

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

CRIMINAL APPEAL NO. 111 OF 2002

The State of Maharashtra
at the instance of
Mr.K.S. Shinde,
Food Inspector,
Office of the Jt. Commissioner,
FDA, M.S. Pune.

... Appellant

Versus

- 1) Nandkishor Kashmirilal Agarwal
Vendor & Partner of
M/s.Poona Supari Corporation,
Pune.
 - 2) Subhash Kashmirilal Gupta (Agarwal)
Partner and Nominee of
M/s.Poona Supari Corporation,
Pune.
 - 3) M/s. Poona Supari Corporation,
Situating at Matruchaya Building,
Survey No.914, Block No.1,
Yerwada, Pune- 16
- .. Respondents
(Orig. Accused Nos.1 to 3)

.....
Mrs.A. S. Pai, A.P.P. for the Appellant - State.
Mr. K. H. Parekh, Advocate for the Respondents.
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CORAM : S.B. SHUKRE, J.

DATED : OCTOBER 19, 2015.

ORAL JUDGMENT :-

This is an Appeal preferred against the judgment and order dated 12th June, 2001, passed in Regular Criminal Case No.42 of 1998, by the Chief Judicial Magistrate, Pune, thereby acquitting the respondents of the offences punishable under Section 7(i) read with Section 2(ia)(a), Section 7(v) read with Rule 62, Section 16 and Section 17 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "PFA Act", for short).

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

Respondent nos.1 and 2 were the partners of the respondent no.3 M/s. Poona Supari Corporation. On 6th November, 1997, respondent no.1 was present in the premises of respondent no.3 situated at Yerwada and he performed the role of vendor as well. The complainant, Food Inspector on visit to the premises, expressed his desire to purchase six packets of Gutkha each weighing 100 grams, containing 100 pouches of 1 gram each for the price quoted by the respondent no.1. Accordingly, he purchased six packets and divided them into three equal parts

for sampling purposes. He took out the samples thereof by following prescribed procedure. One sample was sent by him for analysis and report on 7th November, 1997, to the Public Analyst, State Public Health Laboratory, Pune. The other two samples with necessary documents were sent to the Local Health Authority, Pune. In due course, report of the public analyst was received by the Local Health Authority. It indicated presence of Magnesium Carbonate, an adulterant, in the sample that was subjected to analysis and presence of this substance contravened Rule 62 of the PFA Rules, 1955. Therefore, consent for prosecuting the respondents was obtained from the Joint Commissioner, Pune and, accordingly, a complaint was filed against the respondents. Evidence before charge was recorded. As *prima facie* case was found to be present against all the respondents, a charge for the offences under Section 7(i) read with Section 2(ia)(a) and Section 7(v) read with Rule 62, Section 16 and Section 17 of the Prevention of Food Adulteration Act, 1954, was framed against all the respondents. As they pleaded not guilty for the same, they were tried in accordance with law.

On merits of the case, the learned Chief Judicial Magistrate found violation of several mandatory provisions of law

in the case and therefore, expressing doubt over the genuineness of the prosecution case, the learned Magistrate acquitted all the respondents of the offences with which they were charged in the present case. The State has not accepted these findings as correct and, therefore, has preferred the present Appeal.

3 I have heard Smt.Pai, the learned A.P.P. for the State and Mr.Parekh, the learned counsel for the respondents. I have carefully gone through the record of the case including the impugned judgment and order.

4 The learned A.P.P. for the State has submitted that some violations of the prescribed procedure are indeed there but in his opinion they were not fatal to the prosecution case. According to the learned counsel for the respondents, these violations are of mandatory provisions of law and, therefore, would have to be treated as dealing a fatal blow to the case of the prosecution.

5 On considering the evidence available on record, I am of the view that the learned counsel for the respondents is right when he submits that the violations which have been pointed out

in the impugned judgment and order go to the very root of the case against the respondents and, therefore, the benefit of the same has to be given to the respondents.

6 It is not in dispute that the date of analysis was not mentioned in the report of the public analyst. It is well settled law that failure to mention the date of analysis of the sample in the report is a lacuna which vitiates the entire prosecution. If the date of analysis is mentioned in the report of the public analyst, it would enable the accused to prove as to whether or not within a reasonable period of time the sample was analyzed by the expert and, if it is found that the the analysis has not been carried out within a reasonable period of time or within the time in which the sample, according to the scientific principles, could be said to remain in the same state in which it was at the time of its seizure, the accused would be able to mould his defence accordingly. This important right of putting forward an effective defence in the matter has been taken away in the present case by failure to mention in the report of the public analyst the date of analysis of the sample and, therefore, the learned Magistrate has rightly concluded that the entire prosecution against the respondents has stood vitiated. The learned Magistrate, has rightly placed

reliance upon the ratio settled in this regard in the case of ***State of Maharashtra Vs. Tirathsingh Saudagarsingh Khanuja***¹.

7 There is also another material violation of the mandatory provisions of law. The public analyst had not sent the report of analysis of sample to the Local Health Authority within 40 days from the receipt of the sample, as required under Rule 7(3) of the PFA Rules, 1955. This violation would also vitiate the prosecution against the respondents.

8 In the result, I am of the view that the learned Magistrate has rightly recorded acquittal of the respondents for the offences with which they were charged in the instant case. There is no scope for making any interference in the impugned judgment and order. The Appeal deserves to be dismissed. The Appeal stands dismissed.

(S. B. SHUKRE, J.)

1) 1986 (I) PFA Cases page 55.