

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 497 OF 2002

The State of Maharashtra,
Through Shri. Satishkumar Vishwanath
Khairnar, 44 yrs., Ocu. Service,
Jt. Commissioner,
Food & Drug Department, Latur.

... **APPELLANT**
(Orig. Complainant)

VERSUS

Abdul Gani Mahetabsaheb Choudhari,
Age 37 yrs., Occu. Taj Ice-Cream
R/o. Aurangpura, Nilanga,
Tq. Nilanga, Dist. Latur.

... **RESPONDENT**
(Org. Accused)

...
Ms R. P. Gour, APP for Appellant / State.
Smt. Chincholkar, Advocate for Respondent.

...

CORAM : **INDIRA K. JAIN, J.**

DATE : 28th October, 2015.

JUDGMENT:

. This appeal takes an exception to the judgment and order of acquittal passed on 20th May, 2002 by the learned Judicial Magistrate First Class, Nilanga in Regular Criminal Case No.26 of 1993.

2 For the sake of convenience Respondent shall be referred in his original status as Accused as he was referred before the Trial Court.

3 The facts as are necessary for deciding present appeal may be stated as follows—

- i. Accused was owner and proprietor of a shop styled as Taj Ice-Cream situated at Aurangpura, Nilanga. Complainant was Food Inspector. On 12th May, 1992 Complainant visited shop of Accused at about 05:45 pm. He was accompanied by Sadulla Amirkhan Pathan. Accused was present in the shop. He was dealing in production and sale of ice-candy. Complainant disclosed his identity to Accused and purchased sample of ice-candy from him. The sample was sealed and sent to Public Analyst Pune. At the same time sample bottles were also sent to Local Health Authority Latur. Report of Analyst was received on 22nd June, 1992. It was positive. Necessary sanction was obtained from Commissioner

to prosecute the Accused. After sanction was accorded and statutory notice was issued to Accused complaint was filed before the Magistrate.

- ii. Charge was framed at Exhibit 60. Accused pleaded not guilty and claimed to be tried. His defence was of total denial and false implication. He raised a specific defence that Complainant made demand of money and since he refused to pay, false case was filed against him.
- iii. On behalf of Department 2 witnesses were examined. PW-1 Satish Khairnar is Food Inspector and PW-2 Kadappa Gade is Assistant Commissioner, Food and Drugs Department, Latur. On going through the evidence adduced by Department, Trial Court found correctness and truthfulness of sanction dated 15th January, 1993 was not duly proved and thereby acquitted Accused of the offences punishable under Sections 16(1)(A)(1) and 16(1)(A)(2) of the Prevention of Food Adulteration Act. Being aggrieved by the

order of acquittal Department through State has preferred present appeal.

4 Heard the learned counsel for parties. Perused the evidence adduced on behalf of Department. Crux of prosecution case lies in the statutory compliance under Section 20 of the Prevention of Food Adulteration Act, which reads thus:

“20. Cognizance and trial of offences. – (1)

No prosecution for an offence under this Act, not being an offence under section 14 or section 14-A shall be instituted except by, or with the written consent of the Central Government or the State Government or a person authorized in this behalf, by general or special order, by the Central Government or the State Government.

Provided that a prosecution for an offence under this Act may be instituted by a purchaser or recognised consumer association referred to in section 12, if he or it produces in Court a copy of the report of the public analyst alongwith the complaint.

(2) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under sub-section (1-AA) of

section 16 shall be cognizable and non-bailable.

State Amendments–[Maharashtra]. – In its application to the State Government, for S. 20, substitute the following section, namely: –

“20. Cognizance of offences and arrest without warrant. – (1) All offences punishable under this Act shall be cognizable and non-bailable.

(2) Any Police officer not below the rank of an Inspector of Police, as may be specified by the State Government, by notification in the Official Gazette may, arrest without warrant any person against whom a reasonable complaint has been made or credible information has been received of his having been concerned in any of the offences punishable under this Act.”

5 From the provisions of Section 20 of the Prevention of Food Adulteration Act it is crystal clear that statutory compliance is mandatory. In this connection learned counsel for Respondent vehemently contended that sanction order was placed on record but it was not proved by examining the Sanctioning Authority. Learned counsel further submitted that for want of proof of sanction prosecution itself was not valid and order of acquittal was correctly recorded by Trial Court.

6 It is not in dispute that sanction order though placed on record Sanctioning Authority was not examined to prove the sanction order. Learned APP strenuously submitted that sanction order is a public document and it was not necessary for prosecution to examine Sanctioning Authority.

7 Per contra, learned counsel for Respondent relied upon decision of the Honourable Apex Court in **Mobarik Ali Ahmed Vs. The State of Bombay**¹ referred by Delhi High Court in **Manohar Lal Vs. The State**² and submitted that sanction under Section 20 is not an empty formality and for non-compliance of the mandatory provisions prosecution itself cannot be held as valid.

8 Needless to state that sanction to prosecute is an important factor which constitutes a condition precedent to the launching of prosecution against Accused. Undoubtedly burden of proving requisite valid sanction was on prosecution. Merely saying that examination of Sanctioning Authority was not necessary as sanction order was a public document would not absolve the prosecution from its onerous responsibility to prove correctness and

1 AIR 1957 Supreme Court 857

2 1989 CRI. L. J. 570

truthfulness of contents of sanction order in accordance with the law.

9 Admittedly in the present case Sanctioning Authority was not examined. As a result sanction order was not duly proved. Prosecution did not comply with the mandatory statutory requirement under Section 20 of the Prevention of Food Adulteration Act. In this premise reasonings recorded by Trial Court cannot be said to be incorrect, illegal or perverse. Thus no interference is warranted in the present appeal. Hence the following order:

ORDER

Criminal Appeal No.497 of 2002 is dismissed.

[INDIRA K. JAIN, J.]

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