IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 279 OF 2003

The State of Maharashtra,
at the instance of S.V. Khairnar,
Food Inspector, Food & Drugs
Administration, Jalgaon **APPELLANT**

VERSUS

Ashok Dalumal Hemnani,
Prop. Of Shop No. 21,
Central Fule Market, **RESPONDENT**
Jalgaon **(ORIG. ACCUSED)**

Smt. R.P. Gaur, A.P.P. For the appellant/State
Mr. D.S. Bharuka, Advocate for the respondent

CORAM : SANGITRAO S. PATIL, J.

JUDGMENT RESERVED ON : 4th AUGUST, 2017
JUDGMENT PRONOUNCED ON : 14th AUGUST, 2017

JUDGMENT :

Heard the learned A.P.P. for the appellant/State and the learned counsel for the respondent.

2. By this appeal, the State of Maharashtra/ appellant has taken exception to the acquittal of the respondent of the offence under Section 7 (i) read

with Section 2 (ia) (a) and Section 2 (ia) (m), punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 ("Act", for short), recorded by the learned Chief Judicial Magistrate, Jalgaon in Regular Criminal Case No. 461 of 2000 on 31st December, 2002.

3. The Food Inspector namely Mahesh Namdeorao Chaudhari visited the shop of the respondent on 1st November, 1999 and after introducing himself with the respondent, purchased 450 grams of groundnut oil each from three different barrels, which was meant for sale through the shop of the respondent. The said groundnut oil was taken by the Food Inspector in clean and dry utensils. He then divided that groundnut oil in three equal parts each and filled it in three dry and clean glass bottles each as samples. He packed and sealed those samples with the signatures of the respondent and panch witness. He affixed necessary slips to the sample bottles. He then prepared panchanama of the fact of taking samples of groundnut oil. He then sent one of the bottles from those three sets of samples to the Public Analyst, District Public Health Laboratory, Worli, New Mumbai as per the Rules. The Public Analyst

analyzed the said samples and found that they were not conforming to the standard of groundnut oil as per the provisions of the Act. The papers in respect of taking of samples and all other documents were sent to the Joint Commissioner, Food and Drugs, through the Local Health Authority, Jalgaon for obtaining consent to prosecute the respondent. In the meantime, the Food Inspector Mahesh Chaudhari got transferred. He was succeeded by the Food Inspector namely Satish Vishwanath Khairnar. He received the consent orders for prosecuting the respondent given by the Joint Commissioner, Nasik through the Local Health Authority. Therefore, the Food Inspector Satish Khairnar filed three different complaints against the respondent for the above mentioned offence in respect of three samples taken by the Food Inspector Mahesh Chaudhari from three different barrels of groundnut oil from the respondent. The Food Inspector Satish Khairnar intimated that fact to the Local Health Authority for taking action under section 13 (2) of the Act.

4. On the basis of the complaints lodged by the Food Inspector Satish Khairnar, three different criminal cases were registered against the respondent. This

appeal is arising out of Regular Criminal Case No. 461 of 2000.

5. The appellant examined the Food Inspectors namely Mahesh Chaudhari and Satish Khairnar, the panch witness namely Brijlal Meghawani and the Local Health Authority Shashikant Patil to establish guilt of the respondent for the above mentioned offence.

6. The Trial Court considered the evidence on record and came to hold that the appellant failed to establish guilt of the respondent for the above mentioned offence. The Trial Court, therefore, acquitted the respondent of the said offence.

7. The learned A.P.P., appearing for the appellant/State, submits that there is sufficient, cogent and clinching evidence on record to establish guilt of the respondent for the above mentioned offence. All the formalities as prescribed under the provisions of the Act and the Prevention of Food Adulteration Rules, 1955 (“Rules”, for short) have been strictly followed by the Food Inspectors. The Trial Court acquitted the respondent on the flimsy ground that the presence of one peon was not stated by the Food

Inspector Mahesh Chaudhari and that the utensils in which 450 grams of groundnut oil was taken from the barrels as also the sample bottles were not cleaned and dried on the spot.

