

Municipal Corporation Of Delhi vs Shiv Shankar on 1 February, 1971

Equivalent citations: 1971 AIR 815, 1971 SCR (3) 607, AIR 1971 SUPREME COURT 815

Author: I.D. Dua

Bench: I.D. Dua, S.M. Sikri, Vishishtha Bhargava

PETITIONER:
MUNICIPAL CORPORATION OF DELHI

Vs.

RESPONDENT:
SHIV SHANKAR

DATE OF JUDGMENT 01/02/1971

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
SIKRI, S.M. (CJ)
BHARGAVA, VISHISHTHA

CITATION:
1971 AIR 815 1971 SCR (3) 607
1971 SCC (1) 442

ACT:
Repeal-Implied-Prevention of Food Adulteration Act, 1954-
Fruit Products Order, 1955-Sale of adulterated Vinegar-
Prosecution under Adulteration Act-Competence-If Fruit
Products Order impliedly repeals Adulteration Act.

HEADNOTE:
The respondent, who was selling Vinegar under a license granted under the Fruit Products Order, 1955, made by the Central Government under s. 3 of the Essential Commodities Act, was prosecuted under the Prevention of Food Adulteration Act, 1954, for selling adulterated vinegar. He pleaded that vinegar, whether brewed or synthetic, being a food product and standard specification for such vinegar being tabulated in Part XIV attached to the Second Schedule

of the Fruit Order, persecution without the previous sanction of the licensing Officer as required by clause 15 of the said order was incompetent. The trial judge rejected the contention. But the High Court quashed the proceedings. It was observed that the special provisions of the Fruit Order had overriding effect and therefore a manufacturer of fruit products could only be prosecuted under the provisions of the Fruit Order.

In the appeal to this Court it was contended for the respondent that there was an irreconcilable conflict between the two statutory provisions, and the Fruit Order being, not only of a date later than the Adulteration Act but also having, by virtue of s. 3(6) of the Essential Commodities Act overriding effect over all other laws, it must prevail over the Adulteration Act and the rules. On the question whether the Fruit Order impliedly repeals the Adulteration Act,

HELD : The plea of implied repeal must fail and the appeals must be allowed.

To determine if a later statutory provision repeals by implication an earlier one it is necessary to scrutinise and consider the true meaning and effect both of the earlier and the later statute. If the objects of the two statutory provisions are different and the language of each statute is restricted to its own object or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on surface. [611 D-G]

The provisions of the Adulteration Act and the Fruit Order, for effectuating their respective objects, have imposed, different restrictions in the manufacture and sale of vinegar whether brewed or synthetic. in the interest of public health the respondent has to comply with the provisions of the Adulteration Act and Rules and in the interests of equitable distribution of essential commodities including the articles of food covered by the Essential Commodities Act and the Fruit Order they have to comply with the provisions of the fruit Order. Both the provisions are supplementary-

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mentary and cumulative in their operation and no provision of the Fruit Order is shown to be destructive of or fatal to any provision of the Adulteration Act or the Rules made thereunder so as to compel the court to hold that they cannot stand together. If the Adulteration Act or Rules impose some restrictions on the manufacturer, dealer and seller of vinegar, then they have to comply with them irrespective of the fact that the Fruit Order imposes lesser number of restrictions in respect of these matters. The former do not render compliance with the latter impossible, nor does compliance with the former necessarily and automatically involve violation of the latter. Even if both statutes to some extent overlap, section 26 of the

General Clauses Act fully protects the guilty parties against double jeopardy or double penalty. [618 C-H]
Om Prakash Gupta V., State of U.P., [1957] S.C.R. 423, T. S. Baliali v. T. S. Rengachari, 1969 3 S.C.R. 65, State v. Gurcharan Singh, A.I.R. 1952 Punjab 89, and Paine v. Stater, [1883] 11 Q.B.D. 120. ,referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION:, Criminal Appeals Nos. 151 to 158 of 1966.

Appeals from the judgment and order dated December 30. 1964 of the Punjab High Court, Circuit Bench at Delhi in Criminal Revisions Nos. 81-D to 83-D, 107-D and 129-D to 132-D of 1964.

