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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 381 OF 2002.

State of Maharashtra	]	
at the instance of	]	... <u>Appellant.</u>
Shri. H. N.Ugale, Food Inspector,	]	Original
Food and Drug Administration	]	Complainant
Maharashtra State, Pune	]	

V/s.

1. Mr. Vijaykumar Bansilal Bhansali,	]	
r/o 212, Nana Peth, Pune.2	]	
	]	
2. Mr. Santoshkumar Bansilal Bhansali (deceased)]	]	
	]	
3. M/s Vijaykumar Bansilal Bhansali	]	
situated at 212, Nana Peth, Pune.2	]	
	]	
4. Mr. Santosh Prithviraj Bhandari	]	
r/o 321, Nana Peth, Pune-2.	]	
	]	<u>Respondents.</u>
5. Mr. PravinKhivraj Bhandari	]	Original
r/o as above	]	Accused
	]	Nos
6. Mr. Ravindra Dattusing Pardeshi	]	1 to 7.
r/o 64/65, Nana Peth, Pune-2.	]	
	]	
7. M/s Santosh Traders	]	
situated at 1250, Bhawani Peth	]	
Pune 42.	]	

Dr. F. R. Shaikh, APP for the appellant State

None for the Respondents

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 4th DECEMBER, 2015.

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

1. This appeal is preferred by the State challenging acquittal of respondents accused, for the offence punishable under 7 (i) read with Section 2(ia), (a), 2(ia) (m), 7(v) of the Prevention of Food Adulteration Act, read with rule 50 of the Prevention of Food Adulteration Rules 1962 (hereinafter referred to as, “Act”) as recorded by the Chief Judicial Magistrate, Pune, vide his judgment and order dated 26th December, 2001, in Regular Criminal Case No. 27 of 1997.

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

On 20th September, 1995, P.W.1 Ugale, Food Inspector of Pune City, visited establishment of M/s Santosh Traders alongwith panch P.W.3

Srishrimal. There accused No.1 was present. P.W.1 Ugale disclosed to him his identity and the purpose of the visit. He purchased three plastic packets of iodized salt of Suraj brand from accused No.1 and paid him price of Rs.6/-. He kept those three packets in three separate polythene bags and sealed them. Then he complied with the requisite procedure of preparing memorandum panchanama and submitted report to Local Health Authority. On 21st September, he sent one sealed sample part of iodized salt to the Public Analyst and remaining two parts to the Local Health Authority, Pune Municipal Corporation, Pune. On 20.11.1995 itself, he has recorded statement of accused No.1 from which it was transpired that the accused No.1 was vendor and partner of accused No.3 the firm, alongwith deceased accused No.2. It was also revealed that they had purchased the salt in question from accused No.7 M/s Santosh Traders and accused Nos. 4 to 6 were the partners of the accused No.7 M/s Santosh Traders. Accordingly, after obtaining the sanction from the Joint Commissioner Shri. U. R. Gotkhindikar, vide Exh.72, he filed case against all the accused, in the trial Court.

3. In the trial Court P.W.1 Food Inspector Haridas Ugale, examined himself before framing of charge and on being satisfied with his evidence, the trial Court framed charge against accused vide Exh.77. The accused pleaded not guilty and claimed trial.

4. In support of its case, the prosecution relied upon evidence of P.W.1 Food Inspector Ugale, P.W.2 Dr.Anil Rawetkar the Local Health Authority and P.W.3 panch Srisrimal, who was declared hostile.

5. On appreciation of their evidence, the trial Court found several lacunae and breach of mandatory provisions and rules in the case put up by the prosecution and hence the trial Court acquitted all the accused giving them the benefit of doubt.

6. In this appeal I have heard learned APP for the State and perused the record and proceeding of the trial Court. In this case evidence of P.W.1 Food Inspector, Ugale is of much significance and that is the only evidence on record as such brought by prosecution. Admittedly panch

witness to the memorandum i.e. P.W.3 has not supported the prosecution case. That may not make much difference to the prosecution case, but the admissions given by P.W.1 Food Inspector, Ugale in his cross examination are bound to prove fatal to the prosecution case. In the first place, he has admitted that he had no evidence to show that accused No.5 or 6 were taking part in day-to-day business or activity of the said firm. He has further admitted that accused No.6 was only nominal partner of said firm. Further according to him, he has added the name of accused No.5 in the case only because his name was shown in the partnership firm. Law is well settled, as laid down in the case of **State of Maharashtra -vs- Satyanarayan Pannalal 1980 (I) PFA Cases Page 94**, that only the persons who are responsible to the firm for the conduct of its day-to-day business can be held liable for prosecution for offences under Prevention of Food Adulteration Act. In the present case, therefore, it necessarily follows that accused Nos 5 and 6 are required to be acquitted on this very ground itself.

7. Even as regards the procedure which is followed by P.W.1 Food Inspector Shri.Ugale, in collecting sample from the shop of accused

No.1 is concerned, his cross examination proves that he has purchased three separate packets of 1 Kg each, out of 50 packets of 1 Kg each, containing iodized salt and he has put each packet in separate polythene bag and prepared 3 samples. The mandate under the Act requires that he should have opened three separate packets of salt which he has purchased and should have mixed contents thereof together and from that mixed contents he should have drawn 3 equal samples. Then only one could have said that the sample was homogeneous and was representing the whole bulk. The law as laid down by our own High Court in the case of **State of Maharashtra, - Lakhmichand Suganchand Agarwal and anr (1998) 100 Bom MLR 540**, clearly states the procedure for collecting sample, when the sample is purchased from bulk. It is laid down that such sample has to be mixed and then it should be divided in three parts so that each sample would represent whole bulk from which it was obtained. In the present case P.W.1 Food Inspector Ugale, has not followed such procedure and thereby committed breach of mandatory provisions as laid down under Section 11 (1) (b) of the Prevention of Food Adulteration Act.

8. Further it is also pertinent to note that sample as per rule 14 and 16 (b) and (c) is required to be sent to Public Analyst in dry and clean container. In the instant case, sample was sent in polythene bags. As held in the case of **State of Maharashtra -vs- Prabhudas Atalmal Baktani 1986 (3) PFA Cases 221**, sending sample in a plastic bag which can be easily tampered with contravenes the mandatory provisions of rule 14 of the Act and the benefit of the same extends to the accused.

9. Moreover, in the present case P.W.1 Food Inspector Ugale admitted that during the course of enquiry it was revealed that accused Nos 1 to 3 had purchased salt from accused No.7 and accused No.7 had purchased it from M/s Gujarat Chemical Gandhidham. The bill to that effect is produced on record at Exh.110. In such situation, when accused Nos 1 to 3 had purchased the salt under a legal and valid guarantee from M/s Gujarat Chemical firm, they cannot be deemed to be guilty in view of section 19 of the Act.

10. The evidence on record also proves that polythene bag of the

salt had come to Pune from Gandhidham, Gujarat State which is at a distance of 700 Kms, naturally in transportation salt must have come in contact with air, heat, light, water etc. Therefore, the possibility iodine therein being evaporated cannot be ruled out, especially when the sample was analyzed after 27 days from its collection.

11. Thus it is clear that the trial Court has considered all these infirmities and lacunas in the case of prosecution and on proper appreciation of evidence on record, acquitted the respondent accused. The appeal, therefore, does not call for any interference in the judgment and order passed by the trial court. Hence appeal 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.