

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.987 OF 2001
ALONG WITH
CRIMINAL APPEAL NO.984 OF 2001
ALONG WITH
CRIMINAL APPEAL NO.985 OF 2001
AND
CRIMINAL APPEAL NO.986 OF 2001

State of Maharashtra	]	
(At the instance of Mr. Gopal Vishnu Kulkarni,	]	
Food Inspector, Food & Drug Administration,	]	
791/93, Lucky Building, New Guruwar Peth,	]	 Appellant /
Pune – 42.	]	(Org. Complainant)

Versus

1. Mr. Madanlal Jaibhagwan Aggarwal	]	
Partner of M/s. Pooja Food Products,	]	
S. No.173, Wakadgaon, Tal. Mulshi,	]	
Dist. Pune.	]	
	]	
2. M/s. Pooja Food Products (Firm)	]	
S. No.173, Wakadgaon, Tal. Mulshi,	]	 Respondents /
Dist. Pune.	]	(Org. Accu.Nos.1 & 2)

Mrs. A.S. Pai, A.P.P., for the Appellant / State.

Mr. K.H. Parekh for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 7TH DECEMBER 2015.

ORAL JUDGMENT :

1. Criminal Appeal Nos.984 of 2001, 985 of 2001 and 986 of 2001 are not on Board. By consent, the same are taken on Board and taken up for hearing forthwith.

2. All these four Criminal Appeals are arising out of one and same Judgment and Order dated 10th April, 2001 of Chief Judicial Magistrate, Pune in four Criminal Cases bearing R.C.C. No.253 of 1999, R.C.C. No.254 of 1999, R.C.C. No.255 of 1999 and R.C.C. No.256 of 1999. Hence, they are being decided by this common Judgment.

3. By the impugned Judgment of the Trial Court, Respondent Nos.1 and 2 are acquitted, in all the above referred four Criminal Cases, of the offences punishable under Sections 7(i), 7(iii), 7(v), 2(ia)(a), 2(ia)(c), 2(ia)(m) r/w. Rule 44-h, Rule 50 of the Prevention of Food Adulteration Rules, 1955 and Rule 5 of MPFA Rules, 1962 punishable under Sections 16 and 17 of Prevention of Food Adulteration Act, 1954. Being aggrieved by the said Judgment, the Appellant / State has preferred these four Appeals.

4. Brief facts of the Appeals can be stated as follows :-

On 28th December, 1992, PW-1 Gopal Kulkarni, the Food Inspector, visited the Turmeric Powder manufacturing factory premises of M/s. Pooja Food Products situated at Sr. No.173, Wakadgaon, Taluka Mulshi, Dist. Pune along with Panch Witness Ashok Maruti Satpute. Respondent No.1 Madanlal Aggarwal was present in the factory and he informed that he

was the Partner of Pooja Food Products and looking after the business of manufacturing of turmeric powder for sale. PW-1 Kulkarni disclosed to him his identity and the intention of visit. PW-1 Kulkarni then purchased 600 gms. each of turmeric powder for the purpose of analysis from five different lots of turmeric powder for the price of Rs.12/- each from Respondent No.1. He divided each sample of the said turmeric powder in three equal portions and put them in three clean, dry and empty glass bottles. He sealed those bottles, completed the requisite formalities, drew the Memorandum Panchanama and then, on the next day, he sent one sample of turmeric powder to Public Analyst, whereas, two remaining samples to Local Health Authority. On the receipt of the Report of Public Analyst that, the turmeric powder contains foreign starch, i.e. rice starch, and, therefore, does not confirm to the standards, he submitted all the papers for obtaining consent for prosecution of the Respondents. On receipt of the sanction, he filed five separate cases against the Respondents.

5. In support of his case, PW-1 Kulkarni examined himself and on being satisfied with his evidence, the Trial Court framed charge against the Respondents in all the five cases. Respondent No.1 pleaded not guilty and claimed trial. In addition to the evidence of PW-1 Kulkarni, the

prosecution examined PW-2 Panch Witness Ashok Maruti Satpute, PW-3 Local Health Authority Sopan Patil and the Public Analyst Ramesh Chavan. On appreciation of these evidences, the Trial Court was pleased to hold that prosecution has failed to prove its case beyond reasonable doubt and, accordingly, acquitted the Respondents in all the five cases.

6. This Judgment of the Trial Court is challenged in these Appeals by learned A.P.P., whereas, supported by learned counsel for the Respondents.

7. At this stage, it may be stated that Criminal Appeal No.972 of 2001 preferred by the State against this common Judgment in R.C.C. No.252 of 1999, at the stage of admission itself, after perusing the impugned order and finding, this Court was pleased to dismiss the Appeal vide order dated 10th April, 2001, holding that no case is made out for interference. Hence, leave to appeal was denied.

8. Though these Appeals are admitted against the same common Judgment, in my considered opinion, these Appeals also deserve the same fate of dismissal on merit, as the perusal of the Judgment passed by the Trial Court reveals that the Trial Court found number of infirmities

and lacunae in the case put up by the prosecution, which, according to the Trial Court, were going to the root of the matter. There was also breach of mandatory provisions. On perusal of the Judgment passed by the Trial Court, I am satisfied that the evidence adduced on record by the prosecution to prove the guilt of the Respondents is not at all satisfactory and the findings of the Trial Court are borne out with the proper reasoning.

9. The cross-examination of Public Analyst Ramesh Chavan reveals that, for testing the sample, he has applied only microscopic examination and not any other test to analyze the sample. Needless to say, that mere microscopic examination cannot be sufficient to find out whether the sample of turmeric powder contains the foreign starch material. The law to that effect is very clear. Further, Public Analyst Ramesh Chavan has admitted that in the test done by him, total starch contents of turmeric were found to be within limit. In such situation also, microscopic examination cannot be sufficient to accept the Report of Public Analyst to hold that the sample of turmeric power did not confirm to the standards laid down in the Rules.

10. The evidence of Public Analyst Ramesh Chavan further reveals that he has prepared the Notes of Analysis three days after the tests were

carried out. Again it has to be stated that the Notes of Analysis are to be prepared simultaneously when the sample is analyzed. If they are prepared later on, they are bound to lose their evidential value. There is also no evidence on record to show that he compared the seals on specimen impression with seal on sample and outer cover. It was his duty to do so. In the absence of such evidence, his Report again loses the evidential value.

11. In view of these lacunae in the prosecution case, in my considered opinion, the Trial Court has rightly extended the benefit of doubt to the Respondents. Hence, the Appeals hold no merit and stand dismissed. Bail Bonds of the Respondents stand cancelled.

[DR. SHALINI PHANSALKAR-JOSHI, J.]