

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 247 OF 2003

The State of Maharashtra,
through Shri R.B. Kulkarni,
Food Inspector, Food & Drugs
Administration, M.S., Jalna

APPELLANT

VERSUS

1. Shri Minitkumar Panditrao Patil,
Vendor and Nominee of M/s Sanket
Food Products Pvt. Ltd.,
A-9/26, Additional MIDC, Jalna

2. M/s Sanket Food Products Pvt. Ltd.,
A-9/26, Additional MIDC, Jalna

RESPONDENTS

Mr. N.T. Bhagat, A.P.P. for the appellant/State
Mr. S.P. Shah, Advocate holding for Mr. Parag
Barde, Advocate for the respondents

CORAM : M.T. JOSHI, J.

DATE : 21/11/2015

ORAL JUDGEMENT :

1. Heard both sides.

2. Aggrieved by the acquittal of the respondents from the offences punishable under section 7 (1) read with section 2 (ia) (a) and section 2 (ia) (m) of the Prevention of Food Adulteration Act, by the learned

Joint Judicial Magistrate First Class, Jalna, vide judgement and order dated 4th December, 2002 passed in Regular Criminal Case No. 20032/1998, the present appeal is preferred by the State.

3. The prosecution case, in short, is as under:-

. That, respondents are the manufacturer of Gutkha. On 29th July, 1997 PW1 — Ramakant Kulkarni — the Food Inspector had visited the premises of the respondent no. 2 M/s. Sanket Food Product Pvt. Ltd. and collected 1500 grams of catechu of Rs.420 as per the due procedure. The samples were prepared and one of the samples was sent for analysis which showed that it did not conform with the standard prescribed. In the circumstances, the complaint was filed. The notice as per provisions of section 13 (2) of the Prevention of Food Adulteration Act was issued to both the respondents and the charge sheet was filed.

4. Before the learned Judicial Magistrate First Class, two witnesses were examined. During the trial, it has become an admitted fact that catechu was not meant for sale but for processing for preparation of Gutkha. It was further admitted that at the time of collection

of the nuts of the catechu fallen on the ground and along with the earth, the samples were collected. Further, no material regarding sending of notice as per provisions of section 13 (2) of the Act was placed before the learned Judicial Magistrate First Class. Considering the record before him, the learned Judicature Magistrate First Class acquitted the respondents. Hence, the present appeal.

5. The learned A.P.P. submitted that in fact the catechu did not conform with the standard prescribed and merely because it had fallen on the earth would not make any difference. Further, the presumption regarding service of notice on the respondents required to be issued under section 13 (2) of the Act, has arisen in the present case. He, therefore, prayed that the appeal be allowed.

6. Mr. S.P. Shah, learned counsel appearing for the respondents supported the reasoning forwarded by the learned Judicial Magistrate First Class and prayed that the appeal be dismissed.

7. On the basis of above material and the

submissions advanced on behalf of both sides, the following point arises for my determination.

Whether the prosecution has proved that, on 29th July, 1997, the present respondent no. 1 – the vendor and nominee of respondent no. 2 was found in possession of catechu nuts meant for sale, which was adulterated and sub-standard?

My finding to the above point is in the negative and the appeal is, therefore, dismissed for the reasons to follow:

R E A S O N S

8. The above facts would make it clear that the catechu nuts were not meant for selling but were for processing for mixing the same in preparation of Gutkha. Learned counsel Mr. Shah submitted that in fact before processing the catechu nuts, the same was being tested first and thereafter only, the same was to be mixed in the Gutkha. He further submitted that the very fact that the samples collected was first mixed in the soil, would go to show that no proper care in preparation of

the sample was taken. Last but not the list, the substantive right of the present respondents for getting the samples analyzed through the Central Forensic Science Laboratory, had been lost as the notice that was required to be issued under section 13 (2) of the Act, was not served on the respondents. He further submitted that as there was no material that the said notice was sent, the presumption of service of notice has been rightly held by the learned Judicial Magistrate First Class as not to have been arisen in the present case.

9. Considering all the above facts on record, I do not find any fault with the reasoning forwarded by the learned Judicial Magistrate First Class. Hence, the following order.

10. The appeal is hereby dismissed. The bail bonds of the present respondent no. 1, if any, shall stand cancelled.

[M.T. JOSHI]
JUDGE