

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.863 OF 2002

The State of Maharashtra	]	
(Through Shri. B.K. Karyappa,	]	
Food Inspector, Sangli,	]	
Food & Drug Admn.,	]	
M.S. Jannatabi Bldg.,	]	 Appellant /
South Shivaji Nagar, Sangli)	]	(Org. Complainant)

Versus

1. Santosh Hirachand Jogad,	]	
Age : 25 Years,	]	
Vendor of M/s. Santosh Provision Stores,	]	
Municipal Gala No.31, Lengare Road,	]	
Vita, Tal. Khanapur, Dist. Sangli.	]	
	]	
2. Hirachand Shivraj Jogad,	]	
Age : 50 Years,	]	
Proprietor of M/s. Santosh Provision Stores,	]	
Municipal Gala No.31, Lengare Road,	]	 Respondents /
Vita, Tal. Khanapur, Dist. Sangli.	]	(Original Accused)

Mr. H.J. Dedia, A.P.P., for the Appellant / State.

None for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 3RD DECEMBER 2015.

ORAL JUDGMENT :

1. The Appellant / State has preferred this Criminal Appeal challenging acquittal of the Respondents for the offences under Section 2, 7(i) r/w.

2(ia)(a), 2(ia)(c) and 2(ia)(m) punishable under Section 16 of the Prevention of Food Adulteration Act, 1954, as recorded by the Judicial Magistrate, First Class, Vita, Dist. Sangli, vide his Judgment and Order dated 2nd February, 2002 in Regular Criminal Case No.78 of 1992.

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

On 20th February 1992, Respondent No.1 Santosh was working as vendor in Santosh Provision Stores at Municipal Gala No.31, situate on Lengare Road, Vita. Respondent No.2 Hirachand was the Proprietor of the said shop. PW-1 Bapu Karyappa, who was working as Food Inspector, visited the said shop along with his Assistant C.A. Kasabekar on that day. He disclosed his identity to Respondent No.1, who was present in the said shop, and also communicated to him his intention to take samples of the articles for the purpose of chemical analysis. PW-1 Karyappa inspected the said shop and found eight packets / plastic bags containing 1 Kg. Poppy Seeds (*Khaskhas*) in each packet. The packets bear the seal, label, the date of manufacturing etc. Hence, he purchased 450 gms. Poppy Seeds out of the one packet for analysis for consideration of Rs.38.25. He divided the said Poppy Seeds into three equal parts qua 150 gms. each, put each part of the sample in separate glass bottles,

completed all the formalities, including the drawing of Panchnama in the presence of the Panch PW-2 Sidhanath Nikam. Then he sent one part of the sample to Public Analyst at Sangli and remaining two parts of the samples, along with necessary documents, to the Local Health Authority.

3. In due course, PW-1 Karyappa received the Report of Public Analyst (Exhibit-62), Sangli disclosing that the sample did not confirm to the standards of the Poppy Seeds, as required under Appendix-B of the Prevention of Food Adulteration Act. The sample was found to be falling in parameter for extraneous matter and non volatile ether extract. PW-1 Karyappa, therefore, collected the necessary information regarding establishment of Santosh Provision Store and submitted Proforma-A along with all the papers to the Joint Commissioner, Pune Division, through PW-3 Aatram Whatkar, the Local Health Authority, who was working, at that relevant time, as Assistant Commissioner in Sangli. On the receipt of the consent / sanction from the Joint Commissioner, Pune Division, PW-1 Karyappa filed complaint against both the Respondents in the Trial Court.

4. Trial Court framed charge against the Respondents vide Exhibit-76. Both the Respondents pleaded not guilty and claimed trial, raising the

defence of false implication on account of the quarrel with PW-1 Karyappa.

5. In support of its case, the prosecution has examined in all three witnesses viz. PW-1 Food Inspector Bapu Karyappa, PW-2 Panch Sidhanath Nikam and PW-3 Assistant Commissioner Aatram Whatkar. Through their evidence, the prosecution has proved number of documents. Out of these three witnesses, PW-2 Panch Nikam has not supported the prosecution case. Though he is declared hostile and cross examined, nothing worthwhile is elicited in his cross-examination to support the prosecution case.

6. Hence, as regards the evidence relating to taking of samples from the shop of the Respondents and about observing all the formalities and mandatory requirements for the same, as laid down under the Prevention of Food Adulteration Act, the only evidence in the case is of PW-1 Food Inspector Karyappa. He has reported in detail about the procedure which he has adopted for collecting the samples and for completing the requisite formalities. However, in his cross-examination, he has given certain admissions, on the basis of which the Trial Court found that though PW-1 Karyappa has deposed that he has collected the samples in dry, empty

and clean bottles, he has to admit in his cross-examination that there was a margin of air space between the cork of the bottle and the upper layer of the sample. Therefore, the Trial Court held that it gives room for raising doubt that the sample was not packed as prescribed in Rule 14 of the Act and the possibility of leakage and insertion of moisture, hence, cannot be ruled out. The Trial Court also found that there was no reference in Memorandum Panchanama (Exhibit-51) about washing, cleaning and drying of the bottles before filling the samples in the same, which necessarily again leaves the possibility of sample bottles being not cleaned, dried and emptied, as mandated under Rule 14 of the Act.

7. The cross-examination of PW-1 Karyappa further reveals that he had despatched the counter parts of the samples, copy of Form No.7 along with Memorandum, specimen impression of the seal together at one and same time. Rule 4 under the Prevention of Food Adulteration Act mandates that they should be sent separately so as to avoid tampering of the samples in transit. Sending of the samples along with specimen impression of the seal at one and same time, leaves scope for tampering of the sample and it also amounts to breach of mandatory Rule 4 of the Act. It has also the cascading effect of the Public Analyst Report (Exhibit-62), in the instant case, loosing its credibility.

8. The Public Analyst Report (Exhibit-62) is also silent about the conduct of microscopic test as well as starch structure, which can be detected only through microscopic test. The report is also silent about the process by which non volatile ether extract was arrived at; either by hot process or cold process. Further, the date of actual analysis and completion thereof is also not mentioned in the Report.

9. The evidence on record also proves that there was no proper compliance of sub-section (2) of Section 13 and Rule 9(b) of the Act. The mandatory intimation was not given to each of the Respondents. Though PW-3 Assistant Commissioner Aatram Whatkar has deposed about issuance of notice to both the Respondents by R.P.A.D., the acknowledgment receipts (Exhibits "89" and "90") show that it was served upon one and same person. Moreover, the postal endorsement shows that, it was despatched on 19th June, 1992, whereas, the case is filed in the Court on 16th June, 1992 itself. Sub-section (2) of Section 13 of the Act mandates that Accused should be informed about their right to get the samples analyzed through Central Laboratory on the permission of the Court. Such intimation has to be given on or before filing of the complaint, which is not done in this case and hence there is breach of Rule 9(b) also.

10. In view of these various lacunae and infirmities in the prosecution case, it is clear that the Trial Court has rightly extended the benefit of doubt to the Respondents. The Appeal, therefore, is devoid of merits, hence, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]