Bishan Narain, B. P. Maheshwari and N. K. Jain, for the appellant (in all the appeals).

C. K. Daphtary, N. N. Goswami, K. L. Mehta and S. K. Mehta, the respondent (in Cr. A. No. 151/1966).

K. L. Gossain, N. N. Goswami, K. L. Mehta and S. K. Mehta, the respondent (in Cr. As. Nos. 152 to 158 of 1966). S. K. Mehta for the intervener.

The Judgment of the Court was delivered by Dua, J.-These eight appeals with certificate (Crl. Al)-peals Nos. 151 to 158 of 1966) raise a common question of law and would, therefore, be disposed of by a common judgment. In-deed, all the appeals in the Punjab High Court were also disposed of by a learned single Judge of that Court sitting on circuit at Delhi by a common judgment and another learned single Judge of the same Court similarly certified the cases to be fit for ,appeal to this Court by a common order.

The only question canvassed at the bar requiring determina- tion by us is whether the respondent is liable to be prosecuted under the Prevention of Food Adulteration Act, 37 of 1954 (hereafter called the Adulteration Act) for selling adulterated vinegar when the vinegar is being sold under a licence granted under the Fruit Products Order, 1955 (hereafter called the Fruit Order) made by the Central Government under s. 3 of the Essen-

tial Commodities Act. The High Court has relying on an un- reported Bench decision of the Punjab High Court in State v. RaJ Kumar (Crl. A. 996 f 1961 decided on October 29, 1962) held that they cannot be prosecuted. It was argued in the High Court that the rules made under the Adulteration Act had come into force after the enforcement of the Fruit Order and vinegar being mentioned as an article of food in those rules, prosecution under both the provisions of law was permissible. Reliance in support of this argument was also placed on s. 26 of the General Clauses Act. This argument was not accepted and it was observed that the special provisions of the Fruit Order had overriding effect and, therefore, a manufacturer of Fruit Products could only be prosecuted under the provisions of the Fruit Order. Prayer for reference to a larger Bench for reconsideration of Raj Kumar's case

(supra) did not find favour with the learned single Judge.

In this Court the view taken in Raj Kumar's case (supra) was sought to be supported by the learned counsel for the, respondent. The provisions of the Fruit Order and of the Adulteration Act, it was contended, could not harmoniously co-exist on the statute book, as compliance with one would, in certain contingencies, result in violation of the other some respects. With respect to the particular charges tried in the cases in appeal, however, no attempt was made on behalf of the respondents to show that there was any fatal conflict or inconsistency between the two provisions. The question before us accordingly lies within a very narrow compass. The appellant urged that there is no implied repeal of the Adulteration Act by the Fruit Order in so far as the sale of vinegar is concerned, whereas the case of the respondent is that there is an implied repeal and the respondents are not liable to be prosecuted under the Adulteration Act for violating its provisions. Shri Bishan Narain sought support for his submission from *Om Prakash Gupta v. State of U.P.* (1) and *T. S. Baliah v. T. S. Rangachari* (2). In the former case S. 5 (1) (c) of the Prevention of Corruption Act was held not to repeal s. 409 I.P.C. The decision of the Punjab High Court (*Khosla and Falshaw, JJ.*) in *State v. Gurcharan Singh*(3) holding to the contrary was overruled. In the latter case s. 52 of the Income tax Act, 1922 was held not to repeal s. 177, T.P.C. It is unnecessary to refer in detail to the facts of all the eight cases separately as no such reference was made by either side at the bar. Shri Bishan Narain for the appellant, by way of illustra-

(1) [1957] S.C.R. 423 (2) [1969] 3 S.C.R. 65.

