

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 589 OF 2003**

The State of Maharashtra
(Through Food Inspector, Pune)

... Appellant
(Orig.Complainant)

Versus

1. Kamlesh Satish Herekar,
Vendor & Manager of Alok Restaurant
at 1340, Shivajinagar, Pune

2. Satish Parshuram Herekar,
Proprietor of Alok Restaurant,
1340, Shivajinagar, Pune

... Respondents
(Orig.Accused Nos. 1 & 2)

.....

Mrs. Sharmila Kaushik, APP for the State.
None for the respondents.

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**CORAM: ANOOP V. MOHTA, J.
DATE : 2nd JUNE, 2017**

ORAL JUDGMENT :

1. This is a State Appeal, whereby, challenge is made to impugned Judgment and order dated 23rd October, 2002 passed by the Chief Judicial Magistrate, Pune in R.C.C. No. 708 of 2000 whereby the accused have been acquitted of the alleged offences.

2. The accused was prosecuted for having committed the offences punishable under Sections 7(i) read with Section 2(ia)

(a), 2(ia)(j) and Rule 29 of the Prevention of Food Adulteration Rules (The Rules), read with Section 7(v) punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 (The Act).

3. The accused are proprietors of Alok Restaurant, situated at Shivajinagar, Pune. The complainant - Food Inspector, on 7th March, 1998 and on earlier occasion opined that the sample of Tandoori Chicken contains extraneous synthetic colour in contravention of Rule 29. However, the case was closed after giving a warning. On 10th January, 2000, the complainant - Food Inspector, alongwith a Panch Witness, visited the restaurant again. Accused No.1, a student/son of the Proprietor, was present as a vendor, Manager and a person incharge of the premises. The prosecution case was also that he was selling prepared food including "Tandoori Chicken". The complainant after disclosing his identity took sample for the purpose of analysis and specifically 900 gms. of Tandoori Chicken, kept in a Refrigerator. The complainant gave notice in Form VI under Section 14-A of the Act and despatched the sample parts as per the Rules. The public analyst in the report opined that the sample contains extraneous

food colour and therefore, after obtaining consent from the Joint Commissioner, FDA, Pune, the complaint was filed on 21st August, 2000.

4. The charges were read over and as the accused pleaded not guilty, the trial proceeded accordingly. The statement was recorded under Section 313 of the Code of Criminal Procedure (Cr.PC.) by accused No.1 that he was not working as Manager; that Tandoori Chicken was half prepared, kept in refrigerator. Accused No.2 - the Proprietor was not present in the restaurant.

5. The learned Judge, held that the prosecution failed to prove that on 10th January, 2000, the accused sold Tandoori Chicken containing the extraneous synthetic food colour and thereby contravened Rule 29 read with Section 7 punishable under Section 16 of the Act.

6. Heard learned APP for the State, who read and referred the evidence and the material so placed on record including the reasons given by the learned Judge. After considering the submissions, in my view, no case is made out by the prosecution to interfere with the acquittal order.

7. There is evidence on record to suggest that accused No.1 was not serving as Manager in the restaurant. Accused No.2 being Proprietor was absent when the Food Inspector inspected and took the sample of the food. The sample, therefore, collected in absence of the Proprietor, but in presence of his son/student who was not working as Manager and was not managing the affair. The same was further supported by the evidence of panch witness PW3. Such action in breach of rule, is fatal to the prosecution case even of taking the possession/sample in such fashion. The sample required to be taken in the presence and on behalf of the Manager, Proprietor or employees of the restaurant with clear finding that it was intended for sale. Therefore, as all these elements are absent, the case as registered against the accused was unsustainable.

8. The sample which was in the refrigerator; and the same was not fully cooked; and not ready for serving to the customers, such sample ought not to have taken. There is no contra supporting material on record. It is necessary for the prosecution to prove that the sample collected by Food Inspector was ready for sale. The Chicken was kept in the refrigerator was not even mentioned in the complaint. The panchnama Exhibit-20 support the same. The

refrigerated half cooked Chicken cannot be the foundation for launching of such prosecution. PW3 has not supported the prosecution case, on the contrary supported the findings given by the learned Judge.

9. The proper procedure was not followed as recorded in paragraph No.15 by the complainant - Food Inspector did not make food article homogeneous. Exhibit-56, even did not show the weight of the Tandoori Chicken. As per Rule 22, at least 500 gms. Sample was required to be sent for the test analysis. In any way, it was necessary for the Inspector to take the sample as required as per the rules. Such non-compliances definitely had caused injustice to the accused.

10. There is finding given by the learned Judge that the glass bottle in which the sample was taken, was not cleaned on the spot. But, it was cleaned one day before taking the sample. Rule 14 which is mandatory, was not followed. PW3 has admitted that the bottle was not cleaned in his presence. The requirement of cleaning the bottle and dried before collecting the sample just cannot be overlooked.

11. I have also noted, and as recorded by the learned Judge, which goes to the root that the prosecution filed the complaint after seven months. This delay must have deteriorated the Chicken. The valuable rights under Section 32 of the Act to get the analysis by the Director General, Food was definitely violated. Therefore, taking overall view of the matter and in view of the above findings, apart from the reasons given by the learned Judge, no case is made out by the State to interfere with the order of acquittal so passed.

Hence the order;

ORDER

The Appeal is dismissed. No costs.

(ANOOP V. MOHTA, J.)