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

CRIMINAL REVISION APPLICATION NO.35 OF 2003

Rameshsingh s/o Shankarsing Chouhan,
Age 48 years, Occu. Agriculture,
R/o Kalambar, Taluka Loha,
District Nanded ..Petitioner

Versus

State of Maharashtra ..Respondent

Mr A.R. Borulkar, Advocate for petitioner
Smt. M.S. Patni, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 3rd September 2015

ORAL JUDGMENT

1. The present revision is by the accused-convict.

2. The revision petitioner was convicted by learned Judicial Magistrate, First Class, Loha by judgment and order dated 18th July 2001 in Regular Criminal Case No.514 of 1999 (R.C.C.No.203/1992), as he was held guilty for contravening Rule 50 of the Prevention of Food Adulteration Act, 1955 (hereinafter referred to as “the Act” for brevity). He was convicted under Section 248 (2) of Cr.P.C. and was sentenced to undergo rigorous imprisonment for three months and to pay fine of Rs.500, in default to undergo rigorous imprisonment for fifteen days, for an offence punishable under Section 16 (1) (a) (ii) proviso 2 of the Act. The said judgment of conviction was subject matter of challenge before the learned Sessions Judge, Nanded in Criminal Appeal No.50 of 2001. Learned Sessions Judge, Nanded by his judgment and order dated 22nd January 2003 dismissed the appeal

of the present petitioner, maintaining the order of conviction and sentence passed by learned Judicial Magistrate, First Class, Loha. Feeling aggrieved thereby, the present revision.

3. Few facts, as are necessary for deciding the present revision are as under :

4. The case of the prosecution against the present revision petitioner was the Food Inspector, Vyankat Gaikwad, on 21st March 1992 at about 10.30 a.m. along with his Assistant A.Y. Rathod and panch witness Vishwanath Eklare visited to an outlet M/s Tara Pepsi at village Kalambar. Pepsi is a frozen coloured sweet water solution in polytube. Original accused No.1 Jeevansingh was claimed to be brother-in-law of the present petitioner, who was selling Pepsi in absence of present petitioner. Upon inspection of the premises, the said Food Inspector purchased 600 gram Pepsi i.e. thirty pieces of Pepsi, each piece containing 20 gram at a price of Rs.4.20 and obtained the receipt.

5. A notice came to be issued under Section 14-A of the Act for disclosing the name and address and other particulars of the firm, warranty, purchase bill etc. Then, intention was disclosed pursuant to provisions of Rule 12 of Food Adulteration Rules, 1955 (hereinafter referred to as “the Rules” for brevity) by issuing notice in Form No.6 of the provisions of the Rules that the sample purchased was for the purpose of sending for analysis and divided the samples in three equal parts. One part of the sample was handed over to the accused after sealing the same and obtaining signature of the panch. One part was

despatched on 23rd March 1992 to Public Analyst at Pune by Registered Post A.D. Pursuant to Form No.7, one part was given to the Local Public Health Authority. The sample since was tested positive saccharin, as apparent from the report dated 27th April 1992, the contravention of Rule 47 of the Rules was noticed. Upon query with the licencing authority, it was noticed that the licence required under Rule 50 of the Rules was not obtained by the firm while manufacturing and dealing with Pepsi, which is food item. The village panchayat, on 26th June 1992 and 9th August 1992 informed that the firm was owned by the present petitioner.

6. Necessary sanction pursuant to Section 20 of the Act was granted by the Joint Commissioner to prosecute the petitioner, on 29th August 1992 and as such the complaint for prosecuting the petitioner for an offence punishable under Section 16 (1) and 16 (1-A) of the Act came to be filed. The petitioner's brother-in-law was also implicated as accused No.1, whereas petitioner was shown to be accused No.2.

7. The accused No.1 was never served though bailable warrants were issued. As such, the trial was separated though recourse was taken to Sections 82 and 83 of the Cr.P.C. The State has also not taken any steps pursuant to the provisions of Chapter VI Part C of the Cr.P.C. for getting the said accused and as such, the Court separated the trial against accused No.1 Jeevansingh in view of Section 317 (2) of the Cr.P.C.

