

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL No.694 OF 2001**

The State of Maharashtra. .. Appellant
(original complainant)

...VERSUS...

(1) Shri Vasant Rameshwar Mitkari,
Vendor of M/s. Gurukrupa Trading Co.,
situated at 378, Market Yard,
Pune-37.

(2) Sou. Leela Vasant Mitkari,
Proprietor of M/s. Gurukrupa
Trading Co., situated at 378,
Market Yard, Pune-37.

.. 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 18.4.2001 delivered by the learned Chief Judicial

Magistrate, Pune in Regular Criminal Case No.102/1997, thereby acquitting the respondents-accused from the offences punishable under Sections 7(i) r/w Sec. 2 (ia) (a), 2 (ia) (f), 2 (ia) (j), 2 (ia) (m) Sec. 7 (ii) (d) r/w Sec. 2 (ix) (d) and Sec. 7 (v) r/w Rules 23 and 50 of Prevention of Food Adulteration Rules, 1955 and Rule 5 of Maharashtra Prevention of Food Adulteration Rules, 1962 punishable under Section 16 (1) (a) (i) and 16 (1) (a) (ii) 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 :

Respondent no.1, at the relevant time, was the vendor and respondent no.2 was the proprietor of M/s. Gurukrupa Trading Company, situated at 378, Market Yard, Pune-37. On 29.10.1996, Food Inspector Mr. Ugale visited the said premises of the respondents at about 2.00 p.m. along with panch witness Ashok Avte, Assistant Commissioner Mr. Kulkarni and sampling Assistant Mr. Pawar and after disclosing his identity and purpose of visit, purchased 600 grams Ginger (whole) which was kept in a labelled polythene bag containing 1 kg. of Ginger (whole). The quantity of

Ginger was divided in three equal parts and then each of the parts was transferred into three glass bottles which were clean and dry. They were sealed and labelled by following the prescribed procedure. Notice of the same was given to the respondent no.1. One part of the said sample together with Form No.VII was sent to the Public Analyst, Pune (hereinafter referred to as the 'PA' for short) for analysis along with relevant documents. Remaining sample parts together with relevant documents and Form No.VII were sent to the Local Health Authority, Pune. After analysing the sample, the PA submitted the report that the sample of Ginger (whole) did not conform to the standards of Ginger. Therefore, the Food Inspector Mr. Ugale collected relevant information from the respondent no.1 in order to complete the investigation and, thereafter, submitted all the relevant documents to the Joint Commissioner, Pune seeking his consent for prosecuting the respondents. On receipt of the consent, the complaint came to be filed by another Food Inspector Mr. Kembalkar.

The process was issued to the respondents who entered their appearance in the Court of Chief Judicial Magistrate,

Pune. Evidence before charge was recorded. It was found that *prima facie* offences were made out. A charge for the offences punishable under Sections 7(i) r/w Sec. 2 (ia) (a), 2 (ia) (f), 2 (ia) (j), 2 (ia) (m) Sec. 7 (ii) (d) r/w Sec. 2 (ix) (d) and Sec. 7 (v) r/w Rules 23 and 50 of Prevention of Food Adulteration Rules, 1955 and Rule 5 of Maharashtra Prevention of Food Adulteration Rules, 1962 punishable under Section 16 (1) (a) (i) and 16 (1) (a) (ii) of the Prevention of Food Adulteration Act, 1954 was framed against both the respondents. Both the respondents pleaded not guilty to the same and claimed to be tried as per law.

3. On merits of the case, the learned Magistrate found that the offences with which the respondents were charged in the present case were not proved beyond reasonable doubt and, therefore, by the judgment and order dated 18.4.2001 acquitted the respondents of the said offences. Not being satisfied with the same, the State is before this court in the present appeal.

4. I have heard the learned APP for the Appellant-State. None appears for the respondents-accused. I have carefully gone through the record and impugned judgment and order.

5. Learned APP for the Appellant-State has submitted that the learned Magistrate has not properly appreciated the evidence available on record in the light of settled principles of law and, therefore, has recorded erroneous findings against both the respondents.

6. On perusal of impugned judgment and order, I find the position to be otherwise. The findings recorded by the learned Magistrate are in consonance with the settled principles of law and cannot be said to be perverse or arbitrary.

7. Learned Magistrate has found that the respondents were entitled to the benefit of Section 19 (2) of the PFA Act, 1954 because admittedly the sample of Ginger was drawn from a sealed packet having a label on which the name and address of the source M/s. Jay Spices, 420, Marketyard, Pune-37 were mentioned. Admittedly, the sample in question was connected to the source referable to M/s. Jay Spices. Admittedly, the sample was drawn from the whole Ginger, weighing 1 kg. Admittedly, the firm M/s. Jai Spices was not made an accused in the present case and no explanation for the same has been given. In these facts

and circumstances, the benefit of Section 19(2) of the PFA Act, 1954 given by learned Chief Judicial Magistrate cannot be said to be illegal or improper.

8. There was also a doubt about obtaining of three samples of Ginger as it was not mentioned in the panchanama that after purchase of the whole Ginger weighing 600 gram, the pieces were kept on one paper and mixed and, thereafter, divided into three equal parts. The panch witness Avte admitted that respondent no.1 has protested at the time of drawal of the samples that the bottles used for keeping samples were dirty and not fit for collecting of sample. The complainant, however, did not adduce satisfactory evidence to show that the sample bottles were clean, dry and empty before they were used for storing the samples. Although, the information of the complaint and copy of the report of the PA had been sent, according to the prosecution, to the respondents and the postal acknowledgement in that regard was at Exh.82, the learned Magistrate found that the acknowledgement did not bear the signature of any of the respondents and thus there was a doubt if the information along with copy of the PA report was

received by the respondents or not. Learned Magistrate, therefore, found that valuable statutory right of the respondents to get the additional sample retested from Central Food Laboratory was taken away, which was fatal to the prosecution. All these lacunae in prosecution case have been rightly appreciated by learned Magistrate so as to record his finding of innocence of the respondents.

9. In the circumstance, I find no merit in the present appeal. There is no reason for me to make any interference with the impugned judgment and order and the appeal deserves to be dismissed. The appeal stands dismissed.

JUDGE