

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

CRIMINAL REVISION APPLICATION NO.33 OF 2004

- 1) Nandu s/o Shivram Sananse
Age 37 years, Occ. Vendor of
M/s Ambika Stores, Jalgaon,
Taluka and District Jalgaon.
- 2) Shivilal s/o Shivram Sananse,
Age 38 years, Occ. Proprietor
of M/s Ambika Stores, Jalgaon

Both residents of Genesh Colony,
Jalgaon, Taluka & District Jalgaon ... APPLICANTS
(Original Accused)

VERSUS

The State of Maharashtra
through P.P., High Court,
Bench at Aurangabad ... RESPONDENT

.....
Shri P.P. Mandlik, Advocate for the applicants
Shri N.T. Bhagat, A.P.P. for respondent/ State
.....

CORAM: N.W. SAMBRE, J.

DATED: 26th October, 2016.

J U D G M E N T:

1. The Chief Judicial Magistrate, Jalgaon, in R.C.C. No.33/1996, convicted the present applicants under Section 16 of the Prevention of Food Adulteration Act and sentenced them to

suffer rigorous imprisonment for six months and fine of Rs.1000/-, in default to suffer simple imprisonment for two months, which was further confirmed by learned IInd Adhoc Additional Sessions Judge, Jalgaon in appeal being Criminal Appeal No.43/2000, by the judgment and order dated 16.1.2004. As such the present revision.

2. The facts necessary for deciding the present revision are as under :

It is the case of the prosecution that on 25.6.1995, the accused No.1, who is vendor and accused No.2, who is proprietor of M/s Ambika Provision Stores, was found selling turmeric powder which was not fit for human consumption. The samples were accordingly drawn and sent for public analysis. The report Exh.36 declared that the turmeric powder does not conform to the standard as prescribed as per Item No.A.05.20.01 of Appendix 'B' of the Prevention of Food Adulteration Rules, 1955. After getting sanction from the Joint Commissioner, Food and Drugs vide Exh.46, complaint came to be filed in the Court on 5.12.1996.

3. In support of the prosecution case, P.W.1 complainant D.N. Mirajkar is examined at Exh.24 and P.W.2 Pralhad Bonde, a Clerk from the office of Food and Drugs

Administration, Jalgaon is examined at Exh.60. In addition to above oral evidence, the documentary evidence was produced such as Chemical Analyser's report, the sanction order etc.

4. While questioning the conviction and praying for an acquittal, the learned counsel Shri Mandlik would urge that, there is no compliance of Rules 7, 14 to 16 of the Prevention of Food Adulteration Rules, 1955 as the sample was taken in a polythene bag whereas the rules contemplate the same to be taken in a glass bottle with a tight lead. According to him, the said compliances are mandatory and in absence thereof, the conviction cannot be sustained as the rules which are meant for dealing with the sealing, fastening and dispatching of the samples were not strictly complied with. He would then urge that, no independent witness is examined apart from the fact that the Analyst was also not examined. He would rely upon the judgment of this Court in the matter of **State of Maharashtra Vs. Bhaskar Rajeshwar Gangshettiwar & others**, reported in **2003 Bom.C.R. (Cri.) 1617** so as to submit that if the Rule 14 is not complied with, then the report of the Public Analyst will be hardly of any assistance. He would then also rely upon the judgment of the Punjab & Haryana High Court in the matter of **State of Punjab Vs. Raman Kumar**, reported in **1998 Cri.L.J. 737** so as to claim that the samples in container or a polythene

container or in other wrapper if used for drawing the samples, while dealing with an issue under Prevention of Food Adulteration Act and Rules framed thereunder, the same are not suitable containers as contained in Rule 14. At last, the learned counsel would urge that, having regard to the fact that the incident in question was of 1995, the applicant be granted benefit of the provisions of Section 360 of the Criminal Procedure Code and would draw support from the judgment of the Apex Court in the matter of **N. Sukumaran Nair Vs. Food Inspector, Mavelikara**, reported in **1995 Cri.L.J. 3651**.

5. The learned A.P.P., on the other hand, opposed the claim and submits that, the sample was properly drawn with examining P.W.1 and P.W.2. According to him, the report of the Chemical Analyser is not required to be independently proved in the light of the provisions of the Evidence Act and the Criminal Procedure Code. He would then submit that, the present revision against conviction be dismissed.

6. Having bestowed my thoughts to the submissions made, it is required to be noted that, Section 13 of the Prevention of Food Adulteration Act deals with the aspect of the report of Public Analyser. Once the said report is admittedly issued by an authority under the Act, the same need not be

proved by examining the author of the said report, which is at Exhibit 38. It is then to be noted that, the attack is made on the issue as regards the drawing of the sample which claims to be in violation of Rule 14 of the Rules. In the present case, from the testimony of P.W.1, it could be noted that the sample in question was drawn and sent for analysis in a sealed pack by Hand Delivery on 28.6.1995 along with copy of the Form No.7. The P.A. report then speaks that the turmeric powder was received in a sealed and intact and unbroken condition. It is then to be noted that, so far as the issue as regards drawing of the sample in a plastic container is concerned, in the present case, the sample of the turmeric powder was obtained on a clean and dry paper and thereafter was sealed. It is then to be noted that, so far as the issue as regards non-compliance of Rule 14, i.e. not obtaining the sample as per Rule 14 of the Rules, which reads thus :

"The material brought on record in the cross-examination of both the witnesses would clearly reveal that the sample of groundnut oil was not obtained as per the prescribed procedure laid down by the P.F.A. Act and Rules. It will be useful to quote Rule 14, which reads as under :

"Rule 14-- "Manner of sending sample for analysis. Samples of food for the purposes of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation or in the case of dry substance, entrance of moisture and shall be carefully sealed."

not raised during the proceedings before both the courts below is concerned, it is worth to observe that, the same is open for agitation even before this Court.

7. Based on the evidence of panch witness, which is observed hereinabvoe, the sample of the turmeric powder was taken on a dry paper and was then sealed in polythene bag cannot be termed to be satisfying the requirement of Rule 14 and as such, the conviction of the applicants based on defective samples drawn, cannot be sustained. The appropriate support to that effect can be drawn from the judgment of this Court in the matter of State Vs. Bhaskar (cited supra) particularly para Nos.9, 10 and 11.

8. In addition to above, the judgment of the Punjab & Haryana High Court, particularly para Nos.21, 24 and 25 makes it clear that, sample drawn in a polythene container or thick paper are not suitable containers as provided under Rule 14 and as such, the sample drawn and the report of the Analyst based on such defective process of drawing and preserving samples cannot be formed basis for conviction.

9. As a consequence of above, Criminal Revision Application is allowed. Conviction and sentence imposed upon

the applicants vide judgment and order dated 11.7.2000, passed by the learned Chief Judicial Magistrate, Jalgaon in R.C.C. No.33/1996, and confirmed by the learned IInd Adhoc Additional Sessions Judge, Jalgaon in Criminal Appeal No.43/2000, vide judgment and order dated 16.1.2004 is quashed and set aside. The applicants are acquitted of the offence punishable under Section 16 of the Prevention of Food Adulteration Act. Fine, if paid, be refunded to the applicants. Their bonds stand cancelled.

(N.W. SAMBRE, J.)