

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1033 OF 2001

The State of Maharashtra	]	
At the instance of -	]	
Shri S. S. Deshmukh,	]	
Food Inspector, Solapur,	]	
C/o/ Asstt. Commissioner,	]	
Food & Drug Administration,	]	
M. S. Central Administrative	]	
Bldg., Solapur.	]	... Appellant

Versus

1	Surendra Bhagirath Somani	]	
	Age 27 years, Vendor of M/s.	]	
	Laxminarayan Traders,	]	
	Sushil Nagar No.2, Plot No.1,	]	
	Near Bharti Vidyapeeth,	]	
	Vijapur Road, Solapur.	]	
2	Bhagirath Hiralalji Somani	]	
	Prop. of M/s.	]	
	Laxminarayan Traders,	]	
	Sushil Nagar No.2, Plot No.1,	]	
	Near Bharti Vidyapeeth,	]	
	Vijapur Road, Solapur.	]	... Respondents

.....
Mr. Deepak Thakur, A.P.P. for the Appellant - State.
.....

CORAM : S.B. SHUKRE, J.

DATED : AUGUST 26, 2015.

ORAL JUDGMENT :

This is an Appeal preferred against the judgment and

order dated 30th April, 2001, delivered in Regular Criminal Case No. 318 of 1999 by the Chief Judicial Magistrate, Solapur, thereby acquitting the respondents of the offence punishable under Section 16 (1)(a)(ii) of the Prevention of Food Adulteration Act, 1954 read with its relevant sections.

2 Briefly stated, facts of the case are as under:

Respondent No.1 was the vendor and respondent no. 2 was the proprietor of M/s. Laxminarayan Traders, situated at Sushil Nagar No.2, Plot No.1, Near Bharti Vidyapeeth, Vijapur Road Solapur. They were found to be storing for sale Badishep (Fennel Seeds), a food article, in adulterated form, which fact was confirmed after its sample purchased in sufficient quantity by the Food Inspector from the respondents was sent to the Public Analyst for analysis and report after following due process. Since the Public Analyst's report was positive for adulteration, consent was given by the Competent Authority for launching of prosecution against the respondents. Accordingly, they were prosecuted for the offences punishable under Section 16(1)(a)(ii) together with other relevant sections of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "PFA Act", for

short). On merits of the case, the learned Chief Judicial Magistrate found that prosecution failed to prove beyond reasonable doubt the offence that was charged against both the respondents and therefore by her judgment and order dated 30th April, 2001, acquitted the respondents of the same. Not being satisfied with the same, the State is before this Court in the present Appeal.

3 I have heard learned A.P.P. for the Appellant – State. None has appeared on behalf of the respondents. I have carefully gone through the record of the case including the impugned judgment and order.

4 Although learned A.P.P. for the State has taken exception to the impugned judgment and order on the ground that they do not reflect proper appreciation of evidence of the prosecution, I beg to defer with him for the reasons stated in the forgoing paragraphs.

5 Admittedly, the report of Public Analyst given in the present case does not bear any date. In the case of ***State of***

Maharashtra Vs. Gangadhar Kisan Paitwar¹, it has been held that if the report of the Public Analyst does not bear date of analysis, the report loses its evidentiary value and conviction cannot be based upon such a report of the Public Analyst. The learned Magistrate, relying on this very case, held that report of the Public Analyst submitted in the present case being devoid of date of analysis had no evidentiary value. The view so taken by the learned Magistrate is absolutely in accordance with the settled principles of law.

6 Rule 9A of the PFA Rules 1955 makes it mandatory for the prosecution to send information of launching of prosecution together with report of the Public Analyst to the accused within ten days of launching of the prosecution. This provision of law has been held to be mandatory in several cases decided by various High Courts. Some of such cases have been referred to in the impugned judgment. They are (1) ***Pimpri Chinchwad Nagarpalika Vs. Giriraj Chiranjilal Sharma***² and (2) ***The State of Punjab Vs. Dilip Singh***³. Admittedly, in the instant case, the prosecution was launched on 29th November, 1999 and the accused received its information together with

1) 1983 All India PFA Journal, Page 283

2) Mh.L.J. 1999 (2) Page 608.

3) All India PFA Journal, 1990 Page 104.

report of the Public Analyst on 4th January, 2000 i.e. after a period of one month and five days. This would establish clear violation of Rule 9A, a mandatory provision of law. The defect arising from such violation is incurable as it prejudicially and irreversibly impacts the defence of the accused. The benefit, therefore, must go to the accused i.e. the respondents. The learned Chief Judicial Magistrate has, therefore, rightly recorded acquittal of the respondents by holding that prosecution has failed to prove beyond reasonable doubt its case against the respondents. No interference with the impugned judgment and order is warranted.

7 Appeal stands dismissed.

(S. B. SHUKRE, J.)