

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 43 OF 2007

1. The State of Maharashtra,
at the instance of Food Inspector,
Tulsidas Chandidas Rao Boralkar,
Food and Drug Administration,
Jalna, Maharashtra State.
2. Tulsidas Chandidas Rao Boralkar,
Food Inspector, Food and Drug
Administration, Jalna, Maharashtra,
State (Now working at Latur). ..Petitioners...
(Petitioner no.1 orig resp. no.1
and petitioner -orig respondent
no.2 in Cri Rev Pet No.65/2002)

VERSUS

1. Nagindas Jivanlal Mehta,
Nominee M/s Narottamdas and
Co., Shamal Road, P.B. No.43,
Khamgaon 444 303.
 2. Narottamdas and Co.,
Shamal Road,
P.B. 43, Khamgaon 444 303.
 3. Sriram Nandlal Bhutada,
Proprietor, M/s Radhakisan
Sriram Bhutada, General
Merchand, Partur.
 4. Shri Harischandra Roopchandra Vadera,
Distributor, Vijay Trading Co.,
Shivaji Road, Parbhani.
- ..Respondents..
(Resp no.1 and 2 orig applicant No.1
and 2 and Resp No.3 and 4 Ori resp
no.3 and 4 in Cri Revn No.65/2002.)

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APP for Petitioners : Mr P G Borade
Advocate for Respondents : Mr R N Chavan h/f Vijay
Sharma For R-1,2, Mr A S Usmanpurkar For R-3,4

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CORAM : V.K. JADHAV, J.
Dated: September 23, 2016

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ORAL JUDGMENT :-

1. The learned APP has submitted affidavit of the petitioner on record and the same is taken on record. Copy is already served on the other side.

2. Being aggrieved by the order passed by the Additional Sessions Judge, Jalna dated 4.8.2006 in Criminal Revision Petition No.65/2002, the State has preferred present Criminal Writ Petition.

3. Brief facts, giving rise to the present writ petition are as follows :-

On 17.2.1998 Food Inspector Shri Boralkar had obtained sample of Sodium bicarbonate from original accused 1 and 2. On 17.2.1998 Food Inspector visited the establishment of accused no.1 and accordingly purchased 900 grams of sodium bicarbonate from the

shop by disclosing his identity and also obtained the receipt for payment of the amount of the above goods. Thereafter, said sample was sent for analysis by following due process. It reveals from the report of the analysis that, sample of the sodium bicarbonate is admixture sodium bicarbonate and sodium carbonate. In due course complainant had obtained consent for filing the complaint and accordingly, filed complaint before the Judicial Magistrate First Class, Partur. Learned Judicial Magistrate First Class, Partur issued process against all accused for the charges levelled against them in the complaint. Respondents no.3 and 4 original accused 3 and 4 had filed an application Exh.10 for discharge before the Magistrate and remaining accused persons also filed separate application before the Magistrate for discharge. The Magistrate had rejected the applications of all accused by two separate orders. Being aggrieved by the same, present respondent nos.3 and 4 and remaining accused persons approached the Sessions Court, Jalna. The learned Additional Sessions Judge, Jalna allowed revision petitions and accordingly discharged the respondent

nos. 3 and 4 original accused 3 and 4 from the charges levelled against them in RCC no.8/2000. Aggrieved by the same, State has preferred present writ petition.

4. During the course of the argument, the point was raised whether any standard is fixed for sodium bicarbonate under the provisions of Prevention of Food Adulteration Act, 1954. The learned Additional Sessions Judge, Jalna in paragraph no.12 of the Judgment has observed that, the learned APP before him unable to show the court any provision under which any standard has been fixed for the sodium bicarbonate i.e. article allegedly purchased by the complainant Food Inspector from the accused persons. In the light of the above observations, this Court has directed the petitioner State to find out the relevant provision under the Food Adulteration Act and submit the affidavit of Food Inspector to that effect.

5. Accordingly, one Shri Ramchandra Marotrao Bharkad, Food Safety Officer (Previously working as Food Inspector under the provisions of Prevention of

Food Adulteration Act, 1954) working in the office of Assistant Commissioner (Food and Drug Administration) Maharashtra State, Jalna submitted his affidavit and in paragraph nos. 2 and 3 of the affidavit it is stated which is reproduced herein below :-

- “2. I say and submit that, during hearing of this criminal petition the point was raised about Standards for Sodium Bicarbonate under Prevention of Food Adulteration Act, 1954. I have gone through the Act and found that no standards are given for Sodium Bicarbonate under Prevention of Food Adulteration Act.*
- 3. I say and submit that, the Sodium Bicarbonate finds its reference under the category of Food Additives and also in the standards of food article Namely Khandsari Sugar, Infant Milk Food, Infant Formula, Follow-up Formula-Complementary Food Where it is mentioned that Sodium Bicarbonate (Food Grade) but what is meant by food grade is not mentioned in the Act. Copy of the relevant portion of the Prevention of Food Adulteration Act, 1954 is annexed.”*

6. In view of the above legal position and since no standard has been fixed for sodium bicarbonate, the continuation of the proceeding before the Magistrate in RCC No.8/2000 as rightly held by the Additional Sessions Judge Jalna to be abuse of process of the Court.

7. In view of the above, I do not find any substance in the writ petition. Hence, order.

O R D E R

I. Criminal Writ Petition is hereby dismissed.

II. Rule discharged.

sd/-
(**V.K. JADHAV, J.**)

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