(3) A.I.R. 1952 Punjab 89.

tion made a passing reference to the facts of *Cril. Appeal No. 155 of 1966*. From the record of that appeal we find that samples of (i) sugar cane juice vinegar, (ii) vine (pure) vinegar and (iii) pure jaman vinegar, were taken by a Food Inspector from the shop of the respondent on October 17, 1960 and on the 'same having been found highly adulterated and unfit for human consumption because of the presence of sulphuric acid which is prohibited, complaints under ss. 7/16 of the Adulteration Act were instituted by the Municipal Prosecutor in December, 1960. After the prosecution evidence was recorded, the respondent Shiv Shan- ker applied to the trial magistrate in October, 1963 praying that the prosecution be dropped. In this application it was admitted that the prosecution had arisen out of a raid dated October 17, 1960 at the premises of the accused "when allegedly samples of vinegar were taken which are stated to be adulterated because of the presence of sulphuric acid". It was pleaded that-the petitioning accused had secured in 1960 a licence under the Fruit Order and vinegar whether brewed or synthetic being a food product and standard specification for such vinegar being tabulated in Part XIV attached to the Second Schedule of the Fruit Order, prosecution without the, previous sanction of the Licensing Officer as required by cl. 15 of the said Order was unauthorised. Prosecution under the Adulteration Act was on this ground pleaded to be incompetent. In the application reliance in support of this plea was placed on the unreported Bench decision of the Punjab High Court in Raj Kumar's case in which according to the accused it had been held that a licensee under the Fruit Order could not be prosecuted for any contravention of that Order or of the Adulteration Act without the previous sanction of the Licensing Authority appointed under the Fruit Order. The trial magistrate basing himself on an unreported single Bench decision of

the Punjab High Court and on s. 26 of the General Clauses Act rejected this application. On revision, the Additional Sessions Judge relying on the decision in Raj Kumar's case (supra) made a reference to the High Court recommending that the proceedings be quashed. J. S. Bedi, J., relying on Raj Kumar's case (supra) quashed the proceedings. S. K. Kapur J., who certified the case to be fit for appeal after quoting a passage from Raj Kumar's case (supra) considered the question raised to be important enough for appeal to this Court.

The general principles governing implied repeal appear to us to have long since been settled. The difficulty is normally experienced in their application to a given case. From the passage quoted by Kapur J., from the unreported Bench decision in Raj' Kumar's case (supra) upholding the implied repeal of the Adulteration Act by the Fruit Order it seems to us that the Division Bench did not correctly and fully grasp them. We accordingly, consider it proper to broadly restate the general rule. It was laid in *Paine v. Stater*(1) that when two Acts are inconsistent or repugnant the later will be read as having impliedly repealed the earlier. As the legislature must be presumed in deference to the rule of law to intend to enact consistent and harmonious body of laws, a subsequent legislation may not be too readily presumed to effectuate a repeal of existing statutory laws in the absence of express or at least clear and unambiguous indication to that effect. This is essential in the interest of certainty and consistency in the laws which the citizens are enjoined and expected to obey. The legislature, which may generally be presumed to know the existing law, is not expected to intend to create confusion by its omission to express its intent to repeal in clear terms. The courts, therefore, as a rule, lean against implying a repeal unless the two provisions are so plainly repugnant to each other that they cannot stand together and it is not possible on any reasonable hypothesis to give effect to both at the same time. The repeal must, if not express, flow from necessary implication as the only intendment. The provisions must be wholly incompatible with each other so that the two provisions operating together would lead to absurd consequences, which intention could not reasonably be imputed to the legislature. It is only when a consistent body of law cannot be maintained without abrogation of the previous law that the plea of implied repeal should be sustained. To determine if a later statutory provision repeals by implication an earlier one it is accordingly necessary to closely scrutinise and consider the true meaning and effect both of the earlier and the later statute. Until this is done it cannot be satisfactorily ascertained if any fatal inconsistency exists between them. The meaning, scope and effect of the two statutes, as discovered on scrutiny, determines the legislative intent as to whether the earlier law shall cease or shall only be supplemented. If the objects of the two statutory provisions are different and the language of each statute is restricted to its own objects or subject, then they are generally intended to run in parallel lines without meeting and there would be no real conflict though apparently it may appear to be so on the surface. Statutes in *pari materia* although in apparent conflict should also so far as reasonably possible, be construed to be in harmony with each other and it is only when there is an irreconcilable conflict between the new provision and the prior statute relating to the same subject matter, that the former, being the later expression of the legislature, may be held to prevail, the prior law yielding to the extent of the conflict. The same rule of irreconcilable repugnancy controls implied repeal of a general by a special statute. The subsequent provision treating a phase of the same general subject matter in a more minute way may be intended to imply repeal pro-tanto of the (1) [1883] 11 Q.B.D. 120.

