

**PROSECUTION AGAINST CORPORATIONS IN OFFENCES RELATING
TO ADULTERATION OF FOOD – A DISTURBING DEVELOPMENT**

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On the 16th of September 2003 the Supreme Court delivered the Judgment in Criminal Appeal No. 142/1994. The said Criminal Appeal arose out of a criminal complaint under Section 276-C, 277 and 278 read with Section 278-B of the Income Tax Act against a company registered under the provisions of the Companies Act namely M/S Velliappa Textiles Ltd. and its Managing Director Sri C. Velliappa. The Karnataka High Court quashed the complaint on a petition under Section 482 of the Code of Criminal Procedure filed by the above named accused persons. The complainant, Assistant Commissioner, Assessment II, Bangalore became the appellant in the Supreme Court. The Judgment in the Criminal Appeal is reported in Assistant Commissioner, Assessment-II, Bangalore and others –Vs- Velliappa Textiles Ltd. and another (2003) 11 SCC 405. This Judgment herein after will be referred to as Velliappa. Velliappa was cited recently in Criminal Revision No.593 of 1995 of the Gauhati High Court, a case arising out of a complaint under the Prevention of Food Adulteration Act, 1954 (PFA Act hereinafter). The case was heard by a Division Bench on 03.06.2004 and the Judgment was delivered on 09.09.2004. In the Judgment in Criminal Revision No. 593 of 1995 M/S Brooke Bond Lipton India Ltd. –Vs- The State of Assam dated 09.09.2004 as yet unreported the Division Bench followed Velliappa and in effect held that prosecution against a company like M/S Brooke Bond Lipton India Ltd for an offence under the PFA Act is not maintainable because the company cannot be sent to jail. This, at least within the jurisdiction of the Gauhati High Court unsettles a settled position in Law of Prosecution of a corporation under the PFA Act continuing for nearly half a century since the PFA Act came into force on the 1st of June 1955. This is the disturbing development mentioned in the title of this writing. What follows is an attempt to explore this disturbance albeit with limited resources. The Judgment in Criminal Revision No.593 of 1995, M/S Brooke Bond Lipton India Ltd. –Vs- The State of Assam will hereinafter be referred to as Brooke Bond. It will be expedient to analyse both Velliappa and Brooke Bond first.

Analysis of Velliappa

1. As indicated already Velliappa arose out of a complaint under Section 276-C, 277 and 278 read with Section 278-B of the Income Tax Act. The appeal was heard by a Bench of three Judges.

Interestingly however there are three separate Judgments in the appeal. These Judgements will be referred to as the first, the second and the third Judgment in accordance with the Order they are printed in the journal, Supreme Court Cases. The first Judgement is the minority Judgment. The second and the third Judgements constitute the majority. The Judgments constituting the majority also do not agree on all points. Two points for decision arising in the appeal were (1) whether at the stage of according sanction for prosecution under Section 279 (1) of the Income Tax Act, opportunity of hearing should be given to the accused. (2) Whether the prosecution of company is unsustainable as it being a juristic person no substantive sentence of imprisonment can be awarded to it. The unanimous answer on the first point was that no such opportunity of hearing is needed to be afforded. On the second point with which this writing is solely concerned the first Judgment holds that the prosecution of the company is maintainable. The second and the third Judgment are unanimous that because of the reason indicated earlier the prosecution for offences under the Income Tax Act has rightly been quashed.

1.1.0-The reasonings in the minority Judgment began with the mention of several other statutes where similar provision like that of Section 278-B of the Income Tax Act has been made. Within this group of statutes amongst others mention has been made of Section 17 of the PFA Act, Section 34 of the Drugs and Cosmetics Act, Section 10 of the Essential Commodities Act, Section 141 of the Negotiable Instruments Act etc. This is at para 9.1.0 of the minority Judgment. Then at para 18 of the said Judgment a Full Bench decision of the Delhi High Court holding that a sentence of fine alone in a company prosecution under the PFA Act is valid has been noticed. At para 19 of the Judgment on the question of mens rea in food offences the only Constitution Bench Judgment of the Supreme Court alongwith two others Judgments of the Supreme Court on food offences were noticed. The Judgment concluded by relying on M.V. Javali -Vs- Mahajan Borewell and Co and Others (1997) 8 SCC 72, a case dealing with Section 278-B of the Income Tax Act that the prosecution of the company even though the company cannot be imprisoned when convicted is valid in Law. M.V. Javali (Supra) was decided by the Supreme Court on the 26th of September 1997.

