

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 815 OF 2002**

State of Maharashtra
(At the instance of Shri G. N. Chaudhari,
Food Inspector, Food & Drug Administration,
Maharashtra State, Pune.

...Appellant
(Orig.Complainant)

Versus

1. Ramnath Punamchand Dayama,
Vendor and Nominee of -
2. M/s. Dhariwal Tobacco Products Ltd.,
Unit No. 2, Borade Mala, Shirur,
Dist. Pune.

...Respondents
(Orig.Accused)

Mrs. P. P. Shinde for the Appellant-State

None for the Respondents

CORAM : REVATI MOHITE DERE, J.
MONDAY, 8th MAY, 2017

ORAL JUDGMENT :

1. Heard learned A.P.P for the appellant-State.
2. By this appeal, the appellant-State of Maharashtra has impugned the judgment and order dated 23rd November, 2001 passed by the

learned Judicial Magistrate First Class, Pune in RCC No. 50 of 1998, by which, the respondents-accused were acquitted of the offences punishable under Sections 7(i) r/w Section 2(ia)(a), Section 7(v) r/w Rule 62 punishable under Section 16(1)(c)(ii) and 17 of the Prevention of Food Adulteration Act, 1954.

3. Brief facts as are necessary to decide the appeal are as under :

Govinda Namdeo Chaudhary is the complainant. He was a notified Food Inspector, at the relevant time. The respondent No. 1 is stated to be the vendor and the nominee of respondent No. 2 M/s. Dhariwal Tobacco Products Ltd., Shirur. According to the complainant, on 21st October, 1997, he along with Food Inspector-Joshi and other witnesses visited the premises of respondent No. 2. The respondent No. 1 is stated to have been present there. The complainant disclosed his identity and the purpose of his visit and demanded and purchased 3 packets of 200 gm each of Manikchand Gutkha, after making the requisite payments. The complainant served a notice on the respondents-accused as contemplated under the Prevention of Food Adulteration Act. Thereafter, samples of each

of the said packet were prepared as per the Rules; one sample part and relevant documents were sent to the Public Analyst and remaining two parts and relevant documents were sent to the Local Health Authority on 22nd October, 1997. As the first Public Analyst reported that the sample was of standard quality, the second sample part was sent to the Public Analyst, Mumbai, by the Local Health Authority, Pune. The Public Analyst, Mumbai stated that the sample contained Magnesium Carbonate to the extent of 4.2%. Thereafter, the complainant after due inquiry submitted all the relevant documents to the Joint Commissioner, FDA, Pune, for obtaining consent. After consent to prosecute the respondents was received, a complaint was lodged as against the respondents-accused, in the Court of the learned Judicial Magistrate First Class, Pune, on 9th June, 1998.

The respondents-accused appeared before the learned Magistrate. The complainant adduced evidence before charge and the respondents-accused were given an opportunity to cross-examine the witnesses. Thereafter, charge was framed as against the respondents-accused. The respondents-accused pleaded not guilty and claimed to be

tried. The learned Magistrate after considering the evidence on record, was pleased to acquit the respondents of the aforesaid offences.

4. The prosecution in support of its case examined 4 witnesses PW 1-Govinda Chaudhary, PW 2-Chandrakant Malekar, Assistant Commissioner (Food), PW 3-Arun Jadhav, panch and PW 4-Kundalik Shelar, Assistant Commissioner (Food) and Local Health Authority for Pune District.

5. Perused the evidence and the impugned judgment and order. The learned Magistrate after considering the evidence on record was pleased to acquit the respondents-accused essentially for the following reasons:

(i) that the first Public Analyst report, which showed that the sample was of standard quality was not produced on record, although admitted by the complainant. According to the complainant, on his request, Local Health Authority sent the second sample part to the Public Analyst, Greater Mumbai, who reported that the sample contained Magnesium

Carbonate to the extent of 4.2%. Learned Judge has observed that Public Analyst, Greater Mumbai had no jurisdiction at all to analyse and submit the report with regard to the sample in question, which was drawn at Shirur, Pune. He has further observed that even otherwise Exhibit 57 i.e. the Public Analyst's report, Greater Mumbai, does not specifically show that the provisions of Prevention of Food Adulteration Act/Rules have been contravened. The learned Judge also observed that the said Public Analyst's report, does not disclose the name and address of the manufacturer of Gutkha in question, nor do the seal impression appear to have been compared with. The said Public Analyst's report i.e. Exhibit 57 shows that the analysis started on 13th December, 1997, whereas, the report is signed by the Analyst only on 2nd January, 1998. Admittedly, the Public Analyst who did the analysis was also not examined by the prosecution nor is there any evidence forthcoming, as to why the complainant thought it necessary to send the second part of sample to the Public Analyst, Greater Mumbai and what were the reasons for the Local Health Authority to forward the same to the Public Analyst, Greater Mumbai. Considering the two contradictory Public Analysts' reports, the learned Judge granted benefit of doubt to the respondents-accused. Apart from the aforesaid, PW 2-

Chandrakant Malekar, the Local Health Authority has admitted in his evidence that Rule 62 of the Prevention of Food Adulteration Rules restricts the use of anti-caking agent in food articles and that in the Prevention of Food Adulteration Act/Rules, the use of Magnesium Carbonate has been specifically allowed in certain articles. PW 2-Chandrakant Malekar has also admitted that in supari and lime, Magnesium Carbonate is present in natural form. Admittedly, as has come in the evidence, in the said food articles which were seized, supari and lime are the material ingredients, in which Magnesium Carbonate is present in natural form. It may also be noted that it is not the prosecution case that Magnesium Carbonate has been used in the said Gutkha as an anti-caking agent;

(ii) that the sealed contraband was not put in a container as contemplated by the Rules and as such there was contravention of Rule 14 of the Prevention of Food Adulteration Rules, 1955. It was observed that even the evidence of the complainant PW 1-Govinda Chaudhary indicated that the alleged sample packets were not put in any container and that the mouth thereof, was sealed as contemplated under the said Rule. The

sample parts in the complaint Exhibit 1 and memorandum Exhibit 21 do not specifically disclose the placement of the alleged seals on the sample parts;

(iii) Non-placing of any documentary piece of evidence to show that PW 2-Chandrakant Malekar and PW 4-Kundalik Shelar, appointed as Additional Collector FDA, Pune, were also appointed as Local Health Authority;

(iv) It was observed that according to the prosecution, the complainant had collected the samples in question in the presence of panchas on 21st October, 1997 and that on very day, memorandum also was prepared along with other documents. However, in Exhibits 19 (notice in for, VI) and Exhibit 20 (notice under Section 14A of PFA Act) indicated that the said panch witness had mentioned the date of signature thereon, as 20th October, 1997 i.e. the said date was of previous day of alleged visit of the complainant, indicating that the notice had been served on the respondents-accused prior to the collection of the samples. Panch witness Jadhav has also affirmed that his signature was obtained on 20th October,

1997 i.e. on the previous day of the alleged date of visit by the complainant to the accused company. The learned Judge has observed that the said fact also creates a doubt regarding the truthfulness of the memorandum and other documents.

6. The aforesaid reasons given by the learned Magistrate for acquitting the respondents-accused are cogent and cannot be said to be perverse or unsustainable. The findings are consistent with the evidence on record. There is no infirmity in the said order and hence, the appeal is devoid of merits and as such is dismissed.

REVATI MOHITE DERE, J.