

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.386 OF 1999

The State of Maharashtra ... Appellant

V/s.

Balasaheb Dhondiram Chavan
The Vendor and Proprietor
of M/s. Shailandra Kirana Stores,
A/P. Shere, Tal. Karad, District Satara. ... Respondent

...
Mrs. A. A. Malhotra, Asstt. Public Prosecutor for the appellant.
Mr. Milind Deshmukh for the respondent.

...

CORAM : S. B. SHUKRE, J.

DATE : 14 JUNE 2016.

P.C.:

1. By this appeal, legality and correctness of the Judgment and order dated 11 January, 1999 passed by the Judicial Magistrate, First Class, Karad at Karad in Regular Criminal Case No.255 of 1996 have been challenged.

2. The respondent was prosecuted for offence punishable under section 7(i) read with section 2(ia)(a) and 2(ia)(m) and offence punishable under section 16 of the Prevention of Food Adulteration Act, 1954 ("PFA" for short).

3. The allegations made against the respondent were that on 17 October 1995 at about 12 noon at Grocery Shop of the respondent situated at Village Shere, Taluka Karad, District Satara, the respondent was found to be storing and selling adulterated food article viz. Ground nut oil, the analysis of which showed that the food article did not conform to the standards prescribed under the PFA and rules framed thereunder.

4. By the impugned Judgment and order, the learned Magistrate, however, found that there was violation of Act and mandatory provisions of law requiring the Food Inspector to follow a particular procedure. He, therefore, further found that the respondent was entitled to be given benefit of doubt and accordingly acquitted him of the aforesaid offence. Nor being satisfied with the same, the State is before this Court in the present Appeal.

5. I have heard learned Asstt. Public Prosecutor for the State and the learned counsel for the respondent. I have carefully gone through the record of the case including the impugned judgment and order.

6. It is seen from the record of the case that various mandatory provisions of law requiring the Food Inspector to follow a set of procedure in collection of food samples and sending them to the Public Analyst for being analysed were not complied with

by the Food Inspector. The bottles that were used for collecting the samples of ground nut oil were admittedly not clean and dry as required under Rule 14. The Food Inspector could not produce any documentary evidence showing that he had used clean aluminium containers. He has also admitted that he did not clean the three bottles in the presence of panch witnesses. There has been no documentary evidence to show that the measuring flask used for drawing the samples of ground nut oil was clean and dry. There has also been violation of Rule 12 requiring the Food Inspector to draw a sample from the container in original condition, if it is available, in case where the sample has been drawn from an open container. In this case the sample has been drawn from an open container. No enquiry as to whether or not, there was present in the shop the container containing the food article in original condition was made. If there was no enquiry was made in this regard, there was no question of additionally drawing the sample of ground nut oil from the container in which the food article was kept in its original condition. There is no evidence showing that the Food Inspector had carried with him the necessary equipments such as Large bag, clean and dry bottles, jars, or other containers in sufficient quantity, corks and stoppers for bottles and containers, sealing wax, matches, tapers, candles, or other means of melting wax, official seal, stout envelopes for powers, jug with funnel for filling liquid into parts so on and so forth as required under section 10, Note. 27 of the PFA.

7. Thus, non compliance with the aforesaid provisions of law which had been held to be mandatory in nature, has resulted in creating a veritable doubt about drawing of samples of ground nut oil from the container in which the ground nut oil was stored for selling and entitled the respondent to get a benefit of doubt in the matter. The same has been afforded to him by the learned magistrate by acquitting him of the offence punishable under section 16 read with section 7(1) and other relevant sections of the PFP and rightly so.

8. There is no scope for making any interference with the impugned judgment and order. The Appeal deserves to be dismissed. The Appeal stands dismissed.

(S. B. SHUKRE, J.)