

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION*

CRIMINAL APPEAL NO. 84 OF 1997

The State of Maharashtra
(At the instance of Food
Inspector Shri S.G.Kubde, Bombay .. Appellant

Vs

Ramesh B.Somayya
M/s Bhagwati Stores,
Kasturba Road, Near Rly. Stn.,
Malad (West) Mumbai – 64. .. Respondent

Mr.S.V.Gavand – Additional Public Prosecutor, for the Appellant.

Mr.V.S.Pandey i/b Mr.S.U.Pandey, for the Respondent.

***Coram : N.M.Jamdar, J.
Date : 19 June 2017.***

Oral Judgment :

By this Appeal, the State of Maharashtra through the Food Inspector has challenged the order passed by learned Additional Chief Metropolitan Magistrate, Mazgaon, Mumbai dated 27 November 1995, acquitting the Respondent of the charge levelled against him under the provisions of Food Adulteration Act, 1954 and Rules thereunder.

2. According to the prosecution, the Respondent was in business of selling food articles. The complainant i.e. the Food Inspector, empowered under the provisions of Prevention of Food Adulteration Act of 1954, visited the premises of the Respondent on 19 August 1991 and purchased certain articles i.e. 'Peti Sunth Akhand' and 600 gms of this food article was collected. Amount was duly paid to the Respondents. After collecting the sample, it was equally divided in three parts and labeled under a panchanama as per the provisions of the Act. The samples were accordingly sent for analysis as per the provisions of the Act and the report of Public Analyst under Exhibit P2 was received, wherein it was stated that the samples contained "non permitted extraneous synthetic Blue colour pigments". Sanction was duly accorded by Joint Commissioner of Foods and Drugs Administration. The charge is specifically framed by referring to clause (h) of Section 2(ia)(h). Accordingly prosecution was lodged against the Respondents for offence punishable under section 7(i) r/w. 2(ia)(a), 2(ia)(h) r/w. Rule 23 of the Rules of 1955, read with section 16 of the Act.

3. The trial was held before the learned Chief Additional Metropolitan Magistrate Mumbai as case No.45/S/1992. Charge was framed against the Respondents under section 7(i) r/w. 2(ia)(a), 2(ia)(h) r/w. Rule 23 of the Act punishable under section 16 of the Act. On behalf of the prosecution, three witnesses were examined i.e. PW-

1 Ravindra Ganu Gosavi, Junior Surveyor, Bombay Municipal Corporation; PW-2 Shyamsunder Ganpat Kubde, Food Inspector and PW-3 Shrikant Mangalchand Singhi, panch witnesses. The accused-Respondents filed their statement under section 313 of the Code of Criminal Procedure.

4. The learned Metropolitan Magistrate, Mumbai came to the conclusion that the offences were not proved against the Respondents, primarily on the ground of vagueness in the Public Analyst report, admissions given by Food Inspector-Mr.Kubde in his cross-examination and non-application of mind by the Sanctioning Authority. The contention of the Respondents that the concerned officers were not qualified, was negatived. The learned Magistrate held that there was nothing on record to show that the substance found in the report of the Public Analyst was injurious to human health. The learned Magistrate also held that the sanctioning authority that not properly considered the provisions of Rule 27 and there was a non-application of mind by the sanctioning authority. Accordingly, the learned Magistrate by judgment and order dated 27 November 1995, acquitted the Respondents.

5. I have heard Mr.Gavand, learned APP for the Appellant and Mr.Pandey, for the Respondent No.1.

6. Mr.Gavand, learned APP on behalf of the State submitted

that the finding of the learned Magistrate that the report was vague, was incorrect as the report was submitted in due format. It was submitted that the moment prohibited substance is found in the sample, there was no further requirement of demonstrating that it is injurious to health. It was submitted that the learned Judge has incorporated non-germane factor into consideration and since the acquittal is based on this ground, the order is perverse. It was submitted that there is no lacuna in the sanction, as after considering all material the Sanctioning Authority has accorded the sanction. It was submitted that since the prohibited substance is found which is an offence, of adulteration as defined under the provisions of the Act, appropriate punishment ought to have been imposed, considering the object of the Act.

7. Mr.Pandey the learned counsel for Respondents submitted that looking at the charge framed it was necessary for the prosecution to duly prove that the substance found was injurious to human health. He relied upon the admissions in the cross-examination to demonstrate that no such evidence has been placed on record. The learned counsel for Respondents also submitted that the learned Magistrate has correctly taken into consideration provisions of Rule 27 framed under the Act of 1954.

8. The scope of appeal against acquittal is well-settled. Unless the finding and conclusions are perverse, the order of acquittal

is not lightly to be interfered, as the presumption of innocence continues even in appeal. If the view taken by the Trial Court is a possible view then mainly because another view is possible, an order of acquittal is not to be reversed.

9. In the present case the Respondents are charged under section 7(i) r/w. 2(ia)(a), 2(ia)(h) r/w. r.23 of the Act punishable under section 16 of the Act and the rules thereunder, 1955. Section 2(1-a) defines the meaning of the phrase 'adulterated'. Section 2(1-a) (h) reads thus -

-2.(i-a) 'adulterated' an article of food shall be deemed to be adulterated -

.....

.....

(h) if the article contains any poisonous or other ingredient which renders it injurious to health.

.....

.....

Thereafter there is another category in section 2(1-a) which deals with colouring matter i.e. (j) which reads thus -

(j) if any colouring matter other than that prescribed in respect thereof is present in the article, or if the amounts of the prescribed colouring matter which is present in the article are not within the prescribed limits of variability

The prosecution has specifically referred to Section 2(ia)(h) which deals with articles poisonous or other ingredient which renders the

food article injurious to health. There is no reference to clause (j) which speaks of coloring matter. Since the charge is not under clause (j), the argument advanced by the learned APP that it is not necessary for the prosecution to prove that the articles seized contains any poisonous substance, cannot be accepted. If the charge specifically referred to clause (h) and the Respondents were sought to be prosecuted on the ground that poisonous and injurious ingredient were added to food material, then the prosecution ought to have produced cogent material in that regard.

10. The Public Analyst report only refers to the colouring substance. Further there is neither any statement in the report nor in the oral testimony the prosecution witnesses that the substance was injurious to health. The Food Inspector admitted in his cross-examination that there is no such record that the substance used was injurious to human health. This factor has been noted by the learned Magistrate. Thus the view taken by the learned Magistrate that there was no cogent evidence placed on record by the prosecution that the article contained any poisonous ingredient and the clause (h) is not attracted, cannot be stated to be a perverse view.

11. Having gone through the evidence and the judgment, I do not find that it is proved by the prosecution that the substance was poisonous or injurious to human health. Nothing has been shown by the State as to how section 2(1-a)(h) is attracted by referring to any

cogent material on record. The Respondents cannot be punished by invoking some other clause when it was not the case put to them nor the charge was framed. In view of this position, I do not find that there is any reason made out for reversing the judgment and order passed by the learned Magistrate.

12. Accordingly Appeal stands dismissed.

(N.M.Jamdar, J.)