1.1.1-The second Judgment leading the majority in Velliappa begins at para 23. The most notable feature of this Judgment for the purpose of this writing is that it does not even once mention any other statute far less the PFA Act even once.

In para 35 of the Judgment, however, the Full Bench Judgement of the Delhi High Court referred to in the minority Judgment has been commented upon. The comment is this: Where

the legislature has granted discretion to the Court in the matter of sentencing, it is open to the Court to use its discretion. Where, however, the legislature, for reasons of policy has done away with this discretion, it is not open to the Court to impose only a part of the sentence prescribed by the legislature, for that amounts to rewriting the provisions of the statute. Entire thesis of the Judgment is with regard to the prosecution under Section 278-B of the Income Tax Act. The conclusion that such a prosecution against a company is not sustainable because the company being a juristic person cannot be imprisoned was reached primarily on two grounds. Firstly to uphold the validity of such a prosecution will amount to filling up a casus omissus and secondly a penal statute has to be strictly construed, Relevant Law Commission Reports several decisions of the Supreme Court bearing on the construction of penal statutes, amongst other materials, have been called in aid in support. M.V. Javali (Supra) has been refused to be followed.

1.1.2–The third Judgment is the shortest of the three. This Judgment in para 57 principally noticed the changes in law made by several foreign countries regarding substitution of fine in lieu of imprisonment in case of corporate criminal liability and held without any discussion of law or authority that without changes in law it is difficult to substitute fine for imprisonment. This position was sought further to be bolstered by the fact that Indian Penal Code (amendment) Bill 1972 indeed sought to make the necessary amendments but the Bill lapsed. On the principal question the Judgment concurred with the conclusion in the second Judgment and thus formed the majority.

1.1.3–From the above analysis it is clear that Velliappa though a decision of a three Judge Bench relating to corporate criminal liability under the Income Tax Act in substance it is a two Judge decision on the principal question arising therein as indicated. Indeed, in none of the two Judgments forming the majority there is any statement nay even indication that M.V. Javali (Supra) deciding the same question in relation to prosecution of a company under the Income Tax Act contrary to the holding by the majority in Velliappa has been overruled. The following passage from Salmond on Jurisprudence, Twelfth Edition at page 147 seems apposite –

“ Where in fact a precedent is disregarded, this may take two forms. The Court to which it is cited may either overrule it, or merely refuse to follow it. Overruling is an act of superior jurisdiction. A precedent overruled is definitely and formally deprived of all authority. It becomes null and void, like a repealed statute, and a new

principle is authoritatively substituted for the old. A refusal to follow a precedent, on the other hand, is an act of co-ordinate, not of superior, jurisdiction. Two courts of equal authority have no power to overrule each others decisions. Where a precedent is merely not followed, the result is not that the later authority is substituted for the earlier, but that the two stand side by side conflicting with each other”.

It is trite to say that in such a situation Courts before which these conflicting decisions are cited are free to choose either of them. Better in law not later in time is the guiding principle of such a choice. Thus even on the question of corporate criminal liability under Section 278-B of the Income Tax Act Velliappa is not a binding authority because of the presence side by side of M.V. Javali (Supra) holding a contrary view.

ANALYSIS OF BROOKE BOND

- 2. – A sample of skimmed milk powder purchased by the Food Inspector from M/S Amit Supply Agency found on analysis by the Public Analyst to be adulterated led to the prosecution of the vendor and M/S Lipton India Ltd. as the manufacturer for an offence under the PFA Act. During the pendency of the case M/S Lipton India Ltd. got amalgamated with M/S Brooke Bond India Ltd. and a new Company M/S Brooke Bond Lipton India Ltd. was born. This new company came to be arrayed as one of the accused in the case by order dated 18.08.1995 passed in the case. Brooke Bond filed criminal revision against the order dated 18.08.1995 and thus was born the Criminal Revision No. 593 of 1995 and the only point in the revision was whether the new company which was not in existence at the time of occurrence of the offence can be arrayed as an accused. Considering that the point arising in the case is not free from intricacy and is likely to arise frequently the revision was referred to a Division Bench by Order dated the 6th of June 2002. All this happened before Velliappa was even born. The Division Bench repelled the contention of the petitioner on the question that they cannot be arrayed as an accused because they were not in existence at the time when the offence occurred. By the fortuitous circumstance of the delay in disposal of the Criminal Revision whereby it came to be heard and disposed of by the Division Bench on 09.09.2004 exactly one week before the anniversary of Velliappa the majority decision in Velliappa, a sidewind, took the center stage and overwhelmed Brooke Bond. It appears from the copy of the Judgment available with the writer that the fourteen and a half page Judgment of the Division Bench consumed, including the facts of the case, twelve and a quarter page in dealing with the original point and only two**

and a quarter pages were devoted to the fortuitous point unsettling a settled position regarding corporate criminal liability under the PFA Act. The Division Bench held thus :-