8. The learned A.P.P. submits that when there is specific evidence of the Food Inspector Mahesh Chaudhari about having taken groundnut oil in the dry and clean utensils as well as taking the samples in dry and clean bottles, which fact also has been confirmed in the reports of analysis of Public Analyst, it was not necessary that the said utensils and sample bottles should have actually been dried and cleaned on the spot itself. The learned A.P.P. further submits that the presence or absence of the peon at the time of taking samples is totally an insignificant fact. The learned A.P.P. then submits that on the request of the respondent, the second sample was sent to the Central Food Laboratory (CFL), Calcutta, wherein also it was noticed that the sample of groundnut oil was adulterated. According to the learned A.P.P., the Trial Court committed a grave mistake in acquitting the respondent.

9. The learned A.P.P. pointed out to the judgment delivered by this Court in Criminal Appeal No. 278 of 2003, whereby this Court set aside the judgment of acquittal dated 31st December, 2002 passed by the learned Chief Judicial Magistrate, Jalgaon in Regular Criminal Case No. 462 of 2000, which was instituted for the above mentioned offence only on the basis of one of the samples taken from one of the three groundnut oil barrels from the respondent under the same panchanama by the Food Inspector Mahesh Chaudhary on 1st November, 1999 itself. The learned A.P.P. submits that the same formalities which were observed by the Food Inspector Mahesh Chaudhary for taking samples of groundnut oil from the respondent in Regular Criminal Case No. 462/2000, were observed by him in respect of the present case also. This Court has set aside the judgment of acquittal passed by the Trial Court, held the respondent guilty of the above mentioned offence and convicted him to suffer rigorous imprisonment for a period of six months and to pay a fine of Rs.1000/-, in default to suffer rigorous imprisonment for fifteen days.

10. The learned A.P.P. submits that it is not the case of the respondent that he has challenged the said

judgment of conviction and sentence. As such, it has got finality. The learned A.P.P., therefore, submits that in view of the judgment passed by this Court in Criminal Appeal No. 278 of 2003, the present appeal also is liable to be allowed and the respondent is liable to be convicted for the above mentioned offence, otherwise an anomalous situation would be created.

11. As against this, the learned counsel for the respondent submits that certain valid and legal points indicating breach of mandatory provisions of the Act and Rules by the Food Inspectors have not been brought to the notice of this Court by the learned counsel for the respondent when Criminal Appeal No. 278 of 2003 was heard by this Court. He, therefore, submits that the judgment dated 11th January, 2016 passed by this Court in Criminal Appeal No. 278 of 2003 cannot be made applicable to the facts of the present case. He submits that the Food Inspector committed breach of Rule 14 of the Rules by not cleaning and drying on the spot the utensils and sample bottles in which the groundnut oil was taken from the barrels in the presence of the respondent. According to him, as held in the cases of ***The State of Maharashtra Vs. Gitaram Kaluram 1993 (2)***

FAC 238, State of Maharashtra Vs. Bhaskar Rajeshwar Gangshettiwar and others 2004 (1) FAC 13 and ***The State of Maharashtra Vs. Shri Chandrakant Sopan Kadam and another 2016 ALL MR (Cri) 2986***, the breach of Rule 14 would entitle the respondent to get acquittal.

12. He then submits that before taking out the groundnut oil, it was not stirred. Therefore, in view of the judgment in the case of ***State of Maharashtra Vs. Vinayak Mahadeorao Waze and another 2005 (2) FAC 126***, the respondent was entitled to get acquittal.

13. He then submits that the Food Inspector Chaudhari did not follow Rules 17 and 18. He did not despatch the samples in the manner provided in Rule 17 and did not send the memorandum and specimen impression of the seal used to seal the packets in a sealed packet separately to the Public Analyst. There is no postal acknowledgement receipt given by the Public Analyst about receipt of the memorandum and specimen impression of the seal. Relying on the judgment in the case of ***State of Maharashtra Vs. Rajkaran 1988 EFR 550***, he submits that unless postal receipt is produced, it cannot be accepted that the memorandum and specimen of

the seal were sent separately by post.

14. According to him, after receiving the report of Central Food Laboratory in respect of second sample, it was necessary to obtain fresh consent for prosecution of the respondent. However, no such fresh consent was obtained. Therefore, in view of the judgment in the case of ***The State of Maharashtra Vs. Ashpak Ahmed Fakik Ahmed and another 2014 ALL MR (Cri) 3589*** and ***N. Sukumaran Nair Vs. Food inspector, Mavelikara (1997)9 SCC 101***, the respondent is liable to be acquitted.

