico's case (supra). The determination of the ratio decidendi is not as easy as it might appear, at first sight, in certain cases. In Amar Kumar Mahto and anr. v. State of Bihar [AIR 2010 Pat.19] the Patna High Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Court referred to Halsbury 's Laws of England (Fourth Edition), Vol.37, paragraph 1237 regarding 'ratio decidendi'. It reads thus:-

> "The enunciation of the reason or principle upon which a question before a Court has been decided is alone binding as a precedent. This underlying principle is called the

> 'ratio decidendi', namely the general reasons given for the decision or the general grounds upon which it is based, detached or obstructed from the specific peculiarities of the particular case which give rise to the decision".

7. A Full Bench of the Madras High Court in M. Shaikh Dawood v. Collector of Central Excise, Madras [AIR 1961 Mad.1 (F.B.)] quoted passages from Salmond on Jurisprudence, 11th Edn. P.223 and 224 thus:-

> "A precedent is a judicial decision which contains in itself a principle. The underlying principle which thus forms its authoritative elements is often termed the ratio decidendi. The concrete decision is binding between the parties to it, but it is the abstract ratio decidendi which alone has the force of law as regards the world at large. The only judicial principles which are authoritative are those which are thus relevant in their subject matter and limited in their scope. All others, at the best, are of merely persuasive efficacy".
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> They are not true ratio decidendi and are distinguished from them under the name of dicta or obiter dicta, things said by the way.
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> Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Now, we will deal with the contentions. The learned counsel appearing for the petitioners in the revision petitions as also in the Crl.M.Cs. contended that the Hon'ble Apex Court in Pepsico's case after considering the rival contentions and also the relevant provisions of the law, held that Section 23(1A) (ee), which is relevant as far as these cases are concerned, is mandatory in nature.

8. Per contra the learned Additional Director General of Prosecution contended that it cannot be the ratio of the decision in Pepsico's case and in fact, the decision in Pepsico's case is confined only to sweetened carbonated water. It is further contended that the provisions under Section 23 of the PFA Act cannot be understood to have mandated for framing of rules and that position is easily deducible from the word "may" employed in the said rule. It is further contended that no specific reason has been assigned by the Hon'ble Apex court to hold that the word "may" employed in Section 23 of PFA Act partook the Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 meaning 'must' or 'shall'. Virtually, to substantiate the said contention that in order to be a binding precedent a decision must be one rendered after discussing the scope of the provisions of law or it should be one rendered relying on other authorities on the said point the learned Additional DGP relied on various decisions of the Hon'ble Apex court such as in State of Rajasthan v. Ganeshi Lal [2008 KHC 4383], Oriental Insurance Co. Ltd. v. Raj Kumar [2008 KHC 5157] and State of Punjab v. Rafiq Masih (White Washer) [2014 KHC 4488]. In Ganeshi Lal's case the Hon'ble Apex court held that placing reliance on a decision by a court without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts and each case presents its own features and that it is not everything said by a Judge while

giving a judgment that constitutes a precedent. It was also held therein that the only thing in a Judge's decision binding a party is the principle upon which the case is decided and Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 for this reason it is important to analyse a decision and isolate from it the ratio decidendi. Virtually the same view has been taken in Oriental Insurance Co.'s case (supra). A perusal of paragraph 12 in Oriental Insurance Co.'s case (supra) would reveal that their Lordships discussed about the theory of precedence. In paragraph 12 it was held thus:

> "According to the well settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and
>
> (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC
>
> 647) and Union of India and Ors. v. Dhanwanti Devi and Ors.

1996 (6) SCC 44 : 1996 AIR SCW 4020. A case is a precedent and binding for what it explicitly decides and no more."

(emphasis added)

9. In Rafiq Masih's case (supra) Hon'ble Apex Court held that the directions issued under Section 142 of the Constitution of India do not constitute a binding Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 precedent unlike Article 141 of the Constitution of India. It was further held that the Apex Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case. In short, in the said decision in unambiguous terms it was held that if directions were issued in a decision invoking the power under Article 142 of the Constitution of India they do not constitute a binding precedent or forms any ratio decidendi. But, at the same time if there is a declaration of law it would be binding in view of the provisions of the Article 141 of the Constitution of India. A scanning of the decisions in Pepsico's case in the light of the above said decisions would reveal that as regards the provisions under Section 23(1A) (ee) no declaration which is having a binding force has been made by the Hon'ble Apex Court, it is contended. In other words Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317

& 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 in so far as the provisions under Section 23 of the PFA Act is concerned the decision in Pepsico's case cannot be considered as a binding precedent except in the case of sweetened carbonated water, it is further contended by the learned ADGP. In this context the arguments advanced by learned counsel Sri. Bechu Kurian Thomas also has some relevance. It is contended that even if certain directions and findings in Pepsico's case are taken as obiter dictum still they are binding on this court inasmuch as in relation to the obiter dictum, as canvassed by the learned Additional DGP, there is no direct pronouncement on that question elsewhere by the Hon'ble Apex Court. To substantiate the said contention, the learned counsel also relied on a decision of the Hon'ble Apex Court in Oriental Insurance Co. Ltd. v. Meena Variyal [(2007) 5 SCC 428] wherein it was held:- ....."an obiter dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court. Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 But as far as this Court is concerned, though not binding, it does have clear persuasive authority". The decision of the Hon'ble Apex Court in Sarwan Singh Lamba v. Union of India [(1995) 4 SCC 546] was also relied on by the learned counsel to contend that normally even an obiter dictum is expected to be obeyed and followed. The learned ADGP thereupon raised a contention that a Division Bench judgment of this Court in Devon Foods v. Union of India [1995 (1) KLT 564] after considering the scope of Section 23 (IA) (hh) held that it is for the laboratory to determine the method of analysis and therefore there is no need for the Central Government to define the methods.

10. The learned ADGP also drew our attention to sub sections 1 and 1 (a) of Section 23 to point out that under both the said sub sections the word 'may' has been used. It is also contended that Section 8 of the PFA Act postulates that it is open to the State Government as also the Central Government to appoint persons as public analyst for such Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 local areas as may be assigned to them by issuing notifications. It is further contended that Rule 6 of the PFA Rules prescribes the qualifications of public analyst and Rule 7 provides the duties of the public analyst. In the light of Rule 7 it is further contended that a close scanning of the same would reveal that what was left to define was the laboratory in which a public analyst could and should conduct the analysis and also the method of analysis. It is further contended that it is the said gap that was virtually filled held in by the incorporation of Section 23 (1A) (ee) and (hh). The learned Additional DGP further drew our attention to the proviso to Rule 8 of the PFA Rules. Rule 8 prescribes the qualifications for Food Inspector and the proviso thereunder will reveal that training in food inspection and sampling work obtained prior to the commencement of the Rule 3 of the Prevention of Food Adulteration (Fourth Amendment) Rules, 1976 'in any of the laboratories under the control of a public analyst appointed Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 under the Act' was also prescribed as a qualification equivalent for the purpose of requisite training under the rules. This was brought to our attention to contend that the said provision would indicate that a public analyst appointed under the Act was to have a laboratory under his control. In the said circumstances it is further contended that Section 23 (IA) (ee) virtually is applicable only with

respect to the Public analyst appointed by the Central Government and it is inapplicable as far as the public analysts appointed by the State Government. In the said circumstances it is further contended that if a construction is given to Section 23 (IA) (ee) that it is mandatory and not directory, in the light of the provisions under Rule 7 of PFA Rules it would be as good as holding that despite the specification of the duties under Rule 7 they were to remain defunct till the defining of laboratories under Rule 23 (IA) (ee) as there would not be any laboratory of Public Analysts for the Food Inspectors to get trained. The learned ADGP Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 further contended that Rule 3 (c) would also indicate that public analysts in various States have laboratories under their control and they could carry out investigation in collaboration with such laboratories of public analysts and the Central Food laboratories. In such circumstances it would indicate that there could be laboratories under the control of public analyst in the other States and investigation could be conducted either in the Central Food laboratory or in collaboration with such laboratories.

11. Virtually all such contentions are taken to canvass the point that term public analyst, employed in Section 23 (IA) (ee) refers only to public analyst appointed by the Central Government and also to contend that even otherwise the Public Analysts appointed by the State would conduct investigation, rather analysis, either in the Central Food Laboratory or in collaboration with such laboratories under the control of public analysts in the other States. Yet another contention was also taken up for the said purpose. Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 It is contended by the learned Additional DGP that it is envisaging such situations that Section 23 (2) has been incorporated to provide the manner in which a rule could be brought into force and to validate any action or anything done prior to the bringing into force of such rule. In other words it is contended that anything previously done under an unamended rule or any rule which is incorporated subsequently are validated by the provisions under Section 23 (2) of the PFA Act.

