

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 352 OF 2014

Arifbhai s/o. Gulam Nabi Vora **Petitioner.**

Versus

The State of Maharashtra & Anr. **Respondents.**

Mr. D.S. Bharuka, Advocate for petitioner.

Mr. S.A. Ambad, APP for State.

CORAM : T.V. NALAWADE, J.

DATED : 6th July, 2015.

ORDER :

1. The petition is filed against the judgment and order of Criminal Revision No. 97/2011, which was pending in the Court of Additional Sessions Judge, Aurangabad. The Sessions Court has dismissed the revision filed by present petitioner against the order of issue process made by the learned Judicial Magistrate, First Class, Aurangabad in SCC No. 45/2011, which is filed as a private complaint by the Food Inspector for offences punishable under sections 7[i] r/w. 2[ia] [a], section 2 [ia][c], 2 [ia] [m] punishable under section 16 of the Prevention of Food Adulteration Act, 1954 [hereinafter referred to as the 'Act' for short]. Both the sides are heard.

2. In the incident dated 24.10.2010 accused No. 1 was found selling Khoa in open place in Aurangabad. Police had given information to Food Inspector about such sale of Khoa. Food Inspector visited the place and collected sample of 750 grams of Khoa from accused No. 1. He followed the procedure laid down under the Act and sent a sample to local analysis. Food Inspector issued notice to accused No. 1 in Form No. VI and section 14-A of the Act. The accused then produced the bill of a firm by name Honest Dairy Products, Anand, Gujrat and informed that this firm had supplied the food article. The petitioner is proprietor of the said concern. The sample was found to be adulterated. Complaint is filed against both accused No. 1 and the present petitioner, manufacturer.

3. It is the case of petitioner that the name of purchaser appearing on the bill produced by accused No. 1 does not tally with the name of accused No. 1. It was also submitted that closed and sealed packets as per the requirement of the Act and Rules were not found in possession of the accused No. 1 and so, the prosecution as against the present petitioner is not possible.

4. In the complaint, the name of accused No. 1 and his

address are described as 'Gopalsing Lajjaram Paal, Aurangabad'. On the bill which is admittedly issued by accused No. 2, petitioner, name of the purchaser is mentioned as 'R.R. Gopal'. This bill bears No. 727 and date of sale is 23.10.2010. This bill shows that 1350 k.g. of Khoa was sold in Gujrat by accused No. 2, present petitioner and the value of Khoa was Rs. 94,500/- and VAT amount of Rs. 3780/- was collected on this amount.

5. In the notice dated 27.10.2010 issued under section 14-A of the Act, information was asked by the Food Inspector and in reply to the notice, accused No. 1 specifically informed that accused No. 2 had supplied aforesaid Khoa to him. In complaint, it is specifically mentioned that sample was collected from polythene bag of 40 k.g. which was with the vendor. There were 31 such pouches, bags with the vendor. This information is reduced in to writing in Form No. IV by the Food Inspector.

6. The learned counsel for the petitioner submitted that in view of the provision of section 14 and in view of the fact that there is discrepancy in the description of the purchaser in the bill and the bags were not closed and sealed, relief needs to be given to the petitioner. This Court sees no force in this submission. The provision of section 14 of the Act runs as

under :-

"14. Manufacturers, distributors, and dealers to give warranty.-

No manufacturer or distributor of, or dealer in any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor :

Provided that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of, or dealer in, such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this section.

Explanation - In this section, in sub-section (2) of Sec. 19 and in Sec. 20-A, the expression "distributor" shall include a commission agent."

It can be said that there was no compliance of provision of section 14 or the Rule 12-A from the manufacturer, petitioner. Huge quantity of Khoa was admittedly sold under the aforesaid bill. The bill does not show any warranty, but the proviso given in section 14 can be used, but by the vendor, accused No. 1. Thus, even if other circumstances are ignored and the contentions of the petitioner are considered as they are, there was breach of

provision of section 14 and Rule 12-A.

7. Section 14-A of the Act runs as under :-

"14-A. Vendor to disclose the name, etc., of the person from whom the article of food was purchased. - Every vendor of an article of food shall, if so required, disclose to the Food Inspector the name, address and other particulars of the person from whom he purchased the article of food."

This section has no relation to section 14. Section 14-A and Rule 12-C show that it is the duty of the vendor to supply the name of manufacturer. If such information is supplied by the vendor to the Food Inspector, this information can be used by the Food Inspector for filing the complaint against the manufacturer. The circumstance that the petitioner is not disputing that the aforesaid bill is issued by petitioner needs to be kept in mind in the present case. The defence of discrepancy in the name itself cannot be considered at this stage when there is other record.

8. The provision of section 19 of the Act runs as under :-

"19. Defences, which may or may not be allowed in prosecutions under this Act. - (1)

It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves-

(a) that he purchased the article of- food-

(i) in a case where a license is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer;

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

(3) Any person by whom a warranty as is referred to, in Sec. 14 is alleged to have been given shall be entitled to appear at the hearing and give evidence."

Section 19 (1) of the Act shows that accused No.1 needs to face the prosecution for proving his defence and section 19 (2) of the Act shows that the burden is on the accused No. 1 to prove his defence that he had sold the Khoa in the same condition in which he had brought from accused No. 2.

9. At present, the bill produced by accused No. 1 showing that it is the accused No. 2, who is manufacturer of Khoa, needs to be considered against accused No. 2. It was adulterated food article and there are aforesaid circumstances and so, the provisions of sections 16 and 20 A can be used against the petitioner. As the material is already available, there is no need to wait for trial only as against accused No. 1 and the case can be filed against both the accused on the basis of aforesaid material. There is material to show that the adulterated food article was manufactured by accused No. 2. The date of the sale at Gujrat and the date of collecting sample are relevant and the circumstance that huge quantity of Khoa was found with accused No. 1 and he supplied the information against the accused No. 2, cannot be ignored atleast at this stage.

10. The learned counsel for petitioner placed reliance on

the case reported as **2004 (1) FAJ 87 [Mohinder Kumar Vs. State of Haryana]**. In this case, in view of the facts of that case, the Apex Court held that the genuineness of the bill, invoice was not admitted by the accused, manufacturer and when the offence itself was not proved as against the vendor, the manufacturer was entitled to acquittal. The bill showed that there was no name of accused No. 1 on it, but there was altogether different name. The name of accused No. 1, vendor was Naresh Kumar and on the bill, there was the name of Darshan Lal to whom food article was supplied by the manufacturer. The facts were different. In the present case, genuineness of the bill is not in dispute and the manufacturer is trying to take benefit of the circumstance of discrepancy in the name of accused No. 1 given in the complaint and the name of the person appearing on the bill to whom present petitioner had supplied the Khoa. All these things can be considered only during trial and not at this stage. In the case cited supra also acquittal was given.

11. In the present case, opportunity needs to give to prosecution to prove the case mentioned in the complaint. As there is material of aforesaid nature, the learned J.M.F.C. has not committed any error in making order of issue process. The

instances of selling of adulterated Khoa are increasing day by day and manufacturers are mixing adulterants which are harmful to the health of public. The sweets made from Khoa are liked by children. In view of these circumstances, such case cannot be taken lightly.

12. In the result, the petition stands dismissed.

[T.V. NALAWADE, J.]

ssc/