“The next submission on which the petitioner sought quashing..... The learned Single Judge (Hon’ble the Chief Justice) relying on the decision of the Apex Court in M.V. Javali –Vs- Mahajan Borewell & Co. & Ors. 1997 (8) SCC 72 (Sic), held that in such a situation the Court may sentence the company to pay fine only, as no imprisonment can be awarded against the company. The decision in M.V. Javali (Supra) was considered by a Three Judge Bench in a recent case of Asstt. Commissioner, Assessment-II..... and in the above case the Court (by a majority decision) held that where the sections of Law require the minimum mandatory term of imprisonment coupled with a fine and there is no specific provision otherwise, a company cannot be prosecuted. It was observed that this is a lacuna in a number of enactments, including the Prevention of Food Adulteration Act and the said lacuna cannot be allowed to be filled up by interpretation or construction of the provision of law.” (Underlining supplied)

Then the Division Bench fully quotes para 21 of Velliappa containing the minority view in Velliappa and concludes that the prosecution against the petitioner M/S Brooke Bond Lipton India Ltd cannot be allowed to continue in view of the law laid down by the Apex Court. Thus the petitioner lost on the original point but won by a sidewind.

2.1.0.-At the outset it may be noticed that the portion underlined particularly the reference to PFA Act there was not to be found anywhere in the two Judgments forming the majority in Velliappa. It is also difficult to understand why the minority is quoted and not the majority view. In para 1 of this writing the basic statements in each of the three Judgments in Velliappa have been narrated. All the three Judgments really tried to answer the issue relating to maintainability of a prosecution against a company under the Income Tax Act. The decision and reasons for decision of Velliappa relates only to Section 278-B of the Income Tax Act. Any reference to cases or other statutes containing similar provisions is only incidental and was made only to prop up the central point arising for decision. Any reference and observation in Velliappa to and on the provisions of PFA Act, even if discoverable in the majority view cannot be elevated to the status of a law declared within Article 141 and as such cannot be a binding precedent on the said

provisions of the PFA Act. It is true that portion underlined at para 2 in the quotation from the Judgment of the Division Bench can be deduced from the majority in Velliappa by implication. But it has been long settled that a case is an authority for what it actually decides. In this connection following enlightening passage from Quinn -Vs- Leathen 1901 AC 495 quoted at page 651 in State of Orissa Vs Sudhansu Sekhar Mishra A.I.R 1968 S.C. 647, a five Judge decision of the Supreme Court dated the 7th November 1967 may be read :-

“ Now before discussing the case of Allen V. Flood, (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of expressions which may be found there ore not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expression are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.”

ANALYSIS OF LAW.

3. - So far two statements of law made in this writing are (1) that the majority in Velliappa does not even constitute a binding authority on the question of validity of a prosecution of a company under the Income Tax Act because M.V. Javali (Supra) has never been overruled. (2) that Velliappa cannot be quoted to support the proposition that prosecution of a company under the PFA Act cannot be sustainable because a company cannot be imprisoned, a proposition logically following from the majority in Velliappa. A detailed analysis of the law on the point is attempted in this section with reference to prosecution of a company for offences under the PFA Act.

3.1.0–The opening sentence of the statement of Objects and Reasons of the PFA Bill reads thus :- “ Adulteration of foodstuff is so rampant and the evil has become so widespread and persistent that nothing short of somewhat drastic remedy provided for in the Bill can hope to change the situation”. In pursuance of such an object

provision for prosecution against companies was made in the original PFA Act itself operative from 01.06.1955. By the amendment Act 49 of 1964 effective from 01.03.1965 Section 20-A was added making it possible to implead the manufacturer, distributor or dealer of the offending food stuffs who are nearly always a company within Section 17 of the PFA Act. By the same amendment Act Section 14 was added. PFA Rules, 1955 were similarly amended by inserting Rules 12-A, 12-B, 12-C and Rules for packing and labeling of Foods requiring furnishing of complete address of a manufacturing company. Finally by the Amendment Act 34 of 1976 effective from 01.04.1976 the provisions of Section 17 was further expanded to provide for a detailed procedure for company prosecution and also Section 16 (1-D) was added. All these cannot but be read and understood as undoubted expression of the intention of the legislature to prosecute and punish companies for offences under the PFA Act. The Courts lean against any construction of a provision in a statute which reduces the provision to a dead letter.