15. The learned counsel for the respondent submits that the list of the documents sent to the Consenting Authority has not been produced before the Court. Therefore, in view of the judgment in the case of ***Shri Chandrakant Sopan Kadam and another*** (supra), the consent accorded for prosecuting the respondent cannot be said to be free from doubts. The learned counsel submits that the Food Inspector being an interested person in seeing the respondent convicted, independent corroboration was necessary to his evidence. The evidence of the panch witness is very vague and general. It does not corroborate the evidence of the Food Inspector on all

material points. Therefore, on the basis of the evidence on record, the respondent was not liable to be convicted. The learned counsel for the respondent, therefore, prays that the appeal may be dismissed.

Compliance of Rule 14 of the Rules :

16. The Food Inspector Mahesh Chaudhari deposes at Exh-17 that on 1st November, 1999, he visited shop of the respondent along with another Food Inspector having surname Ugale and panch witness Brijlal Meghawani. He requested the respondent to sell 450 grams of groundnut oil from each of the three barrels. The respondent cleaned the upper lids of the barrels. Then he (Chaudhari) provided three clean and dry utensils to the respondent. He had shown the panch and the respondent the clean and dry utensils. Thereafter, the respondent sold 450 grams of groundnut oil from each of the barrels in three utensils. He then separated the said groundnut oil in three equal quantity and filled it in three different glass bottles each after showing the sample bottles and the corks to the respondent to make him satisfied that the same were clean and dry. All these procedural aspects have been noted by him in the panchanama (Exh-24). It has been signed by the

respondent. The copy of that panchanama also was given to him. Brijlal (PW3) – panch witness does not specifically state about the fact of cleaning and drying the utensils as well as sample bottles on the spot. However, panchanama (Exh-24), which was prepared on the spot in the presence of the respondent, depicts the factual position about satisfaction of the respondent in respect of dryness and cleanness of the utensils as well as sample bottles used for taking samples. The respondent has not ever made any grievance against the contents of panchanama (Exh-24). The contents of this panchanama fully corroborate the evidence of the Food Inspector Chaudhari.

17. In the case of ***Gitaram Kaluram*** (supra), cited by the learned counsel for the respondent, the panch witness merely deposed that sample bottles were washed by water but did not state that the bottles were dried and only thereafter the coconut oil was poured therein. Therefore, the acquittal of the accused therein was upheld. In the case of ***Bhaskar Rajeshwar Gangshettiwar and others*** (supra), the Food Inspector had clearly stated that he had taken samples by weighing measure (container), which was lying in the shop of the accused

and he did not clean it before obtaining the sample in that container. In the case of ***Shri Chandrakant Sopan Kadam and another*** (supra), no evidence was adduced by the complainant as regards the necessary precaution taken by him to ensure that the bottles in which samples were collected were clean and dry. In the circumstances, the accused was acquitted.

18. In the present case, there is positive and clinching evidence of the Food Inspector Chaudhari that after getting it confirmed from the respondent that the utensils, in which the groundnut oil was purchased as well as the sample bottles, in which it was poured, were dry and clean. In view of this distinguishing fact, the above mentioned rulings would not be applicable to the facts of the present case.

19. The learned A.P.P. relied on the judgment in the case of ***Kantilal s/o Parasmal Jain Vs. The State of Maharashtra 2014 SCC OnLine Bom 502.*** In that case, the evidence of the complainant showed that he purchased the groundnut oil in a clean, dry and empty stainless steel pot. He divided the samples into three equal parts and thereafter, it was kept in three clean, dry and empty glass bottles. The panchanama proved on record also

mentioned that the complainant bought the groundnut oil after it was weighed, in clean, dry and empty stainless steel pot and then the same was divided into three parts and filled in clean, dry and empty glass bottles. The evidence of the complainant had remained unshattered in his cross-examination. In the circumstances, the evidence of the complainant was accepted. In the present case also, there is nothing in the cross-examination of the Food Inspector Chaudhari to indicate that the utensils or the sample bottles in which the groundnut oil was taken and filled, were not dry and clean. Moreover, the respondent has not made any grievance about the contents of this panchanama (Exh-24), wherein it was specifically mentioned that the said utensils as well as the sample bottles were dry and clean. In my view, the evidence of the Food Inspector Chaudhari clearly shows that he has duly complied with the provisions of Rule 14 of the Rules in the matter of taking samples of the groundnut oil purchased from the respondent.

