

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.56/2002

(Food and Drug Administration ..vs.. Suresh Chandulal Bangoliya & anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. V. A. Thakare, A.P.P. for appellant.
Mr. Sagar Katkar, Advocate h/f Mr. N. R. Saboo,
Advocate for respondents.

CORAM : A.B. CHAUDHARI, J.

DATE : JUNE 24, 2015.

This appeal is directed against judgment and order dated 25.10.2001 in Criminal Appeal No. 34/1999 by Sessions Judge, Buldhana, by which the appellate court reversed the judgment and order of conviction recorded by the trial Judge on 21.07.1991 in Criminal Case No.191/1988 and acquitted respondents.

I have perused both the judgments recorded by the courts below. The prosecution had examined only two witnesses, PW1-Prakash Patki and PW2-Salimkha Gulamkha. The prosecution did not prove that the Public Analyst's report was supplied to the accused in order to comply with the mandatory provisions of Section 13 (2) of the Prevention of Food Adulteration Act, 1954. The trial Court, however, observed in paragraph 9 of the judgment that the accused did not dispute that the said report was not received and, therefore, presumed that Public

Analyst's report was received by the accused. Obviously, the reason is perverse since the initial burden of proof to prove that the report of the Public Analyst was served on the accused is on the prosecution and not on the defence. The accused kept quiet because burden to prove that the report was served on him or Local Health Authority was on the prosecution. The appellate court, therefore, rightly found that the trial court committed error in putting burden on the accused to show that he did not receive the Public Analyst's report. The reason given by the trial court is absurd and has rightly found to be wrong by the appellate court.

The net result is that the right of the accused under Section 13(2) of the Prevention of Food Adulteration Act was destroyed by the prosecution. The provision has been repeatedly held to be mandatory. There is clear cut non compliance of the same. That apart, the above reason itself, according to me, is sufficient to record an order of acquittal.

In view of above, I pass the following order.

ORDER

Criminal Appeal No. 56/2002 is rejected.

JUDGE