

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
CRIMINAL APPELLATE JURISDICTION.**

Criminal Revision Application No. 2 Of 2001.
With
Criminal Application No.396 Of 2015.

- (1) Nandkishore s/o Mulchand Biyani.
Age : 35 Years, Occ.: Trade.
- (2) Jugalkishore s/o Mulchand Biyani.
Age : 37 Years, Occ.: Trade.

Proprietor of Shop
“Ambika Tea Company”.
Mondha Road, Jalna.
Both R/o.: Rajendra Prasad Road,
Jalna. Dist. Jalna.

:: **Applicants.**

Versus.

- (1) The State of Maharashtra.
- (2) Jagannath s/o Dattatraya Gonjari.
Age : 49 Years, Occ.: Service.
Food Inspector,
Food and Durg Administration
(Maharashtra State),
Jalna.

:: **Respondents.**

Appearance =>

Mr. Joydeep Chatterji, Advocate a/with Ramchandra Nirmal,
Advocate for the Applicants (Original accused Nos. 1 and 2.)

Mr. D.R. Kale, Additional Public Prosecutor for the State of
Maharashtra / Respondent No.1.

CORAM : V.M. DESHPANDE, J.

DATE : 26th FEBRUARY, 2015.

J U D G M E N T :-

Present Criminal Revision Application is directed against the judgment and order of conviction dated 25th April, 1994 passed by the learned Chief Judicial Magistrate, Jalna, Dist. Jalna in Regular Criminal Case No.64 Of 1992 whereby, the learned Magistrate convicted Accused No.1 – Nandkishor Biyani and Accused No.2 – Jugalkishor Biyani for the offences punishable under Section 7(vi) read with Section 16(1)(b) and (e) of the Prevention of Food Adulteration Act, 1954 (In Short, the P.F.A., Act.) and were directed to suffer rigorous imprisonment for two years and to pay fine of Rs.2000/- each, and in default of payment of fine, to undergo rigorous imprisonment for further six months each, together with the judgment and order dated 3rd January, 2001 passed by the learned 2nd Additional Sessions Judge, Jalna in Criminal Appeal No.16 Of 1994 whereby, the lower appellate court dismissed the Appeal preferred on behalf of the present applicants.

[2] I have heard Mr. Joydeep Chatterji, learned counsel for the Applicants and Mr. D.R. Kale, learned Additional Public Prosecutor for the State.

(i) Applicants – Nandkishor and Jugalkishor, who are brothers were carrying their business under the trade name “Ambika Tea Company”, Mondha Road, Jalna. Under the said trade name, they use to supply Santoor tea dust in packets by putting labels – M/s. Santoor Tea.

(ii) On 2nd January, 1990 Complainant – Jagannath s/o Dattatraya Gonjari, who was Food Inspector visited the premises alongwith the panchas. At the time of his inspection, he found that, in one gunny bag, 605 Kilogram black dust

appearing as tea was stored. As per the complaint, that time, the applicants have disclosed that, it is not tea but it is adulterant. According to the complainant, said powder i.e. adulterant was used for mixing it with the tea dust. He purchased 600 Grams of sample, divided it into three equal parts, get them in clean and dry empty bottles which were sealed and labelled with signatures of the panchas and accused No.1.

(iii) The complaint further proceed that on 3rd January, 1990 sample alongwith covering letter was sent to the Public Analyst, Aurangabad. In the report of the Public Analyst dated 8th February, 1990 (Exhibit – 58), it is mentioned that, black powder analyzed by Public Analyst is identical to the tea dust but instead of it, it is granular powder.

(iv) After obtaining the necessary sanction, complaint was lodged and the accused were prosecuted.

(v) Charge was framed against the applicants. In order to bring home the guilt of accused, the prosecution has examined the Complainant–Food Inspector Jagannath Gonjari (PW No.1), PW No.2 Sayyad Ayub Ali s/o Babamiya and P.W.No.3 Kwaja Samiullah s/o Khwaja Rehmatullah, Assistant Commissioner of Food & Drugs, Jalna.

(vi) The learned trial court after appreciating the evidence, convicted the applicants, as observed in opening paragraphs of this judgment.

