

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
REVISION APPLICATION NO.189 OF 2002**

The State of Maharashtra

...Applicant

Versus

Bhushan Motilal Gandhi & Ors.

...Respondents
(orig. accused Nos.1 to 5)

...

Mr. H.J. Dedhia, APP for the Applicant -State.
None for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 1st OCTOBER, 2016

P. C. :

This revision is directed against the order dated 19th October, 2001 in Regular Criminal Case No.9 of 1997 whereby the learned Judicial Magistrate, First Class, Phaltan, Dist. Satara discharged the Respondents -accused Nos. 1, 2, 4 and 5 of offences under sections 7(i) r/w. sections 2 (ia) (a), 2(ia) (m), 17 punishable under section 16 of the Prevention of Food Adulteration Act.

2. Heard the learned APP for the Applicant-State. None present for the Respondents, though duly served.

3. I have perused the records and considered the submissions

advanced by the learned APP for APP -State. The records reveal that the Respondents were prosecuted for storing and selling Godrej Vanaspati. The accused No.2 is a proprietor of a shop under the name of M/s. Jivraj Hirachand Gandhi & Sons, Ravivar Peth, Phaltan, wherein Godrej Vanaspati alleged to be adulterated food article, was kept for sale. Accused No.1 was the seller of Godrej Vanaspati. Accused No.3 was the supplier whereas Accused Nos.4 and 5 were the manufacturers of the said food article. On 6.2.1996 at 10.30 a.m. the Food Inspector of Phaltan Municipal Council visited the said shop and in the presence of panchas took a sample of food article viz. Godrej Vanaspati, which was kept for sale. After complying with the requisite procedure under the Act, he forwarded a portion of the sample to the Public Analyst for analysis. The report of the Public Analyst reveals that as per the Baudouin Test the sample of Godrej Vanaspati was lighter than 2 red units and hence, did not conform to the standards of Vanaspati as per PFA Rules, 1955. In view of the said report sanction was obtained from the Joint Commissioner, Food and Drug Administration, Pune, and thereafter a complaint was lodged against the aforesaid Respondents for selling adulterated Godrej Vanaspati.

4. The records reveal that at the instance of one of the

Respondents remaining part of the sample was sent to the Central Food Laboratory, Calcutta for analysis. The Director of Central Food Laboratory submitted the report after analysing the said sample of Godrej Vanaspati. Said report was not in conformity with the report of the Public Analyst. As per the report of the Public Analyst the sample of Vanaspati showed Baudouin Test lighter than 2 red units whereas as per the report of Central Food Laboratory, the result of Baudouin Test (for sesame oil) is positive and Central Food Laboratory found 2.3 Red Unit when performed as per A.(19) (x).

5. There can be no dispute that report of the Central Food Laboratory supersedes the report of the Public Analyst. Since the said report indicates that the said food item meets the requirement of Baudouin Test the Respondents could not have been prosecuted on the ground that the said food item did not conform the standards of Baudouin Test. The report of the Central Food Laboratory indicated that the sample was held to be adulterated for not having adequate vitamin 'A'. No such discrepancy was found by the Public Analyst at Pune, who had analysed the said food sample. In his statement before the Court the Food Inspector had admitted that there is difference between the report submitted by the Public Analyst and the report

submitted by the Director of Central Food Laboratory at Calcutta. The report of the Central Food Laboratory discloses a totally different kind of adulteration than what was mentioned in the report of the Public Analyst. Hence, the Respondents could not have been prosecuted for a different kind of adulteration, as stated in the report of Central Food Laboratory, without obtaining a valid sanction to that effect.

6. Considering the above facts and circumstances, in my considered view the learned Magistrate was justified in discharging the Respondents herein for want of sanction. Consequently, the revision application stands dismissed.

(ANUJA PRABHUDESSAI, J.)