

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

CRIMINAL REVISION APPLICATION NO. 117 OF 2003

1. Shaikh Kalimoddin s/o. Shaikh .. Applicants
Badiuddin, Vendor of
M/s. Shiraji Kirana, Main Road,
Khultabad, Dist. Aurangabad.
2. Shafiuddin s/o. Badiuddin,
Proprietor of M/s. Shiraji Kirana,
Main Road, Khultabad,
Dist. Aurangabad.

Versus

1. The State of Maharashtra .. Respondents
Through Government Pleader of
High Court of Judicature of Mumbai,
Bench at Aurangabad.
2. Shri P.B. Umrani,
Food Inspector,
Food & Drugs Administration,
Nath Market, Aurangabad.

Mr.C.D. Biradar, Advocate (appointed) for the applicants.
Mr.A.R. Kale, A.P.P. for respondent/State.

CORAM : Z.A. HAQ, J.

DATED : 25.11.2016

P.C. :-

. Heard Mr. C.D. Biradar, Advocate (appointed) for
the applicants and Mr.A.R. Kale, A.P.P. for the non-
applicants.

02. The applicants have challenged the judgment passed by the Sessions Court dismissing the appeal and maintaining the judgment passed by the Chief Judicial Magistrate convicting the applicants for offence under sections 2 (ia) (a), (c), (m) punishable under section 16 of the Prevention of Food Adulteration Act, 1954. The learned Advocate for the applicants has pointed out several discrepancies in the considerations by the subordinate Courts. However, all the averments made by the learned Advocate for the applicants are not recorded as the matter can be disposed on the basis of the submission that the copy of the report of public analyst was not served on the applicants. In support of the submission, learned Advocate has relied on the judgment given by this Court in the case of **State of Maharashtra Vs. Shamsundar Ganeshlal Navandar, 2009 (2) Mh.L.J. (Cri) 525** and the judgment given by the Hon'ble Supreme Court in the case of **Rameshwar Dayal Vs. State of U.P., 1995 (Supp) (4) SCC 659.**

. In the above cases it is held that the right conferred by Section 13 (2) of the Food Adulteration Act is a valuable right and the prosecution is under an obligation to supply copy of the report of public analyst to the accused, failing which the conviction under the provisions of the Prevention of Food Adulteration Act,

1954 cannot be sustained.

3. The learned A.P.P. has not been able to point out that copy of the report of public analyst was supplied to the accused as required by Section 13 (2) of the Prevention of Food Adulteration Act. It is submitted that copy of the report of public analyst was sent by the Registered Post Acknowledgement Due. However, there is nothing on record to show that the copy of the report was served on the accused. In the case of **Shamsundar Ganeshlal Navandar (Cited Supra)**, similar situation existed and this Court recorded that the prosecution is under an obligation to serve the copy of report of public analyst. The point raised in the revision application is covered by the above judgments and as the learned Magistrate has failed to appreciate the above aspects, the impugned judgment cannot be sustained. Hence, the following order :-

(i) The Criminal Revision Application is allowed.

(ii) The judgment passed by the Chief Judicial Magistrate, Aurangabad in R.C.C. No.199 of 1998 on 01.01.2001 and judgment passed by learned III Adhoc Additional Sessions Judge in

Criminal Appeal No.4 of 2001 on 28.03.2003 are set aside and the applicants are acquitted of the offence under section 2 (ia) (a), (c), (m) punishable under section 16 of the Prevention of Food Adulteration Act, 1954.

(iii) Rule made absolute in above the terms. In the circumstances, parties to bear their own costs.

4. Mr.C.D. Biradar, Advocate appointed to represent the applicants/accused be paid his fees as per rules. Mr.D.S.Bharuka, Advocate who represented the applicants/accused earlier, also assisted the Court along with Mr. C.D. Biradar at the time of hearing.

[Z.A. HAQ, J.]