

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

CRIMINAL APPEAL NO.194/2002

State of Maharashtra,thr.Shri T. M. Derkar, Food Inspector, Amravati ..vs.. Devanand
Babulal Sahu

AND CRIMINAL APPEAL NO.195/2002

State of Maharashtra,thr.Shri T. M. Derkar, Food Inspector, Amravati ..vs.. Devanand
Babulal Sahu

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

Court's or Judge's orders.

Mrs. Rashi Deshpande, A.P.P. for appellant.
Mrs. Gaikee, A.P.P. for appellant.

CORAM : A.B. CHAUDHARI, J.

DATE : JULY 9, 2015.

The state has put to challenge two judgments and orders of acquittal dated 24.10.2001 passed by Chief Judicial Magistrate, Amravati by which respondents-accused were acquitted of the offence punishable under the provisions of Prevention of Food Adulteration Act. Both these appeals are being disposed of by this common judgment and order since the same set of evidence, oral as well as documentary, is involved.

I have perused the judgment and reasons recorded by the trial Judge in both these appeals for recording order of acquittal. The learned trial Judge in both these cases found that the Food Inspector nowhere stated that the sample of linseed oil that was obtained by him was obtained after separating

the same and after making the same homogeneous and the said fact was also not mentioned in panchanama at the time when the samples were taken. In the light of the Judgment in **Suresh Kumar ..vs.. State of Haryana, 1993 (1) PFA Cases 118**, wherein it was held that the requirement of law namely; burden of proof to prove that the sample was taken and made homogeneous by the State through its food Inspector and if burden was not discharged, the prosecution must fail.

The Food Inspector, in the present case, admittedly, did not have the evidence in the form of Panchanama that when samples were taken in both these cases, they were made homogeneous by properly separating the same and further the bottles, in which the samples were taken, were clean and dry. The first reason recorded by the learned trial Judge, therefore, cannot be faltered.

Upon perusal of the evidence, I find that the prosecution did not examine anybody from the Local Health Authority nor the Food Inspector stated anywhere that after obtaining report from the Public Analyst, the same was served on the accused persons. That means that the accused could move the court for sending sample, which is called the third sample, to the Central Laboratory, if he is so advised. The provisions of Section 13 (2) of the Prevention of Food

Adulteration Act has been repeatedly held to be mandatory by the courts below. Needless to say that the burden of proof that the Public Analyst's report was served on the accused must be discharged by the prosecution and that was not done in both these cases. Mrs. Deshpande, learned A.P.P. pointed out postal acknowledgment showing service of report of the Public Analyst. However, the acknowledgment does not contain any signatures of the respondent.

In the result, I find no merit the present appeals. Hence, following order is passed.

ORDER

(i) Criminal Appeal Nos.194/2002 and 195/2002 are rejected.

JUDGE