

Anand

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

CRIMINAL APPEAL NO.392 OF 2002

State at the instance of
Shri D.S.Patil,
Food Inspector, Food and Drug
Administration, (M.S.), 852/8,
B Ward, Subhash Road,
Kolhapur.

.Appellant
(Original
Complainant)

Vs.

1. Mahadev Yeshwant Ballal,
Age : 76 yrs, Vendor & Proprietor
of M/s. M.Y.Ballal Kirana Shop,
H.No.196, Guruwar Peth, Chandgad,
District - Kolhapur.

.Respondents
(Original
Accused)

2. Ramesh Shankar Siddanaver,
Age : 39 yrs, Prop. M/s. Ramesh S. Siddanaver,
General Merchant and Commission Agent,
698, Ravivar Peth,
Belgaum (Karnataka State).

Mr.S.S.Hulke, APP, for the Appellant - State
Mr.S.S.Patwardhan a/w. Mr.Bhushan Mandalik, Advocate, for
the Respondent Nos.1 & 2

CORAM : REVATI MOHITE DERE, J.

DATE : 11.05.2017

ORAL JUDGMENT

. Heard learned counsel for the parties.

2. By this Appeal preferred by the State of Maharashtra,

the Appellant has impugned the Order dated 29.12.2001 passed by the learned Judicial Magistrate F. C., Chandgad, District - Kolhapur by which the Respondent - accused came to be acquitted, as the case was dismissed in default.

3. Learned APP submitted that though the case was adjourned from time to time, the dates were formal dates. He submitted that technically only on the previous date i. e. 22.11.2001 the Complainant was absent, pursuant to which, on the next date i. e. 29.12.2001, as the Complainant and the learned APP were absent, the case was dismissed in default and the Respondent - accused were acquitted of the offences.

4. Learned counsel for the Respondents opposes the Appeal. He submits that the Complainant was absent on several dates and as such, no interference is warranted in the impugned Order dated 29.12.2001.

5. Perused the papers.

6. The Complainant is the Food Inspector, who has lodged a complaint as against the Respondent - accused, alleging offences punishable under Sections 7(i) r/w. 2(ia)(a), 2(ia)(m)

punishable under Section 16 of the Prevention of Food Adulteration Act, 1954. Admittedly, the case against the Respondent - accused has not been heard on merits and they were acquitted by the learned Judge, as he was pleased to dismiss the case in default, as the Complainant was absent and there was no representative of his present, and as no adjournment Application was preferred.

7. In the facts, it would be necessary to consider the roznama of the case. A perusal of the roznama shows that the complaint was presented by the Complainant in person and was registered on 12.06.2000 and process was issued as against the Respondent - accused, on the very same day. On 23.06.2000, the Advocate for the Respondent No.1 filed his Vakalatnama and so did the Advocate for the Respondent No.2. On the said date, an order was passed issuing yadi to the Food Inspector. On 10.07.2000, learned Advocate for the Respondent No.1 was present and so was the Complainant. An Application was preferred by the Advocate for the Respondent No.1 to send the sample to the Central Laboratory. Pursuant thereto, the learned Judge passed an order directing the Respondent No.1 to deposit Rs.1,000/- by Demand Draft. The matter was adjourned for

depositing the Demand Draft to 17.07.2000. On 17.07.2000, the Advocate for the Respondent No.1 was present and so was the Complainant. The matter was adjourned for receipt of Analysis report from the Central Laboratory, Kolkata to 17.08.2000. On 17.08.2000, the case was again adjourned for receipt of Analysis report from the Central Laboratory to 04.10.2000. On 29.08.2000, a letter dated 18.08.2000 was received along with the Analysis report. Accordingly, an order was passed and an acknowledgement letter to the Director, Central Food Laboratory, Kolkata was issued. On the next date i. e. 04.10.2000, the Respondent - accused and their Advocates were absent and so was the Complainant. As the Respondent - accused were absent and as they had not furnished sureties, an NBW was issued as against them. The learned Magistrate was pleased to reject the exemption Application filed by the Advocate for the Respondent - accused and the case was adjourned for execution of the NBW issued against the Respondent - accused, to 31.10.2000. On 31.10.2000, the Presiding officer was on leave and the matter was adjourned for execution of NBW to 10.11.2000. On 10.11.2000, the Respondent No.1 appeared, however, the Complainant was absent. The Application preferred by the Respondent No.1 for cancellation of NBW was allowed. The

