

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.143 OF 1997

The State of Maharashtra
through A.J.Khatavkar, Food Inspector,
Food and Drug Administration (MS),
Mhatre Building, Pen, District Raigad

Appellant

versus

1. Rajkumar Bakelal Gupta (Vendor),
person in-charge at the time of sampling of
M/s.Maruti General Stores,
At Post Aapta, Tal.Panvel, Dist.Raigad.

2. Radhesham Mevalal Gupta,
License Holder and proprietor of
M/s.Maruti General Stores,
At Post Aapta, Tal.Panvel, Dist.Raigad.

Respondents

Mr.K.V.Saste, Assistant Public Prosecutor, for Appellant.
None present for Respondents.

CORAM : PRAKASH D. NAIK, J.

Date of reserving the judgment : 16 August 2016
Date of pronouncing the judgment : 23 September 2016

JUDGMENT :

1. This appeal is preferred by the State by invoking Section 378(1) of Code of Criminal Procedure, 1973 ('Code') against the judgment and order of acquittal dated 30 October 1996 passed by

Judicial Magistrate, First Class, Panvel in Regular Criminal Case No.74 of 1994. Respondent nos.1 and 2 were the accused who were prosecuted before the said Court in the said proceedings.

2. Brief facts of the prosecution case are as follows :

(a) The complainant is a duly appointed Food Inspector who was authorised to institute the complaint. Accused no.1 is a vendor in-charge of M/s.Maruti General Stores at village Aapta from whom the sample of food article "refined Soybean Oil" was collected. Accused no.2 is the license holder and proprietor of M/s.Maruti General Stores;

(b) On 19 May 1993, the complainant Mr.Khatavkar visited the premises viz. Maruti General Stores. Accused no.1 was found in-charge of the shop and he was selling food articles. The complainant disclosed his identity and intention of drawing food samples for test and analysis. The complainant accordingly purchased 450 gms of Soyabean Oil kept in a unlabelled tin for sale. The sample was divided into three parts and rapped in seal by following relevant procedure;

(c) The complainant forwarded one sealed part of the sample to the Public Analyst, Public Health Laboratory, Pune by hand delivery on 20 May 1993 along with necessary forms as per rules. The remaining two samples were sent to local health authority on 20 May 1993 by hand delivery;

(d) The complainant received original copy of report of Public Analyst through local health authority on 16 June 1993. The report revealed that food sample drawn from accused on 19 May 1993 is adulterated within the meaning of Section 2(ia)(a), (b), (c) and (h) of The Prevention of Food Adulteration Act, 1954 ('the said Act');

(e) The complainant processed the papers and forwarded the same to the Joint Commissioner, Food and Drugs Administration, Konkan Division for obtaining sanction for prosecution. After receiving the papers, the authority accorded sanction for prosecution against both the accused for an offence punishable under Section 7(i) read with Sections 2(ia)(a), 2(ia)(b), 2(ia)(c) and 2(ia)(h) punishable under Section 16 of the said Act;

(f) The complainant lodged the complaint in the Court on 15 March 1994. On 16 March 1994, the complainant through Assistant Director, FDA, Pen issued notices to both the accused under Section 13(2) of the said Act and informed them about filing of the complaint. By the said notices, accused were called upon to exercise their right to get the sample analysed from the Director, Central Food Laboratory, Gaziabad;

(g) The Judicial Magistrate, First Class, sent a sample to the Central Food Laboratory, at Gaziabad ('CFL Gaziabad') for analysis on the application of the accused. It was received by the CFL, Gaziabad on 11 January 1995 and the analysis report was received on 18 February 1995.

3. A charge was framed against the accused on 17 August 1996 for offences under Sections 7(i) read with Sections 2(ia)(a), 2(ia)(b), 2(ia)(c) and 2(ia)(h), punishable under Section 16 of The Prevention of Food Adulteration Act, 1954.

4. The prosecution examined the complainant as PW no.1 and the panch for the seizure as PW no.2. The panch has not supported the prosecution case and was declared hostile. On completing the evidence, the statement of the accused was recorded under Section 313 of the Code. The JMFC by judgment and order dated 30 October 1996 acquitted both the accused of all the charges. The State has preferred present appeal against the said judgment and order of acquittal.

