

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1013 OF 2002**

The State of Maharashtra

... Appellant

Versus

1. Mr. Dewaram Mangaram Dharmavat
2. Mr. Bhakaram Jogaram Dewasi
3. Mr. Sohanlal Pannaji Choudhary
4. Mr. Sitaram Jasaram Choudhary
5. M/s. Choudhary Traders (The Firm) ... Respondents

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Mr. Arfan Sait, APP for the Appellant-State.

Mr. K.H. Parekh for respondents.

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CORAM : A. S. OKA, J.

DATE : 18th MAY, 2017.

ORAL JUDGMENT

1. By this appeal against acquittal, the State of Maharashtra has taken an exception to the judgment and order dated 15th January, 2002 passed by the learned Chief Judicial Magistrate, Pune in Regular Criminal Case No. 21 of 1998, by which the respondents accused were acquitted for the offences under Section 7(i) read with Sections 2(ia)(a), 2(ia)(h) and 2(ia) (m) punishable under Sections 16 and 17 of the Prevention of Food Adulteration Act, 1954 (for short 'the said Act').

2. The State Government had filed a complaint in the Court of Chief Judicial Magistrate at Pune through a Food Inspector. In the complaint, it is alleged that on 18th January, 1997, the then Food Inspector Shri. Ugale visited the premises of Dharmawat Trading Company in Market Yard at Pune for the purposes of sampling. At that time, it is found that second accused i.e. second respondent was present in the premises of food shop and was looking after the business. Shri. Ugale demanded black pepper and by paying an amount, he purchased 600 gms of black pepper(whole) from an open unlabeled gunny bag for test and analysis. Complaint describes as to how the sample was divided into three portions. Reliance is placed on memorandum drawn on the spot. On 28th February, 1997 Shri. Ugale received a letter from Local Health Authority (Pune Municipal Corporation) recording that the Public Analyst opined that the sample is of standard quality. Therefore, Shri Ugale sent a letter to the Local Health Authority requesting to send remaining sample part to another Public Analyst as he was of the opinion that the report of the Public Analyst, Sangli was erroneous. Thereafter, a report of Public Analyst of the Mumbai Municipal Corporation was called

for, who opined that the food article contained mineral oil and is adulterated as per the provisions of the said Act.

3. Process was issued on the said complaint on 25th March, 1998. The prosecution examined the complainant as well as Shri. Ugale, the Food Inspector. After considering the evidence, the impugned order of acquittal was passed by the learned Chief Judicial Magistrate. The impugned order was passed mainly on the ground that there was non compliance with the provisions of Clause (b) of Sub-Section (1) of Section 11 of the said Act inasmuch as, Shri. Ugale deposed that he did not clean the bottles used for collecting samples of black pepper.

4. Secondly, it was held that the black pepper (whole) in the bag having capacity of 6 kgs was not mixed together to have a homogeneous sample. Thirdly, it was held that after a report of Public Analyst was found to be favourable of the accused, there was no reason to send balance sample to another Public Analyst. It was held that no reasons have been recorded for sending the remaining sample to another Public Analyst.

5. Learned APP submitted that the order of acquittal has been passed on hyper technical grounds and in fact, this is a case where no other conclusion except the conclusion that guilt of the respondents was established could have been recorded.

6. The learned counsel appearing for respondents relied upon a decision of Division Bench of this Court in the case of *State of Maharashtra Vs. Gitaram Kaluram*¹. He also relied upon a decision of this Court in the case of *State of Maharashtra Vs. Ghanshyam Motilal Gupta*². He also relied upon a decision of this Court in the case of *The State of Maharashtra Vs. Madhukar B Dharne and another*³.

7. I have perused the complaint, notes of evidence and other documents on record. I have perused the evidence of Shri. H.N. Ugale. In the examination in chief, Mr. Ugale has stated thus;

..... “ I issued notice u/s 14-A of PFA Act to accused no.2. The o/c of said notice under signatures of myself, accused no.2 & panch is at Exh.62. Accused no.2 gave me 600 gms of black pepper (whole) on clean white paper. I showed 3 dry clean and empty bottles to accused no.2 and

1 Criminal Appeal No. 64 of 1992 decided on 28th October, 1993.

2 Criminal Appeal No. 553 of 1996 decided on 18th February, 2009.

3 Criminal Appeal No. 228 of 1997 decided on 3rd March, 2009.

panch I divided said sample in 3 equal parts on clean and white papers. Then poured each part into above bottles. Mouth of each bottle was tied with plastic paper, and it was sealed with sealing wax.” ...

8. I have also perused the Complaint. Though in the Complaint, it is mentioned that the second respondent gave 600 gms of black pepper on a clean white paper, it is not stated that the sample was divided in three equal parts on clean and white papers. In the cross examination, it is accepted that *Panchnama* at Exhibit-64 does not record that Shri Ugale used a big paper for taking black pepper sample and he divided it in three parts by cutting the paper. He admitted that on the spot he did not clean the bottles used for collecting the sample though he stated that bottles were already cleaned. It is not disclosed who had cleaned the bottles. Considering this part of the evidence, the learned Chief Judicial Magistrate has recorded a possible finding that there was no compliance of Clause (b) of Sub-Section (1) of Section 11 of the said Act.

9. In paragraph 10 of the cross examination, Shri Ugale accepted that the Local Health Authority vide letter at Exhibit-77 informed that Public Analyst, Sangli opined that sample was of

standard quality. He stated that he cannot state as to why he thought that the said report was not proper. That is the reason why the learned Judge has recorded a conclusion that no reason is brought on record as to why the report of Public Analyst, Sangli was found to be incorrect and what was the reason for sending it to another Public Analyst. The view taken by the learned Chief Judicial Magistrate that the prosecution could not bring home the charges against the respondents is a possible view which can be taken on the basis of evidence on record. Therefore, no case is made out to interfere in this appeal against acquittal. Accordingly, I pass the following order.

ORDER

- (i) Appeal is dismissed.
- (ii) The bail bonds on the respondents stand cancelled.

(A. S. OKA, J.)