Repugnant general provision with which it cannot reasonably co-exist. When there is no inconsistency between the general and the special statute the latter may well be construed as supplementary.

In the light of these broad guidelines we may now examine the two statutes as they stood in 1960 because the cases with which we are concerned relate to that year. The history and the scheme of the two statutory provisions would be helpful in discovering the legislative intent on the question of implied repeal. Turning first to the Adulteration Act, it was enacted by the Parliament to make provision for the prevention of adulteration of food and it came into force on June 1, 1955. Previously corresponding laws on adulteration of foodstuffs were in force in different States, having been enacted by their respective legislatures. All those laws were repealed by s. 25 of the Adulteration Act. It may be pointed out that under the Government of India Act, 1935 "adulteration of foodstuffs and other goods" was a provincial subject whereas under the Constitution it is included in the Concurrent List. Section 2(i) of this Act which defines the word "adulterated" consists of several sub-clauses. One of these sub-clauses is (1) according to which "an article of food shall be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability". Clause (v) of s. 2 defines "food" to mean "any article used as food or drink for human consumption other than drugs and water and includes : (a) any article which ordinarily enters into or is used in the composition or preparation of human food, and (b) any flavouring matter or condiments. According to cl. (ix) an article of food shall be deemed to be "misbranded" if it falls within any one of the sub-clauses (a) to (k). It is not necessary to reproduce all these sub-clauses. "Package" has been defined in cl. (X) to mean "a box, bottle, casket, tin, barrel, case, receptacle, sack, bag, wrapper or other thing in which an article of food is placed or packed". We have referred to the definitions of "misbranded" and "package" because one of the cases before us (Crl. A. 154 of 1966) is a case of alleged misbranding, the remaining seven cases being of alleged adulteration. Section 5 prohibits import of, inter alia, adulterated and misbranded food and all articles of food in contravention of any provision of the Act or of any rules made thereunder. Section 7 prohibits manufacture for sale or store and also sale and distribution of, inter alia, adulterated and misbranded food and articles of food, in contravention of the Adulteration Act and the Rules made thereunder. Section 8 provides for appointment of Public Analysts and s. 9 for the appointment of Food Inspectors. The powers of Food Inspectors are contained in S. 10. He possesses very wide powers for the purpose of effectively achiev-

ing the statutory object of preventing the manufacture, sale and distribution etc., of adulterated articles of food. The procedure for taking samples of food by the Food Inspector for analysis is prescribed in s. 11 and the report of the Public Analyst is made admissible by s. 13. The proviso to sub-s. (5) of s. 15 makes the certificate signed by the Director of Central Food Laboratory final and conclusive proof of the facts stated therein. The Central Food Laboratory is established by the Central Government under s. 4 for the purpose of carrying on functions entrusted to it by the Adulteration Act or by the Rules made thereunder. Section 16 provides for penalties for offences under the Adulteration Act and cl. (a) of sub-s. (1) makes it an offence for any person, whether by himself or by any person on his behalf to import into India or manufacture for sale or to store, sell or distribute any article of food in contravention of any of the provisions of the Act or of any rules made

thereunder. In the prosecution for an offence pertaining to the sale of an adulterated or misbranded article of food s. 19 makes impermissible the defence that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased an article for analysis was not prejudiced by the sale. Section 20 prohibits cognizance and trial of offences under the Act except when prosecution is instituted by or with the written consent of the State Government or a local authority or a person authorized in this behalf by such Government or authority. Under the proviso to this section a purchaser referred to in s. 12, is, however, empowered to institute a prosecution if he produces in court a copy of the report of the Public Analyst along with the complaint. Section 21 overrides s. 32, Cr.P.C. in the matter of sentence to be passed under this Act by the Presidency Magistrates or Magistrates of 1 Class, trying offences under the Act. Section 23 confers on the Central Government wide powers to make rules under the Act after consulting the Central Committee for Food Standards appointed by the Central Government under s. 3. Section 24 empowers the State Government, (after consultation with the Central Committee for Food Standards and with previous publication) to make rules for giving effect to the provisions of the Act in matters not covered by s. 23. Various States have actually framed rules under this section.

