

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

CRIMINAL APPEAL NO. 898 OF 2002

The State at the instance of
Mr. S. D. Mokashi,
Food Inspector,
Food and Drug Administration,
Pune.

.... Appellant
(Orig.Complainant)

Versus

Mr. Damodhar Namdeo Wabale, Vendor
and Others.

.... Respondents
(Orig. Accused)

Mr. Arfan Sait, APP for Appellant/State.
None for Respondents.

**CORAM : A. S. OKA, J.
DATE : MAY 17, 2017.**

ORAL JUDGMENT

. Heard learned APP in support of the Appeal.

2. The challenge is to the Judgment and Order dated 24th May 2002 passed by the learned Chief Judicial Magistrate at Pune. A complaint was filed by Food Inspector in the Court of the learned Chief Judicial Magistrate at Pune alleging commission of offences under Section 7 (i) read with Section 2 (ia) (a), 2 (ia) (m) punishable under Sections 16 and 17 of the Prevention of Food Adulteration Act, 1954 (for short, “the said Act”).

3. The case made out in the complaint filed by the Food Inspector is that on 17th May 2001 in the afternoon, he visited the factory of the Respondents/Accused wherein they were conducting business of manufacturing (packing) for sale and stocking of food article groundnut oil. The allegation in the complaint in short is that the said groundnut oil was adulterated. The case made out in the complaint is that he purchased quantity of 450 grams of groundnut oil from packed tin and 450 grams of groundnut oil from a tank of the 1st Respondent – 1st Accused. He paid price thereof vide Cash Memo at Exhibit 23. According to the case made out in the complaint, the 1st Respondent gave the said quantity of oil in clean and dry plastic mug after weighing it with the help of measuring scale. The complainant stated that by using plastic mug and measuring scale, he put representative portions into three separate clean, dry and empty glass bottles. Thereafter, he stated as to how the glass bottles were wrapped in thick brown paper and sealed. He stated in the complaint that remaining quantity of groundnut oil was put into 20 tins. Reliance is placed on the report of the Public Analyst (P.A.), Pune in which he opined that the sample of groundnut oil was adulterated as per the provisions of the said Act. Process was issued to the Respondents on the said complaint and the Respondents were tried.

4. The order of acquittal has been passed by the learned

Magistrate mainly on two grounds. The first ground is that that there is no evidence on record to show that the plastic mug in which sample was kept was clean and dry and that the bottles were clean and dry. The second reason given is that P. A. Report at Exh.41 does not show that the oil sample was injurious to the health.

5. The learned APP has taken me through the notes of evidence and impugned Judgment. He submitted that impugned Judgment is perverse, as ingredients of all offences were proved by the complainant. He submitted that order of acquittal has been passed on the grounds which were totally unwarranted and not supported by evidence on record.

6. None appears for the Respondents.

7. I have perused the notes of evidence and the impugned Judgment. In paragraphs – 3 and 4 of the complaint, it is the case of the complainant that the quantity of groundnut oil purchased by him was given to him by the 1st Respondent in a clean and dry plastic mug. He divided the quantity in plastic mug in representative portions and put it in to three separate clean, dry and empty glass bottles. Thus, it is his case in the complaint that the mug was provided by the 1st Respondent. It is not his case that the bottles were provided by the 1st Respondent or by any other Respondent.

8. In paragraph 3 of the deposition, the complainant has maintained the said stand. What is material is paragraph 10 of his deposition, which reads thus :

“It is true that I did not wash mugs and alleged bottles at the oil mill in question. The witness volunteers that I had washed it and cleaned it in person before going to said oil mill. I did said work on the previous day of sampling. There is no written entry that I had done so. I did not use funnel to put the oil in sample bottle. It is not true that I did not make equal parts with the help of weighing scale. It is not true to say that I did alleged sample parts approximately. It is not true to say that the alleged mug, bottles were dirty hence, P.A. has opined accordingly.”

9. Thus, in the complaint his case is that the mug was provided by the 1st Respondent. When he was confronted in the cross-examination with the fact that the mug was not washed, he admitted that the mug was not washed on the relevant day, but he came up with a new case that he had washed it and cleaned it on earlier day before going to the Oil Mill. The said statement in the cross-examination runs completely contrary to the stand taken in the complaint and in the examination-in-chief wherein it is stated that after the complainant purchased the oil samples, the mug was provided by the 1st Respondent. Therefore, there was no question of complainant washing and cleaning it on the earlier date. It is not recorded

by the complainant anywhere that he washed and cleaned the mug as well as three bottles.

10. Rule 14 of the Prevention of Food Adulteration Rules, 1955 provides that samples of food for the purpose of analysis shall be taken in clean, dry Bottles or Jars. In the present case, basic safe-guard provided by Rule 14 was not complied with by the complainant. In fact, a possible conclusion which can be drawn on conjoint reading of the complaint and the deposition of the complainant is that the complainant himself did not wash and clean the plastic mug and the bottles. Therefore, the view taken by the learned Magistrate that the guilt of the Respondents - Accused is not proved beyond reasonable doubt is certainly a possible view which could have been taken on the basis of evidence on record. Hence, no interference is called for with the impugned order of acquittal in this Appeal against acquittal.

11. Accordingly, Appeal is dismissed.

(A. S. OKA, J.)