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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.679 OF 2003.

The State of Maharashtra	]	Appellant
V/s.		
1. Kiran Ishwarilal Suratwala	]	
vendor	]	
	]	Respondents
2. Shri. Ishwarilal Pranjivandas	]	Original
Suratwala, Proprietor of	]	Accused
M/s K.I. Suratwala & Company,	]	Nos. 1 & 2.
01-A, Navi Peth,	]	
Solapur	]	

Mr. Arfan Sait, APP for Appellant State.
Mr. Y. B. Purwant I/by Mr. V.V.Purwant for respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 28th AUGUST, 2017.

ORAL JUDGMENT: [Per : Dr. Shalini Phansalkar-Joshi,J.]

1. This appeal is preferred by the State challenging the judgment and order dated 30th August, 2002, passed by the Chief Judicial Magistrate First Class, Solapur in R.C.C. No.255 of 1998, thereby acquitting respondent Nos. 1 & 2 for the offence punishable under Section 16(1)(a)(iii) for the contravention of provisions of Section

7(i) read with Section 2(ia) (a) and 7(v) r/w Rule 29 of the Prevention of Food Adulteration Act, 1954, (for short called, as “the Act”) and the Rules framed thereunder.

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

On 10.11.1992 P.W.1 Food Inspector Londhe visited the premises of respondent No.1, named and styled as M/s K.I.Suratwala Pvt. Ltd, situate at 61-A Navi Peth,Solapur. Respondent No.1 was present in the shop and on enquiry, he informed P.W.1 Food Inspector Londhe that he was looking after the affairs of shop and selling food articles like mix -masala supari and scented supari for human consumption. After disclosing the identity, P.W.1 Food Inspector Londhe took inspection of the premises and purchased 900 grams of mix-masala supari and 900 grams scented supari for the price of Rs.1.89. The collected samples were sent to Public Analyst and on the receipt of report of Public Analyst that samples were not conforming to the standards prescribed, after obtaining the sanction for prosecution, the case was lodged against respondents.

3. In support of the case P.W.1 Food Inspector Londhe has examined himself and also led evidence of panch witness P.W.3 Salim

Rangrej and P.W. 2 the sanctioning authority.

4. On appreciation of this evidence, the learned trial Court was pleased to hold that there was no compliance of the mandatory provisions and requirements laid down under the Act and accordingly acquitted both the accused.

5. In this appeal, I have heard learned APP for the appellant State and learned counsel for the respondents. I have also perused the entire evidence on record and the impugned judgment of the trial Court. On perusal of the same and after giving my anxious consideration to the submissions advanced at Bar by learned counsel for appellant and learned counsel for respondents, I am of the considered opinion that in this appeal against acquittal, learned APP has not succeeded in pointing out any perversity in the impugned judgment of the trial Court. Hence this Court should restrain itself from interfering in the said decision. The perusal of the judgment of the trial Court, shows that the trial Court has assigned legal grounds for acquittal of the respondents.

6. It can be seen from the evidence on record that at the time of inspection, admittedly respondent No.2 was not looking after the

business of the said firm. He was merely a licencee and in view thereof, the trial Court was pleased to hold that as he was not dealing with the business in the shop and his signatures were not obtained on any of the document. When P.W.1 Food Inspector Londhe visited the shop, respondent No.2 was not present in the shop. Therefore, respondent No.2 sans any evidence on record connecting with the business, cannot be held guilty for commission of offence alleged against him.

7. As regards, respondent No.1, admittedly he was present in shop when the samples were collected on 10.11.1997. The evidence of P,.W.1, Food Inspector Londhe, however, goes to show that in the panchnama Exh.32, the mandatory procedure which is required to be followed for collecting the samples is not at all mentioned. The panchnama is silent as to collection of the samples in dry, clean and empty bottles. The report of Public Analyst as observed by the trial Court does not bear the date of analysis. Public Analyst is also not examined on this aspect and therefore, prosecution has not brought on record the date on which sample was analyzed and in such circumstances, the report of the Public Analyst loses its evidentiary value and respondent No.1 cannot be convicted on the basis of the said report.

8. There is also one more vital infirmity in the prosecution case, namely, that the sample was collected on 10.11.1997; whereas prosecution was launched on 12.10.1998. Thus, there is delay of about one year. There is also no conclusive evidence to show that the information about launching of the prosecution was given to the respondent within 10 days from the date of launching the prosecution, as is mandatory.

9. Another infirmity which is highlighted by the trial Court in the prosecution case pertains to the fact that though respondent No.1 has produced the bill which is at Exh.42 under which he has purchased this supari from Luhadia Enterprises, 1st Boiwada, 2nd floor, Bhileshwar, Bombay 02, P.W.1 Food Inspector Londhe has failed to make enquiry with the said Luhadia Enterpries. As respondent No.1 was covered under the warranty, the trial Court has rightly held that there is breach of provisions of Section 9 (2) of the Act.

10. Thus, the perusal of the reasons given by the trial Court while acquitting respondents, show these reasons are based on the proper appreciation of the evidence on record. Hence, in view of breach of mandatory provisions of the Act and the Rules, the acquittal of the respondents, for the offence alleged against them, cannot be

called as perverse so as to warrant any interference therein. The appeal, therefore, holds no merits and hence stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]