

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.71 OF 2003

The State of Maharashtra,
At the instance of Shri A.D.
Ajansondkar, Food Inspector,
Food and Drugs Admn., M.S.
Sarjepura, Ahmednagar.

...APPELLANT

VERSUS

Arvind Shriram Lad,
Age-45 years, Vendor and Prop. of
M/s. Prashant Provision Stores,
At & Post-Kolpewadi,
Tq-Kopargaon, Dist-Ahmednagar.

...RESPONDENT

...
Mr. S.J. Salgare, A.P.P. for Appellant.
Mr. Santosh S. Jadahvar, Advocate for Respondent.
...

CORAM: S.S. SHINDE, J.

DATE : 8TH MAY 2017

ORAL JUDGMENT :

1. This Appeal takes exception to the
Judgment and Order dated 2nd September 2002,
passed by the Court of Judicial Magistrate First

Class, Kopargaon in R.T.C. No.366 of 1993, by which Respondent - Arvind Shriram Lad came to be acquitted from the offence punishable under Sections 7(i) read with Section 2(ia)(a) and 2(ia)(c) and 7(v) read with 2 (ia)(m) and Rule 44(h) punishable under Section 16 of the Prevention of Food Adulteration Act.

2. The prosecution case, in nut-shell, is as under:-

A) The complainant A.D. Ajansondkar, Food Inspector, Food and Drugs Administration, Ahmednagar, filed the private complaint before the Court of Judicial Magistrate First Class, Kopargaon. He was an authorized officer to file such complaint. The Respondent i.e. original accused was proprietor of a firm M/s. Prashant Provision Stores, situated at Kolpewadi, Tq-Kopargaon, Dist-Ahmednagar and he was doing the business of stocking for sale and selling the food

articles. He had valid license to run such business to sale food articles. In the complaint filed by the Food Inspector, there is mention of the premises from which the Respondent was doing his business.

B) On 31st January, 1992 the complainant along with an independent witness Shri Balnath Kondaji Pagar, resident of Velapur, Tq-Kopargaon, visited the premises of the Respondent accused at about 12.30 p.m., where the accused was present. Complainant disclosed his identity to the accused and made his intention clear that he wants to draw samples of food articles for test and analysis under the provisions of the Food Adulteration Act and the Rules thereunder. The complainant inspected the premises thoroughly and purchased 600 gm. Turmeric (Haladi Powder), which was kept in an open and unlabeled tin containing about 2 Kg. Haladi powder. The complainant paid the amount of purchase of said Turmeric. The complainant gave an

intimation in Form No.6 to the accused for drawing the said samples for test and analysis. The complainant also issued a notice under Section 14(a) of the Prevention of Food Adulteration Act and the Respondent was asked to disclose his name, address of the supplier, and receipt was obtained from the accused. The accused replied the said notice. The complainant divided the sample then and there into three equal parts and each part was filled into clean, dry and empty polythene bag, and after sealing of those bags containing Turmeric and after taking proper care, complainant affixed paper-slip bearing the signature of local authority and Assistant Commissioner, Food and Drug Administration, Maharashtra State, Ahmednagar on each part of the sample from bottom to top. Thereafter the complainant tied each part by a twin horizontally and vertically and each part was then sealed with sealing wax with four seals. Thereafter the complainant obtained signature of accused on the samples and accordingly panchnama

was drawn.

C) It is the case of the prosecution that on 1st February, 1992, one part of the sample along with Form No.XVII in sealed packet, was sent to Public Analyst, Public Health Laboratory, Pune through special messenger. On the next day, remaining two part of samples were deposited by the complainant with Local Health Authority and Assistant Commissioner, Food and Drug Administration, Maharashtra State, Ahmednagar. The complainant received Public Analyst's report from the Local Health Authority, Assistant Commissioner, Ahmednagar on 9th March, 1992 along with covering letter of Public Analyst, Pune. It was disclosed in the report that the sample does not conform to the standards of Turmeric Powder as per the Prevention of Food Adulteration Rules, 1955. The complainant after receiving such report, completed the necessary investigation and submitted all the relevant papers to the Joint

Commissioner, Nashik Division, Food and Drug Administration for sanction as per Section 20 of the Prevention of Food Adulteration Act and accordingly necessary consent was received and thereafter complaint was filed.

D) As per the prosecution case, Haldi (Turmeric Powder) is an article of food within the meaning of Section 2(v) of the Prevention of Food Adulteration Act and Rules thereunder. It was alleged that the accused on 31st January, 1992, stored for sale and sold adulterated article of food namely, Haldi Powder and thereby contravened provisions of Section 7 read with 2(ia)(a) and 2(ia)(c) and 7(v) read with 2 (ia)(m) and Rule 44(h) punishable under Section 16 of the Prevention of Food Adulteration Act and Rules thereunder.