Stirring of Oil :

20. Relying on the judgment in the case of ***Vinayak Mahadeorao Waze and another*** (supra), the learned counsel

for the respondent submits that there is no evidence on record to show that the Food Inspector Chaudhari stirred the groundnut oil before taking its sample. In paragraph No. 7 of the said judgment, there is simply a mention of the fact that the Food Inspector admitted that the oil was not stirred before collection of the sample. However, there is no discussion or observation with reference to any provisions of the Act or the Rules making stirring of groundnut oil mandatory before taking its sample. There were a number of deficiencies in that case which led to the acquittal of the accused. The said acquittal was not on the ground that the groundnut oil was not stirred before taking its sample. On the contrary, in the case of ***Kantilal s/o Parasmal Jain*** (supra), cited by the learned A.P.P., it is specifically observed that what is required for taking sample of milk (i.e. stirring) is not the requirement for taking sample of oil because fat in the milk settles on the top, while in the case of groundnut oil, it is not so. In the circumstances, the contention of the learned counsel for the respondent that for want of stirring of the groundnut oil, the sample thereof cannot be said to have been properly taken, cannot be accepted.

Compliance of Rules 17 and 18:

21. Rule 17 of the Rules contains the manner of despatching containers of samples, while Rule 18 contains the procedure for sending of the memorandum and specimen impression of the seal used to seal the packet to the Public Analyst by any suitable means.

22. The Food Inspector Chaudhari deposes that on 2nd November, 1999, he prepared specimen impression in four copies. He prepared Form No. VII. He forwarded one of the parts of the samples with original Form VII in one sealed packet to Public Analyst, New Bombay. He put one impression of seal and one copy of memorandum in a sealed packet and sent these two packets with his Assistant to the Public Analyst, New Bombay. The copy of the memorandum is Exh-25, while that of the specimen seal is Exh-26. He states that rest of two specimen seals were sent to the Local Health Authority in separate sealed packets with covering letter (Exh-27). The rest of the two parts of samples along with two copies of Form No. VII were sent in a sealed packet to

the Local Health Authority, Jalgaon with covering letter (Exh-28). He informed the Local health Authority that one of the samples had been sent for analysis to the Public Analyst. He then deposes that he received acknowledgement (Exh-29) from the Local health Authority. He further received acknowledgement (Exh-30) from the Public Analyst about receipt of specimen seal and Form No. VII. This evidence of the Food Inspector Chaudhari has gone totally unchallenged in his cross-examination. I do not find any reason to disbelieve it. From this evidence, it is clear that he fully complied with the provisions of Rules 17 and 18. In the circumstances, the judgments in the cases of ***Rajkaran*** (supra) and ***Shri Chandrakant Sopan Kadam and another*** (supra) would be of no help to the respondent to express doubt on the procedure followed by the Food Inspector Chaudhari.

Reports of the analysis of samples :

23. The report of the Public Analyst in respect of the sample sent by the Food Inspector Chaudhari reads as under:-

"Report No. 135
18/1/2000
Exh-31

Chief Judicial
Magistrate, Jalgaon

FORM III
[See rule 7 (3)]

REPORT BY THE PUBLIC ANALYST

Appearances	:	The sample of oil is clear free from suspended matter etc. separated water.
Test for Rancidity	:	Negative
Test for colour	:	No extraneous colour detected
Test for Mineral oil	:	Negative
Test for Caster seed oil	:	Negative
Butyrorefractometer reading of	:	40° C - 60.0
Supermification Value	:	190.35
Iodine value	:	121.49
Unsaponifiable matter	:	0.56%
Acid value	:	0.42
Bellier Test	:	Turbidity Temperature acetic acid method : 28.0^{0}C
Opinion	:	The above sample bearing code No. JLG/6/NSKD and slip Sr.No. 06717 does not conform to the standards of Groundnut oil as

per Prevention of Food Adulteration Act, 1954.

