

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 266 OF 1997

The State of Maharashtra

.....Appellant
(Orig. Complainant)

V/s.

1. Shri. Rajkumar Bankelal Gupta
Vendor person incharge at the
time of sampling of M/s. Maruti
General Stores, At post, Apta,
Tal. Panvel, Dist. Raigad.

2. Shri. Radhesham Mevalal Gupta
License Holder and Proprietor
of M/s. Maruti General Stores,
situated at Apta, Tal. Panvel,
Dist. Raigad.

.....Respondents
(Orig. Accused)

* * * * *

Mrs. Geeta Mulekar, APP for the State, appellant.

None for the respondents.

CORAM :-

SANDEEP K. SHINDE, J.

DATE :-

23rd June, 2017.

JUDGMENT :-

1. The State has preferred this Appeal under

Section 378 (1) of the Code of Criminal Procedure against the order of acquittal passed by the Judicial Magistrate First Class, Panvel on 31st October, 1996 in Regular Criminal Case No. 75 of 1994.

2. The Appeal was admitted and notices were issued to the respondents. Pending appeal, Radheshyam Nevalal Gupta, respondent no.2 accused died on 29th June, 2011 and as such appeal abates against him. Accused were tried under Section 7(i) read with 2(i)(a), 2(ia), (b), 2(ia) (c) and 2(ia)(h) and 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter called as “the said Act”).

3. The prosecution case is, that accused no.1 was in-charge of Maruti General Stores when the sample of food article “Soyabean oil” was collected, whereas, accused no.2 was a license holder and the proprietor of M/s. Maruti General Stores. The complainant visited the shop on 19th May, 1993 alongwith the panch and after

disclosing his identity, collected sample of Soyabean oil. It was divided into three parts and wrapped in the seal by following the relevant rules. He sent one sealed part of the sample to the Public Analyst Public Health Laboratory, Pune by hand delivery on 20th May, 1993 . The remaining two, were sent to the Local Health Authority on 20th May, 1993 by hand delivery. He received a report of the Public Analyst on 16th June, 1993 which revealed that the sample drawn from the accused was “adulterated” within the meaning of the provisions of the said Act. Thereupon, necessary consent was obtained and complaint was filed in the Court on 15th March, 1994. On 16th March, 1994 the complainant, through Assistant Director, FDA then issued notices to both the accused as required under Section 13(2) of the Act and informed about the filing of the complaint. Vide the very notices, the accused were called upon to exercise their right to get the sample analysed from the Director, Central Food Laboratory (CFL), Gaziabad. It appears, the Learned Judicial Magistrate First Class upon

receiving the application from the accused, forwarded the sample to the CFL which was received by CFL on 11th January, 1995. The Director, CFL submitted the report on 28th February, 1995.

4. That both the accused denied the charge framed against them and claimed to be tried.

5. The Learned trial Judge after appreciating the evidence acquitted the accused for non-compliance of the provisions of Section 13 (2-A) and 13 (2-B) of the Act.

6. In the case in hand, the accused exercised right under Section 13(2) of the Act, vide application dated 16th April, 1994 whereupon on 21st October, 1994 requisition was sent to the Local Health Authority requiring it to forward a part of the sample to the Court for forwarding the same to the CFL. In view of this request, the Local Health Authority produced the samples in the Court from 14th November, 1994.

7. That in terms of the provisions of Section 13 (2-A) of the Act, when an application is made to the Court under sub-section (2) of Section 13 of the Act, the Court shall require the Local Health Authority to forward the parts of the sample by the said Authority and upon such requisition being made, the said Authority shall forward the part of the sample to the Court within a period of five days from the date of receipt of such requisition.

. Admittedly, herein sample was produced in the Court on 14th November, 1994 i.e. twenty two days after receipt of the requisition by the Local Health Authority. This delay was held fatal to the prosecution.

. That in terms of the provisions of Section 13 (2-B) of the said Act after forwarding the samples to the CFL, the Director of CFL, is required to send the Certificate, to the Court in prescribed form within one month from the date of receipt of sample specifying the result of the analysis. The provisions of Section 13(2-B) commands report within one month from receipt of the samples from the Court. Herein, the sample was sent to

the Laboratory on 29th November, 1994 which was received by the Central Laboratory on 11th January, 1995. The Analysis Report at Exhibit-57, however, it is dated 28th February, 1995. It means the certificate was submitted by the CFL after one month from the receipt of sample.

