

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

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CRIMINAL APPEAL NO. 397 OF 2001

The State of Maharashtra
Through Shri M. S. Kembalkar, Food
Inspector, Office of Jt. Commissioner,
Food & Drug Administration,
Maharashtra State, Pune.

...Appellant

Versus

Jhony Jaylal Wadhwani
Vendor & Proprietor of Neelam Food
Products, at 59/A, At Post Mundawa,
Pune-36

...Respondent

.....

Mrs. Manisha R. Tidke, APP for the Appellant-State.
Mr. Vishwajit Sawant a/w. Ms. Tanaya Patankar, Mr. Prabhakar
Manohar Jadhav for the Respondent.

CORAM : S. B. SHUKRE, J.
DATE : 15th MARCH, 2016.

JUDGMENT

1. This is an appeal preferred against the judgment and order dated 18.11.2000 passed in R.C.C. No. 38 of 1999 by the Chief Judicial Magistrate, Pune thereby acquitting the respondent of the offences punishable various sections of Prevention of Food Adulteration Act, 1954 (hereinafter referred to PFA Act in short). Briefly stated, the facts are as under:

2. The respondent was prosecuted by the State at the instance of Food Inspector, Food and Drug Administration, Pune on the allegations that on 19.05.1998 at about 12.30 p.m. the respondent who was a vendor and proprietor of M/s. Neelam Food Products situated at 59/A, Mundawa, Pune was found to be storing, distributing and selling a food article, a Pan Masala under the brand name Jani Khushbu scented Pan Masala which was adulterated and not found to be in conformity with the standards prescribed for the same under PFA Rules, 1955 read with relevant sections of the PFA Act.

It is the case of the prosecution that the Food Inspector, on his visit to the shop of the respondent on 19.05.1998 at about 12.30 p.m. had purchased 15 packets of the said Pan Masala each of which weighing 70 gms by making payment of Rs.285/- to the respondent and then dividing 15 packets into 3 parts, each part comprising 5 sealed packets, prepared 3 samples required for the purposes of inquiry and investigation for ascertaining whether the samples were adulterated or not. They were tied horizontally and vertically by means of a strong thread and seals were affixed to it. According to the prosecution proper sealing procedure was adopted. On 20.05.1998, one sealed part of the sample together with mandatory

Form No. VII was sent to the Public Analyst, Kolhapur for analysis and report. The remaining sealed parts were sent together with Form No. VII to local Health Authority, Pune. The result of the analysis disclosed that the sample examined did not conform to the standards prescribed under the PFA Rules, 1955 read with relevant sections of the PFA Act and found to be adulterated. It was particularly noted that the sample contained ash, to the extent of 8.17%, which percentage was slightly higher (by .17%) than the permissible limits. Therefore, after obtaining consent to prosecute the respondent and after completion of investigation, the complaint was filed against the respondent.

3. As the respondent pleaded not guilty to the charge framed against him and claimed to be tried, he was tried for the offences under Sections 2(ia)(a), 2(ia)(m) read with Sections 7(i), 7(v) read with Rule 42(zzz)(1) & under Section 16 of the PFA Act with which he was charged. On merits of the case, the learned CJM found that the prosecution failed to prove all the offences that were charged against the respondent beyond reasonable doubt and, therefore, the learned CJM acquitted the respondent of the said offences by his judgment and order dated 18.11.2000. Not being satisfied with the

said order, the State chose to approach this Court in the present appeal.

4. I have heard learned APP for the State-appellant and the learned counsel for the respondent. I have carefully gone through the record of the case including the impugned judgment and order. It is seen from the impugned judgment and order that the learned CJM has considered various inadequacies and lacunae in the procedure adopted by the Food Inspector for sealing the sample, sending the intimation regarding the prosecution of the respondent together with the copy of the report and also the manner in which the consent was accorded by the Joint Commissioner for prosecution of the respondent and held that these inadequacies and insufficiencies were fatal to the prosecution case and acquitted the respondent of the offences with which he was charged in this case. The learned CJM has also found that even on merits of the case, the prosecution case against the respondent could not be accepted for the reason that the ash contained in the sample analysed by the Public Analyst was only marginally higher than the permissible limits and in the background of the admitted fact that the sample was analysed by a Public Analyst not at Pune, though available, but a Public Analyst at Kolhapur, found

that such marginal excess in total ash content could be attributed to also error of judgment in the analysis and, therefore, further found that benefit of doubt deserved to be given to the respondent.

5. In the facts and circumstances of the case, I find, as rightly submitted by the learned Counsel for the respondent, that these findings recorded by the learned CJM could not be said to be representing an impossible view or arising out of some perversity or arbitrariness committed while appreciating evidence on record. It is an admitted fact that while taking the samples of the Pan Masala, the contents of the samples were not put in a container as required under Rule 14 of the PFA Rules, 1955. It is also an admitted fact that the intimation about filing of the complaint against the respondent and sending of the copy of the report to the respondent was all made after a period of 45 days. The same should have been done within 40 days. The percentage of the total ash contained in the sample analysed was 8.17%, which was just above the permissible limits by about .17%. No explanation has been given by the complainant as to why the sample was got analysed by him from a Kolhapur Laboratory when the State Public Health Laboratory was available in Pune. It is a matter of common knowledge that when substances are analysed by

two different laboratories, the results of their analysis may not be identical and may vary slightly or marginally. If the sample in question in this case had been examined by the laboratory at Pune, it is quite likely that some variations might have emerged in the analysis. The crossing of the permissible limits in this case as regards the total ash content is only by .17% and this percentage is certainly a marginal one and, therefore, as rightly held by the learned CJM placing reliance upon the judgment in the case of **Nortan Mal Vs. State of Rajasthan, 1995 Supp (2) SCC 581**, the benefit of doubt must go to the respondent. Even the copy of the report of the Public Analyst has been sent after the expiry of stipulated period of 40 days which has resulted in causing of great prejudice to the defence of the respondent. With such evidence on record, I do not think there was any scope for the learned CJM to take another view.

6. In the circumstances, I am of the view no interference in the impugned judgment and order is warranted. The Appeal stands dismissed.

(S. B. SHUKRE, J.)