In this regard passages from Craies on Statute Law and Maxwell on The Interpretation of Statute have been quoted often in the Judgments of the Supreme Court. The following Judgments throw brilliant light on this aspect of interpretation

- (1) A three Judge unanimous decision of the Supreme Court dated 16.09.1959 reported in AIR 1959 S.C. 198, Sirajul-Haq Vs. S.C. Board of Waqf observes thus:-

“ That is why we think that the literal construction of the expression “any person interested in a Waqf” would render a part of the sub-section wholly meaningless and in effective..... It is well settled that in construing the provisions of a statute Courts should be slow to adapt a construction which tends to make any part of a statute meaningless or ineffective, an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute.”

- (2) Another Three Judge unanimous decision of the Supreme Court dated 05.11.1958 reported in Commissioner of Income Tax -Vs- S. Teja Singh A.I.R. 1959 S.C. 352 observes thus :-

“..... and if we accede to this contention we must hold that though the Legislature enacted S. 18 A (9)(b) with the very object of bringing the failure to send estimates under S.18 A(3) within the operation of S.28, it

signally failed to achieve its object. A construction which leads to such a result must, if that is possible, be avoided on the principle expressed in the maxim "ut res magis valeat quam pereat" vide Cutis -Vs- Stovin Vide also Craies on Statute Law, page 90 and Maxwell on the Interpretation of Statutes, Tenth Edition pages 236-237(10) We are accordingly of opinion that it was competent to the Income Tax authorities to impose a penalty under S. 28 read with S.18 A (9) (b) where there has been a failure to comply with S.18 A (3)."

(3) Craies and Maxwell were again quoted by a Five Judge Bench of the Supreme Court in a decision dated 07.11.1960 in M. Pentiah -Vs- Verramallapa, A.I.R. 1961 S.C. 1107 to observe that a construction reducing a provision to a dead-letter should be avoided.

(4) Another Five Judge unanimous decision dated 13.04.1989 in A.I.R. 1990 S.C. 123, Tinsukhia Electric Supply Co. Ltd -Vs- State of Assam observed thus :-

"The Courts strongly lean against any construction which tends to reduce statute to a futility. The provision of a statute must be so construed as to make it effective and operative, on the principle "Ut res majis valeat quam periat". It is no doubt true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial -review by testing the law for arbitrariness or unreasonableness under Article 14, but what a Court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which legislature intended for it."

Considered in the light of above authoritative principles there can be no doubt that Brooke Bond instead of advancing the remedy set out in the object and reasons of the PFA Act will reduce the provisions of Section 16 (1-D), 16(2), 17, 18 & 20-A of the PFA Act and some of the PFA Rules earlier mentioned to a dead-letter. Unfortunately neither the principles detailed above nor the consequences of making part of the PFA Act ineffective and inoperative by such a holding were placed before the Division Bench.

3.1.1.-Salmond in his celebrated work on Jurisprudence has distinguished judicial decisions as authoritative and persuasive. Authoritative precedents are binding but a persuasive precedent provides option to the Court either to follow it or not. Among persuasive precedents is “judicial dicta, that is to say, statements of law which go beyond the occasion, and lay down a rule that is irrelevant to the purpose in hand, or is stated by way of analogy merely, or is regarded by a later Court as being unduly wide.”