12. In the order of reference dated 25.9.2014 in paragraph 5 the preliminary statement in 'Precedent in English Law' - Rupert Cross and J.W. Harris (Clarendon law series) in respect of precedents has been taken note of thus:-

> "It is a basic principle of the administration of justice that like cases should be decided alike. This is enough to account for the fact that, in almost every jurisdiction, a judge tends to decide a case in the same way as that in which a similar case has been decided by another judge. The strength of this Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 tendency varies greatly. It may be little more than an inclination to do as others have done before, or it may be the outcome of a positive obligation to follow a previous decision in the absence of justification for departing from it. Judicial precedent has some persuasive effect almost everywhere because stare decisis (keep to what has been decided previously) is a maxim of practically universal application.

> The peculiar feature of the English doctrine of precedent is its strongly coercive nature. English judges are sometimes obliged to follow a previous case although they have what would otherwise be good reasons for not doing so."

Words of Lord Denning, treated as locus classicus, are also referred therein thus:

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases. One should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.
>
> *** *** *** Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

The observation made by the Apex Court in Bharat Petroleum Corporation Ltd. & another v. N.R.Vairamani & another (AIR 2004 SC 4778) was also referred to in the order of reference. It reads thus:-

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated."

In the above context an earlier decision of the Hon'ble Apex Court in Regional Manager v. Pawan Kumar Dubey reported in [AIR 1976 SC 1766] is also worthwhile to notice. It was held therein thus:-

> "It is the rule deducible from application of law to Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 he facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts".

In short, we are of the view that when a decision of the Hon'ble Apex Court is cited one shall not tend to distinguish the same when the same principles are to be applied, unless there is additional or different fact which could make a world of difference between conclusions even by applying the same principles. Under Article 141 of the Constitution of India when a law is declared by the Hon'ble

Apex Court it is binding on all courts within the territory of India.

13. In the light of the decisions referred hereinbefore, it can be safely said that the statement of principles of law applicable to the legal problems disclosed by the facts is the Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 vital element in a decision and that ingredient is the ratio decidendi. Two other decisions of the Hon'ble Apex Court also have to be borne in mind while considering the aforesaid question. In the decision in Islamic Academy of Education v. State of Karnataka [AIR 2003 SC 3724] the Hon'ble Apex Court held:-

> "The ratio decidendi of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out of the entire ratio decidendi of the judgment". Even though we have adverted to different observations and the decisions as above we are of the view that we should be cautioned ourselves from Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 distinguishing a decision of the Hon'ble Apex Court when it is cited before us. In Fuzlunbi v. K. Khader Vali [AIR 1980 SC 1730] the Hon'ble Apex Court observed in paragraph 8 as hereunder:-
>
> ".....there is no warrants whatever for the High Court to reduce to a husk of a decision of this court by its doctrinal gloss".

In paragraph 10 of the said decision the reasons which would pursue a judge to distinguish precedent as per Glanvile Williams in his "Learning the Law" was also extracted. It reads thus:

> "that the earlier decision is altogether unpalatable to the court in the later case, so that the latter court wishes to interpret it as narrowly as possible". The same learned Author notes that some judges may "in extreme and unusual circumstances) be up to seize on almost any factual difference between this previous case and the case before him in order to arrive at a different decision. Some precedents are continually left on the shelf in this way, as a wag observed, they become very "distinguished". The limit of the process is reached when a judge says that the precedent is an authority only 'on its actual facts.' Even after quoting the same it was held further therein Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 thus:- "We need hardly say that these devices are not permissible for the High Courts when decisions of the Supreme Court are cited before them not merely because of the jurisprudence of precedence, but because of the imperatives of Article 141".

14. We think that it will be inappropriate if we are not adverting to the decisions of three learned Single Judges that constrained the learned Single Judge to pass the order of reference dated 25.9.2014 before proceeding further to consider what is the ratio decidendi in Pepsico's case (supra).

15. The first among the three decisions was rendered in Tito Varghese v. Food Inspector [2012 (4) KLT 796]. The food item involved therein was 'urd dhal' exhibited for sale. The application of ratio in Pepsico's case (supra) was considered by the learned Single Judge. After referring to paragraph 40 to 45 of the decision of the Hon'ble Apex Court in Pepsico's case (supra) it was held that observation Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 thereunder could not be stretched to an extent as if the Apex Court has rendered a decision that use of DGHS method for analysis over other food items and conducting of tests on those items in State laboratories are not sufficient to sustain the prosecution based on the analysis report from such laboratories. It was so held after taking note of the fact that in Pepsico's case (supra) the item of food article was sweetened carbonated water and the method which was employed for analysis was nothing but DGHS method of analysis. In short it was interpreted by the learned Single Judge that the decision in Pepsico's case (supra) is a precedent only in respect of sweetened carbonated water and the observations thereunder would not invalidate any prosecution based on analysis report from any other state laboratories in respect of other food items. After holding thus the prayer to quash the complaints relying on the decision in Pepsico's case (supra) was declined. At the same time in Gopalakrishnan v. Food Inspector [2013 Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 (3) KLT 455] another learned Single Judge considered the applicability of the dictum in Pepsico's case (supra) and the item of food involved in that case was 'ice cream'. After referring to the provisions under Section 23 (IA) (ee) and (hh) and the decision of the Hon'ble Apex Court in Pepsico's case (supra) it was held that since the provisions under Section 23 (IA) (ee) and (hh) are mandatory when the question is with respect to the liberty of a citizen who is an accused in a case under PFA Act, 1954 and when the consequences are severe the provisions under the PFA Act have to be interpreted strictly and scrupulously. Holding that the provisions under Section 23 (IA) (ee) and (hh) are mandatory it was held that what is to be looked into is whether the provision under Section 23 (IA) (ee) and (hh) are followed scrupulously or not. In short, it was held that the principles laid down rather, the reasoning of the Hon'ble Apex Court in respect of sweetened carbonated water would apply in case of other food items as well where an analysis Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 was conducted by a public analyst not from a defined laboratory, in the matter of initiation and continuation of a prosecution based on a report of analysis of a public analyst. In the reference order dated 25.09.2014 another decision rendered by yet another learned Single Judge in Crl.R.P.No.3245/2004 dated 25.3.2014 (E.K. Varghese v. Food Inspector) was also referred to. The item of food involved in that case was 'Toor Dhal'. Evidently it was held that the dictum in Pepsico's case (supra) is applicable in respect of the said item of food article as well inasmuch as the analysis was not conducted by the public analyst in a laboratory defined under Section 23 (IA) (ee) of the PFA Act. Thus it can be seen that while considering Gopalakrishnan's case (supra) as also the decision in E.K. Varghese's case (supra) the dictum in

Pepsico's case (supra) was virtually understood and applied taking that the Hon'ble Apex Court laid down that the provisions under Section 23 (IA) (ee) and (hh) are mandatory. In Tito Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Varghese's case (supra) it was held that the decision in Pepsico's case (supra) could not be understood to have laid down a preposition that merely because analysis was conducted from a laboratory other than a laboratory defined under Section 23 (IA) (ee) it would not render the prosecution invalid for that reason. In other words, the said decision was understood and applied as if it is a decision having binding precedent only in respect of sweetened carbonated water. It was the wake such cleavage in opinion that the learned Single Judge referred these cases as per order dated 25.9.2014. As noticed herein before, the other cases were also referred following the order of reference dated 25.9.2014.

16. The provisions of law which really form the bone of contentions read thus:

> 23:Power of the Central Government to make rules.-
>
> (1) The Central Government may, after consultation with the Committee and after previous publication by notification in the Official Gazette, make rules to carry out the provisions of this Act:
>
> Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Provided that consultation with the Committee may be dispensed with if the Central Government is of the opinion that circumstances have arisen which render it necessary to make rules without such consultation, but, in such a case, the Committee shall be consulted within six months of the making of the rules and the Central Government shall take into consideration any suggestions which the Committee may make in relation to the amendment of the said rules.
>
> (1-A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters,namely:
>
> (a) specifying the articles of food or classes of food for the import of which a license is required and prescribing the form and conditions of such license, the authority empowered to issue the same [the fees payable therefor, the deposit of any sum as security for the performance of the conditions of the license and the circumstances under which such license or security may be cancelled or forfeited] ;
>
> (b) defining the standards of quality for, and fixing the limits of variability permissible in respect of any article of food;
>
> (c) laying down special provisions for imposing rigorous control over the production, distribution and sale of any article or class of articles of food which the Central

> Government may, by notification in the Official Gazette, specify in this behalf including registration of the premises where they are manufactured, maintenance of the premises in a sanitary condition and maintenance of the healthy state of human beings associated with the production, distribution and sale of such article or class of articles;
>
> (d) restricting the packing and labelling of any article of food and the design of any such package or label with a view to preventing the public or the purchaser being deceived or misled as to the character, quality or quantity of the article or to preventing adulteration;
>
> (e) defining the qualifications, powers and duties of Food Inspectors and public analyst;

Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013
(ee) defining the laboratories where samples of articles of food or adulterants may be analysed by public analysts under this Act;

(f) prohibiting the sale of defining the conditions of sale of any substance which may be injurious to health when used as food or restricting in any manner its use as an ingredient in the manufacture of any article of food or regulating by the issue of licenses the manufacture or sale of any article of food;

(g) defining the conditions of sale or conditions for license of sale of any article of food in the interest of public health;

(h) specifying the manner in which containers for samples of food purchased for analysis shall be sealed up or fastened up;

(hh) defining the methods of analysis;

(i) specifying a list of permissible preservatives, other than common salt and sugar, which alone shall be used in preserved fruits, vegetables or their products or any other article of food as well as the maximum amounts of each preservative;

(j) specifying the colouring matter and the maximum quantities thereof which may be used in any article of food;

(k) providing for the exemption from this Act or of any requirements contained therein and subject to such conditions, if any, as may be specified, of any article or class of articles of food;

(l) prohibiting or regulating the manufacture, transport or sale of any article known to be used as an adulterant of food;

(m) prohibiting or regulating-

(i) the addition of any water, or other diluent or Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 adulterant to any article of food;

(ii) the abstraction of any ingredient from any article of food;

(iii) the sale of any article of food to which such addition or from which such abstraction has been made or which has been otherwise artificially treated;

(iv) the mixing of two or more articles of food which are similar in nature or appearance;

(n) providing for the destruction of such articles of food as are not in accordance with the provisions of this Act or of the rules made thereunder.