personal bond and surety bond of the Respondent No.1 were accepted and the matter was adjourned for execution of NBW qua the Respondent No.2. On 13.11.2000, non-bailable warrant was issued against the Respondent No.2, who was residing at Belgaum. On 05.01.2001, the Respondent No.1 was present and the matter was adjourned for receipt of NBW against the Respondent No.2, to 05.02.2001. On 05.02.2001, the Respondent No.1 was present. The report of NBW was not received and hence, Show Cause Notice was issued to the PSI, City Police Station, Belgaum and the NBW was re-issued against the Respondent No.2. The matter was adjourned for execution of NBW against the Respondent No.2 and notice to PSI to 05.03.2001. On 05.03.2001, the Presiding officer was on leave and hence the case was adjourned for execution of NBW against the Respondent No.2 and notice to PSI, to 07.04.2001. On 07.04.2001, the Respondent No.1 was present and the matter was adjourned as the NBW issued was not received back to 07.06.2001. On 07.06.2001, the Respondent No.1 was present and the matter was again adjourned for execution of NBW against the Respondent No.2 to 04.07.2001. On 04.07.2001, the Respondent No.1 was present and the matter was adjourned for execution of NBW against the Respondent No.2 to 12.07.2001.

On 12.07.2001, NBW was re-issued as against the Respondent No.2 through the Superintendent of Police, Belgaum. Learned Advocate filed his Vakalatnama on behalf of the Respondent No.2. The Respondent No.2 also filed an Application seeking cancellation of NBW, which was allowed on penalty of Rs.50/- being deposited. The Respondent No.2 was released on personal bond and surety bond of Rs.10,000/- and the matter was adjourned for hearing before charge and receipt of NBW to 30.07.2001. On 30.07.2001, both the Respondent - accused were present, however, the Complainant was absent. It is mentioned in the roznama dated 30.07.2001 that the report of NBW was not returned. Accordingly, the matter was again adjourned for hearing before charge to 03.09.2001. On 03.09.2001, both the Complainant and the Respondent - accused were absent. It is noted that the Presiding officer was transferred and hence, the matter was adjourned to 03.10.2001. On 03.10.2001, the Respondent - accused were absent and it is mentioned in the roznama that the Presiding officer was transferred and hence, the matter was adjourned to 17.10.2001. On 17.10.2001, the Respondent - accused and their Advocate were present. As the Presiding officer was on leave, the matter was adjourned for hearing before charge to 22.11.2001. On 22.11.2001, the

Respondent - accused and their Advocate were present and so was the learned APP. The roznama reflects as the Court time was over in Criminal work, the matter was again adjourned to 29.12.2001. On 29.12.2001, the Respondent - accused and their Advocate were present. However, the learned APP was absent and hence, an order was passed below Exh.1 which reads as under :-

“ Order

1. Complainant absent. There is no his representative. No adjournment application. Hence, case is dismissed in default.
2. Accused are acquitted.

J.M.F.C., Chandgad”

8. A perusal of the roznama shows that the matter was adjourned on several occasions for receipt of the NBW report or; as the Presiding officer was transferred or was on leave. Infact, on the date previous to the impugned Order i. e. 22.11.2001, the matter was not taken up as the Court time was over in Criminal work. The dates were all more or less formal dates. Therefore, the absence of the Complainant on the said dates cannot be said to be either deliberate or intentional. From the perusal of the roznama, it appears that the Complainant, a public servant, who had filed the complaint was not even issued summons and as

such, dismissal of the complaint was not warranted. It is informed that the Respondent No.1 has expired. Learned counsel for the Respondents, at this stage, states that he had sent a letter by R.P.A.D. to the Respondent No.1 and that the postal remark shows that the Respondent No.1 has expired. Learned Advocate for the Respondent No.1 to produce the Death Certificate of the Respondent No.1 before the learned Magistrate.

9. Considering the peculiar facts of this case, the impugned Order cannot be sustained. Accordingly, in the interest of justice, it would be appropriate to quash & set aside the impugned Order dated 29.12.2001 passed by the learned Judicial Magistrate F. C., Chandgad, District - Kolhapur by which the Respondents - Accused were acquitted of the offences punishable under Sections 7(i) r/w. 2(ia)(a), 2(ia)(m) punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 and to restore the case i. e. R.C.C.No.11 of 2000 back to its original file. Accordingly, the following order is passed.

O R D E R

(i) The impugned Order dated 29.12.2001 passed by the learned Judicial Magistrate F. C., Chandgad, District - Kolhapur

in R.C.C.No.11 of 2000 is quashed & set aside and the said case, being R.C.C.No.11 of 2000 is restored back to its original file;

(ii) Both, the Complainant and the Respondent - accused to appear before the learned Judicial Magistrate F. C., Chandgad, District - Kolhapur on **19.06.2017 at 11.00 a.m.**;

(iii) Considering the fact, that the case is of 2000, the hearing of R.C.C.No.11 of 2000 is expedited. Learned Magistrate is directed to complete the said case as expeditiously as possible and preferably within six months from the date of appearance of the Complainant and the Respondent No.2 before the Magistrate's Court.

10. Accordingly, the Appeal is allowed and is disposed of on the aforesaid terms.

(REVATI MOHITE DERE, J.)