

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

APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 802 OF 2003

The State of Maharashtra
Through Shri. S.P.Adhae
Food Inspector,
Food & Drugs Administration,
(M.S.), Rangbhavan,
Sarjepura, Dist. Ahmednagar.

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

VERSUS

1. Sumant Prabhakar Kale
Vendor & Production
incharge of M/s Malpani
Agro Products,
Survey No. 50/1/1,
Kasara Dumala,
Akole Road, Tq. Sangamner,
Dist. Ahmednagar.
2. Prafulla Premchand Khivansara
Nominee of M/s Malpani
Agro Products,
Survey No. 50/1/1,

Akole Road, Tq. Sangamner,
Dist. Ahmednagar.

3. M/s Malpani Agro Products,
Survey No. 50/1/1,
Akole Road, Tq. Sangamner, .
Dist. Ahmednagar.

.... **RESPONDENTS/
[ORI. ACCUSED]**

Ms. R.P.Gour, A.P.P. for Appellant – State.
Mr. D.S.Bharuka, Advocate for R.Nos. 1 to 3.

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

JUDGMENT :

This Appeal takes an exception to the Judgment and Order of acquittal passed on 04/08/2003 by the learned Judicial Magistrate First Class, Sangamner, district Ahmednagar in R.T.C. No. 103/2001.

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 facts, as are necessary for deciding the present Appeal, may be stated as follows :-

i) Accused No. 3 is a Firm registered under the provisions of Indian Partnership Act. Accused No. 2 is nominee of accused No.3 and accused No. 1 is the vendor, managing the affairs of accused No. 3 Firm for and on behalf of accused Nos. 2 and 3.

ii) On 07/09/2000, Food Inspector Mr. S.P.Adhao visited the premises of accused No. 3 – Firm styled as M/s Malpani Agro Products situated at Akole Road, Sangamner. The Firm was dealing in business of sealing, packing and selling Ground-nut and Sunflower oil. Complainant purchased samples in the presence of panch witnesses. The samples were sealed and sent to Public Analyst, Pune. On receiving report of analysis, complainant sought necessary sanction to prosecute the accused. On 12/06/2001, sanction was received, authorizing the complainant to launch prosecution and accordingly complaint was filed in the court of Judicial Magistrate First Class, Sangamner.

4. Charge was framed at Exh. 58. Accused pleaded

not guilty and claimed to be tried. Their defence was of total denial and false implication.

5. To substantiate its case, department examined complainant – P.W. 1 Shaileshkumar Pralhad Adhao and P.W.2 Mr. Kashinath Trimbak Sudke, Assistant Commissioner, Food & Drugs, Ahmednagar. Accused did not examine themselves and not adduced defence evidence. On going through the evidence of prosecution witnesses, trial Court found that there was no contravention of the provisions of Prevention of Food Adulteration Act and accused were not responsible, as alleged by the department.

6. Being aggrieved, department through State has preferred the present Appeal.

7. Heard learned Counsel for the parties. Perused the evidence adduced on behalf of department. The crux of prosecution case lies in statutory compliance u/s 20 of the Act, which 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.] ”

8. From the provisions of Section 20 of the Act referred above, it is apparent that statutory compliance is mandatory. The consent order Exh.46 was proved in the evidence of Food Inspector Mr. S.P.Adhao. Prosecution did not examine Sanctioning authority. In this connection learned A.P.P. vehemently submitted that sanction order is a public document and it was not necessary for prosecution to examine the Sanctioning authority.

9. Needless to state that consent to prosecute is an important factor, which constitutes a condition precedent to launch prosecution against the accused. Undoubtedly, burden of proving requisite valid sanction was on prosecution. Merely saying that examination of Sanctioning authority was not necessary, as the sanction order is a public document, would not absolve the prosecution from its onerous responsibility to prove correctness and truthfulness of contents of sanction order, in accordance with the law. In this backdrop non examination of Sanctioning authority to prove correctness and truthfulness of sanction order Exh. 46 was fatal to the prosecution case.

10. The learned counsel for parties have taken this Court to the evidence of both the witnesses and an elaborate panchanama

drawn by the Food Inspector as well as the report of Public Analyst. The irregularities committed at the time of taking samples, not producing the appointment order of Local Health Authority and errors apparent in the certificate of Public Analyst were considered as sufficient to hold that prosecution has failed to bring home guilt of the accused within the four corners of law. The view taken by the trial Court was a reasonable and possible view. In any case, appreciation of evidence by the trial court can not be said to be incorrect, illegal or perverse. Hence, no interference is warranted in the present Appeal.

11. Criminal Appeal No. 802 of 2003 stands dismissed.

[INDIRA K.JAIN,J.]