

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 794 OF 2001

The State of Maharashtra	]	
at the instance of	]	
Shri Suresh Vithal Joshi,	]	
Food Inspector,	]	
Food & Drug Administration,	]	Appellant
M. S. Pune.	]	...(Orig. Complainant)

V/s.

1.	Mr. Narayan Bhausahab Waman (Vendor)	]	
		]	
2.	Mr. Dilip Bhausahab Waman, Proprietor of Himraj Ice Candy, Both situated at Gat No.1490, Opp. ST Stand Shikrapur, Tal. Shirur, Dist.- Pune.	]	
		]	
		]	... Respondents

.....
Mr. A. S. Shitole, A.P.P. for the Appellant – State.
.....

CORAM : S.B. SHUKRE, J.

DATED : AUGUST 26, 2015.

ORAL JUDGMENT :

This is an Appeal preferred against the judgment and order dated 3rd April, 2001 delivered in Regular Criminal Case No. 164 of 2000 by Chief Judicial Magistrate, Pune, thereby

acquitting the respondents of the offence punishable under Section 16 read with Sections 7(i), 2(1a)(a), 2(1a)(m) 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:

(i) Respondent no.1 is the vendor. Respondent no.2 was the proprietor of a firm Himraj Ice Candy situated at Gat No.1490, Opposite ST stand Shikrapur, Taluka Shirur, District - Pune from where the respondents were carrying on the business of selling the Ice-cream. With a view to obtain sample of the Ice-cream for ascertaining whether the Ice-cream being sold conformed to the standards of Ice-cream set out in the PFA Act, the complainant - Food Inspector along with one more Food Inspector and panch witness visited the said shop of the respondents at about 12.00 hrs. of 15th June, 1995. After disclosing their identity and purpose of visit, they purchased 900 grams of Pista Ice-cream from respondent no.1 and divided it into three equal parts. The three portions of the Ice-cream were put in three clean, dry and empty bottles and formalin of requisite quantity was added, as preservative to each of the bottles.

The bottles were duly sealed as per the procedure prescribed under the PFA Act and Rules framed thereunder. Notice in Form No.VI in pursuance of Section 14-A of the PFA Act was issued to respondent no.1. On 16th June, 1995, one sealed sample together with original memorandum Form-VII with covering letter in sealed condition were sent to Public Analyst, Pune for analysis and report. Relevant documents and the remaining sample portions were sent to Local Health Authority and Assistant Commissioner (II) FDA Pune. The report of the Public Analyst showed that the sample of the Ice-cream did not conform to the standards of Pista Ice-cream as per the PFA Rules, 1955. Therefore, after obtaining consent from the Joint Commissioner, a complaint was filed against the respondents.

(ii) Evidence before charge was adduced. The respondents were allowed to cross-examine the witnesses of the complainant. On being satisfied that a *prima facie* case was made out, the learned Magistrate framed a charge for an offence punishable under Section 16 read with Sections 7(i), 2(1a)(a), 2(1a)(m) of PFA Act against both the respondents to which they pleaded not guilty and claimed to be tried. Further evidence was led. On merits of the case, the learned Magistrate found that

prosecution failed to prove beyond that reasonable doubt that the offence that was charged against both the respondents, and therefore, by his Judgment and order dated 3rd April, 2001, the learned Chief Judicial Magistrate acquitted both the respondents of the same. Not being satisfied with the same, the State is before this Court in the present Appeal.

3 I have heard Shri Shitole, learned A.P.P. for the Respondent - State of Maharashtra. None has appeared for the respondents. I have carefully gone through the record of the case including the impugned judgment and order.

4 Although, the learned A.P.P. has argued that the acquittal of both the respondents recorded by the learned Magistrate is the result of erroneous appreciation of evidence available on record, the learned A.P.P. could not point out from the evidence of the prosecution as to what circumstances could have been held to be going against the present respondents and could have been found to be sufficient to nail them in the present case.

5 The learned Chief Judicial Magistrate by carrying out

a detailed analysis of the prosecution evidence in his judgment found that there were several non-compliances with the mandatory provisions of law, which cumulatively resulted in creating a doubt about the entire prosecution case against the respondents and rightly so.

6 The admissions given by the complainant P.W. 1- Suresh Vithal Joshi in his cross-examination taken on behalf of the respondents have dealt a fatal blow to the prosecution case. He admits that 900 grams of Pista Ice-cream that was purchased by him from the respondents was first placed by him in a steel pot obtained by him from the respondents themselves. He also admits that for transfer of the whole sample of the Ice-cream by dividing it into three parts into three empty bottles, a spoon was used which was collected by him from the respondents. If both these articles were collected by him from the respondents, it was the duty of the complainant to ensure that these articles were cleaned and dried up before their use by him and this should have been done either by him or by any of those accompanying him at the spot itself. But, he admits that he did not do so. He also admits that even though the whole sample that was purchased by him was a frozen item like Pista Ice-cram, he did not send the

sample to the Public Analyst at the same temperature and in the same condition it was stored at the shop of the respondents. He also admits that the wrapper of the sample was not stated to be **“folded in”** in the punchnama, Exhibit - 36, which in fact is true, if one peruses the punchanma. These admissions would together make it clear that no proper procedure for taking sample of the Ice-cream and also for sending it to Public Analyst for analysis and report was followed, and it has created a doubt about the genuineness of the report of the Public Analyst which says that sample of the Ice-cream does not conform to standards of Pista Ice-Cream. Therefore, the learned Magistrate by relying upon the cases of ***State of Maharashtra Vs. Mohanlal Hanumandas Vaishnowa & Anr.***¹, ***State of Maharashtra Vs. Ram Murat Dube***², ***Nathi Lal Vs. State of U.P.***³, has rightly held that there being violation of mandatory provisions of PFA Rules, the benefit of doubt deserves to be given to the respondents.

7 There was also yet another violation of the mandatory right of the respondents under Section 13(2) of the PFA Act.

The sample was taken on 15th June, 1995 and the complaint was

1) 1978 PFA Journal Page 183.

2) 1979 (I) PFA Case Page 282.

3) 1980 (I) PFA cases page 457.

filed on 18th December, 1995. Thus, filing of the complaint was after lapse of six months which resulted in denial of the right of the respondents to get the second part of sample of Pista Ice-cream, admittedly a perishable food article, analysed from Central Food Laboratory under Section 13(2) of the PFA Act. The learned Magistrate has also referred to such denial of right of the respondents in his impugned judgment and order by following the law laid down by this Court in the case of ***State of Maharashtra Vs. Subhash Ramkrishna Uddappi***⁴ and rightly so.

8 In the circumstances, I find that no case has been made out for making any interference in the impugned judgment and order. The Appeal deserves to be dismissed.

9 The Appeal stands dismissed.

(S. B. SHUKRE, J.)

4 1979 (I) PFA Cases page 212.