

IN THE HIGH COURT OF JURICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 347 OF 1999

The State of Maharashtra **... Appellant.**

V/s.

Rupchand Bhagwandas Gandhi **... Respondent**
M/s. R. B. Gandhi, Kirana Shop,
At & Post. Pimparkhed, Tal. Shirur,
Dist. - Pune.

Ms. Neeta Jain, APP for the Appellant /State.
Mr. C. M. Kothari, Counsel for Respondent.

CORAM :SMT. VIBHA KANKANWADI, J.

DATE ON WHICH THE JUDGMENT IS RESERVED:14/07/2017
DATE ON WHICH THE JUDGMENT IS PRONOUNCED:21/07/2017

:JUDGMENT:

1. Prosecution/ State has challenged the order of acquittal of the accused by the Judicial Magistrate First Class, Ghodnadi, Dist. Pune in Reg. Cri. Case No. 96 of 1992 on 29-07-1998; whereby the accused/ respondent was acquitted of the offence u/s. 7 (I) r/w. Sec. 2(ia),(a), (c), (h), (l) r/w. Rule 50 punishable u/s. 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'PFA Act').

2. The prosecution story as emerges from the record is that accused is that proprietor and vendor of M/s. R. B. Gandhi, Kirana Store at Pimperkhed, Tal. Shirur. He is doing his business in food articles. Original Complainant was the Food Inspector. Complainant

had visited the shop of the accused at about 4-5 p. m. on 06-03-1992 with one panch. Accused was present in the shop. Complainant purchased 1200 gms of Vanaspati which was kept in unlabelled open tin. Complainant paid price for the same and obtained receipt. The said commodity was then divided into three equal parts in clean empty stainless steel pot. Each part of Vanaspati was put in 3 dry, clean bottles. The bottles were corked and sealed separately. The were wrapped separately in papers and labelled. Signatures of accused and witness were affixed. One sealed bottle was sent to Public Analyst, Pune on 07-03-1992. The other counter parts were also sent to Local (Health) Authority on the same day. The report of the Public Analyst dt. 07-04-1992 was received on 21-04-1992. It was opined that the sample of Vanaspati showed presence of Castor Seed Oil and therefore the same was not as per the standards of Food Adulteration Rules, 1955. Matter was referred to Jt. Commissioner for according sanction u/s. 20 of the PFA Act. After the sanction was received, complaint was filed by the then Inspector.

3. After the accused appeared before him, learned J.M.F.C. has recorded evidence before charge. When it was found that sufficient material has been placed to frame a charge, charge has been framed against accused at Ex. 34. In all 4 witnesses were examined by the complainant. Taking into consideration the evidence on record, learned Magistrate has come to the conclusion that prosecution has failed to prove the guilt of the accused. Accused has been therefore, acquitted of the offence u/s. 7 (I) r/w. Secs. 2(ia),(a), (c), (h), (l) r/w. Rule 50 punishable u/s. 16 of PFA Act. This acquittal is under challenge in this appeal.

4. Heard learned A.P.P. for appellant State and learned Counsel representing respondent/ original accused.

5. It has been submitted on behalf of appellant that the learned Magistrate has not appreciated the evidence adduced by the complainant. It has been wrongly held that there is violation of Sec. 11 (a) (b) of PFA Act as well as non-compliance of Rule 17 of the Act. Further, the learned Magistrate has erred in holding that non-production of notes of the Public Analyst is fatal to the prosecution. Public Analyst was examined in this case and therefore, sufficient evidence has adduced. The acquittal of the accused is wrong.

6. Per contra, the learned Counsel appearing for respondent/ accused while supporting the reasons given by the learned Magistrate while acquitting accused; further submitted that there were gross violations committed by complainant while taking sample. He has not explained how he had divided 1200 gms of Vanaspati in three bottles. Panch does not support complainant on this point. Further the evidence shows that before the product was poured in the bottle, it was taken out in a steal vessel. It was not made homogeneous by stirring it. Unless it was made homogeneous, the result of the analysis could not be accurate. Presence of caster oil in the product shows that there was necessity of making the product homogeneous. Mixing of caster oil is not totally prohibited. Important point is that the sanctioning authority has not been examined.

