

entirely at the discretion of the Magistrate and the defence have no right to force him to recall these witnesses for further cross-examination if he does not desire to do so. Reference was made by learned counsel to a ruling of a learned single Judge of the Madras High Court in the case of *Sardar Khan Sahib v. Athaulla* (1). In this ruling the learned Judge did not at all apply his mind to the difficulty raised by the word "another" and therefore I cannot take his ruling as any authority for the interpretation of that word in section 350(1). I think that the reference is ill-advised and that the accused has no right to demand a re-hearing and accordingly I refuse this criminal reference and direct that the Magistrate shall proceed with the trial of the case.

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 SHYAMA  
 PADO  
 DEB  
 v.  
 SUNDAR  
 DAS

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*Before Mr. Justice Bennet*

EMPEROR *v.* PANCHAM RAM\*

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 1938  
 July, 18

*U. P. Prevention of Adulteration Act (Local Act VI of 1912), section 6—"Written warranty", requirements of—"Sold in the same state in which he purchased"—Mode of proof.*

In a prosecution under section 4 of the U. P. Prevention of Adulteration Act, in respect of selling and exposing for sale adulterated ghee, the shopkeeper relied on the fact that he himself had purchased the ghee from a wholesale firm under cash vouchers which stated that "the ghee sold by the firm was actual village ghee and the groceries were sold at a cheap rate": *Held* that the statement in the cash vouchers was a mere advertisement and did not amount to a written warranty as required by section 6(a) of the Act.

*Held*, also, that for the purpose of sub-section (c) of section 6 of the Act some independent evidence, like that furnished by an analysis and comparison of a sample taken from the wholesale firm which supplied the ghee to the accused, would be necessary besides the mere statement of the munib of the accused that the ghee was sold in the same state in which it was received.

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\*Criminal Reference No. 357 of 1938.

(1) A.I.R. 1925 Mad. 174.

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Mr. *Binod Behari Lal*, for the applicant.

EMPEROR  
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RAM

The Deputy Government Advocate (Mr. *Sankar Saran*), for the Crown.

BENNET, J.:—This is a criminal reference by the learned Sessions Judge of Agra recommending that the conviction of Pancham Ram under section 4 of the U. P. Prevention of Adulteration Act should be quashed and the fine refunded, if paid. The Magistrate had before him a case in which a Bazar Chaudhri of the Agra Cantonment Board took a sample of ghee from the shop of the accused and the analyst stated that it contained fat or oil foreign to pure ghee. After stating the various points raised by the accused the learned Sessions Judge considers that the defence of the accused that the ghee was bought by him under a written warranty is sufficiently established by him under section 6 of the Act and that on such a defence the Bazar Chaudhri should have gone to the wholesale shop of Seva Ram and Jiva Ram and taken a sample from that shop. Now section 6 of the Act requires that the accused vendor must prove three things to the satisfaction of the court:—“(a) that the article or drug sold was purchased by him as the same in the nature, substance and quality as that demanded by the purchaser and with a written warranty to the effect that it was of such nature, substance and quality; (b) that he had no reason to believe at the time when he sold it that the article or drug was not of such nature, substance and quality as aforesaid, and (c) that he sold it in the same state in which he purchased.” Now in subsection (a) what is required is a written warranty. All that has been produced by the accused is a number of cash vouchers showing that Seva Ram Jiva Ram, the wholesale firm, supplied ghee on various occasions in 1937. Now in the cash vouchers there is a printed line which states that the ghee sold by the firm is actual village ghee and that the groceries are sold at a cheap rate. This line does not appear to me to be in any sense a written

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warranty and the mere fact that the signature of the vendor occurs at a totally different place in the bottom of the form does not imply that the signature is attached to that line. The line in question is a mere advertisement alleging that the ghee is good and the groceries are cheap. I consider therefore that in defence no written warranty has been produced. I may further note that if a written warranty had been produced of a proper nature, I do not think it would have been incumbent on the Bazar Chaudhri to go to the wholesale dealers and obtain a sample. In addition to the written warranty it is necessary for the accused to prove as part of his defence under sub-section (c) that he sold the ghee in the same state in which he purchased it. I consider therefore that it would have been for the accused to ask the Bazar Chaudhri to accompany him to the wholesale shop and for the accused to ask for a sample to be taken from the wholesale shop and submitted for analysis. This of course could also have been done at a later date than on the date when the first sample was taken. The accused took no action of this sort and therefore even if there had been a written warranty, the accused did not produce sufficient evidence under sub-section (c). Therefore in my opinion the statement of the munib that it was sold in the same state would not be sufficient. Some independent evidence in support of this statement was necessary. For these reasons I do not agree with the learned Sessions Judge that any defence has been established under section 6 of the Prevention of Adulteration Act. Accordingly I refuse this criminal reference and direct that the papers be returned.