We may now briefly refer to the Prevention of Food Adulteration Rules, 1955 (hereafter called the Adulteration Rules). These rules were made by the Central Government under s. 4(2) and s. 23(1) of the Adulteration Act and were published in the Official Gazette as per notification dated September 12, 1955. The rules other than those contained in Part III- Appendix B-Item A.12 Margarine, Part VI and Part VII came into force on the date of their publication in the Official Gazette : the rules contained in Part III, Appendix B, Item A.12 Margarine came into force on June 1, 1956 and the rules contained in Part VI and Part VII came into force on December 1, 1956-: vide r. 1(3). Under S. 23(2) (prior to its amendment in 1964) all rules made under sub-s. (1) had to be laid as soon as possible before both Houses of Parliament. By Act 49 of 1964 sub-s. (2) was amended so as to provide for every rule made under sub-s. (1) to be laid before each House of Parliament while in session, for a total period of 30 days in order to afford an opportunity to the two Houses to study and to modify or annul it for, future if both Houses so agree. We have referred to this amendment as some of the rules were amended thereafter. The effect of the subsequent amendment of some of the rules will be noticed later. The Adulteration Rules clearly bring out the anxiety of their authors to see that wholesome food is sold to the citizens. The duties and powers of Food Inspectors as contained, inter alia, in rr. 9 and 13, broadly illustrate this anxiety. These rules also indicate that the framers of the Rules were not unaware of the different provisions of the Fruit Order. By way of illustration reference may be made to r. 50 which prescribes conditions of licence to manufacture, sell, stock, distribute or exhibit certain articles of food. In cl. (1) of sub-r. (1) of this rule the fruit-products covered under the Fruit Order and some other articles have been excluded from the operation of this rule. This clause was amended twice, once in November, 1956 and again in April, 1960. Had the Adulteration Act been intended to be impliedly repealed by the Fruit Order (which would also mean implied repeal of the rules) it would have been unnecessary to expressly exclude such fruit-products from the operation of this rule. Rule 5 and Appendix B of these Rules came into force on December 1, 1956 after the promulgation of the Fruit Order. According to r. 5 the standard of quality of the various articles of food specified in Appendix B are as specified therein. In Appendix B item at sl. no. A.16 deals with "fruit products". But the articles of fruit products dealt with in A. 16.01 to A. 16.12 clearly show that vinegar is not included in the expression "fruit products". Vinegar

is dealt with in A.20 and synthetic vinegar in A.20.01. Both these items were added in April, 1960.

We may now turn to the Essential Commodities Act, 10 of 1955 and the Fruit Order. The Essential Commodities Act was enacted in 1955 with the object of providing, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities. It came into force on April 1, 1956 repealing the Essential Commodities Ordi-

nance No. 1 of 1955 which had been promulgated with the same object and enforced on January 26, 1955, the date of the expiry of the Essential Supplies (Temporary) Powers Act 26 of 1946. The last named Act had replaced the Essential Supplies (Temporary Powers) Ordinance No. XVIII of 1946 which had come into force on October 1, 1946. That Ordinance was promulgated with the object of continuing, during a limited period, powers to control the production, supply and distribution of, and trade and commerce in, foodstuffs and certain other commodities. To empower the Indian Legislature to enact law on this subject matter the British Parliament had passed India (Central Government and Legislation) Act, 1946(9 and 10 Geo. VI, c.39). The Indian Legislature not being in session the Ordinance was promulgated to meet the emergency and this was replaced by Act 26 of 1946. Reference has been made by us to this past history for the purpose of indicating the different objects and purposes intended to be achieved by the two legislative measures. Section 2 of the Essential Commodities Act which is the definition section defines in cl. (a) "essential commodity to mean any of the classes of commodities stated in sub-cl. (i) to (xi). Sub-clause (v) refers to "foodstuffs, including edible oil-seeds and oils" and cl.