Had Velliappa contained any statement of law regarding prosecution of a company under Section 17 of the PFA Act and the provisions connected therewith or related thereto even though such statement would be irrelevant for the purpose of determining the maintainability of prosecution of a company under the Income Tax Act, Velliappa at best could have attained the status of a judicial dicta. Since, as indicated earlier it did not contain any such statement nor even a reference to the PFA Act, the majority in Velliappa is not even a persuasive precedent. In a prosecution against a company under the Income Tax Act, provision in Section 278-B stands alone. In the PFA Act Section 16 (1-D), 16(2), 18, 20-A and some of the PFA Rules already indicated form a package. Unlike the PFA Act there is no provision in the Income Tax Act for cancellation of licence, forfeiture of the offending articles, advertising of the name of the offending company. A conviction alone under the PFA Act may visit a company with all or any of these consequences. Thus though the provision for prosecution under the Income Tax Act of a company may appear similar to those under the PFA Act considering the total package they cannot be called provisions in pari materia. Therefore even as a matter of analogy either of the holdings in M.V. Javali (Supra) and in Velliappa with regard to prosecution of a company under the Income Tax Act cannot be cited either to support or negate any determination as to maintainability of a prosecution against a company under the PFA Act. To decide either way the maintainability of a prosecution against a company under the Income Tax Act it was logically not necessary in M.V. Javali (Supra) and in Velliappa to decide the maintainability of a prosecution against a company under the PFA Act. Had the same point in relation to a prosecution of a company under the PFA Act been logically involved in the two decisions of the Supreme Court in relation to a prosecution of a company under the Income Tax Act even then the point would have been vitiated by the doctrine of sub-silentio and would not be a precedent. All the above and much more can be read in chapter 6 covering pages 141 to 188 of Salmond on Jurisprudence Twelfth Edition. This section of the writing may be ended with the following quote from the end of chapter 6 of Salmond.

“ Cases involving novel points of law, then, cases of first impression, have to be decided by reference to several things. The Judge must look at existing law on related topics, at the practical social results of any decision he makes, and at the requirements of fairness and justice. Sometimes these will all point to the same conclusion. At others each will pull in a different direction; and here the Judge can only weigh one factor against another and decide between them. The rationality of the judicial process in such cases consists in fact of explicitly and consciously weighing the pros and cons in order to arrive at a conclusion”.

The point of law decided in Brooke Bond will surely qualify as a novel point of law.

3.1.2.-A few decisions of the Supreme Court with some relevance to the topic on hand may be noticed. In K. Sahadev -Vs-Suresh Bir 1995 Supp (3) SCC 668 a problem about two similar provisions of two similar Acts namely Andhra Pradesh Building (Lease, Rent & Eviction) Control Act 1960 and East Punjab Urban Rent Restriction Act 1949 fell for consideration. A single Judge of the Andhra Pradesh High Court struck down Section 4 of the Andhra Pradesh Act as unconstitutional. Despite this the Rent Control Officer held that he had jurisdiction to determine fair rent taking into account existing circumstances of the case. The order was maintained in appeal. In further revision filed by the tenant the High Court held that similar provision of East Punjab Act having been held valid by the Supreme Court in (1988) 1 SCC 366 earlier decision of the Single Judge holding Section 4 of the Andhra Pradesh Act unconstitutional is no more a good law. On these facts the Supreme Court held thus :-

“ Unless the decision in Ataur Rahman was set aside by a larger Bench the declaration given by it that Section 4 was ultra vires could not be put at naught by a decision given by this Court in respect of another Act.”

A.I.R 2001 S.C. 1203 in para 10,11 & 12 throws a flood of light on the Rule of Sub Silentio earlier indicated. A.I.R 2003 S.C. 2661 in para 11,12, 13 & 14 indicates the pitfalls in the way of placing reliance on precedents or judgments assumed to be precedents and cautions Courts against using precedents as provisions of statute. The latest on precedents from the Supreme Court can be read in Punjab National Bank -Vs- R.L. Vaid and

others, 2004 AIR SCW 4708 decided on 20.08.2004. The following passage from the Judgment aptly ends this section of the writing.

“ We find..... facts of the case. There is always peril in treating the words of a judgment as though they are words in a Legislative enactment and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a difference between conclusions in two cases. Disposal of cases by merely placing reliance on a decision is not proper. Precedent should be followed only so far as it marks the path of justice, but you must cut out the dead wood and trim off the side branches or else you will find yourself lost in thickets and branches, said Lord Denning, while speaking in the matter of applying precedents.”

