

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.588 OF 2001

The State of Maharashtra	]	
Through Shri. S.S. Bhoralkar,	]	
Food Inspector, Food & Drug Administration,	]	
Maharashtra State,	]	
Central Administrative Building, Solapur	]	 Appellant
V/s.		
Dnyaneshwar Dagdu Salgar	]	
Proprietor of M/s. Shree Ganga Provision	]	
Stores, North Sadar Bazar, Solapur	]	 Respondent

Mr. H.J. Dedia, A.P.P., for the Appellant-State.

Mr. Prasad B. Kulkarni for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 4TH FEBRUARY 2016.

P.C. :

1. This Appeal is preferred by the State challenging acquittal of the Respondent for the offences punishable under Sections 7(i) r/w. 2(i)(m) and 16 of Prevention of Food Adulteration Act, 1954, as recorded by the Judicial Magistrate, First Class, Court No.2, Solapur, vide its Judgment and Order dated 22nd January 2001 in R.C.C. No.111 of 1997.

2. Facts of the Appeal can be stated in brief as follows :-

On 16th October 1995, Food Inspector S.S. Bhorkar visited the shop of the Respondent along with Panch Witness and found that the Respondent has stock of Kardi Oil and was selling the same. The Food Inspector Bhorkar, therefore, purchased the Kardi Oil of 450 ml. for test and analysis and paid price of Rs.21.60 in presence of the Panch Witness. Respondent gave him receipt of the purchase and he was also informed about the purpose of visit and purpose of purchasing the sample. The Food Inspector Bhorkar divided the said Kardi Oil sample in three equal parts and kept them in three empty, dry, clean bottles. They were tightly corked to prevent any leakage. On the next day, one sample part was given by hand delivery to the Public Analyst, District Public Health Laboratory, Solapur, along with copy of Memorandum in Form No.VII. Second copy of the Memorandum, specimen impression of seal were sent along with covering letter in a sealed envelope to the Public Analyst. The remaining two sample bottles were sent to Local Health Authority and Medical Officer of Health, SMC, by hand delivery. On 15th November 1995, the Complainant - Food Inspector Bhorkar received the report from the Public Analyst showing that the sample of Kardi Oil was containing Butyrefractometer reading at 40-C Iodine value, which was

not within the permissible limits. Hence, after obtaining necessary sanction under Section 20 of Prevention of Food Adulteration Act, 1954, the Food Inspector Bhorkar filed complaint against the Respondent.

3. In support of its case, the Food Inspector Bhorkar examined himself and being satisfied with his evidence, the Trial Court framed charge against the Respondent, to which he pleaded not guilty, raising the defence that the Kardi Oil, from which the sample was taken, was not stored in the shop for the purpose of sale, but it was meant for lighting of the festival lamps. The sample of the Kardi Oil was obtained by compelling him to do so.

4. On appreciation of his evidence, the Trial Court was pleased to acquit the Respondent, mainly and only on the ground that there was inordinate delay in examination of the sample by the Public Analyst.

5. This Judgment of the Trial Court is challenged in this Appeal by learned A.P.P. by submitting that, admittedly, the sample was sent to Public Analyst on 17th October 1995 itself and in the absence of any evidence proving that it was analyzed belatedly, the Trial Court has committed an error in acquitting the Respondent.

6. Per contra, learned counsel for the Respondent has supported the finding of the Trial Court by pointing out that the Report of the Public Analyst, which is produced on record, does not bear the date on which it was analyzed. However, the Report bears the date as '15th November 1995' and, therefore, if it was analyzed or examined one month after collection of the sample, then this delay may result in reducing the value of Iodine. In view thereof, , according to him, the Trial Court has rightly acquitted the Respondent.

7. I find much substance in the submission of the learned counsel for the Respondent, because the Report of the Public Analyst produced on record at Exhibit-38 does not reveal the date on which the sample was received and when it was analyzed or examined by him. The Report (Exhibit-38) bears the date as 15th November 1995 and as per the evidence of the Complainant Bhoralkar also, Report was received by him on 15th November 1995. Hence, it was essential to know on which date the sample was analyzed or examined. Otherwise, it will follow that it was examined on 15th November 1995, the date on which the Report was served. If it was so, then the evidence of the Public Analyst was essential to show that this delay of one month in examination of the sample has not

adversely affected the quality of the sample. The sample, according to his Report, was found to be not confirming to the prescribed Iodine value. His evidence was essential to prove that the delay of one month in examination of the sample has no effect on reduction of Iodine value in the sample. In the absence of such evidence on record, in my considered opinion, the Trial Court has rightly extended the benefit of doubt to the Respondent.

8. This Appeal, therefore, holds no merit and hence stands dismissed, confirming acquittal of the Respondent for the offences punishable under Sections 7(i) r/w. 2(i)(m) and 16 of Prevention of Food Adulteration Act, 1954.

9. The Bail Bonds of the Respondent stand cancelled.

[DR. SHALINI PHANSALKAR-JOSHI, J.]