(2) Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

17. Bearing in mind the various decisions referred supra and also the provisions of law referred hereinbefore we will consider the question what exactly is the dictum laid down by the Hon'ble Apex Court in Pepsico's case (supra). The best way to reach out to the same, is to refer to the decision in Pepsico India Holdings (P) Ltd. v. Food Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Inspector [2009 (2) KLT 69] (for short Pepsico India Holdings' case only) rendered by a learned Judge of this court from which the decision of the Hon'ble Apex Court in Pepsico's case (supra) arose. It is relevant to extract paragraph 5 in the said decision and it reads thus:

> 5. The learned counsel for the petitioners submits that the cognizance taken against the petitioners is totally unjustified and prays for invocation of the extraordinary inherent jurisdiction under S. 482 Cr.P.C. to quash the prosecutions against the petitioners on the following six specific grounds:
>
> (1) No rules having been framed at the relevant time under S. 23 (1a) (ee) of the Act by the Central Government defining the laboratories where samples of articles of food or adulterants may be analysed by the Public Analysts under this Act, the Public Analysts who have submitted the relevant reports in all these prosecutions cannot be

held to have complied with the law and therefore their reports are liable to be eschewed and ignored.

(2) No methods of analysis having been defined under S. 23 (1a) (hh) of the Act by the Central Government, the reports submitted by the Public Analysts by following whatever methods they thought to be appropriate are not valid and correct and cannot be accepted at all - even at this stage.

(3) At any rate, there are no validated methods of analysis identified by the scientists so far to ascertain the percentage pesticide residue present in a carbonated beverage (i. e. , a complex matrix article) and therefore the reports of the Public Analysts cannot be reckoned as legally acceptable to found prosecutions against the petitioners.

Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013
(4) The Public Analysts in the reports issued by them have not specifically opined that the presence of pesticide residue at the levels detected by them is injurious to health and consequently their conclusion that the article is adulterated under S. 2 (ia) (h) of the Act cannot be legally taken cognizance of.

(5) Even assuming that the Public Analysts in their reports have opined that the presence of pesticide residue at the levels detected by them are injurious to health, their opinion that the presence of pesticide residue at that level renders the articles injurious to health under S. 2 (ia) (h) of the Act is perverse and cannot be accepted - even at this stage.

(6) At any rate, in the light of the decision in S. M. S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005 (4) KLT 209 (SC)), the indictees who are only Directors of the Company and against whom no better or specific allegations are raised are not liable to face prosecution. It is those grounds which were considered by the learned Single Judge while rendering the decision in Pepsico India Holdings' case (supra). Ground No.1 and 2 extracted above would reveal that they relate to non-framing of the rules as enabled under Section 23 (IA) (ee) and (hh) of the Act. Evidently after considering the rival contentions it was held by the learned Single Judge that the provisions under Section 23 (IA) (ee) and (hh) are only enabling provisions and not provisions which are mandatory in nature and Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 further it was held that in such circumstances non- formulation of rules under Section 23 (IA) (ee) and (hh) could not be held fatal to the prosecution. Virtually, contentions raised under ground 3, 4, 5 as extracted above, in that case were resisted by the learned Public Prosecutor contending that the petitioners therein, who are indictees, did not choose to take resort to the valuable right available under Section 13 (2)of the PFA Act. Evidently the further contention was that an indictee who had not chosen to invoke such a valuable right conferred on him could not seek for premature termination of the prosecution seeking invocation of the extra ordinary jurisdiction under Section 482 Cr.P.C. It is the decision rendered by the learned Single Judge after considering grounds 1 to 6

as extracted above that was taken up before the Hon'ble Apex Court which ultimately culminated in Pepsico's case supra. As far as this bunch of cases are concerned, their fate would depend upon the answers to the question as to what is the ratio decidendi Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 of the decision in Pepsico's case (supra). It is in this context that the fact that the learned Judge in Pepsico India Holdings' case held that the provisions under Section 23 (IA) (ee) and (hh) are only enabling provisions and are not mandatory and that the said findings were reversed by the Hon'ble Apex Court in Pepsico's case (supra) assumes relevance. Paragraph 27 in Pepsico's case (supra) reads thus:-

> "Sri. K N Bhat learned Senior Advocate who appeared for the State of Kerala contended that Section 23 of the 1954 Act though empowered the Central Government to make rules to, inter alia, define the laboratories where samples of articles of food could be analysed by public analyst under the Act as also to define the method of analysis under sub Section 23 (IA) (ee) and (hh), the said power is only discretionary and it was for the Central Government act on the basis thereof. It was further contended that non formulation of Rules under Section 23 (IA) (ee) and (hh) for analysis of beverages could not be construed as fatal to the prosecution".

Evidently, referring to paragraph 37 of the decision in Pepsico's case the learned ADGP contended that the width of the dispute involved in Pepsico's case was only related to Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 sweetened carbonated water and therefore the, decision in Pepsico's case could not be understood as a binding precedent in respect of other food items. Paragraph 37 of the decision in Pepsico's case reads thus:

> From the submissions made on behalf of the respective parties, it is apparent that the width of the dispute to be settled in these Appeals is not very wide. We are only required to consider as to whether the presence of 0.001 mg of Carbofuran per litre found in the sweetened carbonated water, manufactured by the Appellant-Company, can be said to be adulterated as per Rule 65 of the 1955 Rules and under Section 2(ia)(h) of the 1954 Act, particularly in the absence of any validated standard of analysis provided for under the 1954 Act or 1955 Rules.
>
> True that to support the said contention paragraph 39 and 40 thereunder were also brought to our notice. At the same time, the relevant aspect to be noticed is that after considering the rival contentions the findings of this Court in Pepsico India Holding's case was virtually summarised by the Hon'ble Apex Court in paragraph 41 thus:
>
> The High Court summarised its view into several grounds of challenge. Grounds 1 and 2 relate to the non-framing of Rules under Section 23(1-A) (ee) and (hh) of the 1954 Act. Grounds 3, 4 and 5 deal with the challenge thrown on behalf of the Appellants to the submissions that the report of the Public Analyst was not final and that the same could be challenged under Section 13(2) of the said Act. Ground

> Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 6 deals with the criminal liability of the Directors of the Company on account of the allegations against the Company.

Going by the same it is evident that the Hon'ble Apex Court found that this court summarised its view into several grounds of challenge and further found that ground 1 & 2 relate to the non framing of Rules under Section 23(1-A) (ee) and (hh) of the 1954 Act and grounds 3 to 5 deal with the challenge thrown on the behalf of the appellants therein to the submissions that a report of the public analyst was final and the same could have been challenged under Section 13 (2) of the said Act. It further held in paragraphs 44 & 45 thus:

> 44. The High Court also misconstrued the provisions of Section 23(1-A)(ee) and (hh) in holding that the same were basically enabling provisions and were not mandatory and could, in any event, be solved by the Central Government by framing Rules thereunder, by which specified tests to be held in designated Laboratories could be spelt out.

Consequently, the High Court also erred in holding that the non- formulation of Rules under the aforesaid provisions of the 1954 Act could not be said to be fatal for the prosecution.

45. As far as Grounds 3, 4 and 5 are concerned, the High Court failed to consider the reasons given on behalf of the Appellants for not sending the Company's sample to the Forensic Laboratory, to the effect that, since neither any Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 validated method of analysis had been prescribed under Section 23(1-A)(ee) and (hh) of the 1954 Act, nor had any Laboratory been particularly specified for such examination, such an exercise would have been futile. In our view, no useful purpose could have been served by sending the second sample to the Forensic Laboratory, unless a defined tolerance limit of the presence of the pesticides was available in regard to sweetened carbonated water. It may be noted that the High Court had itself observed that mere presence of insecticide residue to any extent could not justify an allegation that the article of food was adulterated, but contrary to such observation, the High Court went on to hold that the sweetened carbonated water manufactured by the appellants was adulterated within the meaning of Section 2(ia)(h) of the 1954 Act.

