

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPEAL NO.41 OF 2002**

The State of Maharashtra,  
Through Ashok Dinkar Pawar  
Food Inspector, Food and Drug  
Department, Latur ..Appellant

Versus

1] Yusuf Kondaisab Bagwan,  
Age 50 years,

2] Mainoddin Kondaisab Bagwan,  
Age 35 years,

Both r/o.Shivapur-Sindala,  
Tq. Nilanga, Dist.Latur ..Respondents

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Mr.V.P.Kadam, advocate for appellant

Mr.R.R.Deshmukh, advocate i/b. Mr.R.B.Deshmukh,  
advocate for respondent nos.1 and 2

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**CORAM : M.T. JOSHI, J.**

**DATE : SEPTEMBER 23, 2015**

**ORAL JUDGMENT :**

Heard both sides.

2] Being aggrieved by the judgment and order  
dated 1<sup>st</sup> October, 2001 passed in R.C.C. No.66 of

1992 by learned Judicial Magistrate F.C., Nilanga, Dist. Latur, thereby acquitting the respondents from the offences punishable under Section 16(i) (a)(ii), 16(1)(a)(i) of Prevention of Food Adulteration Act, present appeal is preferred by the State.

3] The prosecution case, in brief, is that on 14<sup>th</sup> November, 1991, PW 1 – Food Inspector collected samples of 600 gms. of chilli powder from the grocery shop of respondents. As per the rules, sample of chilli powder was divided into three packets. One of the samples was sent to the Public Analyst, Public Health Laboratory, Pune. It's report was that the sample was not confirming to the standards and therefore, after following the due procedure, complaint was filed.

4] Before learned Judicial Magistrate F.C., while PW 1 – Food Inspector and PW 3 – Kadappa Gade, Local Health Authority, deposed on the line of the

prosecution, PW 2 – Uddhavrao Suryawanshi, in whose presence seizure of the food articles was made, turned hostile. Materially, learned Judicial Magistrate F.C. found that there was no compliance of the provisions of Section 13(2) of Prevention of Food Adulteration Act, as there was no proof that within ten days of filing of the complaint, notice was sent to the respondents, so that they would be able to get the sample of the article of food kept by the Local (Health) Authority, analysed from the Central Food Laboratory. Therefore, acquittal came to be recorded against the respondents.

5] Learned A.P.P. for the appellant – State submits that the evidence on record would show that notice was sent to the respondents by R.P.A.D. within ten days and therefore, learned Judicial Magistrate F.C. ought to have convicted the respondents.

6] Learned counsel for the respondents has supported the reasons forwarded by learned Judicial Magistrate F.C.

7] On the basis of this material, following points arise for my determination :-

(I) Whether the prosecution has proved that on 14<sup>th</sup> November, 1991, when the complainant visited the shop of the present respondents, they were found in possession of chilli powder, which did not confirm to the standards of the chilli powder ?

. My findings to the said point is in the negative. The appeal is, therefore, dismissed for the reasons to follow.

**R E A S O N S**

8] While PW 1 - Food Inspector has deposed that it was for the Local Health Authority to send the notice to the respondents, PW 3 - Kadappa Gade, Local Health Authority, has deposed that he had, in fact, sent the notice on 7<sup>th</sup> May, 1992 by R.P.A.D., however, the acknowledgement is not filed on record. According to the prosecution, said acknowledgement was filed lateron.

9] In that view of the matter, the reasons recorded by learned Judicial Magistrate F.C. cannot be faulted with.

10] In the result, the appeal is hereby dismissed. Bail bonds, if any, of the respondents shall stand cancelled.

**[M.T. JOSHI, J.]**