3. Thereafter the concerned Court framed the charge against the Respondent - accused and after

conducting full-fledged trial, acquitted the Respondent - accused. Hence this Appeal by the State.

4. Learned A.P.P. appearing for the State invites our attention to Rule 7 of the Prevention of Food Adulteration Rules, 1955 and submits that there is forty days time limit to send the samples for analysis, to test the same by the analyst and for receiving the report. In his submission, total forty days time is given as per the provisions of Rule 7 of the said Rules and therefore findings recorded by the trial Court in Para 18 of the impugned Judgment that the sample is not tested within prescribed statutory limit, is contrary to the provisions of Rule 7 of the said Rules. It is submitted that the sample was taken on 1st February, 1992, and the same was sent on the very next day for analysis and report was received on 4th March, 1992, and therefore the observations of the trial Court that, the sample would have been

tested in between 1st February, 1992, to 4th March, 1992, and that the report does not disclose the exact date on which the sample was tested, has no basis, in as much as provisions of Rule 7 of the Prevention of Food Adulteration Rules provides for forty days time to test such samples and to receive the report from the Public Analyst. It is submitted that when one sample was found contaminated, in that case there was no option for the concerned Court but to convict the Respondent accused. Therefore, the learned A.P.P. submitted that Appeal deserves to be allowed.

5. On the other hand, learned counsel appearing for Respondent i.e. original accused, submits that the Respondent has stopped the business of storing and selling the grocery articles including Turmeric Powder. He submits that already Respondent has stopped the said business and settled in his life and doing some other business. he submits that the Supreme Court

in the case of State of Maharashtra and another vs. M/s. Gopalprasad Govindprasad Agarwal and others¹, in the facts of that case, has taken a view that the offences were committed almost twenty years ago and therefore the Court declined to interfere in the order of acquittal. He further invites my attention to the Judgment in the case of State of Maharashtra vs. Nandiram Badildas Ahuja² and submits that in the facts of that case the Division Bench of the Bombay High Court at Principal Seat, has taken a view that, by the time the appeal against acquittal of the accused therein was taken up for final hearing, the accused abandoned the business in question and was well settled in life and therefore order of acquittal could not be disturbed. Relying upon the aforementioned two Judgments, learned counsel for Respondent submits that taking the same view, this Court may not cause interference in the order of acquittal. He invites my attention to the findings

1 A.I.R. 1999 S.C. 1507

2 1988(1) Bom.C.R. 68

recorded by the trial Court and in particular Para 18 of the Judgment and submits that the trial Court made specific observations that in the report submitted, the Public Analyst has not mentioned whether the article is injurious to health or not. He further invites my attention to Para 22 of the impugned Judgment and submits that the trial Court has taken note of the fact that concerned analyst who has examined the samples, was not examined and on that count also the trial Court extended the benefit of doubt to Respondent. Therefore, he submits that an order of acquittal may be confirmed.

6. I have considered the submissions of the learned A.P.P. appearing for the State and learned counsel appearing for Respondent. I have also carefully perused the notes of evidence and the findings recorded by the trial Court. It is true that upon careful perusal of Rule 7 of the Prevention of Food Adulteration Rules, 1955, forty

days time is provided for completing the entire exercise of testing/ analyzing the sample and sending report to the competent authority. But in the facts of the present case, as rightly submitted by the learned counsel appearing for the Respondent, the Public Analyst who has analyzed/ tested the sample, was not examined by the prosecution. Apart from it, I also find considerable force in his submissions that in absence of examining the concerned Analyst, merely on the basis of report received from the office of the Public Analyst Pune, through the Local Health Authority, Assistant Commissioner, Food and Drug Administration, Ahmednagar, it is not desirable to hold that the sample was contaminated. Upon careful perusal of the evidence on record and also the findings recorded by the trial Court and the fact that the Respondent has stopped the business of storing and selling the grocery items including Turmeric Powder, and considering the fact that concerned analyst who analyzed/ tested the sample

was not examined, in my opinion the trial Court was justified in giving benefit of doubt in favour of the Respondent.

7. In the present case the Court of Judicial Magistrate First Class, Kopargaon acquitted the Respondent on 2nd September, 2002. That is also one of the reason, in addition to the aforesaid reasons, keeping in view the Judgment of the Division Bench of the Bombay High Court at Principal Seat in the case of State of Maharashtra vs. Nandiram Badildas Ahuja, supra, not to cause interference in the order of acquittal.

8. In the light of discussion in foregoing paragraphs, I am not inclined to cause interference in the impugned Judgment and order of the acquittal. Hence the Appeal stands dismissed.

[S.S. SHINDE, J.]