Paragraph 45 thereunder would reveal that the Hon'ble Apex Court found that the High Court failed to consider the reasons given on behalf of the appellants for not sending the Company's sample to the forensic laboratory, viz., neither any validated method of analysis had been prescribed under Section 23 (I-A) (hh) and no laboratory was specified for such examination under Section 23 (IA) (ee). It was in that context the Hon'ble Apex Court held that no fruitful purpose could have been served by sending the second sample to the forensic laboratory. Thus it is evident that in Pepsico India Holding's case a learned Judge of this Court held that the provision under Section 23 (I-A) (ee) and Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755

of 2013 (hh) are only enabling provisions and are not mandatory and in such circumstances non-formulation of rules under Section 23(1A) (ee) and (hh) could not be held fatal to the prosecution. But, the Hon'ble Apex Court categorically found that the High Court has erred in holding that non- formulations of provisions under the 1954 Act could not be said to be fatal to the prosecution. As regards the nature of the provision under Section 23 (IA) (ee) and (hh) are concerned the findings of this Court in Pepsico's case that they are only enabling provisions and are not mandatory were reversed by the Hon'ble Apex Court holding that this Court misconstrued them. When the Hon'ble Apex court held that the provisions under the Section 23 (I-A) (ee) and (hh) are not directory in nature these provisions which are not directory shall have to be taken only as mandatory in nature. True that such a finding was arrived at, while dealing with a case where the item of food involved was sweetened carbonated water. Merely because the item of Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 food involved in that case is sweetened carbonated water and at that point of time its tolerance limit was not prescribed they cannot be taken as reasons for holding that the decision of the Hon'ble Apex Court that the said provision are not directory has to be confined only in respect of the food item sweetened carbonated water. As held by the Hon'ble Apex Court in Islamic Academy of Education's case to find out the ratio decidendi of Pepsico's decision the entire judgment has to be read. We have already dealt with it. Evidently, the Hon'ble Apex Court considered the provisions under Section 23 (1A) (ee) and (hh) and held that this Court in 'Pepsico India Holding's case' has misconstrued the provisions of Section 23 (1A) (ee) and (hh) in holding that they are basically enabling provisions and are not mandatory. It was also held that this Court also erred in holding that the non-formulation of Rules under the aforesaid provisions of 1954 Act could not be said to be fatal for the prosecution. It is also very Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 relevant to note that the Hon'ble Apex Court has also held that this court failed to consider the reasons given on behalf the appellants therein for not sending to the company's sample to the forensic laboratory. Evidently, the Hon'ble Apex Court further observed that such an exercise viz; by sending the second sample to the Forensic Laboratory, would have been only futile as neither any validated method of analysis had been prescribed nor any laboratory had been particularly specified for such examination. When such reasonings form the basis for interfering with the findings of this Court in Pepsico India Holding's case in respect of sweetened carbonated water, how can it be said that those reasonings are confined only to sweetened carbonated water and not applicable to any other food items. It is also to be noted that by no stretch of imagination it can be said that those provisions are applicable only in respect of sweetened carbonated water and are unrelated to other food items. As held by the Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Hon'ble Apex Court in the absence of any other additional or different fact which could make a world of difference the same principle cannot be applied differently. When a learned Single Judge's finding that the provision under Section 23 (1A) (ee) and (hh) are only enabling provisions and are not mandatory was held as misconstructions of these provisions and the further finding that non- formulation of the Rules under Section 23 (1A) (ee) and (hh) could not be said to be fatal for the prosecution was held as erred decision by the Hon'ble Apex Court and how can another Bench of this Court, whatever be strength, maintain, virtually, the same views by

distinguishing the Apex Court decision or refrain from following the Apex Court's decision when it is cited. In our considered view the decision that those provisions cannot be said to be directory the Hon'ble Apex Court is to be applied in all cases wherever a report of a public analyst in respect of an item of food as adulterated has to form the basis for prosecution. Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Needless to say that such cases when the analysis that culminated in the report was made from a laboratory which was not a defined one in terms of Section 23 (1A) (ee) of the Act applying the ratio in Pepsico's case the failure to conduct it from a defined laboratory has to held as fatal to the prosecution. It is also to be noted that no such laboratories were defined while 'the Act' was in force or in other words till the Act was repealed. As held by the Hon'ble Apex Court in Fuzlunbi's case whether the earlier decision of the Apex Court is altogether unpalatable and to be interpreted narrowly by following the known devices is an area permissible to be resorted only by the Hon'ble Apex Court and as far as the High Courts are concerned once such earlier decision was cited it is impermissible to deviate from it not merely because of the jurisprudence of precedence, but also because the mandate under Article 141 of the Constitution of India. On scanning of the decision of the Hon'ble Apex Court in Pepsico's case (supra) Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 we can only arrived at the conclusion that there is a declaration binding under Article 141 of the Constitution of India to the effect that the provisions under Section 23 (I-A) (ee) and (hh) are not directory. If it is not directory it can only be mandatory. In such circumstances when once the Hon'ble Apex Court held as above the respondents cannot be heard to contend that the said provisions are virtually directory in nature. The upshot the discussion makes us to hold that the decision in Tito Varghese's case (supra) cannot be said to be correctly decided inasmuch as it cannot be said that the decision in Pepsico's case is only binding precedent as regards the food article 'sweetened carbonated water'.

18. Bearing in mind the fact that the Hon'ble Apex Court in Pepsico's case (supra) held that the provisions under Section 23 (I-A) (ee) and (hh) are not directory and that this court has erred in holding that they are only enabling provisions we will proceed further to answer the Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 referred questions. For answering the terms of reference a broad understanding of the said declaration is necessary. When once the Hon'ble Apex Court held that the said provisions are not directory and the failure to adhere to the provisions cannot be said to be not fatal to the prosecution it has to be understood and applied in all cases where a public analyst was to carry out an analysis and to give a report to form the basis for launching the prosecution. Thus, evidently, for that purpose the report should be one made after conducting an analysis in a laboratory defined under Section 23 (I-A) (ee). It is to be noted that after the decision in Pepsico's case (supra) by the Hon'ble Apex Court a notification was followed whereby rule in relation to Section 23 (I-A) (hh) was framed as Rule 4 (9) of the PFA Rules. Thus, in the light of Pepsico's case (supra) in order to be reliable and to be taken the basis for the purpose of launching prosecution a report by a public analyst must be one made after conducting an analysis in a laboratory Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of

2011, 1374 and 1391 of 2012, 2755 of 2013 defined under Section 23 (I-A) (ee) of the Act. In that context the indisputable common case is that till the repealing of 1954 Act no laboratory was defined in terms of the provision under Section 23 (I-A) (ee). If that be so, there could not have been any question of conducting an analysis by a public analyst under the PFA Act in a laboratory defined under Section 23 (I-A) (ee) of the PFA Act. In view of the above findings and conclusions we will answer the questions referred.

First question referred is as follows:

> (1) Could all the prosecutions under the Act of 1954 be stifled by raising a contention that the laboratories or methods of analysis were not defined?

In the light of what we have held herein before the said it can only be answered in the following manner:

> Wherever an analysis has to be conducted from a laboratory to find whether the particular sample of item of the particular food article is adulterated, to form the basis for initiation of prosecution under the PFA Act the report of Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 the analyst in relation to that sample must be one conducted in a laboratory defined under Section 23 (IA-) (ee). Since no such laboratory was defined till the repealing of the PFA Act wherever an analysis from a laboratory was inevitable for making a report regarding item concerned as adulterated there cannot be any successful prosecution in the absence of such a report. In such circumstances the prosecution proceedings have to be terminated for the failure to define laboratories in terms of Section 23 (IA-) (ee) and the consequential failure to conduct an analysis of the particular sample by the public analyst from such a laboratory. In other words taking note of the nature of the food article involved and the method to be employed to find out the adulteration if an analysis from a laboratory is not at all required in such circumstances the prosecution cannot be stifled on the ground that the laboratories in terms of provisions under Section 23 (IA) (ee) were not defined. It cannot be said that all the prosecutions under the 1954 Act Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 should be stifled owing to the failure to define laboratories in terms of Section 23 (I-A) (ee) as there may be cases registered against persons for contravention of the provisions under Section 16 (1) (c), 16 (1) (d) and 14A (Prevention of Food Adulteration Act, 1954). So also a case where the article in food was lifted and sent for analysis prior to the introduction of the provisions under Section 23 (I-A) (ee) viz 1.4.1976 cannot be stifled as anything previously done could not be invalidated owing to the failure to define laboratory in terms of Section 23 (I-A) (ee) in view of the provisions under Section 23 (2). In the context of the term of reference No.1 it is to be noted that subsequent to Pepsico's case (supra) the method of analysis was, in fact,

> defined and it was brought into by incorporating Rule 9 (4) in the PFA Rules with effect from 25.3.2008.

19. The second question referred is as hereunder:

> (2) Is it proper to hold that since Central Government has not taken steps to effectuate Sec.23(1A) (ee) and (hh) of the Act of 1954, no prosecution will lie under the Act of 1954 even if Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 it is established that the standards prescribed for various food items have been flouted?