5. The prosecution examined the complainant Mr.Anant Khatavkar as PW no.1 and Mr.Arun Durgavale (Panch) as PW no.2. The complainant (PW no.1) has deposed that he was appointed as Food Inspector in Food and Drug Administration (F.D.A.) on 19 May 1993. He visited M/s.Maruti General Stores at village Aapta, Tal.Panvel. He was accompanied by panch witness. Accused no.1 was selling food articles in the said shop. He came across a tin containing refined Soybean Oil without any label or brand. The said oil was stored for the purpose of sale. The witness purchased 450 gms. of Soyabean oil from the said accused. He preserved the sample of Soybean oil in bottles. A panchanama was drawn in the presence of panch. He forwarded one sealed bottle sample of the said oil to the Public Health Laboratory, Pune. On 20 May 1993, he

sent a specimen of seal impression along with a copy of Form-7 in a sealed envelope to the public analyst with covering letter. He further stated that two samples were sent to local public health authority on 20 May 1993. On 2 July 1993, he received analysis report from local health authority. The report indicated presence of castor oil in the Soyabean oil. Therefore, the oil sealed by the accused was not up to the standard and it was adulterated. On inquiry, it was revealed that accused no.2 is the proprietor of the said shop. The complainant thereafter forwarded documents to the Assistant Commissioner, FDA, Pen. He was directed to file a complaint against both the accused vide consent order issued by Joint Commissioner, FDA, Pune. Thereafter he lodged the complaint against both the accused. He further stated that after filing the complaint, by letter dated 15 March 1994, he informed LHA, Pen about filing of the complaint against the accused. The local health authority produced the samples in the Court. The same were sent to CFL, Gaziabad on the application of the accused. The report was received from the said Lab in a sealed envelope. The said witness was cross examined by the defense. In the cross examination, it was stated by PW no.1 that for want of receipt of sanction letter, there was delay in filing the complaint in the Court. There is a delay of about nine months. He admitted that after sending the proposal to FDA for sanction, he did not pursue the matter. The sanction letter did not specify the documents/case papers perused for the purpose of grant of sanction. The sanction letter does not mention the time and quantity of the sample. He further stated that the CFL, Gaziabad had received the sample on 11 January 1995. Certificate of analysis was issued on 28 February 1995.

PW no.2 who was examined as a panch witness for the inspection and seizure conducted by PW no.1, has not supported the prosecution case. The witness was declared hostile by the prosecution and was cross examined. However, evidence of the said witness was not supporting the prosecution.

6. The chronology of the events which led to the prosecution, can be summarised as follows :

1	19.5.1993	The incident of seizure had taken place. 450 gms. Of Soybean oil was purchased and samples were obtained on the same day.
2	20.5.1993	One part of samples was forwarded to public analyst by hand delivery and two samples were forwarded to local health authority by hand delivery (Exh.85)
3	16.6.1993	The public analyst submitted his report. It was opined that the sample contains Caster Oil and was adulterated (Exh.94).
4	09.07.1993	Documents forwarded to Local Health Authority for referring it to Commissioner for obtaining consent for prosecution (Exh.97).
5	16.2.1994	Letter by Assistant Commissioner, FDA enclosing consent of Joint Commissioner for prosecution.
6	15.3.1994	The complainant was directed to file a complaint, which was filed on 15.3.1994.
7	16.3.1994	Notices were issued to the accused under Section 13(2) of the Act.

8	16.4.1994	Application by accused to Court for sending the samples to CFL, Ghaziabad.
9	21.10.1994	Requisition by Court to produce the sample.
10	14.11.1994	Sample produced in Court.
11	29.11.1994	The JMFC forwarded a sample to CFL, Gaziabad for analysis.
12	11.1.1995	The sample was received by CFL on 11 January 1995.
13	28.2.1995	The CFL, Gaziabad forwarded its report (Exh.106).

7. On completing the evidence, statement of the accused was recorded and thereafter the Trial Court acquitted both the accused. During the pendency of this appeal, this Court issued a bailable warrant against Respondent no.2 vide order dated 15 June 2016. The Police Inspector, Rasayani Police Station has submitted a report dated 11 July 2016 to this Court that Respondent no.2 (accused no.2) was reported to be dead. A photostat copy of the death certificate is also placed on record. In the said certificate it is stated that Respondent no.2 Radhesham Mevalal Gupta has expired on 21 September 2011. The JMFC, Panvel vide report dated 27 July 2016 intimated to the Assistant Registrar of this Court about report submitted by police to this Court and also enclosing the photostat copy of the death certificate of Respondent no.2. In view of the aforesaid circumstance, the appeal as against Respondent no.2 (Accused no.2) stands abated.

