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

CRIMINAL APPEAL NO. 292 OF 2002

The State of Maharashtra	]	
at the instance of Mr. M.S. Kembalkar	]	Appellant
Food Inspector, FDA, Pune	]	

V/s.

1. Shri. Vasant Rameshwar Mitkari	]	
Vendor of M/s Gurukrupa Trading Co.	]	
378, Market yard, Pune 37.	]	
	]	<u>Respondents</u>
2. Sou. Leela Vasant Mitkari	]	Original
Proprietor of M/s Gurukrupa Trading Co.	]	Accused Nos.
378, Market yard, Pune 37.	]	1 to 3.
	]	
3. Jayraj Kesarimal Doshi	]	
Proprietor of M/s Jay Spices	]	
420 Market Yard Pune 37.	]	

Mr. Amit Palkar, APP for the State
None for the Respondents

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATED : 9th MAY, 2017.

ORAL JUDGMENT :

1] By this appeal, the State is challenging the judgment

and order dated 25.4.2001, passed by Chief Judicial Magistrate, Pune, in R.C.C. NO.100 of 1997, thereby acquitting respondents for the offences under Section 7(i) read with Sections 2(ia) (a), 2(ia)(f), 2(ia) (m) punishable under Sections 16(1)(a)(ii) and 16(1)(a)(i) of Prevention of Food Adulteration Act, 1954.

2] Brief facts of the appeal can be stated as follows :-

On 29.10.1996, at about 2.00 p.m., P.W.2 Food Inspector Ugale, visited the shop of M/s Gurukrupa Trading Company alongwith Assistant Commissioner, Sampling Assistant Mr. Pawar and panch witness Mr. Awate. Respondent No.2, who was Proprietor of M/s Gurukrupa Trading Company and respondent No.1 the Vendor, were present in the shop. After disclosing the intention of their visit, P.W.1 Ubale purchased sample of 600 grams of ginger (whole) from two cardboard boxes kept in the shop. The said sample was divided into three equal parts and filled in three empty clean glass bottles. Bottles were sealed. Panchnama was made. Out of three bottles, one was sent on the next day to Public Analyst, Pune whereas; remaining two bottles were sent to Local Health Analyzer, Pune. As per the report received from Public Analyst, it was found that the sample

was not conforming to the standards of whole ginger and hence after necessary permission, case came to be filed against respondent Nos. 1 and 2 being vendor and Proprietor of Gurukrupa Trading and against No.3 -Proprietor of M/s Jay Spices, who had supplied whole ginger to respondent No.2.

3] Learned trial Court, after hearing both sides and after recording of evidence, was pleased to frame charge against respondents vide Exh.71. Respondents pleaded not guilty and claimed trial raising the defence of denial.

4] In support of its case, four witnesses were examined by the prosecution, including P.W.2 Food Inspector Ugale, P. W.1 complainant Shri. Kembalkar, P.W.3 Public Analyst Shri. Rawetkar, P.W.4 panch Shri. Avte. On appreciation of their evidence, the trial Court, found several lacunas and technical infirmities, like breach of mandatory procedure in collecting and sealing the sample bottles etc. As a result, the trial Court acquitted respondents of all the charges levelled against them.

5] In this appeal, I have heard learned APP, who has made frail attempt to support the impugned judgment and order

of the trial Court. However, on perusal of the judgment of the trial Court, this Court is unable to accept the submissions advanced by learned APP, especially having regard to the scope of interference in an appeal against acquittal which is limited one. As per well settled position of law, unless it is shown that the impugned judgment and order is manifestly illegal or perverse, being against the material on record, this Court in sitting over appeal against acquittal cannot be justified in interfering with the same.

6] The perusal of the judgment of the trial Court reveals that trial Court has considered all the aspects of the case and found that the mandatory provisions of the Prevention of Food Adulteration Act, 1954 and the rules framed thereunder are not followed strictly and as a result the benefit of doubt was extended to the respondents. The trial Court has found that no evidence was brought on record to show that the bottles in which samples were collected were clean and dry. The trial Court has also considered the fact that particulars of the label i.e. Code Number and serial number under which samples were sent to Local Health Analyzer, were not given. Even there was no evidence that seals on the samples were compared with the specimen impression. The trial Court also found through cross examination of P.W.2

Ugale that samples were collected from two cardboard boxes and no method was followed for mixing the same. The trial Court also observed, on the basis of admission given by P.W.2 Ugale, in his cross examination, that samples were not properly divided in three equal parts.

7] Major lacuna which the trial Court noticed and which cannot be cured is that of Public Analyst report exh.54, according to which samples of ginger were not conforming with the standards. However, it is admitted position that standards of ginger are not prescribed under Appendix B of the Prevention of Food Adulteration (Rules), 1955. The Public Analyst report does not specifically disclose that the ginger was to be insect-infected, as required under Section 2(ia) (f) of the Prevention of Food Adulteration Act. Moreover, Public Analyst Report also does not state that ginger was found to be unfit for human consumption. As a result, it was difficult to accept that the ginger was found to be adulterated, beyond reasonable doubt. The trial Court has considered all these aspects .

8] In view of this evidence and infirmities in the case put up by prosecution, it cannot be said that the trial Court has

committed any error or illegality, much less acted perversity, in acquitting the respondents of the charges levelled against them. Thus, the view taken by the trial Court being a plausible and possible view, no interference is warranted therein. The appeal, therefore, stands dismissed. Bail Bonds of the respondents stand cancelled.

[DR.SHALINI PHANSALKAR-JOSHI, J.]