In respect of items of food articles where, for holding that the standard prescribed for the same was flouted or it was not maintained if an analysis from a laboratory is inevitable in such cases also if the analysis was conducted by the public analyst under the PFA Act in a laboratory not defined in terms of Section 23(1A) (ee), in the light of Pepsico's decision, no prosecution will lie based a report made after such an analysis.

The last question referred is follows:

> (3). Whether the ratio in Pepsico's case (supra) can be applied to all cases of alleged food adulteration under the Act of 1954 irrespective of the fact whether or not standards have been prescribed for food items?

In cases where standard is prescribed or in respect of a food item to say that the said item of food is adulterated and to launch the prosecution, if an analysis from a laboratory by a public analyst is inevitable in such circumstances also Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 the ratio in Pepsico's case (supra) will be applicable. In the light of the answers to the referred questions it has become absolutely unnecessary to go into the question referred herein before based on the decision in Narayana Reddiar's case which was declined to be referred.

20. Having answered the reference as above, we are of the view that the fate of the criminal revision petitions and the Crl.M.Cs. depend upon the question whether in respect the item of food involved in individual cases, the sample of which was collected, an analysis from a laboratory is required or not for holding the same as adulterated. If the answer is in the affirmative necessarily in the absence of a report made after an analysis from a laboratory defined in terms of the provisions under Section 23 (I-A) (ee) there can be no successful prosecution. We will therefore, consider the individual cases in the aforesaid manner and in the light of the answers to the referred questions. Needless to say that if the answer to the Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 aforesaid question in respect of a particular case is in the negative there can be no legal impediment in continuing with the prosecution. In view of the fact that till the repealing of

the said Act no laboratories were defined in terms of Section 23 (I-A) (ee) all those cases have to be decided based on a consideration as aforesaid.

21. This criminal revision petition is filed against the judgment in Crl.Appeal No.186 of 1997 passed by the Court of Additional Sessions Judge (Adhoc-I), Thalasserry confirming the conviction and sentence passed by the Court of Judicial First Class Magistrate, Thalasserry in S.T.No.834 of 1992.

22. The item of food article involved in this case is 'Ragi' and the standard therefor, is prescribed under Appendix B-A.18.06. The sample was lifted on 6.2.1992. Evidently, on a complaint filed based on Ext.P13 report of Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 the public analyst cognizance was taken. True that Ext.P13 was superseded by Ext.P14 report of the Central Food Laboratory based on an application filed by the revision petitioner under section 13(2) of the PFA Act. Going by Ext.P13 report, the result of analysis was as follows:-

Moisture	:	8.8 percent
Foreign matter	:	Absent
Other edible grains	:	Absent
Weevilled grains	:	Absent
Damaged grains	:	Absent
Test for coaltar dyes	:	Positive
Coaltar dye-Carmoisine (Colour Index 14720)	:	Present

23.The opinion of the public analyst was that the sample analysed contained Coaltar dye-Carmoisine and therefore, adulterated. Going through the provisions under Rules 23 and 29 of the PFA Rules, it is evident that in the article of food mentioned above, the use of Coaltar dye- Carmoisine is impermissible. Evidently, in this case the presence of Coaltar dye-Carmoisine is detected based on an analysis conducted not in a laboratory as defined under Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 section 23(1A)(ee) of the PFA Act. In the light of the dictum laid down by the Hon'ble Apex Court in Pepsico India Holdings Pvt.Ltd v. Food Inspector [2010 (4) KLT 706 (SC)], as long as a report of public analysis is one prepared not from a laboratory defined in terms of the provisions under section 23(1A)(ee) of the PFA Act, it cannot be a basis for a prosecution. In such circumstances, when the indisputable position obtained in this case is that Ext.P13 report based on which the complaint was filed was not a report prepared based on an analysis conducted by a laboratory defined in terms of section 23(1A)(hh) the trial court could not have taken cognizance based on such a complaint. In such circumstances, this revision petition is liable to succeed and accordingly, it is allowed. The judgment in Crl.Appeal No.186 of 1997 passed by the Court of Additional Sessions Judge (Adhoc-I), Thalasserry and the judgment passed by the Court of Judicial First Class Magistrate, Thalasserry in S.T.No.834 of 1992 are set aside. Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 The bail

bond stands cancelled.

Crl.R.P. No.1518 OF 2003

24. This criminal revision petition is filed against the judgment in Crl.Appeal No.98 of 2000 passed by the Court of Session, Manjeri confirming the conviction and sentence passed by the Court of Judicial First Class Magistrate, Ponnani in S.T.No.3272 of 1991.

25. The item of food article involved in this case is gingelly oil and the standard therefor, is prescribed under Appendix B.A.17.11. The sample was lifted on 22.10.1991. Evidently, at that point of time, neither the laboratory in terms of the provisions under section 23(1-A)(ee) nor the method of analysis in terms of the provisions under section 23(1-A)(hh) were defined by the Central Government. Ext.P10 is the report of the public analyst. True that it was superseded by Ext.P11 report based on an application filed by the revision petitioner under section 13(2) of the PFA Act. The trial court took cognizance on the complaint based Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 on Ext.P10 report. Based on the decision of the Hon'ble Apex Court in Pepsico India Holdings Pvt.Ltd v. Food Inspector [2010 (4) KLT 706 (SC)], a report of a public analyst in order to be reliable and to form the basis for prosecution, must be one based on an analysis conducted from a laboratory defined in terms of the provisions under section 23(1-A)(ee) after following the prescribed method under section 23(1-A)(hh). It is common case that Ext.P10 is not such a report. Indisputably, till the repealing of PFA Act, no such laboratories were defined. In such circumstances, in terms of the dictum laid down by the Hon'ble Apex Court in Pepsico's case to the effect that the provisions under section 23(1-A)(ee) is mandatory, the trial court could not have taken cognizance on the complaint based on Ext.P10 report. In short, this revision petition is liable to be allowed. Accordingly, it is allowed. The judgment in Crl.Appeal No.98 of 2000 passed by the Court of Session, Manjeri and the judgment passed by the Court of Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Judicial First Class Magistrate, Ponnani in S.T.No.3272 of 1991 are set aside. The bail bond stands cancelled. Crl.R.P. No.1665 OF 2003

26. This criminal revision petition is filed against the judgment in Crl.Appeal No.388 of 1998 passed by the Additional Sessions Judge (Fast Track Court-I), Thiruvananthapuram confirming the conviction and sentence passed by the Court of Judicial First Class Magistrate, Attingal in C.C.No.436 of 1993.

27. The item of food article involved in this case is 'rose rice' and the standard therefor is prescribed under Appendix B.A.18.06.04. The sample was lifted on 25.11.1992. Ext.P14 is the report of the public analyst based on which the complaint was filed. The result of public analysis is as follows:-

Moisture:(obtained by heating the pulverised grains at 130:C-133:C for two hours)-12.9 percent.
Foreign matter-Coating of Kavi (Red

Ochre):Present.
Damaged grains:Absent

Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Weevilled grains:Absent Iron as Fe2O3 arising as a result of coating of kavi:35.8 milligrammes per 1000 grammes.

28. Though Ext.P14 was subsequently superseded by Ext.P17 report of the Central Food Laboratory, it is evident that in this case, for finding out the sample of item of food whether adulterated or not, an analysis from a laboratory was conducted. In fact, a scanning of Ext.P14 report itself would reveal that for finding the sample was adulterated for the reasons stated therein an analysis from a laboratory was inevitable and in fact, it was conducted by the public analyst which culminated in Ext.P14 report. We have found that the basis of complaint is the report of the public analyst and evidently, for finding whether the sample of an item of food the sample of which was collected on 25.11.1992 was adulterated or not, the public analyst had conducted analysis from a laboratory and Ext.P14 is its report. It is evident that an analysis from a laboratory was inevitable to Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 find out whether the sample of food taken in this case was adulterated or not. But, in the light of the decision in Pepsico India Holdings Pvt.Ltd v. Food Inspector [2010 (4) KLT 706 (SC)], such a report must have been one prepared by a public analyst after conducting an analysis in a laboratory defined in terms of the provisions under section 23(1-A)(ee) after following the prescribed method under section 23(1-A)(hh). Indisputably, till the repealing of PFA Act, no such laboratories were defined. In such circumstances, in terms of the dictum laid down by the Hon'ble Apex Court in Pepsico's case to the effect that the provisions under section 23(1-A)(ee) is mandatory, the trial court could not have taken cognizance on the complaint based on Ext.P14 report. In short, this revision petition is liable to be allowed. Accordingly, it is allowed. The judgment in Crl.Appeal No.388 of 1998 passed by the Court of Additional Sessions Judge, Thiruvananthapuram and the judgment passed by the Court of Judicial First Class Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Magistrate-I, Attingal in C.C.No.436 of 1993 are set aside. The bail bond stands cancelled.

29. This criminal revision petition is filed against the judgment in Crl.A.No.7/1997 dated 26.7.2003 passed by the Court of Additional District and Sessions Judge (Adhoc) Court-I, Pathanamthitta confirming the order of conviction passed by the Court of Judicial First Class Magistrate, Ranny in C.C.No.485/1995.

