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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.903 OF 2002***

State at the instance of
Mr. Sampat Baburao Shinde,
Food Inspector, FDA, Pune.

... Appellant.
(Orig. Complainant)

V/s.

1. Mr. Namdeo Kashinath Thorat,
(Vendor and Director)
2. Mr. Rabhaji Govind Valase,
Director.
3. Mr. Chandrakant Janardan Valase,
Director.
4. Mr. Ramdas Namdeo Pingale,
Director.
5. M/s. Suyog Milk & Agro Product
Pvt. Ltd.,
All r/o. Nirgudsar, Tal. Ambegaon,
District – Pune.

... Respondents.
(Orig. Accused 1 to 5)

Mr. P.H. Gaikwad-Patil, Asstt. Public Prosecutor for the State.

None for the Respondents.

CORAM : N.M. JAMDAR, J.

DATE : JULY 18, 2017.

Oral Judgment :-

By this Appeal, the State of Maharashtra through Food and Drugs Administration has challenged the Judgment and Order passed by the Chief Judicial Magistrate, Pune dated 26 February 2002 in RCC No. 138 of 2001, acquitting the Respondents – Accused of the offences under Sections 7(i) r/w. Section 2(ia)(a), 2(ia)(m) punishable under Section 16 and 17 of the Prevention of Food Adulteration Act, 1954.

2. The Respondent No.1 – Accused is the Vendor and Director of one Suyog Milk and Agro Products Pvt. Ltd. The other Respondents – accused are the Directors of the said firm. According to the prosecution the Complainant – Food Inspector visited the premises of Suyog Milk Agro Product on 16 February 2001 and collected the samples of homogenized and pasteurized cow milk of Maharathi Brand. According to the prosecution, the procedure has established under the Prevention of Food Adulteration Act, 1954 and the Rules thereunder was followed and samples of milk were sent for analysis to the Public Analyst. The Public Analyst report was received which stated that the sample does not conform to the standard set by the Prevention of Food Adulteration Act 1954 and

the Rules framed thereunder because the sample shows less percentage of milk fat. Taking a note of the report which stated that the sample showed less percentage of milk fat, the Joint Commissioner of Food and Drugs Administration Department, Pune granted consent under Section 20 of the Act of 1954.

3. A complaint was filed on 28 September 2001 alleging that the Respondent – Accused has committed offence under Section 7(i) r/w. Section 2(ia)(a), 2(ia)(m), punishable under Section 16 and 17 of the Act of 1954. The charge was framed and the case was tried by the learned Chief Judicial Magistrate, Pune. The prosecution examined three witnesses and produced the documentary evidence on record. The Chief Judicial Magistrate found that the procedure as laid down under the Act and Rules was not followed. The manner in which the samples were drawn was not proper and came to the conclusion that the prosecution has failed to prove that the Respondents have committed offences as alleged. The learned Magistrate accordingly acquitted the Respondents by the impugned judgment and order dated 26 February 2002.

4. I have heard Mr. Gaikwad-Patil, the learned Asstt. Public Prosecutor for the State - Appellant. None appears for the Respondents.

5. The learned APP, after taking me through the evidence of the parties, contended that the judgment and order passed by the learned Magistrate is not correct and proper and needless assumptions have been drawn. He submitted that the procedure adopted while drawing the sample is correct.

6. Main reason why the sample of milk collected from the establishment of the Respondent – accused was found to be not in compliance with the Act and Rules was because the milk fat in the sample was stated to be less than the prescribed quantity. This was the report of the Public Analyst and also the ground on which consent was granted by the Joint Commissioner. This being the main thrust of the prosecution case, the learned Magistrate took note of various admissions of the complainant who drew the samples. In the complaint it was stated that on 16 February 2001, the complainant purchased 750 ml. and 500 ml. bags of homogenized and pasteurized cow milk and thereafter, the milk was poured in a empty steel pots divided in three parts and thereafter sample was drawn. However, in the cross-examination, the complainant admitted that when he inspected the premises, the process of chilling of milk was going on. The bags from which samples were drawn were removed from the cold storage where the temperature was just above zero. The complainant admitted that if the plastic bags are kept in cold storage, the fat from the milk sticks to the plastic bag.

He admitted that the panchnama at Exhibit 20 did not specifically disclose that he had waited to bring down the temperature to room temperature and then took the sample. If the less percentage of fat in the milk was the contravention of the Act and Rules, then it was incumbent on the complainant to wait till the milk is brought to the room temperature, as, as per his own showing, due to the chilling the milk fat can stick to the plastic bag. The learned Magistrate took note of this aspect and acquitted the Respondents – accused. Even though the other procedure followed thereafter by the complainant may be proper, it will not cure the defect which is discussed above.

7. In the circumstances, the view taken by the learned Magistrate to acquit the Respondents – accused cannot be stated to be a perverse view. Accordingly, the Criminal Appeal is dismissed.

(N.M. JAMDAR, J.)