Signed this 18th day of Jan. 2000

To,
The Local (health) Authority,
Assistant Commissioner,
Food & Drugs Adm.9M.S.),
Jalgaon

Sd/-
Public Analyst"

24. On the application of the respondent, the second sample was sent to Central Food Laboratory, Calcutta for analysis and report. The said report reads as under:-

"FORM-II

(Certificate of test or analysis by the Central Food Laboratory, Calcutta)

Certificate No.G.14-3/2001 (P.T.1)-98(d)

Physical Examination	:	
Moisture	:	
Butyrorefractometer reading at 40°	:	59.6
Saponification value	:	195.4
Iodine value	:	122.8
Acid value	:	0.72
Bellier test (Turbidity Temperature acid method)	:	31.0°C
Baudouin test (for seasame oil)	:	Negative

Polybromide	:	
Test for mineral oil	:	Negative
Test for Cottonseed oil	:	Negative
Test for Argemone oil by T.L.C.	:	Negative
Test for Hydrocyanic acid	:	
Test for Castor oil by T.L.C.	:	Negative
Phosphorus	:	
Test for Tri-Ortho-Cresyl Phosphate	:	
Cloud Point	:	
Flash point (Pensky-Marten closed method)	:	
Added colouring matter	:	Absent
Aflatoxin B1 (Microgram/Kg)	:	10.0
Opinion	:	The sample of Groundnut Oil is adulterated.

Place : KOLKATA
Date : 7.3.01

Sd/
(Dr. J. Chakrabati)
Director
Central Food Laboratory,
Calcutta”

25. From the above mentioned reports, it is clear that the groundnut oil, which was kept for sale and sold to the Food Inspector by the respondent was adulterated article of food as defined in Section 2 (ia) and (m) of the Act.

Consent for prosecution :

26. The learned counsel for the respondent, relying on the judgment in the case of ***Ashpak Ahmed Fakik ahmed and another*** (supra), submits that consent for prosecution of the respondent ought to have been obtained afresh after receiving the report of the Central Food Laboratory in respect of the second sample. In that case, the report of the Public Analyst revealed that there was presence of coal tar food colour in food sample i.e. "Radha-Rani Chatani" and thereby it contravened Rule 28. However, the Central Food Laboratory found that the said food sample contravened Rule 33 (e). Thus, there was variance in the opinion of the Public Analyst and Central Food Laboratory in respect of contravention of the Rules. The consent for prosecution of the accused therein was obtained on the basis of the findings of the Public Analyst, which was not confirmed by the Central Food Laboratory. Therefore, it was held that after receiving the report of the Central Food Laboratory, fresh consent of the Competent Authority was required to be obtained prior to prosecuting the accused therein. In the present case, no such variance has been reported in the opinions of

the Public Analyst and Central Food Laboratory. Consequently, it was not necessary to obtain fresh consent for prosecution of the respondent from the Competent Authority.

27. The Food Inspector Chaudhari states that on 16th February, 2000, he forwarded the proposal for obtaining the consent to prosecute the accused/respondent along with all documents to the Joint Commissioner, Food and Drugs through the Local health Authority vide letter (Exh-37). The letter (Exh-37) contains that the original documents bearing page Nos.1 to 19 with their photocopies were sent by the Food Inspector Chaudhari to the Local Health Authority for obtaining consent for prosecuting the respondent. This evidence cannot be brushed aside merely on the ground that the list of the documents sent to the Consenting Authority was not filed before the Trial Court. The consent order dated 11th October, 2000 is at Exh-51. The Consenting Authority has specifically mentioned in the said order that after going through the case papers, he found that there was prima facie case and it was necessary in the public interest that the prosecution should be instituted against the respondent for the above mentioned offence.

With these specific observations of the Consenting Authority and the evidence of the Food Inspector Chaudhary, I do not find any flaw in the consent order. It was not at all necessary to examine the Consenting Authority to prove the contents of the consent order.