30. The article of food involved in this case is 'bengal gram' (Cicer arietinum Linn). Appendix B-A.18.06.08 of the PFA Rules. Evidently in this case Ext.P18 is the report of the public analyst. A perusal of the same would reveal that after the analysis it was reported that the presence of uric acid in the sample was 400 gm per kilogram. The sample was collected on 18.1.1992. Indisputably, as on 23.02.1995 no laboratories in terms of the provisions under Section 23 Criminal R.P.Nos.1814 of

2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 (1-A) (ee) were defined. So also the method of analysis in terms of Section 23 (1A) (hh) was also not defined. Evidently, in this case in such circumstances the public analyst must have conducted the analysis from a laboratory not defined in terms of Section 23 (1-A) (ee) without following any defined method. True that in this case after receiving the report of the public analyst the sample was sent for analysis from the Central Food Laboratory. But, in the light of the dictum laid down by the Hon'ble Apex Court in Pepsico's case taking into account the fact that there was no report by the public analyst after conducting an analysis in a laboratory defined under Section 23 (1-A) (ee) following the method of analysis prescribed under 23 (1A) (hh) cognizance could not have been taken in this case. When that be the circumstances, the impugned judgement invites interference and this revision petition is liable to be allowed.

Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013

31. No doubt, for determining the question whether the presence of uric acid is beyond the prescribed limit, an examination in a laboratory by a public analyst is inevitable and, but at the same time, in this case it was conducted not in a laboratory defined under Section 23 (1-A) (ee).

32. In the said circumstances, this criminal revision petition is allowed and the judgement in Crl.A.No.7/1997 dated 26.7.2003 passed by the Court of Additional District and Sessions Judge (Adhoc) Court-I, Pathanamthitta confirming the order of conviction and the judgement in C.C.No.485/1995 passed by the Court of Judicial First Class Magistrate, Ranny are set aside. The bail bond stands cancelled.

33. This criminal revision petition is filed by the second accused in S.T.No.3881 of 1997 on the files of the Court of Judicial First Class Magistrate, Kunnamkulam. He was tried for various offences under the Prevention of Food Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Adulteration Act, 1955 (for short the 'PFA Act') read with different rules under the Prevention of Food Adulteration Rules (for short the 'PFA Rules') along with the first accused therein. Feeling aggrieved by his conviction as also the acquittal of the revision petitioner herein/second accused therein, the first accused preferred Crl.A.No.330 of 2000 and Crl.R.P.No.63 of 2000 before the Court of III Additional Sessions Judge (Adhoc) Fast Track Court No.I, Thrissur. In fact, Crl.R.P.No.63 of 2000 was filed by the first accused in S.T.No.3881 of 1997 against the order of acquittal of the revision petitioner herein/second accused. The said appeal and the revision petition were jointly heard and the learned Sessions Judge, by a common judgment, allowed the appeal and the order of conviction passed against the second accused by the learned Magistrate was set aside and he was acquitted. But at the same time, the learned Sessions Judge allowed the revision petition and the acquittal of the revision petitioner/second accused was set aside and the Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 case was remanded to the court below for fresh disposal against the first counter petitioner therein

ie., against the revision petitioner herein. It is in the said circumstances that this revision petition has been filed.

34. During the course of argument, a question crop up for consideration whether against the order of the learned Sessions Judge in revision, a second revision would lie before this Court. It is contended by the learned counsel for the revision petitioner that as regards the revision petitioner, he had not invoked the revisional powers and in fact, the revision before the Court of Session was filed by the first accused in S.T.No.3881 of 1997. It is further submitted that in such circumstances, the revisional power of this Court would still be available. True that a revision before High Court against an order in revision by the Court of Session is maintainable if both revision petitions were not filed by the same parties. This position is clear from a perusal of the provisions under section 399(3) of the Code Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 of Criminal Procedure, 1973. In such circumstances, there cannot be any doubt with respect to the position that as long as the revision before the Sessions Judge was not filed by the revision petitioner herein this revision petition filed against the order in revision passed by the Court of Session in Crl.R.P.No.63 of 2000 is maintainable before this Court.

35. The item of food article involved in this case is 'greenpeas'. Going by Ext.P13 report of the public analyst, the presence of moisture content is 9.7 %. Weevilled grains 6.6% and Uric acid content is 107 grams per kilogram in the sample. The sample was lifted on 18.1.1996. Evidently, at that point of time, neither the laboratory in terms of the provisions under section 23(1-A)(ee) and the method of analysis in terms of the provisions under section 23(1-A)(hh) were defined by the Central Government. At the same time, it is evident that for ascertaining whether the article of food the sample of which was collected on 18.1.1996 was adulterated or not, the public analyst conducted analysis Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 from a laboratory and it is after such analysis that Ext.P13 report was filed. In the light of the dictum laid down by the Hon'ble Apex Court in Pepsico India Holdings Pvt.Ltd v. Food Inspector [2010 (4) KLT 706 (SC)], after 1.4.1976, in order to be reliable and to form the foundation for a prosecution, a report by a public analyst must be one based on the analysis conducted in a laboratory as defined under section 23(1-A)(ee) of PFA Act. Indisputably, even till the repealing of PFA Act, no such laboratories were defined though the method of analysis was defined prior to its repealing. In such circumstances, we are of the view that the decision in Pepsico's case is squarely applicable in this case inasmuch as the report of the public analyst viz., Ext.P13 is the basis for the prosecution against the revision petitioner herein. When the position of law, after 1.4.1976 in order to be reliable and to be a foundation for a prosecution, report must be one based on the analysis conducted from a laboratory defined under section 23(1-A) Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 (ee) and in view of the position that Ext.P13 is not such a report the trial court could not have taken cognizance on the complaint filed based on the said report. In such circumstances, this revision petition is liable to be allowed. Accordingly, it is allowed. Order passed by the Court of III Additional Sessions Judge (Adhoc) Fast Track Court No.I, Thrissur in Crl.R.P.No.63 of 2000 is set aside.

36. This criminal revision petition is filed against the judgment in Crl.A.No.280/2002 dated 19.12.2003 passed by the Court of Additional Sessions Judge-III (Adhoc) Fast Track Court-I, Thrissur confirming the order of conviction passed by the Court of Judicial First Class Magistrate, Chalakudy in S.T.No.564/1995.

37. The article of food involved in this case is 'horsegram'. The date of lifting of sample was on 23.2.1995. Admittedly, no specific standard has been prescribed therefor and the standard to be followed was the general Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 standard under Appendix 18.06.14, viz., under the head the caption 'ANY OTHER FOODGRAMS for any other food grains not specified'. Indisputably, as on 23.02.1995 no laboratories in terms of the provisions under Section 23 (1-A) (ee) were defined. So also the method of analysis in terms of Section 23 (1-A) (hh) was also not defined then. Evidently, in this case in such circumstances the public analyst could have conducted and must have conducted an analysis from a laboratory not defined in terms of Section 23 (1-A) (ee) and following a method not defined. There is conspicuous absence of the method followed in the report by the public analyst which is Ext.P12. True that in this case after receiving the report of the public analyst the sample was sent for analysis from the Central Food Laboratory. But in the light of the dictum laid down by the Hon'ble Apex Court in Pepsico's case and taking into account the fact that there was no report by the public analyst after conducting an analysis in a laboratory defined Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 under Section 23 (1-A) (ee) following the method of analysis prescribed Section 23 (1-A) (hh) cognizance could not have been taken in this case on the complaint. When that be the circumstances, the impugned judgement invites interference and this revision petition is liable to be allowed.

38. In the said circumstances, this criminal revision petition is allowed and the judgement in Crl.A.No.280/2002 dated 19.12.2003 passed by the Court of Additional Sessions Judge-III (Adhoc) Fast Track Court-I, Thrissur confirming the order of conviction and the judgment of the Court of Judicial First Class Magistrate Court, Chalakudy in S.T.No.564/1995 are set aside. The bail bond stands cancelled.

CRL.R.P. No.439 OF 2004

39. This criminal revision petition is filed against the judgment in Crl.Appeal No.25 of 2001 passed by the Court Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 of Additional District & Sessions Judge, Kozhikode confirming the conviction and sentence passed by the Court of Judicial First Class Magistrate, Kozhikode in S.T.No.515 of 1999.

40. The item of food article involved in this case is 'curd' and the standard therefor, is prescribed under Appendix B.A 11.02.04. The sample was lifted on 27.11.1996. Evidently, at that point of time, neither the laboratory in terms of the provisions under section 23(1-A) (ee) and the method of

analysis in terms of the provisions under section 23(1-A)(hh) were defined by the Central Government. After the report from the public analyst the complaint was filed and the revision petitioner herein applied for analysis from the Central Food Laboratory in terms of the provisions under section 13(2) of the PFA Act and Ext.P13 is the report of the Central Food Laboratory. Ext.P10 is the report of public analyst. The said report of analysis runs as follows:-

> Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Milk fat : 6.0 percent Milk solids not fat : 6.3 percent Test for starch : Negative Test for cane sugar : Negative
>
> 41. True that based on the application submitted by the revision petitioner under section 13(2) of the PFA Act, an analysis from the Central Food Laboratory was conducted and Ext.P13 is the report. We have found that the basis of a complaint of this nature is the report of the public analyst and evidently, for finding that the item of food the sample of which was collected on 27.11.1996 was adulterated or not, the public analyst had conducted analysis from a laboratory and Ext.P10 is its report. It is evident that an analysis from a laboratory was inevitable to find out whether the sample of food taken in this case was adulterated or not. In the light of the decision of the Hon'ble Apex Court in Pepsico India Holdings Pvt.Ltd v.

