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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 696 OF 2001.

The State of Maharashtra	]
at the instance of	]
Shri. A.S. Hogale,	]... <u>Appellant.</u>
Food Inspector	] Original
Food & Drug Administration	] complainant.
Maharashtra State,	]
852/8, B Ward, Subhash Road	]
Kolhapur	]

V/s.

1. Kishor Shankarrao Salokhe,	]
Vendor & Manager of	]
Maharashtra S.T. Canteen	]
At & Post Yelane,	] <u>Respondents.</u>
Tal. Shahuwadi,	] Original
District : Kolhapur	] Accused
	] Nos 1 & 2.
2. Ganesh Dattatraya Powar	]
Proprietor of S.T. Canteen	]
Yelane, Tal. Shahuwadi,	]
District : Kolhapur	]

Mrs. A.S. Pai, APP for the appellant State
Mr. P.D. Dalvi, for the Respondents

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 4th DECEMBER, 2015.

ORAL JUDGMENT : [Per : Dr. Shalini Phansalkar-Joshi, J.]

1. This appeal is preferred by the State, challenging the acquittal of respondent Nos 1 & 2, for the offence punishable under Section 16 (1) (a) (i) (ii) of the Prevention of Food Adulteration Act 1954, as recorded by the Judicial Magistrate First Class, in R.C.C. No.58 of 1996, by his judgment and order dated 9th March, 2001.

2. Brief facts of the appeal can be stated as follows :-

P.W.1 Ashok Deshmukh, Food Inspector, appointed for the area of District Kolhapur, during the period from July 1994 to May 1999, has on 19th January, 1996 visited S.T. Canteen at village Yelane, Taluka: Shahuwadi, alongwith his colleague Shri. A.S. Kulkarni and Sample Assistant Shri. Y.S. Sawant. He had also taken with him P.W.2 panch Kisan Patil. When they visited the canteen at about 2.30 p.m., Respondent No.1 was present in the canteen. His job was to look after the management of the canteen. Respondent No.2 was the proprietor of the said canteen. Respondent No.2 was not present at that time.

3. After disclosing his identity and informing the intent of his visit, P.W.1 Deshmukh inspected the canteen and noticed that 4 Kg of refined Soybean oil was stored in stainless steel container. P. W. 1 Deshmukh purchased refined Soybean oil in the quantity of 450 grams for an amount of Rs.15.75 ps. The receipt to that effect came to be executed vide Exh.26. P.W.1 Deshmukh then divided the said sample oil in three equal proportions and kept it in clean, dry and empty bottles. He sealed those bottles and completed the requisite formalities.

4. On the next day, he sent one sealed sample bottle to Public Analyst, Kolhapur through Sample Assistant Y. S. Sawant. He accordingly sent his report to the Assistant Commissioner of Local Health Authority. He also submitted two parts of sealed sample bottles alongwith two copies of form No.7 to Local Health Authority. The report of Public Analyst was received on 12.3.1996 vide Exh.38, informing about the level of iodine in the said sample was not according to standard. Hence after obtaining necessary sanction from the Joint Commissioner, Food and Drug Administration and after recording statement of P.W.2 Hari Sadvilkar from whose shop, respondent No.2 had purchased the said refined soybean oil, P.W.1 Deshmukh filed case

in the court against respondents.

5. The trial Court framed charge against respondents vide Exh.15 after the evidence of P.W.1 Deshmukh was recorded before framing of charge. Both the respondents pleaded not guilty and claimed trial.

6. In support of its case, P.W.1 has examined himself and prosecution also led evidence of two other witnesses viz P.W.2 Hari Sadvilkar and P.W.3 panch Kisan Patil. Both these witnesses have not supported prosecution case and they were declared hostile. The prosecution has also led evidence of P.W.4 Assistant Commissioner of FDA, Shri. Salauddin Momin and P.W. 5 Public Analyst, Shri. Bhujbal. On appreciation of their evidence, trial court was pleased to hold guilt of respondents to be not proved beyond reasonable doubt and acquitted them accordingly.

7. This judgment of the trial Court is challenged in this appeal by learned APP for the State, whereas supported by learned counsel for respondents.

8. In the present case the evidence of P.W.1 Food Inspector Ashok Deshmukh goes to prove that on 19th January,1996, he visited S.T. canteen where respondent No.1 was present and he noticed there 4 Kg refined soybean oil stored in one stainless steel container. According to him, he purchased sample of 450 grams of said refined oil from respondent No.1 and then divided it into three equal proportions and sealed the same. One part of the sample bottle was sent to Public Analyst and it was found that iodine value in the said sample was less than prescribed by law. The report of Public Analyst is produced on record vide Exh.38.

9. Though P.W.3 panch Kisan Patil and P.W.2 Hari Sadvilkar have not supported the prosecution case, in my considered view, it does not make much difference to the fact proved by evidence of P.W.1 Food Inspector Deshmukh that he has purchased requisite sample of refined soybean oil from the S.T. canteen after following proper procedure and sent the said sample to Public Analyst.

10. The real question for consideration in this appeal is whether

storing of any article without any intention of selling the same can amount to “storing” as contemplated and as required for the offence under Section 7 read with Section 16 of the Prevention of Food Adulteration Act. In my considered opinion, trial Court has after placing reliance on the judgments of **State of Maharashtra -vs- Zamandas Vansimal Paryan, 1981 Cri. L.J. 383** and **Municipal Corporation of Delhi -vs- Laxminarayan Tandan & ors 1976 Cri. L.J. 547** rightly held that mere storing of article is not sufficient unless it is proved that article was stored for sale. In the instant case, admittedly respondent Nos 1 or 2 had not stored the refined soybean oil for the purpose of sale. S. T. canteen is not a shop. In such situation, the charge itself is not attracted.

11. Secondly, the evidence of P.W.5 Public Analyst Bhujbal, goes to prove that he has not personally conducted analysis of the sample. It was done by his Assistant. Therefore, the person who has conducted analysis being not examined, the report Exh.38 lose much of its evidentiary value. This is coupled with the fact that actual date of analysis is not mentioned and it is also not mentioned which tests were carried out to ascertain that the value of iodine in the sample was not as

per prescribed standard. Conversely, P.W.5 Public Analyst Bhujbal has admitted in his cross examination that there is no standard of iodine given in the Act for refined soybean oil. Hence he has applied the standard which is given for all other oils. In view of this aspect also, it cannot be said that report of analysis is of any help to the prosecution. As held in the case of **State of Maharashtra -vs- Gangadhar K Paitwar 1983 (11) Prevention of Food Adulteration Cases, 85**, when the report of Public Analyst does not bear date of analysis and the Public Analyst is also unable to state the date of analysis, as in the present case, report of Public Analyst loses its evidentiary value and the conviction cannot be based on such report.

12. Hence taking overall view of the matter, in the present case, it has to be held that the view adopted by the trial Court of acquitting respondents in the light of evidence adduced by prosecution cannot be called as perverse view so as to warrant any interference in the said view. The appeal, therefore, holds no merit, hence it stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the
original signed judgment