(xi) confers power on the Central Government to declare by a notified order any other class of commodity to be an essential commodity for the purposes of the Act, being a commodity with respect to which Parliament has power to make laws by virtue of Entry 33 in List III in the 7th Schedule to the Constitution. Section 3 of the Act confers on the Central Government power to control production, supply, distribution etc., of essential commodities by providing, by an order, for regulating or prohibiting the production, supply and distribution of those commodities and trade and commerce therein. Every order made under this section has to be laid before both Houses of Parliament as soon as may be after it is made. By virtue of s. 6 Orders made under s. 3 have effect notwithstanding anything inconsistent there- ,with contained in any enactment other than the Essential Commodities Act. Section 7 provides for penalties for contravention of orders made under s. 3. Under s. 11 courts are prohibited from taking cognizance of offences punishable under this Act except on a report in writing of the facts constituting such an offence made by a person who is a public servant as defined in s. 21, I.P.C. Section 12 of this Act vests in the Presidency Magistrates and Magistrates of 1 Class power to pass sentences of fines exceeding Rs. 1,000/- on convicted persons notwithstanding the restriction in this respect imposed on their powers by s. 32, Cr.P.C. As already noticed earlier, an ordinance called the, Essential Corn modifies Ordinance, 1 of 1955 had been promulgated on the expiry of the Essential Commodities (Temporary Powers) Act and the present Act was passed to replace that Ordinance.

6 16 It may appropriately be pointed out at this stage that it was not the respondent's case that the Essential Commodities Act had the effect of impliedly repealing the Adulteration Act for the purposes of these cases. The only argument urged was that the Fruit Order had that effect and its

overriding effect by virtue of S. 3 of the Act was strongly emphasised. We may now turn to the Fruit Order (S.R.O. 1052 dated 3rd May, 1955 published in the Gazette of India dated 14th May, 1955) which was made by the Central Government in exercise of the powers, conferred on it by s. 3 of the Essential Commodities Act. Clause (2) of this Order, which is the definition clause, defines the expression "fruit product" in sub-cl. (d) and "vinegar, another brewed or synthetic" is included in this expression as per item (ii) of this sub-clause. "Licensing Officer" as defined in sub-cl. (g) means the Agricultural Marketing Adviser to the Government of India and it includes any other Officer empowered in this behalf by him with the approval of the Central Government. "Manufacturer" as defined in sub-cl.

(h) means a licensee engaged in the business of manufacturing in fruit products for sale and includes a person purchasing such fruit products in bulk and repacking them for sale either by himself or through someone else. Clause 4 prohibits all persons from carrying on business of manufacture except and in accordance with the terms of an effective licence granted to him under this Order in Form "B". Clause 5 prescribes procedure for applications for the grant of a licence under cl. 4. Clause 7 enjoins the manufacturers to manufacture fruit products in conformity with the sanitary requirements and the appropriate standard of quality and composition specified in the Second Schedule to the Order and cl. 8 lays down the requirements to be complied with by the manufacturers in regard to the packing, marketing and labelling of containers, of fruit products. Clause 10 prohibits sale, exposure for sale, despatch or delivery to any agent or broker for the purpose of sale, any fruit products which do not conform to the standard of quality and composition specified in the Second Schedule or which are not ,packed, marked and labelled in the manner laid down in the Order: ,the proviso to this clause contains directions for fruit products imported into India. Clause 12 contains a mandate for every manufacturer to comply with the directions and orders issued to him and failure to do so is to be deemed to be a contravention of the provisions of the Order. According to cl. 15 no prosecution for contravention of any of the provisions of this Order is to be instituted without the previous sanction of the Licensing Officer.

