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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 143 OF 2002

State of Maharashtra	]	
at the instance of	]	.. <u>Appellant</u>
Food Inspector, Food and Drug Administration	]	Ori. Complainant.
Maharashtra State, Pune	]	

V/s.

1. Mr. Ramesh Shankappa Pujari,	]	
Vendor and Manager of	]	
M/s Garuda Hotels P. Ltd.	]	
Room No.831, chawl No.89,	]	
Pimpali, Near Maruti Mandir	]	
Gokhale Road, Pune 16.	]	
	]	
2. M/s Garuda Hotels P. Ltd. (the firm)	]	
S/at 47/1-A, Erandwana Karve Road	]	
Pune -4.	]	
	]	
3. Mr. Narendra Ratansi Gala,	]	
Nominee of M/s Jayantilal & Co.	]	
D/2 Kalyan Society, Shankar Sheth Road	]	
Pune 42 or	]	
Jayantilal & Company	]	
1174, Ravivar Peth, Near Govind Halwai chowk]	]	<u>Respondents.</u>
Pune 2.	]	Original
	]	Accused
4. M/s Jayantilal & Co.	]	Nos
S/at 47/1-A, Erandwana Karve Road	]	1 to 9
Pune -4.	]	
	]	
5. Mr. S. B. Patel,	]	
Director & Licensee	]	
M/s Maruti Marketing P. Ltd.	]	

- 14/A, Hindu Colony, Opp. Sardar Patel]
Stadium, Navrngrpura]
Ahmedabad 380 009]
]
6. Mr. N. K. Patel,]
Director & Licensee]
M/s Maruti Marketing P. Ltd.]
13/B Dariyapur, Patel Society,]
Somnath Road, Usmanpura,]
Ahmedabad 380 009]
]
7. M/s Maruti Marketing Pvt. Ltd]
S/at Ramji Lallo Compound M.G. Road]
Opp. Kala Hanuman Mandir,]
Kandivali (W),Mumbai 67.]
]
8. Mr. Gautam B. Patel, Nominee of]
M/s Hynoup Food and Oil Industries Ltd]
Ahmedabad 380 009.]
Kadi Thor Road, Mehsana, Dist.Mehsana]
Gujarat]
]
9. M/s Hynoup Food and Oil Industries Ltd]
S/at Maruti house, Opp. Air India Ashram]
Road, Ahmedabad 380 009.]

Mrs. A. S. Pai, APP for the Appellant State.
None present for respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 7th DECEMBER, 2015.

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

1. This appeal is preferred by the State challenging acquittal

of respondent accused, for the offences under Sections 7(i) read with section 2(ia) (a), 2(ia) (m) punishable under Section 16 read with section 17 of the Prevention of Food Adulteration Act, 1954, as recorded by the Chief Judicial Magistrate, Pune, vide his judgment and order dated 10th May, 2001 in Regular Criminal Case No.54 of 1997.

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

On 20th March, 1996 at about 1.30 p.m. P.W.1 Food Inspector Mr. Ugale, visited the premises of respondent No.2 M/s Garuda Hotels Pvt. Ltd., alongwith panch witness Mr. Sathe. At that time, accused No.1 Ramesh was present in the Hotel. P.W.1 Food Inspector Mr. Ugale, inspected the said hotel and found tin of refined cotton seed oil having 15 litres quantity stored therein for preparation of food. P.W.1 Ugale purchased sample of 450 grams of said refined cotton seed oil from that tin and paid Rs.20/-. He divided the said sample in three equal parts and put it in three dried, clean and empty glass bottles. The said bottles were corked and sealed and after completing requisite formalities, on the next day, P.W.1 Ugale sent one sample bottle to Public Analyst with relevant documents and remaining two sample

