

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL No. 216 OF 2001**

The State of Maharashtra,
 (Shri R.C. Runwal, Food Inspector,
 Office of the Joint Commissioner,
 Food & Drug Administration,
 M.S. Pune.

.. Appellant
 (original complainant)

...VERSUS...

(1) Shri. Chandrakant Sopan Kadam,
 Vendor of Toddy Shop,
 259, Bhawani Peth,
 Pune.

(2) Shri. Ashok Gudsalmani,
 Prop. of Toddy Shop,
 259, Bhavani Peth,
 Pune.

.. Respondents
 (original accused)

.....
 Mr. D.P. Adsule, APP for Appellant-State,
 None for the Respondents.

CORAM : S.B. SHUKRE, J.
DATED : 30th JULY, 2015.

ORAL JUDGMENT :

This is an appeal preferred against the judgment and order dated 3.10.2000 delivered by the learned Chief Judicial Magistrate at Pune in Regular Criminal Case No.12/1996, thereby acquitting the respondents-accused from the offences punishable under Sections 7(i) r/w Sec. 2 (ia) (a), 2 (ia) (h) and Section 2 (ia) (m) punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'PFA' for short)

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

Respondent no.1 was the Vendor and respondent no.2 was the Proprietor of toddy shop situated at 259, Bhavani Peth, Pune. On 11.8.1995, the complainant and panch witness Hemantkumar Manjarekar visited said shop. The complainant disclosed his identity and his intention to draw the sample of toddy which was alleged to be stored for sale. At that time, respondent no.2 was not present at the shop as he was out of station. The complainant purchased one open unlabelled glass bottle containing

750 ml of toddy and obtained receipt thereof from the respondent no.1. The toddy so purchased was divided into three equal parts which were collected in three dry, clean and empty glass bottles. These three parts were to be used as samples of the toddy purchased from respondent no.1. According to the complainant, they were collected, sealed and labelled properly as per provisions and rules of PFA Act. Before sealing of the bottles, complainant added into each glass bottle 0.25 gram copper sulphate (CUSO 4) as a preservative.

On 11.8.1995, the complainant sent one sealed part of the sample along with original memorandum in Form No.VII in a sealed packet to the Public Analyst, Pune (hereinafter referred to as the 'PA' for short) along with covering letter and specimen seal impression separately. The complainant also sent remaining two sealed parts of the sample along with two copies of memorandum in Form No.VII to Local (Health) Authority, Pune (hereinafter referred to as 'LHA' for short). The PA reported that the sample in question did not conform to the standard of toddy. The complainant, therefore, sent documents of the investigation made

by him in this case to the Joint Commissioner (FDA), Pune for obtaining consent to prosecute the respondents. On receipt of the consent, the complainant filed a complaint for an offence punishable under Section 16 of the PFA before the court of Chief Judicial Magistrate, Pune.

Summons was issued to the respondents and they appeared before the court in response to the same. The complainant adduced evidence before charge. After giving an opportunity of being heard to the complainant and the respondents, Chief Judicial Magistrate framed Charge Exh.45 against the respondents for an offence punishable under Sections 7(i) r/w Sec. 2 (ia) (a), 2 (ia) (h) and Section 2 (ia) (m) punishable under Section 16 of the Prevention of Food Adulteration Act, 1954. The charge was denied by the respondents and they claimed to be tried as per law.

On merits of the case, the learned Chief Judicial Magistrate found that the offences with which the respondents were charged in the present case were not proved beyond reasonable doubt by the complainant and, therefore, he acquitted

the respondents of the said offences by his judgment and order passed on 3.10.2000. It is this order which is under challenge in the present appeal.

3. I have heard the learned APP for the Appellant-State. Nobody has appeared on behalf of the respondents-accused. I have carefully gone through the record of the case and the impugned judgment and order.

4. According to the learned APP for the Appellant-State, the learned Chief Judicial Magistrate has committed serious error of law in not appreciating the essential requirements of Rules governing collection of the samples, sending of the samples for being analysis by the PA and seeking of sanction for prosecution of the respondents-accused and the result is an erroneous and arbitrary finding of acquittal of the respondents.

5. On perusal of the impugned judgment and order and also record of the case, I find it difficult to accept the argument so

canvassed before this court by the learned APP on behalf of the Appellant-state.

6. The learned Magistrate, upon careful assessment of the prosecution evidence, has found several lacunae in the collection of the samples, investigation that was made and the manner in which sanction for prosecution of the respondents was obtained by the complainant cumulative effect of which goes to the root of the matter thereby shattering the prosecution case.

7. The evidence available on record shows that even though the memorandum that was drawn after toddy was purchased and divided into three parts so as to take three samples thereof, the complainant Mr. R.C. Runwal has admitted that initially he had collected three bottles having wide mouth and later on he transferred the same into three more bottles having narrow mouth. Thus, the bottles used for taking of samples of toddy were six in the present case but there is no mention about the six bottles in the memorandum that was drawn at the spot by the complainant. No

evidence has been adduced by the complainant as regards the necessary precaution taken by him to ensure that the bottles in which samples were collected were clean and dry. Therefore, the learned Magistrate has rightly found, relying upon the judgment of this court as referred to in paragraph 7 of the impugned judgment and order, that there is no reliable evidence to enable the court to find that the complainant took samples of toddy purchased in complete compliance with Rule 14 of the Rules framed under the provisions of the PFA.

8. It is also seen from the evidence available on record that though a chemical, copper sulphate, was used as a preservative, the possibility of its being adulterated by some other chemical has not been ruled out. Admittedly, this chemical was first taken on clean paper and then it was added to the samples of toddy. The memorandum in question does not make any mention of the fact that the copper sulphate was first taken on a piece of paper and then transferred into the bottles of the samples. There is also no evidence to show that chemical that was added as a

preservative in the sample bottles was absolutely pure. Taking together all these facts, the learned Chief Judicial Magistrate found that the possibility of preservative copper sulphate being contaminated with another substance chloral hydrate has not been ruled out. Then, it is also not proved by the complainant that copper sulphate is a preservative approved by the rules framed under the provisions of PFA Act. Rule 20 of the Prevention of Food Adulteration Rules, 1955 does not show that copper sulphate is an approved preservative for toddy. Therefore, I find no illegality in the conclusions reached by the learned Chief Judicial Magistrate that the report of the PA itself is full of doubts.

9. It is also seen from the record that there is no reliable evidence as to who had received the samples at the office of the PA and, therefore, the learned CJM was right when he relied upon the ratio of the case of ***State of Maharashtra .vs. Vitthalrao s/o Thanusao Bodkhe, reported in 1997 (1) PFA Cases, 239*** that there was breach of Rule 7 of PFA which is a reason good enough to reject the report of the PA.

10. Even the sanction accorded by the authority for prosecution of the respondents is not free from doubts. The evidence on record nowhere shows as to which documents were sent to the authority and whether any investigation report in Form A was sent to the authority. The sanctioning authority has not been examined and, therefore, it has to be said that the complainant could not prove independent application of mind to the facts of the case on the part of the sanctioning authority before sanction vide Exh.42 was accorded by him. This is what has been held by the learned Chief Judicial Magistrate and rightly so.

11. In the result, I find no merit in this appeal and it deserves to be dismissed. The appeal stands dismissed.

JUDGE