8. The prosecution and the defense advanced arguments after completion of recording of evidence. Learned prosecutor before the Trial Court submitted that the prosecution has proved its case and the accused deserves to be convicted. Learned advocate for the accused raised several contentions and submitted that the prosecution has failed to establish its case and the accused deserves to be acquitted. It was submitted that the Food Inspector has not properly followed the procedure while collecting the samples. The Trial Court has not accepted the said submission which is apparent from the reasons given in paragraph 7 of the judgment. The defense further submitted that the Food Inspector did not steer the Soyabean oil and, therefore, the sample is not refined oil. It was also submitted that there is non application of mind on the part of the authority granting permission for prosecution. Both these submissions were also rejected by the Trial Court by giving cogent reasons. It was further submitted that the report of the public analyst is not in accordance with the procedure. It was submitted after about one month. It was also submitted that there is no compliance of Section 13(2) of the said Act. The Trial Court, however, recorded a finding that till the filing of the complaint, there was no fault on the part of authorities in compliance of the procedural safeguards.

9. The Trial Court, however, observed that the provisions of Section 13(2) of the Act, so far as they relate to the time stipulated for sending the report of analysis by the Director, CFL, Gaziabad, are not followed. The certificate issued by the public analyst cannot be

considered. As per Section 13(3) of the Act, the certificate issued by the Director of CFL under sub section (2B) of Section 13 shall supersede the public analyst's report. It was further observed that under Section 13(2B) of the Act, it is the duty of the Court that, on receipt of the part or parts of the sample from the Local Health Authority under sub-section (2A), the Court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of Section 11 are intact and the signature or thumb impression, as the case may be, is not tampered with, and dispatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the Court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis.

10. It was further observed that under Rule 4, sub-rule (1) of The Prevention of Food Adulteration Rules, 1955 ('the said Rules'), the samples of food for analysis under sub-section (2) of Section 13 of the Act shall be sent either through a Messenger or by registered post in a sealed packet, enclosed together with a memorandum in Form-I in an outer cover addressed to the Director. Sub-rule (2) of Rule 4 requires the container as well as the outer covering of the packet shall be marked with a distinguishing number; and under sub-rule (3) of Rule 4, a copy of the memorandum and a specimen impression of the seal used to seal the container and the cover shall be sent separately by registered post to the Director. Sub-rule (4) of Rule 4 requires the Director or an officer authorized by him to compare the seals on the container and the outer cover with specimen impression

received separately and shall note the condition of the seals thereon. Section 13(2) of the Act provides a right to the accused to make an application to the competent Court within ten days from the letter received by him from Local Health Authority communicating the accused copy of report of the result of the analysis, to send the sample of the article of food already tested by Local Health Authority along with report to Central Food Laboratory.

11. It is further observed by the Trial Court that the complaint is filed within stipulated time on 15 March 1994 and notices were also sent in time on 16 March 1994. The accused preferred an application for sending the sample to the CFL on 16 April 1994. The samples were dispatched on 29 November 1994. The samples appears to have been produced in the Court on 14 November 1994. Sub-section (2A) of Section 13 provides that the local health authority is required to forward the parts of sample to Court within a period of five days from the date of receipt of such requisition. The Court further observed that from Roznama dated 31 October 1994, it appears that the requisition was sent on 21 October 1994 and the part of sample was produced in the Court on 14 November 1994. Therefore, it is clear that there is non compliance of Section 13(2A) of the Act. Sub-section (2B) of Section 13 is also not complied with by CFL which was required to send its report within one month from the receipt of sample for analysis. This is borne out from the report Exhibit-106. It is stated that the sample of refined oil was received on 11 January 1995 with memorandum dated 29 November 1994 from the Court and was found fit for analysis and has been analysed. The report Exhibit-106 was dated 28 February 1995. Therefore, it is

clear that same was not forwarded within one month from the date of its receipt.