bottles to Local Health Authority, Pune. Further he recorded statements of witnesses and it was transpired that respondent No.9 has sold the said oil to respondent No.7. In its turn, respondent No.7 sold the said oil to respondent No.4.. Respondent No.4 has then sold it to respondent No.2. i.e. M/s Garuda Hotels Pvt. Ltd. Respondent No.3 was appointed as nominee by respondent Nos 5 and 6, who were the Directors of Respondent No. 2 whereas respondent No.8 was the nominee of respondent No.9. During the course of investigation, report from Public Analyst was received informing that the sample in question was not conforming to the standard refined cotton seed oil . In view of the said report, all the papers and documents were sent to Joint Commissioner P.W.3 Mr. Ravatekar. On receipt of the same, P.W.2 Food Inspector Mr. Kembalkar filed complaint in the court against respondents.

3. In support of its case, P.W.2 Ugale examined himself at the stage of framing of charge. On being satisfied with this evidence, charge was framed against respondents vide Exh.105. Respondents pleaded not guilty and claimed trial raising defence of denial and false prosecution. A particular plea was raised that respondent No.4 has purchased the oil from respondent No.7 and respondent No.7 has

purchased the said oil from respondent 9 and hence they were entitled to benefit of warranty under Section 19(2) of the Prevention of Food Adulteration Act, 1954. (hereinafter referred to as the “Act”) Respondent Nos 5 and 6 had also adopted specific defence that they had appointed nominee for their firm and said nominee was not made party. They were not looking day-to-day affairs of the firm and hence not liable for prosecution.

4. In support of its case, prosecution relied on the evidence of P.W.1 Food Inspector Mr. Ugale, P. W. 2 another Food Inspector Mr. Kembalkar and lastly Local Authority P. W.3 Dr. Anil Rawatekar.

5. The evidence of P.W.1 Food Inspector Mr. Ugale, reveals that on 20th May, 1996, he has inspected the shop premises of M/s Garuda Hotels Pvt. Ltd., and therefrom he collected sample of refined cotton seed Oil. Though the prosecution has not examined the panch Shri. Sathe, in whose presence sample was purchased by P.W.1 Mr. Ugale, it will not make much difference as the only question for consideration in this appeal is whether P.W.1 Mr. Ugale has followed proper procedure and complied with the mandatory requirement as laid

down under the Act while purchasing sample and dividing it into three parts. On this aspect, however, the trial Court, found that P.W. 1 Mr. Ugale has failed to do so. The rules require that sample should be weighed while purchasing. There is no evidence proving that weighing scale was available either in the hotel or was carried with him by P.W.1 Food Inspector Mr. Ugale. Further the rule requires that sample should be collected in clean, dry and empty bottles and here in the case the evidence on record is conspicuously lacking to that effect. Further there is also admission of P.W.1 Food Inspector Mr. Ugale that he has not cleaned steel utensil pot in which he has purchased 450 grams of refined cotton seed oil.

6. Most important aspect is that the provisions of the Act require that a particular food article was stored in the premises for the purpose of “sale”. Admittedly M/s Garuda Hotels Pvt. Ltd., is a hotel and not “shop premises” and therefore, it cannot be proved that cotton seed oil was stored in the said hotel for the purpose of “sale”.

7. Lastly and most importantly, respondent Nos 5 and 6 who are the Directors of Respondent No.7 had categorically stated and

Exh.77 and 88 prove that they had appointed nominee for respondent No.7. Hence they were not looking after day-to-day affairs and business of respondent No.7. Despite that they are prosecuted in the case which reflects non application of mind by the Joint Commissioner while giving sanction for the prosecution vide Exh.98. The benefit of warranty is also available in this case to respondent under Section 19(2) of the Act.

8. Considering all these infirmities and lacunas in prosecution case, the trial Court has extended the benefit of doubt to the respondent, and in my considered opinion, the view taken by the trial Court being also possible and probable view, while sitting in an appeal, against acquittal, this Court is not legally justified in interfering with the said view. The appeal, therefore, 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.