[3] At the opening of his submissions, Mr. Joydeep Chatterji, learned counsel for the applicants has submitted that opportunity was not given to the applicants to sent the sample for its re-testing in the Central Laboratory. However, in view of the evidence as pointed out by the learned Additional Public Prosecutor from the evidence of PW No.3 Kwaja Samiullah and in view of below noted two decisions :-

(i) Puwada Venkateswara Rao V/s. Chidamana Venkata Ramana, reported in A.I.R. 1976 Supreme court 869 (1).

(ii) Har Charan Singh V/s. Shiv Rani & Ors., A.I.R. 1981, Supreme Court, 1284(1),

Mr. Chhataerji learned counsel for the applicant did not press the said aspect. Accordingly it is not considered in the present application.

[4] The learned counsel for the applicants then pressed into service the reported decision of this court in case of Nizamuddin Siddikbhai Tigala V/s. The State of Maharashtra, reported in 1985 F.A.J. 509, in which this court has ruled that sub-clause (c) of Rule 16 of the Prevention of Food Adulteration Rules, 1955 made under “the P.F.A.Act” is mandatory. He pointed out from the evidence of complainant PW No.1 Jagannath that he has not followed the procedure as mentioned in sub rule (c) of Rule 16 of the Prevention of Food Adulteration Rules, 1955. He further pointed out that panch witness PW No.2 Sayyad Ayub Ali did not state anything about the procedure, though he has proved the panchnama Exhibit – 74. The learned Additional Public Prosecutor was unable to counter the said submission.

[5] Further the following portion appearing in the evidence of PW No.2 Sayyad Ayub Ali s/o Babamiya, independent witness clinches issue in favour of the present applicants :-

“ It is true that, the accused told to Food Inspector that waste of tea power felling on ground have been stored in a gunny bag

and not stored for sale. It is true that balance and pot have been brought from adjoining shop Raj Kirana Stores. It is true that particles while collecting the sample felled down on the ground, have been again refilled in the container.

Thus from the aforesaid, it is clear that what was stored in the gunny-bag was not adulterant but, it was waste of tea power felling on the ground, stored in a gunny bag and was not stored for sale. Further, he has stated that, particles while collecting the sample felled down on the ground, have been again refilled in the container. In that view of the matter, report of the Public Analyst loses its importance, though it has been done microscopically.

[6] The Food Inspector is expected to follow the mandatory provisions as appearing in Rule 16(c) of “the Rules” made under “the P.F.A.Act”. Since from the evidence as appearing in the present case, said procedure was not strictly followed, in that view of the matter, conviction cannot be sustained. Hence, the impugned judgment and order of conviction needs to be set aside.

[7] The reference will have to be made to the order passed by this court [Coram : M.T. Joshi, J.] on 26th September, 2014; since the learned counsel for the applicants submitted that the applicants cannot be contacted and, therefore, Non-Bailable-Warrant was issued. It is reported that, warrant is yet to be executed. Since this court has heard the Criminal Revision Application on its merit and has found that the conviction cannot be sustained, the order of issuance of Non Bailable Warrant dated 26th September, 2014 needs to be recalled and accordingly it is recalled. Hence, following order is passed :-

ORDER

- (i) Criminal Revision Application is allowed.
- (ii) Judgment and Order of conviction dated 25th April, 1994 passed by the learned Chief Judicial Magistrate, Jalna, Dist. Jalna in Regular Criminal Case No.64 Of 1992 together with the Judgment and Order dated 3rd January, 2001 passed by the learned 2nd Additional Sessions Judge, Jalna in Criminal Appeal No.16 Of 1994 are hereby quashed and set aside.
- (iii) The applicants – accused are acquitted for the offences for which they were charged.
- (iv) Fine amount paid by the applicants shall be refunded to them.
- (v) Order of issuance of Non-Bailable-Warrant against the applicants dated 26th September, 2014 is recalled.
- (vi) Since Criminal Revision Application No.2 Of 2001 itself is decided on its merit and is allowed, no orders are necessary in Criminal Application No.396 Of 2015 and it is disposed of.
- (vii) Rule is made absolute.

(V.M. DESHPANDE, J.)