

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE SIDE JURISDICTION****CRIMINAL APPEAL NO.578 OF 2000**

The State of Maharashtra
(At the instant of Shri Y.R.Tamboli,
Food Inspector, Food & Drug Admn.
M.S.)

... Appellant
(Orig. Complainant)

V/s.
Shri Ganesh Jagannath Nalgune,
Aged – Adult,
Vendor and Proprietor of
M/s Rajkumar General Stores,
Situating at and post Masur,
Tal. : Karad, Dist.:Satara.

... Respondent
(Orig. Accused)

Mr. P.H.Gaikwad, APP for the State.
Mrs. Manisha Shekhar Jagtap, for the Respondent.

CORAM : MRS.SWAPNA JOSHI, J.

DATE : 3rd OCTOBER, 2016

JUDGEMENT :

1. This appeal is preferred by the appellant State against the judgment and order dated 13th April, 2000 delivered in Regular Criminal case No. 236 of 1994, by the learned Judicial Magistrate First Class, Karad, thereby acquitting the respondent of the offences punishable under sections 7(i) r/w 2(ia)(a) and (m) and 16 of Prevention of Food Adulteration Act, 1954.

2. Heard the learned APP for the appellant and learned Counsel for the respondent. I have carefully gone through the record of the case and the impugned judgment and order. It is noticed that the judgment passed by the learned Magistrate is not illegal or perverse.
3. The brief facts of the prosecution case are that the complainant Shri Y. R. Tamboli was the Food Inspector duly appointed under section 9 of Prevention of Food Adulteration Act, 1954, by the State Government. The accused is a vendor and proprietor of the firm M/s Rajkumar General Stores, Post-Masur, Taluka-Karad, District-Satara and dealing with the business of storing for the sale and selling the food articles in the said premises. On 19th October, 1993 at about 3.00 p.m. the complainant visited the premises alongwith the panch. The accused was looking after the day to day business. The complainant disclosed his identity and expressed his desire to draw the sample of food articles, as per the provisions of Prevention of Food Adulteration Act and Rules. The complainant inspected the premises and purchased 4.50 grams of groundnut oil from unsealed and unlabeled tin, which was containing about 10 kg. of groundnut oil for the test and analysis purpose. The complainant paid the amount of Rs.18/- as a price of the food article and obtained the receipt. The complainant followed the detailed procedure as per law. The panchnama was prepared and the notice was given. The complainant on receipt of the public analyst report dated 24th November, 1993 and after receipt of the consent from the higher Authority and after following

legal formalities filed the present complaint against the accused. The charge was framed against the accused under section 7(1) and the provisions under section 16 of Prevention of Food Adulteration Act.

4. I have perused the entire evidence on record and heard the learned Counsel for the appellant. The Learned APP contended that the panch witness turned hostile should not be taken into consideration seriously and the testimony of the complainant should be relied upon. He submitted that the testimony of the complainant does not need any corroboration as such as he was discharging his duty in official capacity. As against this the learned Counsel for respondent submitted that the complainant has not strictly followed the mandatory rules.
5. On careful scrutiny of testimony of the complaint it is noticed that mainly the rules 7(3), 9(A), 16, 14, 17 and 18 are not strictly complied with as per the provisions of Prevention of Food Adulteration Act. It is noticed that there is variance between the complaint and deposition of the complainant, in respect of the procedure of obtaining sample, packing and dispatching to the Public Analyst. In view thereof there is every likelihood of tampering of the sample by the Food Inspector, as he was incharge of the sample for sending it to the Public Analyst. So also only one panch witness was accompanying the complainant and as such there is contravention of the provisions of law.

6. It is evident that the sample which was initially obtained of 450 grams of groundnut oil was not obtained in a clean and dry vessel as per the provisions of law.
7. It is noticed that there is contravention of Rule 14 of the Prevention of Food Adulteration Act. Rule 14 indicates that the sample of the food for the purpose of analysis shall be taken in clean and dry bottles or jars or in other suitable container. Section 7 of Prevention of Food Adulteration Act with regard to taking of sample clarifies that unhygienic method should not be adopted to collect the sample. Significantly the complainant in his cross-examination has admitted that the sample procedure was not followed strictly. Thus, there is contravention of Rule 14 of Prevention of Food Adulteration Act. There is also contravention of 17(b) and 18 of the Prevention of Food Adulteration Act, in respect of sending separate sample packets and specimen impression of the seal and the memorandum. It is also noticed that the procedure with regard to the sending of the sample to Public Analyst was also not followed strictly as per the law, by the complainant. Thus, the mandatory provisions under the said Act were not strictly followed by the complainant. It is pertinent to note that there is delay in filing of the complaint. The report of the Food Inspector was received by the higher Authority on 4th December, 1993 and the case was filed on 5th August, 1994. There is unexplained delay of 8 months, which goes to the root of the case. Most importantly there is a contravention of Rule 44 clause (A) of Prevention of Food Adulteration Act. The

complainant failed to establish that the possession of the food articles i.e. Groundnut oil was meant for human consumption only. Significantly the mere possession of the said articles does not constitute any offence under section 7 of Prevention of Food Adulteration Act. There is absolutely no evidence on record to show that the groundnut oil was found in the possession of the respondent was meant for the sale of human consumption. As far as the Public Analyst report Ex. 30 is concerned there is no mention in the Public Analyst report that groundnut oil, which was found in the possession of the respondent was injurious to the health of the human being, it was unfit for consumption and it was unfit for the consumption of the human being. So also no percentage of castor seed oil was given in detail. The Public Analyst report does not appear to be reliable document.

8. In view of the fact that there is complete contravention of the provisions of the Rules under Prevention of Food Adulteration Act, it is held that the prosecution has failed to prove the guilt of the respondent/accused. No perversity or illegality is noticed in the judgment and order passed by the learned Magistrate. In view thereof I am of the opinion that no interference in the impugned judgment and order is warranted and the appeal deserves to be dismissed. Hence, it is dismissed.

(MRS.SWAPNA JOSHI,J.)

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