7. Evidence of PW 1 Dilip Joshi – Food Inspector would show that he had visited the shop of the accused on 6-3-1992 with PW 2 Tukaram Sonawane. He had found 1200 gms Vanaspati Ghee stored in

unlabelled tin container. He told accused that he want whole Ghee for testing. He accordingly, purchased the entire quantity and then divided it in 3 equal parts. Each was filled in open, dry and clean bottles. The bottles were then sealed and then put in brown paper. The ends of the paper were folded and pasted by gum. They were sealed. Thus, it can be seen that he intended to say that all the procedure was adopted by him before putting seal to the samples. PW 2 Tukaram has stated that complainant had taken 1200 gms of Vanaspati from accused in his presence and then put 400 gms of the same in three separate bottles. Important point to be noted is that he does not say that they had found the Vanaspati in unlabelled tin container. In his cross, he has admitted that complainant had taken 400 gms from the tin in 3 pots. He was asked by the complainant to bring 3 pots. This fact is suppressed by the complainant. Further, it has not been tried to be brought on record that those three pots were also clean and dry. When another object was used in between then it was the duty of the complainant/prosecution to prove that there was no scope for addition of any contaminant from their side. One more important fact has not been disclosed either by complainant or by panch that before putting the said product in bottles from the container, complainant had stirred it in order to make it homogeneous. Mere presence of caster oil is not sufficient in this case. Only one bottle was sent for analysis and therefore, making product/ good homogeneous was important. When these basic procedure has not been followed, it can not be said that samples were duly taken.

8. PW 3 Dattatraya Adak is public annalist. He has stated he had received the sample on 7-3-1992. The analysis was started by them on 1-4-1992 and completed on 6-4-1992. The result showed the

presence of caster oil which was not confirming the standards. In his cross, he has stated that except the presence of caster oil, there was no violation of parameters. He had not carried out the test personally, but has stated that his assistant had carried it, under his supervision. However, he has not produced notes taken by him or his assistant at the time of tests. It is not his case that no notes were prepared. It is also not his case that directly the final report was prepared. In fact, when the analysis had commenced on 1-4-1992 and completed on 6-4-1992; this fact itself indicates that notes should have been taken by person who had carried out the tests. He has not claimed that he was present near his assistant throughout the analysis. Non-production of notes and non-examination of proper person who conducted the analysis was fatal to prosecution. It has been rightly observed by the learned Magistrate that in absence of those notes, the report becomes secondary evidence and therefore, can not be relied. Reliance on the decision in ***State of Maharashtra v/s. Shamji Premji Shah [1979 (2) Food Adulteration Cases 8*** was proper, wherein it has been held that,

“Really speaking the notes of the said analysis which are prepared at the time of the Analysis itself, become the main evidence and not the certificate which comes into existence subsequently. In fact, it has been observed that the said certificate has no value at all and consequently the result of the analysis mentioned in the said certificates is also of no consequence. Had report of the Public Analyst been brought on record, without examining the witness himself, then perhaps the situation would have been a little different in as much as the question of getting the notes produced on record and the evidentiary value of the report would not have come into question more so when the Code of Criminal Procedure, the report by itself has been made admissible. However, having once examined the Public Analyst through whom it has been established, that the analysis

was carried earlier than the signing of the report, then undoubtedly different situation arises and in that event the notes become the primary evidence and only the notes become admissible. Added to this as observed earlier, there is another infirmity that the person who has carried the analyst has not been examined, and the record that the Public Analyst who claims to have supervised the analysis does not appear to be present through out when the test were taken”.

Thus, it can not be stated that the report of public analyst has been properly proved, though PW 3 Dattatraya was examined.

9. Another point that was canvassed was regarding non-examination of authority who has given consent to prosecute. PW 4 Sopan Patil had received two sample bottles from complainant on 7-3-1992. He has produced those bottles in Court. He had then received the copy of the test report on 20-4-1992, which was then handed over to complainant. That means he was a formal witness. He had not played any role in obtaining sanction or consent. There is difference between “consent” and “sanction”. Though the considerations for giving sanction u/s. 20 of PFA Act are different than the sanction required u/s. 197 of Code of Criminal Procedure, yet it requires that the authority giving sanction must consider basic facts, rules and regulations. The degree of application of mind while giving “consent” may not be same as required for according “sanction” to prosecute. However, in this case, the concern authority is not at all examined. Therefore, the point regarding 'application of mind' by the authority while giving 'consent' could not be scrutinized. On this point also the appeal should fail.

10. Another point that was canvassed before the trial Court was that there was no compliance of Rule No. 17 framed under PFA Act. It is in respect of manner of dispatching containers of samples. In this case, each sample was not separately packed. The other two were kept in single packet. When there is proper procedure prescribed for packing samples, then it will have to be adhered to properly and strictly.

11. Therefore, the entire scrutiny of evidence would show that the view taken by the trial Court was probable and plausible. Merely because, the second view may be possible, this Court in its appellate jurisdiction dealing with the Appeal against acquittal cannot substitute its view and therefore, the view taken by the Trial Court needs to be confirmed.

12. Hence, the Criminal Appeal stands dismissed.

(SMT. VIBHA KANKANWADI, J)