Food Inspector [2010 (4) KLT 706 (SC)], such a report must be prepared by a public analyst after conducting an Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 analysis in a laboratory defined in terms of the provisions under section 23(1-A)(ee) after following the prescribed method under section 23(1-A)(hh). Indisputably, till the repealing of PFA Act, no such laboratories were defined. In such circumstances, in terms of the dictum laid down by the Hon'ble Apex Court in Pepsico's case to the effect that the provisions under section 23(1-A)(ee) is mandatory, the trial court could not have taken cognizance on the complaint based on Ext.P10 report. In short, this revision petition is liable to be allowed. Accordingly, it is allowed. The judgment in Crl.Appeal No.25 of 2001 passed by the Court of Additional District & Sessions Judge, Kozhikode and the judgment passed by the Court of Judicial First Class Magistrate, Kozhikode in S.T.No.515 of 1999 are set aside. The bail bond stands cancelled.

Crl.R.P No.2594 OF 2005

42. This criminal revision petition is filed against the judgment in Crl.Appeal No.162 of 1997 passed by the Court Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 of II Additional Sessions Judge, Thiruvananthapuram.

43. While considering the reference we have made it clear that the decision of the Hon'ble Apex Court in Pepsico's case could not be applicable in a case where prosecution was launched for any of the violations absolutely unconnected with adulterations. It is the case of the petitioner that the item

of food article the sample of which was collected on 21.4.1993 was found adulterated not based on an analysis conducted from a laboratory defined in terms of Section 23(1A)(ee) of the PFA Act. But at the same time, it is evident that there is conviction for the offence under Rule 50 of the Prevention of Food Adulteration Rules, 1955. It is also to be noted that in this case, the lower court records were not called for. In such circumstances, place this matter before the Single Bench for considering the same in accordance with law, after calling for the records.

44. The petitioner is the 2nd accused in Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 C.C.No.1130 of 2009 on the files of the Court of Judicial First Class Magistrate, Vaikom. Annexure-D is the report of the Public Analyst based on which Annexure-A complaint was filed. Going by Annexure-D report of the Public Analyst the food article which is a `Milk Chocolate' on analysis found to have been contained uric acid to an extent of not less than 71.0% per ppm and that consumption of uric acid is injurious to health and therefore, it is unfit for human consumption. It is on that ground that the sample of food which was collected on 11.11.2003 was found adulterated. Evidently, the presence of uric acid in the aforesaid food article was found only after conducting an analysis from a laboratory as is evident from Annexure-D. The presence of uric acid could not have been detected without conducting an analysis from a laboratory. In fact, in this case, Annexure-D would reveal that such analysis was conducted and the extent of uric acid present in the sample was detected based on such an analysis. In view of the Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 indisputable position obtained that till the repealing of the Prevention of Food Adulteration Act, 1954 no laboratory in terms of Section 23(1-A)(ee) was defined by the Central Government Annexure-D could not be a report prepared by the Public Analyst after conducting an analysis from such a laboratory defined in terms of the said provision under the Prevention of Food Adulteration Act. In view of the decision of the Hon'ble Apex Court in Pepsico India Holdings (P) Ltd. v. Food Inspector (2010 (4) KLT 706 (SC)) in order to be reliable and to form a foundation for a prosecution wherever a report of the Public Analyst from a laboratory is required it must be one prepared after conducting an analysis from a laboratory defined under Section 23(1-A) (ee) of the Prevention of Food Adulteration Act, 1954.

45. Having heard the learned counsel for the petitioners and also the learned Public Prosecutor and also in view of the indisputable position that such laboratories were not defined till the repealing of the Prevention of Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Food Adulteration Act, 1954 the report which formed the basis for the complaint can only be said to be a report prepared without conducting an analysis in a laboratory defined under Section 23(1-A)(ee) of the Act. In the said circumstances, in the light of the decision in Pepsico's case (supra) we have no hesitation to hold that there cannot be a successful prosecution against the petitioner. In such circumstances, it is an eminently fit case for invocation of the inherent power under Section 482, Cr.P.C. in the interest of justice, and it avoid the wasteful exercise of the invaluable judicial time. In the said circumstances, this Crl.M.C. is allowed. The complaint and all further proceedings against the petitioner in C.C.No.1130 of 2009 on the files of

the Court of Judicial First Class Magistrate, Vaikom are hereby quashed.

Crl.M.C.Nos.2105, 2106, 2932 & 3128 of 2011

46. The item of article involved in all these cases is one and the same viz., `Turmeric powder'.

Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013

47. In Crl.M.C.No.2105 of 2011 the first petitioner is the nominee of the second petitioner company (M/s.ITC Limited). They were respectively accused Nos.3 and 4 in C.C.No.221 of 2011 on the files on the Court of Judicial First Class Magistrate -1, Thrissur. In Crl.M.C.No.2106 of 2011 the petitioner who is the nominee of M/s.ITC Ltd. was the second accused in C.C.No.157 of 2011 on the files of the Court of Additional Chief Judicial Magistrate, Ernakulam. In Crl.M.C.No.2932 of 2011 the petitioner was the first accused in C.C.No.157 of 2011 on the files of the same court. In Crl.M.C.No.3128 of 2011 the petitioners are respectively the distributor and vendor of the products of M/s.ITC Ltd. and they were respectively accused Nos.1 and 2 in C.C.No.221 of 2011 on the files of the Court of Judicial First Class Magistrate -1, Thrissur. All these criminal miscellaneous cases have been filed seeking quashment of the proceedings before the respective trial court essentially, based on the contentions relying on the decision of the Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Hon'ble Apex Court in Pepsico India Holdings private Limited v. Food Inspector and another ((2011) 1 SCC (Cri) 8 = (2011) 1 SCC 176). The crux of the contentions in all these cases is that presence of foreign starch and Lead Chromate was assigned as the reason for holding the sample of articles involved in these cases as adulterated. Ash was also detected without conducting a chemical test. With respect to the question whether the percentage of the ingredients such as ash insoluble in HCl could have been ascertained by mere ocular examination without conducting a chemical test virtually came up before the Hon'ble Apex Court and in paragraph 5 of the decision in Jagdish Chandra v. State of U.P. (1981 (1) FAC 33) it was held thus:-

> "A glance at the above Rules would show that the percentage of the various ingredients such as ash insoluble in HCl or volatile oil or moisture in the sample in question, cannot be ascertained with any degree of accuracy by mere ocular examination under a microscope. Chemical Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 tests, including treatment of the ash in the sample with Hydrochloric Acid would be a must. Since in the instant case, the sample was not subjected to any chemical test or analytical process, the opinion of the Public Analyst was not entitled to any weight whatsoever."

From the aforesaid decision it is evident that in order to find the percentage of ash insoluble in HCl mere ocular examination is not sufficient whereas chemical test has to be conducted. That apart, in all these cases, the report of the Public Analyst based on which complaints were filed have been

produced as Annexure-C. They would reveal that apart from the ash insoluble in HCl presence of foreign starch and Lead Chromate was also detected. Annexure-C in all these cases would reveal that the method of test employed for detecting the same was D.G.H.S. Manual. As held by the Hon'ble Apex Court in respect of ash insoluble in HCl there cannot be any doubt with respect to the position that the presence of foreign starch and Lead Chromate also could not have been ascertained with any Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 degree of accuracy without conducting chemical test. In the light of the decision of the Hon'ble Apex Court in Pepsico's case (supra) such analysis or the chemical test should have been conducted by the Public Analyst and in order to make the report reliable it should have been conducted only from a laboratory defined under Section 23 (1-A)(ee) of the Prevention of Food Adulteration Act, 1954. Indisputably, no such laboratories were defined in terms of the said provision till the repealing of the Prevention of Food Adulteration Act, 1954.