8. Mrs. Mulekar, would urge that since CFL found the sample was fit for analysis, the delay caused in transmitting the sample by the Local Health Authority to the Court and further delay in submitting the report by the CFL to the Court would not damage the prosecution's case. She would therefore contend that, the delay caused in forwarding the sample and in receiving the report was not fatal to the prosecution's case. In support of her contention, she has relied on the judgment of the Supreme Court in the case of *T.V. Usman Versus. Food Inspector, Tellicherry Municipality, Tellicherry*, reported in (1994) 1 Supreme Court Cases page 754. I have gone through the judgment, wherein the issue was all together

different, wherein the question fell for consideration was, the interpretation of Rule 7(3) of the said Rules. It was held that Rule 7(3) is only a procedural provision meant to speed up the process of investigation on the basis of which the prosecution is to be launched. This rule was interpreted in context of valuable right of accused conferred under Section 13(2) of the Act and in that context, it was held that it must be shown that the delay has led to denial of right conferred on the accused under Section 13(2) of the Act. In the very judgment, it was held and clarified, that it all depends on facts of each case and as such violation of time limit given in sub-rule (3) of Rule 7 by itself cannot be a ground for the prosecution case being thrown out.

. In the case in hand, the delay on the part of the prosecution was post filing complaint, whereas, in the cited case, the delay was prior to launching the prosecution. Herein, the following chart would indicate the delay was caused at every stage during post launching of prosecution.

- i. visit by the complainant – 19.5.1993
- ii. first report by the local health Authority-16.6.1993
- iii. Complaint filed – 15.3.2014.
- iv. notice under Section 13(2) – 16.3.2014.
- v. accused exercised rights under Section 13(2)-
16.04.1994.
- vi. requisition was sent to the Local Health Authority-
21.10.1994
- vii. Depositing the sample in the Court- 21.10.1994.
- viii. Sample produced in the Court- 14.11.1994.
- ix. sample sent to CFL- 29.11.1994.
- x. samples received by CFL- 7.12.1994., samples were
analysed and date not given.
- xi. report of CFL- 23.12.1994.
- xii. Report received by the Court- 28.2.1995.

. By pointing out the dates and events, the learned Counsel for the appellant submitted, the sample was collected in May, 1993 but was analysed nearly after a year and a half. He further submitted that the trial Court, has rightly dismissed the complaint for non-

compliance of the provisions of Section 13(2-A) and 13(2-B) of the said Act.

9. I have perused the evidence of P.W.1 and documentary evidence. Also perused the judgment. It appears, report of CFL is dated 23rd December, 1994, but it is not known when sample was tested. Evidence of P.W.1, however, says CFL report Exhibit-56 was dated 28th February, 1995. It is not explained by prosecution, firstly, as to when sample was analysed; secondly, if report is dated 23rd December, 1994, why it was not forwarded till 28th February, 1995. More so, it was forwarded after a month from receipt of sample. This anomaly has not been explained. Likewise, there is nothing on record to indicate that, while sending the sample to the CFL, the trial Court followed the procedure laid down in Section 13(2-B) of the said Act. The said sub-section (2-B) of Section 13 reads as follows :-

"On receipt of the part or parts of the sample from the Local (Health) Authority

under sub-section (2-A), the Court shall first ascertain that the mark and seal of fastening as provided in Clause (b) of sub-section (1) of [section 11](#) are intact and the signature or thumb impression, as the case may be, one of the parts of the sample under its own seal to the Director of Central Food Laboratory who shall thereupon send a certificate to the Court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis."

10. In this case, besides delay, the trial Magistrate before sending the sample to the Central Food Laboratory did not examine and ascertain that the marks and seals fastened as provided in Clause (b) of sub-section (i) of [section 11](#) were intact and the signature of the panchas were not tampered with. As the trial Magistrate did not follow the procedure laid down in sub-[section 2\(b\)](#) of [section 13](#) of the said Act, reproduced above, the report of the Director, Central Food Laboratory, Ex. 56, could not

be made the basis for convicting the accused of the offence punishable under [section 7\(i\)](#) read with [section 2\(i\)\(a\), 2\(1a\)\(b\), 2\(1a\)\(c\), 2\(1a\)\(b\) and 16g of the Act.](#)

11. In the result, there is no substance in the appeal and hence it is dismissed. The bail bonds are cancelled.

(SANDEEP K. SHINDE, J)