The object and purpose of the Adulteration Apt is to eliminate the danger to human life and health from the sale of unwholesome articles of food. It is covered by Entry 18, List III of the 7th Schedule to the Constitution. The Essential Commodity-

ties Act on the other hand has for its object the, control of the production, supply and distribution of, and trade and commerce in,. essential commodities and is covered by Entry 33 of List III. In spite of this difference in their main objects, control of production and distribution of essential commodities may, to an extent from a. broader point of view include control of the quality of the essential articles of food and, thus considered, it may reasonably be urged that to some extent it covers the same field as is covered by the provisions of the Adulteration Act. The two provisions may, therefore, have within these narrow limits co-terminus fields of operation. On this premise we have to see if the two provisions can stand together having cumulative effect and in case they cannot, which provision has the overriding or controlling effect. It is needless to point out that they can stand together if the powers are intended to be exercised for different purposes without fatal inconsistency or repugnancy.

At the bar Shri Daphtary in his usual persuasive manner argued that there is an irreconcilable conflict between the two statutory provisions and the Fruit Order being, not only of a date later than the Adulteration Act but also having, by virtue of s. 3(6) of the Essential Commodities Act, overriding effect over all other laws, it must prevail over the Adulteration Act and Rules. He pointed out that under the Fruit Order the prosecution can be instituted only with the previous sanction of the Licensing Officer whereas under

the Adulteration Act even a purchaser may, without any such sanction, institute a prosecution merely by producing along with his complaint a certificate from the Public Analyst. He also drew our attention to s. 20-A of the Adulteration Act according to which, unlike the Fruit Order, the Court trying an offence under that Act is empowered to implead the manufacturer, distributor or dealer of any article of food, it is satisfied that he is also concerned with, that offence, and proceed against him as though the prosecution had been instituted-against him under s. 20. We do not think this section in any way reflects the legislative intention of implied repeal of the Adulteration Act by the Fruit Order. The two statutory provisions can operate within their respective spheres without giving rise to any absurdity or such grave inconvenience as would impel the court to sustain the plea of implied repeal., Incidentally it may also be pointed out that this section was added by Act 49 of 1964 which came into force on March 1, 1965 long after 1960 when the present cases were started. Shri Daphtary developed his argument by adding that if the respondents have manufactured for sale and have sold vinegar in accordance with the terms of the licence granted to them under the Fruit Order then imposition of further restrictions under the Adulteration Act and Rules with a threat of severe penal consequences for violation of those provisions would be in direct conflict with the mandate or directions under the Fruit Order. The counsel contended that at least the freedom to manufacture and sell vinegar as permitted by the Fruit Order is curtailed or further circumscribed by the Adulteration Act and Rules and this must necessarily cut across the provisions of the Fruit Order. He illustrated his point by submitting that under the Fruit Order use of colouring matter is more liberal than under the Adulteration Act and Rules. In view of these conflicting provisions the Adulteration Act and Rules, according to Shri Daphtary must be held to have been impliedly repealed by the Fruit Order. We are unable to agree with this submission. The two statutory provisions, for the purpose of effectuating their respective objects, have imposed ,different restrictions on the respondents when they manufacture and sell vinegar whether brewed or synthetic. We are, however, 'Informed at the bar that in the present case the disputed vinegar is synthetic. In the interest of public health the respondents have to comply with the provisions of Adulteration Act and Rules and in the interests of equitable distribution of essential commodities including the articles of food covered by Essential Commodities Act and the Fruit Order they have to comply with the provisions of the Fruit Order. The provisions of the Adulteration Act and of the Fruit Order to which our attention was drawn seem to be supplementary and cumulative in their operation and no provision of the Fruit Order is shown to be destructive of or fatal to any ,provision of the Adulteration Act or the Rules made