8. The original complainant - Food Inspector was examined as P.W.1 at Exh.42 and as prima facie material was found against the accused-petitioner, for an offence punishable under Section 16 (1) and 16 (1-A), charge was framed on 15th January 2001 at Exh.67 for selling of adulterated Pepsi and for not possessing the licence. Plea of accused was recorded at Exh.68.

9. The petitioner claims that he is not the proprietor of the firm M/s Tara Pepsi and was falsely involved. He claimed ignorance about the procedure followed by the Inspector qua drawing samples.

10. The Food Inspector Vyankat was examined at Exh.42 and he has supported the prosecution story. He has proved notice under Section 14-A at Exh.44, the purchase of Pepsi, payment of amount, the receipt at Exh.43, notice in Form No.6, intention to send the sample to Analyst which bears signature of accused No.1. A panchnama was drawn separating the samples at Exh.43, which bears signature of accused No.1, so also the panch and the complainant. Noticing that there was 37 days difference between the date of drawing the sample and date of report of the Public Analyst and the fact that the preservative was not added, the petitioner was acquitted of the charge of adulteration.

11. The second charge that was levelled against the petitioner was non-possessing of licence for manufacture, sale or store of food article Pepsi. Learned trial Court observed that Rule 50 of the Rules

contemplates holding of licence. P.W.1 Food Inspector and P.W.2 witness were subjected to cross-examination by the petitioner, so as to establish his defence that he is neither manufacturer nor owner or proprietor of the firm M/s Tara Pepsi. So as to establish that the petitioner was the owner of the said firm M/s Tara Pepsi, P.W.2 Vishwanath, the panch speaks of drawing of samples, however, he was declared hostile.

12. The communication at Exh.59, letter dated 7th May 1992 issued by the Inspector to the licencing authority and the response of licencing authority on 21st July 1992 intimating that M/s Tara Pepsi had not obtained the licence under the Rules, which is at Exh.60 are sought to be relied upon.

13. So far as the ownership of the firm is concerned, it is P.W.1 who deposed that the Sarpanch of the Village Panchayat, Kalambar, on 20th June 1992 informed that the present petitioner is the owner of the said firm which letter could be noticed at Exh.61. The Village Panchayat, under the signature of Sarpanch, in detail mentioned the property number and its owner vide its letter bearing Exh.64.

14. By taking into account the testimony of P.W.1, the complainant and the documents Exh.61 and 64, the letter issued by the Village Panchayat, Kalamber confirming the present petitioner to be the owner of the property, learned Judicial Magistrate, First Class, Loha, relying upon Section 3 of the Evidence Act, the presumption under

Section 106 of the Evidence Act was pleased to convict the petitioner.

15. The Sessions Judge, Nanded, while dealing with the appeal has noted that after the process was issued against the present petitioner, his brother-in-law who was shown to be vendor, remained absent and was noticed to be absconding. The Sessions Court then noted that the communication issued by the complainant at Exh.61 dated 23rd June 1992 to the Sarpanch, the reply given by the Village Panchayat at Exh.62 informing that the premises bears House No.658 and the subsequent correspondence at Exhs.63 and 64 along with Exh.62 issued by the Gram Panchayat, Kalambar takes to the only conclusion that the property is owned by the petitioner. Learned Sessions Court then inferred that the property since belongs to the present petitioner, he has knowledge about the proprietorship of the shop or he himself may be proprietor. The Sessions Court then found that the inference that was drawn by learned Magistrate under Section 106 of the Evidence Act is just and proper. The Sessions Court accepted the testimony of solitary witness, complainant Vyankat Gaikwad. As the authority of the complainant was never challenged by the present petitioner, the discharge of official duty was held to be correct and it was inferred that since the petitioner has failed to discharge his burden, the appeal against conviction came to be dismissed.