12. The learned advocate for the accused placed reliance upon the decision in the case of Jayantilal Suratwala and another Vs. State of Maharashtra (1985)2-BCR-287. In the said decision it was observed that finality of the certificate issued by the CFL can be considered on the compliance of mandatory requirement of Section 13(2B) of the Act and Rule 4 of the Rules. The Trial Court further placed reliance upon the decision in case of Gopinath Mote Vs. State of Maharashtra reported in (1980)(1)-Prevention of Food Adulteration Cases-page 112; and the decision in the case of State of Maharashtra Vs. Omprakash Agarwal reported in 1983(2)-BCR-572. Reliance was also placed on the decision in case of Mohanlal Vs. State of Haryana reported in 1984-All India Prevention of Food Adulteration Journal-385. In the said case, the sample was analysed by the Director, CFL after one month and two days and there was violation of Section 13(2B) of the Act, which had resulted into acquittal of the accused. The Trial Court, therefore, acquitted the accused primarily on the ground of contravention of mandatory provisions contained in Section 13(2A) and (2B) of the Act and Rules made thereunder.

13. I have perused the evidence on record. The prosecution case is based upon seizure conducted on 19 May 1993. The prosecution has relied upon several documents. The Act stipulates the procedure which is required to be followed by the authorities and non compliance of the mandatory safeguards would obviously give benefit of doubt to the accused. The main issue involved in the

prosecution is about adulteration of food articles seized by the Food Inspector. While prosecuting the accused, it has to be proved that all requisite procedural safeguards are complied with, with a view to come to the conclusion that the sample seized from the food vendor is adulterated. Section 13 of the Act relates to the report of Public Analyst. As per Section 13(1) of the Act, the Public Analyst shall deliver in such form as may be prescribed, a report to the local health authority of the result of analysis of the article of food submitted to him for analysis. As per Section 13(2), on receipt of report of the result of analysis under sub-section 1 to the effect that the article of food is adulterated, the local health authority shall, after institution of the prosecution against the persons from whom the sample of article of food was obtained, forward in such manner as may be prescribed, a copy of the report of the result of the analysis to such person/s informing them that if it is so desired, they may make an application to the Court within a period of ten days from the date of receipt of a copy of the report to get the sample of the article of the food kept by the local health authority analysed by the CFL. As per sub-section (2A) of Section 13, when an application is made to the Court under sub-section (2) of Section 13, the Court shall require the local health authority to forward the part or parts of the sample kept by the said authority and upon such requisition being made, the said authority shall forward the part or parts of the sample to the Court within a period of five days from the date of receipt of such requisition. As per sub-section (2B) of Section 13, on receipt of the part or parts of the sample from the local health authority under sub-section (2A), the Court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of Section 11

are intact and the signature or thumb impression, as the case may be, is not tampered with, and dispatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the Court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis. As per sub-section (2D), until the receipt of the certificate of the result of the analysis from the Director of the CFL, the Court shall not continue with the proceedings pending before it in relation to the prosecution. As per Section 13(3), the certificate issued by the Director of CFL under sub-section (2B) shall supersede the report given by the public analyst under sub-section (1).

14. From the aforesaid provisions, it is apparent that it is the right of an accused under Section 13(2B) of the said Act to get the sample analysed by CFL by filing an application on receipt of notice of filing a complaint. In the present case, the complaint was filed on 15 March 1994. The notices were issued to the accused. The accused preferred an application for sending the sample to CFL. The sample was produced in the Court on 14 November 1994 and the same was dispatched on 29 November 1994. It is also clear that as per Section 13(2A) of the Act, the local health authority has to forward the sample to the Court within a period of five days from the date of receipt of requisition. The requisition was sent to the local health authority on 21 October 1994 and the sample was produced in Court on 14 November 1994. Therefore, there is violation of Section 13(2A) of the said Act. The report of CFL was received on 28 February 1995. The report was not sent by the CFL to the Court

within one month from the date of receipt of sample specifying the result of analysis. Hence, there is non compliance of Sections 13(2B) of the Act, which vitiates the prosecution initiated against the accused and they deserve to be acquitted. The report of Central Food Laboratory superseded over the report of Public Analyst. In the event of non compliance of Sections 13 (2A) and 13(2B), the said report cannot be relied upon which would affect the right of accused. Hence, I find that the finding given by the Trial Court does not require any interference and the Trial Court has rightly acquitted the accused. The appeal preferred by the State, therefore, fails and the judgment and order of the Trial Court deserves to be confirmed.

15. Hence, I pass following order :

- (a) Criminal Appeal No.143 of 1997 stands abated as against Respondent no.2 (Accused no.2);
- (b) Criminal Appeal No.143 of 1997 stands dismissed.

(PRAKASH D. NAIK, J.)