thereunder So as to compel the court to hold that they cannot stand together. If the Adulteration Act or Rules impose some restrictions on. the manufacturer, dealer and seller of vinegar then they have to comply with them irrespective of the fact that the Fruit Order imposes lesser number of restrictions in respect of these matters. The former do not render compliance with. the latter impossible, nor does compliance with the former necessarily and automatically involve violation of the latter. Indeed, our attention was not drawn to any provision of the Adulteration Act and Rules, compliance with which would result in breach of any mandate, whether affirmative or negative, of the Fruit Order. We are, therefore, unable to find any cogent or convincing reason for holding that the Parliament intended by enacting the Essential Commodities Act or the Fruit Order to implidely repeal the provisions of the adulteration Act and the Rules in respect the statutes can function with full the provisions of the Adultera of the vinegar in dispute. Both vigour side by side in their own parallel channels. Even if they happen to some extent to overlap. s. 26 of the General Clauses Act fully protects the guilty parties against double jeopardy or double penalty. This section lays down that where an Act or omission constitutes an,' offence under two or more enactments then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same offence. If, therefore, the provisions of the Adulteration Act and those of Fruit Order happen to constitute offences covering the same acts or omissions then it would be, open to the prosecuting authorities to punish the offender under either of them subject to the only condition that a guilty person should not be punished twice over.

There is also another aspect which has to be kept in view. Both the Adulteration Act and the Essential Commodities Act have been amended from time to time after their enactment. Being governed by Entries in List III of the 7th Schedule even the States have power to amend these enactments and indeed they have been so amended in some States. The subsequent amendments of the Adulteration Act and of the Essential Commodities Act by the Parliament and the amendment of the Adulteration Rules would also tend to negative any legislative intendment of implied repeal of the Adulteration Act by the Essential Commodities Act or the Fruit Order. It may be recalled that cl. (1) of sub-r. (1) of r. 50 of the Adulteration Rules was amended in 1956 and again in 1960 and the amended clause is indicative of the rule making authority being conscious of both the statutory provisions being operative in their respective fields at the same time, thereby negating implied repeal. A.20 dealing with "vinegar" was also added in Appendix B of the Adulteration Rules in 1956 and A. 20.01 dealing with "

synthetic vinegar" was added in April, 1960. A passing reference may also be made to some of the relevant amendments in some rules made subsequent to the enforcement of the amended section 23 (2). In r. 55 in items at sl. nos. 19 and 20, dealing with pickles and chutnies made from fruit or vegetables and with tomato and other sauces, respectively, the preservatives mentioned in cl. 2 were amended. Similarly in r. 51(2)

the table containing articles like fruit and vegetable juices including tomato- juice was amended. Both the above amendments were made in December, 1965. It may here be pointed out that pickles, chutnies, tomato products, kutchups, sauces and also other unspecified items relating to fruits or vegetables are included in the definition of "fruit product" under the Fruit Products Order. These amendments, though made after 1960, do seem to further negative the intendment of implied repeal as argued on behalf of the respondent. In view of the foregoing discussion it seems to us that the two statutory provisions can harmoniously operate without causing confusion or resulting in absurd consequences' and the scheme of the Adulteration Act and Rules can without difficulty fit into the scheme of the Fruit Order under the Essential Commodities Act. The challenge on the ground of implied repeal must, therefore, be rejected. Incidentally we may note that the view taken by the learned single Judge in this case was later overruled by a Full Bench of the 918 Sup. C.I./71 Delhi High Court in Municipal corporation v. Harnarain (Crl. A. No. 163 of 1967 decided in May, 1969).

Shri Daphtary, as a last resort, tried to press into service Art. 14 in his challenge to the prosecution of the respondent. According to him the prosecuting authorities have an unguided licence to prosecute his clients under one or the other statute and since the penalty under the Adulteration Act is more severe than that under the Fruit Order the principle of equality before the law is violated As this point was not taken in any of the courts below we did not permit him to raise it in this Court. It would, however, be open to the respondent, if so advised, to raise this point in accordance with law in the court below, because the cases have not yet been finally disposed of. The competence of the prosecution having been challenged at an intermediate stage, the cases will have to go back to the trial court. As these cases have been pending since 1962 the trial court should dispose them of with due dispatch and without any further avoidable delay.

The appeals are accordingly allowed and the cases remitted to the trial court for further proceedings according. to law in the light of the observations made above.

R.K.P.S.

Appeals allowed.