3.1.3.-Till date only nine cases could be discovered when the matter of the provision for prosecution of a company under Section 17 of the PFA Act reached the Supreme Court. These cases are –

- 1. Smti Manibai and another –Vs- The State of Maharashtra 1948-1997 FAC (SC) 17;**
- 2. Malwa Co.-operative Milk Union Ltd, Indore and Others –Vs- Biharilal and another 1948-1997 FAC (SC) 21**
- 3. Kisan Trimbak Kothule and Others –Vs- State of Maharashtra 1948-1997 FAC (SC) 397;**
- 4. State (Delhi Admn.) –Vs- I.K. Nangia and another 1948-1997 FAC (SC) 600;**
- 5. Municipal Corporation of Delhi –Vs- Purushottam Dass Jhunjunwala and Others 1948-1997 FAC (SC) 817;**
- 6. State of Maharashtra –Vs- Baburao Ravaji Mahrulkar and Others 1948-1997 FAC (SC)860;**
- 7. Sri Rajendra –Vs- State of Madhya Pradesh 1948-1997 FAC (SC) 945 ;**
- 8. R. Banerjee and Others –Vs- H.D. Dubey and Others 1948-1997 FAC(SC) 960. and**
- 9. Nalin Thakur and others –Vs- State of Maharashtra 2004 (1) FAC 68. decided on 29th January, 2004.**

Barring the case listed at Sl. No. 6, above all the other cases deal only with the aspect of Section 17 of the PFA Act relating to liability of the Partner, Directors, Managers of Company only. Of some factual interest is the case at Sl. No.8 where the Directors and Managers of M/S Lipton India Ltd, the original accused in the complaint case to

which Criminal revision 593 of 1995 of the Gauhati High Court owes its birth were involved. Another feature of note is that the cases at Sl. No.3, 6 &7 are unanimous decisions of Three Judge Benches of the Supreme Court. These circumstances noticed, one may have a closer look at the decision at Sl. No.6 hereinafter indicated as Baburao. In Baburao a firm, that is a company within Section 17 of the PFA Act, and its three partners were the accused persons. The Chief Judicial Magistrate acquitted all the four accused persons. The appeal by the State was dismissed in limine by the High Court. The supreme Court affirmed the acquittal of two partners on the ground that there was nothing to indicate that those two were in charge of or were in any way responsible for the conduct of the business of the firm. The accused firm and the remaining partner who were respondents 4 and 1 in the Supreme Court were convicted and sentenced in the following words :-

“Respondents 1 & 4 are convicted under Section 16(1) (a) (ii) of the Prevention of Food Adulteration Act, 1954 and each of them is sentenced to suffer imprisonment for a period of three months and a fine of Rs.2000/- each.

How the sentence of imprisonment against the firm was executed is not known. Was it an inadvertent mistake on the part of the Supreme Court to have sentenced a company to undergo imprisonment within Section 17 of the PFA Act ? Or was it deliberate leaving the execution part to be effectuated subject to the maxim *Lex non cogit ad impossibilia*, which means that law has to be understood as dispensing with performance of what is prescribed when performance of it is impossible. A lot of English cases have been noticed under the heading “Impossibility of Compliance” at page 326 of Maxwell on the Interpretation of Statutes, Twelfth Edition. There is also a hint towards the same effect in the minority Judgment in Velliappa at para 14.

To complete this analysis it is necessary to state that the Full Bench of the Delhi High Court in Municipal Corporation of Delhi – Vs- J.B. Bottling Company Pvt. Ltd, 1975 Cri.L.J 1148 referred to in the first and the second judgment in Velliappa decided the matter correctly way back on 14.03.1975. Lastly the following quoted, in the unanimous Three Judge decision of the Supreme Court at SL. 3, from a Division Bench decision of the Supreme Court may be extracted to end the analysis of law :-

“ It is trite that the social mission of food laws would inform the interpretative process so that the legal blow may fall on every adulterator. Any narrow and pedantic, literal and lexical construction likely to leave loopholes for this dangerous criminal tribe to sneak out of the

meshes of the law should be discouraged. For the new criminal jurisprudence must depart from the old canons, which make indulgent presumptions and favoured constructions benefiting accused persons and defeating criminal Statutes calculated to protect the public health and the nation's wealth."

THE REMEDY

- 4.- Even if the basis of Brooke Bond that is the majority in Velliappa is someday overruled by the Supreme Court Brooke Bond will still rule. See K. Sahadev (Supra). Therefore to dispel the disturbing consequences of Brooke Bond two immediate ways available are (1) Appeal against Brooke Bond to the Supreme Court and/or (2) A larger Bench of the High Court overruling Brooke Bond. A third and the surest remedy lies through legislation absence of which the majority in Velliappa found impossible to get over. Meanwhile for any future positive developments on the matter one can only wait. The shorter the wait the better it will be for "the public health and the nation's wealth".**