16. Learned Counsel for the petitioner, while questioning the conviction and sentence in the present revision would urge that the same is illegal and contrary to the established principles of law. He

would then urge that the reliance placed on documents Exhs.62 to 65 for the conviction of the petitioner is wholly misplaced, as in law, according to him, it was not the Sarpanch, who was authorised to certify the ownership of the house. He would then urge that after considering that the petitioner has not discharged the burden, the presumption as was drawn under Section 106 of the Evidence Act is just and proper.

17. The next submission is that in absence of the testimony of independent witness and by relying upon the statement of an absconding accused, the petitioner ought not to have been convicted for the offence.

18. Learned A.P.P. opposed the submissions by pointing out that there are concurrent findings of both the Courts below holding the present petitioner as guilty of the offence. He would then submit that the conviction is just and proper and the scope of interference in the revisional jurisdiction is required to be appreciated.

19. Having bestowed my thoughts to the submissions made and upon perusal of certain provisions of the Bombay Village Panchayats Act, it is not clear as to how the Sarpanch of the Village Panchayat is authorised under the law to certify the ownership of a house, when he holds the elective office. Learned Counsel for the petitioner was right in pointing out that the conviction based on the communications at Exhs.62 to 65 drawing inference that the petitioner is owner of the

said house ought not to have been accepted and relied upon. Section 45 of the Bombay Village Panchayats Act provides for the administrative powers and duties. Works of the panchayat are required to be carried out by passing resolution in the meetings. It is further required to be noted that the issuance of such communication under the signature of the Sarpanch ought not to have been entertained when there is Secretary appointed to a Village Panchayat. The communications as are issued by the Sarpanch, in my opinion, ought not to have been accepted by the Courts for the purpose of convicting the petitioner, as it was required to be taken into consideration that as to under what authority the said communications were issued by the Sarpanch and for that purpose, the Sarpanch was not examined to prove the said communications. The communications were neither on the part of the Village Panchayat nor so authorised the Sarpanch to issue the same. As such, for drawing inference that the petitioner herein is the owner of the House No.658 ought not to have been drawn by both the Courts below. Once the evidence that is taken into account for reaching to conclusion from Exhs.62 to 65 is noticed to be incorrectly appreciated and relied upon, further conclusion of drawing presumption under Section 106 of the Evidence Act is also not sustainable for want of any legal basis. The fact remains that the statement of accused No.1, who remained absconding and for whose trace, the State has not taken any steps is accepted as one of the basis for drawing conclusion that the present petitioner is owner of the said house, is also required to be rejected.

20. Apart from above, it is required to be noted that the petitioner is facing the present prosecution for last twenty-two years, only for the purpose of contravening Rule 16 of the Rules to the extent of non-possessing the licence for manufacturing Pepsi, a food item. The panch witness P.W.2 was already declared hostile. As such, for drawing a conclusion that the petitioner is an owner of the said house, the manufacturing activity was going on at House No.658 and there was no licence in favour of the present petitioner so as to convict him, ought not to have been relied upon. So as to reach to conclusion that the petitioner is the owner of manufacturing unit, there is hardly any material on record, much less the statements of the witnesses so as to demonstrate that the manufacturing activity was going on. It is the accused No.1 who was responsible for the sale and so far as the manufacturing is concerned, but for the evidence of P.W.1, there is no other iota of evidence on record, much less the documentary evidence to support the case of the prosecution.

21. In this background, in my opinion, the conviction of the petitioner is not sustainable.

22. As such, for the reasons stated herein above, present Criminal Revision Application stands allowed. The judgment and order dated 18th July 2001 passed by Judicial Magistrate, First Class, Loha in Regular Criminal Case No.514 of 1999 (R.C.C.No.203 of 1992) and the judgment and order dated 22nd January 2003 passed by the Sessions Judge, Nanded in Criminal Appeal No.50 of 2001, convicting and

sentencing the present petitioner for an offence punishable under Sections 16 (1) (a) (ii) proviso 2 of the Prevention of Food Adulteration Act, are hereby quashed and set aside. The petitioner is acquitted of the charge.

(N.W. SAMBRE, J.)

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