28. The technical flaws attempted to be shown by the learned counsel for the respondent in the procedure followed by the Food Inspector Chaudhari in prosecuting the respondent, in view of the above discussion, cannot be said to have any substance. The observations of the Trial Court that the Food Inspector did not follow the provisions of Rule 14 are not well founded. When the respondent himself received the copy of the panchanama under his signature and when he did not make any grievance about the contents of the panchanama, either before the Food Inspector Chaudhari or his superior officers, the presence or absence of any peon or other person at the time of taking sample of groundnut oil would have no adverse effect on the case of the appellant. The Trial Court has wrongly appreciated the facts and the evidence on record and has wrongly acquitted the respondent.

29. The learned A.P.P. cited the judgment in the case of ***Om Prakash Vs. Delhi Administration and another (1976)1 SCC 637***, wherein six samples of milk were taken from six different cans. All the samples were found deficient in respect of non-fat solids and as such, adulterated. It was held that each sample would be a separate transaction of sale and each such transaction of sale would constitute a separate offence, if samples were found to be adulterated. In the present case, the respondent sold three samples of groundnut oil from three different barrels. Therefore, each sample would be a separate transaction of sale and would constitute a separate offence since each of the samples is found to be adulterated. In the circumstances, even if the respondent is convicted by this Court in Criminal Appeal No. 278 of 2003, in respect of one of the three samples taken by the Food Inspector Chaudhari from the respondent on 1st November, 1999, the respondent would be liable to be prosecuted, tried and convicted for the sample subject matter of the present case also since it is found adulterated.

30. As stated above, the respondent has been convicted for the above mentioned offence in respect of

one of the samples of groundnut oil and has been sentenced to suffer rigorous imprisonment for a period of six months and to pay a fine of Rs.1000/-, in default to suffer rigorous imprisonment for fifteen days. Since the respondent is found guilty for the same offence in this case also, arising out of same incident of taking samples under the same set of circumstances, I am of the view that the respondent should be convicted for the offence subject matter of this case with the same sentence that has been passed in Criminal Appeal No. 278 of 2003.

31. It is reported that the respondent is undergoing the sentence of imprisonment. The offence has been committed on 1st November, 1999. The period of about eighteen years has been elapsed therefrom. The respondent is already undergoing the sentence of imprisonment in respect of one of the similar offences. In the circumstances, in view of the provisions of Section 427 of the Code of Criminal Procedure, I think fit to direct that the substantive sentence of imprisonment awarded in this case shall run concurrently from today with the substantive sentence of imprisonment, which is being suffered by the respondent

in respect of his conviction in Regular Criminal Case No. 462 of 2000. The appeal bearing No.280 of 2003 filed by the present appellant against his conviction and sentence for the same offence, which is the subject matter of this appeal, has been allowed by this Court today. It was a case pertaining to one of the samples of groundnut oil taken by the Food Inspector Chaudhari alongwith the sample of groundnut oil subject matter of the present appeal. Considering the above-mentioned facts, I think fit to direct that the substantive sentences passed by the Trial Court, which have been confirmed by this Court in both of these appeals, shall run concurrently vide Section 427 of the Code of Criminal Procedure. In the result, I pass the following order:-

O R D E R

(i) The Criminal Appeal is allowed.

(ii) The impugned judgment and order dated 31st December, 2002, passed by the Chief Judicial Magistrate, Jalgaon in Regular Criminal Case No. 461 of 2000 are quashed and set aside.

(iii) The respondent is convicted of the offence under Section 7 (i) read with Section 2 (ia) (a) and (m), punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 and is sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs.1000/-, in default to suffer rigorous imprisonment for fifteen days.

(iv) The substantive sentence of imprisonment passed against the respondent by this order shall run concurrently from today vide Section 427 of the Code of Criminal Procedure with the substantive sentence of imprisonment that is being suffered by the respondent pursuant to the order dated 11th January, 2016, passed by this Court in Criminal Appeal No. 278 of 2003 (The State of Maharashtra Vs. Ashok Daluman Hemnani) in connection with Regular Criminal Case No. 462 of 2000.

(v) The substantive sentences of imprisonment passed against the appellant by the Trial Court in Regular Criminal Case No. 460 of 2000 and confirmed by this Court in Criminal Appeal

No.280 of 2003 and in Regular Criminal Case No. 461 of 2000 and confirmed by this Court in the present appeal, shall run concurrently.

(vi) The appeal stands disposed of accordingly.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

npj/criapl279-2003