

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

**CRIMINAL APPEAL NO.831 OF 2002
ALONG WITH
CRIMINAL APPEAL No.832 of 2002.**

The State of Maharashtra
Versus
Narayan Bhimaji Pailwan

...Appellant

...Respondent

Mr. Yogesh Dabke, APP for the Appellant.
None for the Respondent.

**CORAM: C. V. BHADANG, J.
DATE: May 23, 2017.**

ORAL JUDGMENT:-

1. Both these appeals, against acquittal, involve common and connected questions in which the respondent was prosecuted before the learned Magistrate in two criminal cases for the offences punishable under sections 2(ia) (a), 2(ia) (m) r/w section 7(1) punishable under section 16 (1) (a) (i) & (ii) of Prevention of Food Adulteration Act, 1954 ('Act' for short) and he has since been acquitted. As such the appeals can be disposed of by this common judgment.

2. The prosecution case is that the Respondent is the proprietor of M/s.Shrikrishna Dairy. On 6/8/1998 the complainant Shivaji Desai visited the dairy and collected samples of buffalo milk. The milk showed fat contents at 5.00% instead of 6.00%. The report of analyzer is produced at Exhibit 52. Accordingly, the complainant filed a complaint before the learned Judicial Magistrate, 1st class on 30/3/1999. The prosecution examined the Food Inspector Shivaji Desai, Dr. Anil Moreshwari Rawetkar and one of the panch as namely Bhagchand Munot.

3. The learned Magistrate found that there is delay of about 8 months from the date of collection of the sample and the delay has resulted in affecting the valuable right of the Respondent/accused under section 13(2) of the Act. The learned Magistrate has further found that the concerned Public Analyst was not examined. 'Freezing point test' which is mandatory was not conducted. It was further found that the bottles were not cleaned and dried as required under Rule 14 of the PFA Rules 1955 ('Rules' for short). For this purpose reliance is placed on the decision of this Court in the case of ***State of Maharashtra vs. Ram Marut Dube, 1979(I) PFA Cases 282.***

4. I have heard the learned APP for the Appellant and perused the record and I do not find that any case for interference is made out. At the outset report Exh.52 shows that although sample was received on 6/8/1998 report of the Public Analyst Exh.52 was issued on 11/9/1998. There is also clear violation of Rule 14 which is held mandatory by this Court in the case of ***Ram Marut Dube (cited supra).*** The Public Analyst is not examined to prove the Report Exh.52. It also appears that 'freezing point test' is not conducted. Thus, in these circumstances the Magistrate has given benefit of doubt to the Respondent.

5. I have carefully gone through the impugned judgment and I find that a plausible view is taken by the learned Magistrate. It is now well settled that in an appeal against acquittal, this Court cannot re-appreciate the evidence so as to substitute the view, unless the view taken by the Court below is perverse or is an impossible view.

6. In the result, no case for interference is made out. The Appeals are hereby dismissed.

(C. V. BHADANG, J.)