

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 669 OF 2001**

The State of Maharashtra,
 (At the instance of
 Shri Ganpat Pandurang Kokane,
 Age 31 years, Food Inspector,
 Solapur.

.. Appellant
 (original complainant)

...VERSUS...

Shri Vijaykumar Kallappa Havinal,
 Age 37 years, Prop. of M/s. Vijaykumar
 K. Havinal Masalewala,
 Tenement No.452-53, Laxmi Market,
 Solapur.

.. Respondent
 (original accused)

.....
 Mr. D.P. Adsule, APP for the Appellant-State,
 Mr. I.M. Khairdi, Advocate for the Respondent-accused.

.....

CORAM : S.B. SHUKRE, J.

DATED : 30th JULY, 2015.

ORAL JUDGMENT :

This is an appeal preferred against the judgment and
 order dated 29.3.2001 passed by the learned Chief Judicial

Magistrate, Solapur in R.C.C. No.274/1999, thereby acquitting the respondent of the offence punishable under Sections 2 (ia)(a)(m) r/w 7(i)(v) punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the 'PFA Act' for short).

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

This case is based on the allegation of Food Inspector Shri Ganpat Pandurang Kokane, the complainant that on 8.12.1998 the respondent had stored for sale at his shop situated at Tenement No.452-53, Laxmi Market, Solapur adulterated chilly powder.

On 8.12.1998, the complainant visited the said shop of the respondent together with panch witness and disclosed his identity and intention to draw the sample. He purchased 600 grams of chilly powder, which was stored in one of the aluminium patis kept at the said shop of the respondent. The chilly powder was divided in three equal parts and each of the parts was poured in empty, dry and clean glass bottles. It was then sealed and labelled as per the prescribed procedure. On the same day, one

sealed part of the sample of chilly powder was sent to the Public Analyst, Public Health Laboratory, Solapur (hereafter referred to as the 'PA' for short) together with duly prepared Form No.VII and specimen impression of seal used for the purpose of sealing the sample bottles. The sample was sent in sealed condition and was received in that condition only by the PA. Remaining two parts of the sample of the chilly powder with two copies of Form No.VII were, on the same day, sent to Local Health Authority of Solapur Municipal Corporation together with covering letter and two copies of specimen impression of the seal used for sealing the samples, for doing analysis of the samples. The PA submitted his report to the effect that the sample bearing No.SMC (II) and Sr. No. 627/1998 contains total ash beyond permissible limits and also non-volatile other abstracts less than permissible limits and thus the sample did not conform to the standard of chilly powder as per Item No.8.05.01 of Appendix B r/w Rule 53 (1)(A) of PFA Rules, 1955. In other-words the report was to the effect that chilly powder was adulterated.

On 13.3.1999, the relevant documents were sent to the

Joint Commissioner and Consenting Authority, Pune for seeking consent to prosecute the respondent for the offence of selling of adulterated chilly powder. On receipt of the consent from the authority, the complainant filed a complaint against the respondent alleging commission of offence of selling of adulterated chilly powder. Based on the evidence recorded before charge, charge for an offence punishable under Section 16 read with other relevant sections of PFA and Rules framed thereunder was framed against the respondent, to which he pleaded not guilty and claimed to be tried as per law.

On merits of the case, the learned Magistrate found that the offences charged against the respondent could not be proved beyond reasonable doubt and, therefore, by the judgment and order dated 29.3.2001, the learned Magistrate acquitted the respondent of the same. Being aggrieved by this judgment and order, the appellant has preferred the present appeal.

3. I have heard the learned APP for the Appellant-State and the learned counsel for the respondent-accused. I have carefully considered the record of the case and impugned judgment

and order.

4. Learned AGP has assailed the judgment only on the ground that the learned Magistrate has not properly appreciated the evidence in the light of the requirement of law under the provisions of PFA Act and Rules, 1955 and the result is of erroneous and illegal judgment delivered by the learned Magistrate in the present case.

5. Learned counsel for the respondent has submitted that the impugned judgment and order are absolutely consistent with the settled principles of law and no perversity or arbitrariness could be seen therefrom. He further submits that while considering the appeal against acquittal, it is not open to appellate court to take another view just because another view is possible and interference by the appellate court could be made only if the evidence taken by the trial court is so illogical as cannot be said to be arising at all from the evidence available on record and that not being the case here, he submits that the present appeal deserves to be dismissed.

6. There can be no second opinion about the settled

principle of law that in an appeal against acquittal, it is not open for the appellate court to upset the findings recorded by the trial court unless the appellate court is of the opinion that the view taken by the trial court cannot be said to arising logically from the evidence available on record. Equally, it is well settled law that it is not permissible for the appellate court to substitute its own view for that of the view taken by the trial court just because another view is possible. In order to do such a thing, it would be necessary for the appellate court to satisfy itself that the appreciation of evidence carried out by the trial court is perverse and arbitrary and that it is not based upon admissible evidence.

7. The impugned judgment and order when examined in the light of the aforestated principles of law, I find that neither any perversity nor arbitrariness could be noticed in the appreciation of evidence done by the trial court in reaching finding of innocence of the respondent. The evidence brought on record by the prosecution regarding giving of notice to the respondent about launching of prosecution against him together with copy of the report of the Public Analyst is sketchy and doubtful. It does not

reasonably prove the fact that when notice was indeed was received by the respondent. If this is so, it has to be said that the valuable legal right of the respondent to get the spare sample re-tested has been seriously affected. On this ground alone, I am of the view that the respondent deserved to be acquitted.

8. There is also a glaring lacunae in the prosecution case regarding proving the material fact of respondent being owner of shop situated at Tenement No.452-53. If it was the case of the prosecution that the respondent was carrying on business of sale of adulterated chilly powder from the said shop, it was absolutely essential for the prosecution to prove beyond reasonable doubt that the said shop was owned or at least run by the respondent. However, no reliable evidence in this regard has been produced on record by the prosecution. On the contrary, the evidence adduced by the respondent in support of his contention that the shop situated at Tenement No.452-53 was in the name of his brother Machindra K. Havinal appears to be reliable. Six tax receipts produced in evidence by the respondent vide Exh.67 reasonably establish the fact that the respondent was carrying on this business

of sale of chilly powder from the shop situated at Tenement No.398, 399 and that the shop situated at Tenement No.452-53 stood in the name of Mallinath K. Havinal.

9. These material lacunae in the prosecution case, as brought to the fore by the evidence available on record have been appropriately considered by the learned Magistrate in recording finding of innocence of the respondent. Such being the nature of the prosecution evidence, I am of the view that there is no case made out by the appellant in enabling this court to interfere with the impugned judgment and order. The appeal deserves to be dismissed. The appeal stands dismissed.

JUDGE