

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 152 OF 2004

The State of Maharashtra
Through Food Inspector,
Food & Drugs Administration,
Parbhani.

**.... APPELLANT/
[ORI. COMPLAINANT]**

VERSUS

1. Murlidharsa Vasudevsa Meghraj [proceedings Abated
Age : 60 Yrs., Occ. : Business, against accused No. 1]
Pradip Jarda Stores,
Station Road,
Parbhani (abated).

2. Pradeep Murlidharsa Meghraj
Prop. Of Pradeep Jarda Stores, **....RESPONDENT/
[ORI. ACCUSED]**
Station Road, Parbhani.

Mr. A.R.Borulkar, A.P.P. for Appellant – State.

Mr. P.K.Joshi, Advocate for R.No. 2.

CORAM : INDIRA K. JAIN, J.
DATED : 29th October, 2015

JUDGMENT : -

Appellant/State of Maharashtra has preferred this Appeal against the Judgment and Order dated 31/10/2003 passed by the learned Judicial Magistrate First Class, Parbhani in R.C.C. No. 207/1998. By the said Judgment and Order, trial Court acquitted the accused of the offences punishable u/ss 2 (ia) (A), 8 (i), 16 (i) (A) (ii), 7 (v) 62, 16 of the Prevention of Food Adulteration Act, 1954.

2. For the sake of convenience, respondents shall be referred in their original status as accused as they were referred before the trial Court.

3. The gist of prosecution case may be stated as follows :-

i) Accused No. 2 Pradeep Murlidharsa Meghraj was the proprietor of Pradeep Jarda Stores situated at Station Road, Parbhani. Accused No. 1 was the father of accused No. 2. Proceedings abated against him during pendency of trial.

ii) On 24/07/1997 Food Inspector Mr. Shivkumar

Kotgire alongwith another food inspector Suresh Tiwari visited the shop of accused No. 2. He disclosed his identity and purchased samples of Goa Gutkha and Star Gutkha from the shop. Those samples were sealed in accordance with the procedure prescribed under the Act and sent to Public Analyst, Aurangabad.

iii) On receiving report from Public Analyst, complainant submitted all the papers to Assistant Commissioner, Food and Drugs Administration, Parbhani and sought sanction to launch prosecution against the accused. After sanction order was received and notice was issued, complaint came to be filed in the Court.

4. Charge was framed against accused at Exh. 9. He pleaded not guilty and claimed to be tried. The defence was of denial and false implication.

5. Prosecution examined in all three witnesses. P.W. 1 Shivkumar Bapurao Kotgire was the Food Inspector and complainant. P.W.2 Suresh Chandulal Tiwari was another Food Inspector, who accompanied complainant on 24/07/1997 to the shop of accused No. 2 and P.W.3 Kamlakar Dattatraya Joshi was a

witness on panchanama.

6. Considering the evidence adduced on behalf of department, trial Court observed that evidence was not sufficient to hold the accused guilty of the alleged charge. It was further observed that mandatory requirements under the Act were not complied. As a result, order of acquittal was recorded. It is the subject matter of present appeal.

7. Heard learned A.P.P. for appellant State. Perused the evidence adduced on behalf of department. On giving anxious consideration to the facts and circumstances, submissions made on behalf of State and evidence of the prosecution witnesses, this Court finds that the view taken by the trial Court is a reasonable and possible view and for the below mentioned reasons no interference is warranted in the Judgment and Order of acquittal.

8. The crux of prosecution case lies in statutory compliance u/s 20 of the Act. It reads thus, :

“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 authorised 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.] ”

9. Needless to state that sanction to prosecute is mandatory u/s 20 of the Act. It is condition precedent to launch prosecution against the accused. Burden of proving requisite valid sanction was on prosecution. As Sanctioning authority has not been

examined, sanction order, though accorded, could not be duly proved, particularly in respect to correctness and truthfulness of contents of the said order. Non examination of Sanctioning authority was a serious legal infirmity demolishing the edifice of prosecution case.

10. On merits at the thresh-hold it is to be mentioned here that P.W. 3 Kamlakar Joshi, who acted as panch on panchanama Exh.25 did not support the prosecution. He was declared hostile. Nothing could be elicited in cross examination of P.W. 3 Kamlakar Joshi to show that he had a reason to side the accused. It appears that P.W. 3 Kamlakar Joshi was an independent witness. Since he had not supported the prosecution, panchanama Exh.25 comes under the clouds of doubt.

11. Another drawback is that manufacturer and principal distributor of Star Gutkha were not joined as parties by the complainant. It is admitted by complainant and P.W. 2 Mr. Suresh Tiwari, another Food Inspector, who accompanied the complainant to the shop of accused No. 2 that at the time of launching prosecution they were acquainted with the details of manufacturer and principal distributor. Non joinder of manufacturer and principal

distributor was another glaring infirmity in the prosecution case, totally frustrating the object of the relevant provisions of the Act.

12. The next loop-hole in the prosecution case is the absence of evidence that the samples collected were injurious to the health. The report of Public Analyst is only to the effect that samples were adulterated. There is no finding that the product was injurious to health.

13. Considering the above serious lacunae, trial Court came to the conclusion that sufficient evidence to convict the accused was lacking and consequently recorded the order of acquittal. This Court finds that the view taken by the trial Court was a reasonable and possible view. In any case, reasonings and findings recorded by the trial Court can not be said to be perverse, incorrect or illegal warranting interference in the appeal. Hence, the following order.

14. Criminal Appeal No. 152 of 2004 stands dismissed.

[INDIRA K.JAIN,J.]

knP/Cr.Appeal 152.2004