48. We have heard the learned counsel for the petitioners in these cases and also the learned Public Prosecutor

49. Indisputably, in all these cases cognizance was taken by the respective trial courts on the complaints filed based on Annexure-C report, the report of Public Analyst. The nature of the result has already been referred to hereinbefore. A perusal of Annexure-C report in all these Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 cases would reveal that presence of articles insoluble in dilute HCl and Lead Chromate was detected. For the detection of the same an analysis from a laboratory by a Public Analyst was inevitable and in fact, such analytical reports are the foundation for the prosecution in all these cases. At the same time, in view of the indisputable position obtained from the fact that till the repealing of the Prevention of Food Adulteration Act, 1954 no laboratories from where a Public Analyst could conduct an analysis in terms of Section 23(1-A)(ee) were defined there could not have been a report after conducting analysis in such a laboratory defined in terms of the aforesaid provision. When that was lacking, in view of the decision of the Hon'ble Apex Court in Pepsico's case (Supra) there cannot be a successful prosecution as the provision under Section 23(1-A)(ee) is mandatory. In view of the said circumstances, without all peradventure we can say that there cannot be any successful prosecution in any of these Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 cases. When that be the position, to avoid the wasteful exercise and also to avoid the loss of invaluable judicial time we are of the view that the proceedings in all the above cases to be terminated invoking the inherent power under Section 482 Cr.P.C. in the interest of justice. In the aforesaid cases cognizance was taken of the offences under Sections 2(ia), (a), (c), (h), 7(i) (v) vi) read with 16(1-A) 17 (1)a(i), (b) and Rule 5 of appendix `B' item A, 05-20-01 and 44(h) of PFA Rules 1955 on the complaints filed based on Annexure-C reports of the Public Analyst and the said reports were prepared by the Public Analyst after conducting an analysis in a laboratory which is not one defined under Section 23(1-A)(ee) of the Prevention of Food Adulteration Act, 1954. In the said circumstances, in view of the manner in which we answered the questions referred, in the light of the decision of the Hon'ble Apex Court in Pepsico's case (supra), the said reports of the

Public Analyst could not have been the basis for taking cognizance Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 on the complaints filed based on Annexure-C reports of the Public Analyst as they could not be sustained in the eye of law. In the said circumstances, the complaints based on Annexure-C reports and all further proceedings in C.C.No.221 of 2011 pending on the files of the Court of Judicial First Class Magistrate -1, Thrissur to the extent it applies to the petitioners in Crl.M.C.Nos.2105 & 3128 of 2011 and the complaints based on Annexure-C reports and all further proceeding in C.C.No.157 of 2011 on the files of the Court of Additional Chief Judicial Magistrate, Ernakulam to the extent it applies to the petitioners in Crl.M.C.Nos.2106 & 2932 of 2011 stand quashed. The Crl.M.Cs are allowed to the above extent.

Crl.M.C.Nos.1374 & 1391 of 2012

50. The petitioners in the captioned Criminal Miscellaneous Cases are one and the same. The item of food article involved in these cases is also the same viz., `Tomato Sauce'. In S.T.No.2267 of 2009 on the files of the Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Court of Judicial First Class Magistrate-I, Kannur they are respectively accused Nos.2 and 3 and same is their status in C.C.No.891 of 2009 which is pending on the files of the Court of Judicial First Class Magistrate, Malappuram. In the former case the petitioners seek quashment of the proceedings in S.T.No.2267 of 2009 and in the latter case the petitioners seek quashment of all the proceedings in C.C.No.891 of 2009, taking up the contention that in the light of the dictum laid down by the Hon'ble Apex Court in Pepsico India Holdings (P) Ltd. v. Food Inspector (2010 (4) KLT 706 (SC)) taking of cognizance on the complaints which culminated in the above proceedings are absolutely unsustainable and as such the complaints as also all further proceedings based thereon are liable to be quashed. Evidently, in Crl.M.C.No.1374 of 2012 Annexure- A2 complaint was filed based on Annexure-A1 report of the Public Analyst. It was on the said complaint that cognizance was taken and the case is pending as Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 S.T.No.2267 of 2009 before the Court of Judicial First Class Magistrate-I, Kannur. In Crl.M.C.No.1391 of 2012 Annexure-A2 complaint was filed based on Annexure-A1 report of the Public Analyst and it was on the said complaint that cognizance was taken and the case is pending as C.C.No.891 of 2009 before the Court of Judicial First Class Magistrate, Malappuram.

51. A perusal of Annexure-A1 in both the cases would reveal that the Public Analyst on analysis of the sample which was collected in the former case on 24.2.2009 and in the latter case on 15.9.2009 found that the acidity as `Acetic acid' is less than the prescribed standard as per Item No.A.16.27 of Appendix B of Prevention of Food Adulteration Rules, 1955. In the former case, as against the prescribed standard which is not less than 1.0 percent the result shows that only 0.77 percent was present. In the latter case as against the aforesaid prescribed standard in the sample acidity as acetic acid is only 0.76%. It is on the Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 basis of such results that the samples collected were found as adulterated

owing to the fact that they do not conform to the standard prescribed for Tomato Sauce. From the facts expatiated above it is evident that in both the cases a test was conducted using the samples collected by the Public Analyst and it is the result of such analysis culminated in Annexure-A1 reports. In the light of the indisputable position it is evident that the tests which culminated in those reports were not conducted from a laboratory defined under Section 23(1-A)(ee) of the Prevention of Food Adulteration Act, 1954. In the light of the decision of the Hon'ble Apex Court in Pepsico's case (supra) in order to be reliable and to form a foundation for such a prosecution after 1.4.1976 viz., the date of incorporation of the provisions under Section 23(1-A)(ee) the report of the Public Analyst must be one based on an analysis conducted from a laboratory defined under Section 23(1-A)(ee) of the Prevention of Food Adulteration Act, 1954. Evidently, Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Annexure-A1 report cannot be said to be made based on analysis conducted in such a laboratory as the indisputable position obtained is that till the repealing of Prevention of Food Adulteration Act, 1954 no such laboratory was defined under Section 23(1-A)(ee) of the Prevention of Food Adulteration Act, 1954. In the said circumstances, in the light of the decision in Pepsico's case (supra) cognizance could not have been taken on the complaint which was filed based on Annexure-A1 reports. In the said circumstances, the captioned Crl.M.Cs are liable to be allowed.

52. In the result, the Crl.M.Cs are allowed. The complaints and all the proceedings in C.C.No.891 of 2009 on the files of the Court of Judicial First Class Magistrate, Malappuram and in S.T.No. 2267 of 2009 on the files of the Court of Judicial First Class Magistrate-I, Kannur, in so far as they relate to the petitioners stand quashed.

53. Accused Nos.5 and 6 in S.T.No.3613 of 2011 on the Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 files of the Court of Judicial First Class Magistrate-I, Kottayam are the petitioners. They filed the captioned miscellaneous case seeking quashment of Annexure-I complaint and Annexure-IV report and all proceedings in S.T.No.3613 of 2011 on the files of the Court of Judicial First Class Magistrate-I, Kottayam. Evidently, cognizance was taken on Annexure-I complaint. Annexure-I complaint was filed based on Annexure-IV report of the Public Analyst. The item of food involved in this case is `Margarine'. The standard thereof is prescribed under item No.A.12 of Appendix B of Prevention of Food Adulteration Rules, 1955. In Annexure-IV report of the Public Analyst it was found that the free fatty acid of extracted fat (as oleic acid) as against the standard prescribed thereof viz., not more than 0.25%, the sample analysed contained only 0.1% that is, within the limit. It was found to be adulterated on the ground that though the prescribed standard as per item No.A.12 of of Appendix B of the Prevention of Food Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Adulteration Rules, 1955 in respect of fat is "not less than 80.0% m/m" the sample contained only 77.6%. True that, the said report was superseded by Annexure-V report of the Central Food Laboratory. But, at the same time, it is evident that the basis for the prosecution is the report of Public Analyst viz., Annexure-IV and complaint was filed based on the same. As noticed hereinbefore, it is evident from Annexure-IV that for arriving at the results noted thereunder an

analysis was conducted by the Public Analyst from a laboratory. In the light of the decision in Pepsico India Holdings (P) Ltd. v. Food Inspector (2010 (4) KLT 706 (SC)) we have answered the reference to the effect that wherever an analysis by a Public Analyst from a laboratory is to be conducted inevitably in order to be reliable and to form a basis for a prosecution it must be one conducted from a laboratory defined under Section 23(1-A) (ee) of the Prevention of Food Adulteration Act, 1954. Since the indisputable position obtained is that no such Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 laboratories were defined till repealing of the Prevention of Food Adulteration Act, 1954 Annexure-IV can only be a report prepared after conducting an analysis from a laboratory which was not defined in terms of the aforesaid provision. In the said circumstances, in the light of the decision in Pepsico's case (supra) and the aforesaid finding it cannot be a reliable one and needless to say, in such circumstances, on Annexure-I complaint filed relying on such a report viz., Annexure-IV cognizance could not have been taken, in the matter. When that be so, we have no hesitation to hold that the complaint and all the proceedings in S.T.No.3613 of 2011 pending against the petitioners who are accused Nos.5 and 6 therein, before the Court of Judicial First Class Magistrate-I, Kottayam are liable to be interfered with.

54. Accordingly, this Crl.M.C. is allowed. The complaint and all further proceedings in S.T.No.3613 of 2011 pending before the Court of Judicial First Class Criminal R.P.Nos.1814 of 2002, 1518, 1665, 1981, 2173, 2511 of 2003, 317 & 439 of 2004, 2594 of 2005 and Crl.M.C.Nos. 417, 2105, 2106, 2932 and 3128 of 2011, 1374 and 1391 of 2012, 2755 of 2013 Magistrate-I, Kottayam to the extent it applies to the petitioners who are accused Nos.5 and 6 stand quashed.

Sd/-

C.T. RAVIKUMAR JUDGE Sd/-

K.P. JYOTHINDRANATH JUDGE shg/TKS/spc