

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL No. 368 OF 2001**

The State of Maharashtra,
at the instance of Food Inspector
A.M. Dhapre.

.. Appellant
(original complainant)

...VERSUS...

- (1) Lalan Kailashnath Gupta
- (2) Ramnaresh Somar Gupta

Both R/o. C/o. M/s. Gupta Oil Centre
and Sweet Mart, Thakur Mansion,
R.R. Thakur Marg, Jogeshwari (E),
Mumbai.

.. Respondents
(original accused)

.....
Mr. D.P. Adsule, APP for the Appellant-State,
Mr. K.H. Parekh, Advocate for Respondent No.1.

.....

CORAM : S.B. SHUKRE, J.

DATED : 30th JULY, 2015.

ORAL JUDGMENT :

This is an appeal preferred against the judgment and order dated 10.11.2000 passed by the learned Additional Chief Metropolitan Magistrate, 46th Court, Mazgaon, Mumbai, thereby acquitting the respondents of the offence punishable under Section 7(i) r/w Sec. 2(ia)(a)(c)(m) and Sec.7(v) r/w Rule 44 (e) punishable under Section 16 of the Prevention of Food Adulteration Act and Rules made thereunder (hereinafter referred to as the 'PFA' for short).

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

The respondents were prosecuted for commission of offence of storing of Teel oil for sale which was adulterated with Mineral oil which offence was punishable under Section 7(i) r/w Sec. 2(ia)(a)(c)(m) and Sec.7(v) r/w Rule 44 (e) punishable under Section 16 of the Prevention of Food Adulteration Act and Rules made thereunder.

The complainant had purchased 450 grams Teel oil from the respondent no.1, who was the vendor and after dividing it into three parts, he collected those parts separately in empty, dry

and clean three bottles, which were duly labelled and sealed in accordance with the procedure. Respondent no.2 was, at that time, the proprietor of the concerned M/s. Gupta Oil Centre and Sweet Mart, situated at Thakur Mansion, R.R. Thakur Marg, Jogeshwari (E), Mumbai-66, where respondent no.1 was the vendor. As the sample was found to be adulterated with mineral oil by the Public Analyst, Mumbai, a prosecution for the offences, as stated earlier, was launched against the respondents.

On considering the evidence of the prosecution, learned Additional Chief Metropolitan Magistrate found that the offences alleged against the respondents were not proved beyond reasonable doubt and, therefore, by the order passed on 10.11.2000, the learned Additional Chief Metropolitan Magistrate acquitted both the respondents of the same. This appeal is filed against the said judgment and order.

3. During the course of hearing, learned counsel for the respondents submitted that respondent no.2 expired on 24.1.2001. This fact is supported by the report of the learned Additional Chief Metropolitan Magistrate, 46th Court, Mazgaon, Mumbai, dated

24.2.2002. Therefore, the appeal filed as against respondent no.2 abates.

4. Although the learned APP for the Appellant-State has submitted that the impugned judgment and order are erroneous which claim is strongly opposed by the respondent no.1, I find it difficult to accept the contention that impugned judgment and order can be called as perverse and arbitrary, insofar as they find respondent no.1 as innocent in the case.

5. The evidence on record shows that the stock of Teel oil was not stirred while it was purchased from the respondent no.1. The evidence also shows that the fact that quantity of 450 grams Teel oil, that was purchased from respondent no.1 was put in a vessel and then divided into three equal parts is also not mentioned in the panchanama. Therefore, I must say that the learned Additional Chief Metropolitan Magistrate has rightly found that there is a doubt about the Food Inspector drawing a representative sample. In the case of State of Maharashtra .vs. Gitaram Kaluram, reported in All India Prevention of Food Adulteration Journal, IV-1994, page 194, this court has found that under Section 11 (i)(b) of

the PFA, it is necessary for the prosecution to bring on record reliable evidence showing that oil purchased for the purpose of testing under the provisions of the PFA must be divided in three equal parts and if the panchnama does not support the same, the accused would be entitled to acquittal in the matter. In this case also, as observed by me earlier, there is no reliable evidence to show that the Teel oil was divided equally in three parts as panchanama makes no mention of this fact. Therefore, there is a doubt arising on the aspect of taking of samples of the Teel oil in accordance with law.

6. In the result, I find that no case has been made out for making any interference with the impugned judgment and order. The appeal deserves to be dismissed. The appeal stands dismissed.

JUDGE