

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.1192 OF 2002

The State Of Maharashtra)
(At the instance of Food Inspector,)
Food & Drugs Admn.(M.S.))...Appellant

Versus

1.Ashok Kumar Manjayaa Shetty)
Manager, M/s.Amdar Niwas (Vistharit),)
Uphar Griha, S.B.Road, Colaba,)
Mumbai – 400 039.)

2.Ratnakar S.Shetty,)
Licencee & Conductor,)
Manager, M/s.Amdar Niwas (Vistharit),)
Uphar Griha, S.B.Road, Colaba,)
Mumbai – 400 039.)...Respondents
(Orig.Accused)

Mr.Deepak Thakare, APP for the Appellant.

None for the Respondents.

CORAM : G.S. KULKARNI, JJ.

DATED : 15th May, 2017

Judgment:

1. This appeal by the State is directed against the judgment and order dated 7 March 2002 of the learned Additional Chief

Metropolitan Magistrate, 46th Court, Mazgaon, Mumbai, in C.C.No.91/S/1995 whereby prosecution of the respondents-accused under Section 7(i) read with Section 2(ia)(a), 2(ia)(m) read with Section 16 of the Prevention of Food Adulteration Act,1954, has resulted into an acquittal.

2. The facts relevant for adjudication of this appeal are as under:-

PW.2 A.N.Rana, the Food Inspector visited the accused's Uphar Griha on 5 October 1994 with Panch by name Naresh Anand. It was noticed that stock of 5 litres of milk was stored for sale in open can. PW.2 - Rana purchased 750 ml. milk for test and analysis from accused No.2. Notice under Form VI was issued by PW.2. According to the prosecution, the panchanama was drawn and following the procedure, the samples of the milk were divided into three equal parts and each part was poured in dry, empty and clean bottles which were sealed and labelled in accordance with the rules and were sent for analysis to the Public Analyst (P.A.). The report of analysis recorded that there was adulteration of the milk. PW.2 obtained the necessary permission from the Joint Commissioner of

Food and Drugs Administration, Gr.Mumbai, and a complaint in question came to be filed before the Trial Court against the accused having committed offence under Section 2(ia)(a) and (m) punishable under Section 16 of the Prevention of Food Adulteration Act,1954.

3. In order to establish the guilt of the accused to have committed the offences in question, the prosecution has examined PW.1 - Ravindra Shripad Chitnis working as a clerk in the office of the Local Health Authority and PW.2-Mr.Anil Narottam Rana, Food Inspector.

4. The evidence of P.W.1 concerns receiving and forwarding of the samples. P.W.2-Anil N.Rana-the Food Inspector has deposed that he visited the premises of the accused and purchased 750 ml. of milk. The milk so purchased was kept in a stainless steel pot belonging to the accused and then, it was divided into three equal parts, stated to be in empty, clean and dry bottle. P.W.2 states that thereafter he added 20 drops of formalin to the contents of each of the bottle and thereafter the mouth of the bottle was closed and seal

was affixed on it and label was pasted on each part of the sample part indicating the particulars. Each sample was wrapped in brown paper and the ends were folded by pasting with gum. P.W.1 stated that the LHA slip No.BMC/LHA-I/81573 was pasted on the wrapper from bottom to top. P.W.1 then states that the signature of Accused No.1, panch and his signature were taken on the covering LHA slip and the wrapper. He deposes that thereafter a panchanama was drawn under the signature of panch and accused No.1 (Exhibit P-14). He deposes that on 6 October 1994, he sent one part of the sample with Form VII to Public Analyst (P.A.), Mumbai, under a letter at Exhibit P-15 and also forwarded a copy of specimen seal expression by letter at Exhibit P-16. He further deposes that he sent two parts of samples with two copies of Form VII to LHA under his letter at Exhibit P-17 for compliance under Section 11(1)(c)(i). In the cross-examination, P.W.2 admitted that he has mixed 20 drops of formalin in each of the samples after division in each bottle. He also admits that there was omission in the panchanama and the complaint about the purchased quantity of milk being put in the steel pot of the vendor and thereafter, making of three divisions.

5. Considering the evidence, the learned Trial Judge has held that the collection of sample and its division into three parts is not mentioned in the panchanama or in the complaint which gives an advantage to the accused. The learned Trial Judge has also held that it was apparent that the milk sample was drawn on 5 October 1994 and the complaint was lodged in the Court on 17 April 1995 which is beyond the period of six months. Referring to the decision of this Court in “*Shaikh Abdul Vs. State of Maharashtra.*”¹, the learned Trial Judge held that the delay of more than six months for filing the complaint from the date of drawing sample of milk gives benefit of doubt in favour of the accused. It was accordingly held that the prosecution could not prove the commission of the offence by the accused and acquitted the accused for the offences in question.

6. I have heard the learned Assistant Public Prosecutor for the Appellant-State. With his assistance, I have perused the evidence as also the impugned judgment and order and the documents as placed on record. On examining the evidence, in my opinion, the

1 1986(3), Food Adulteration Cases Page 122

learned Trial Judge is correct in coming to the conclusion that the offences alleged against the accused are not proved. As apparent from the record, there is a basic failure on the part of the P.W.2-Food Inspector, as also admitted by him in his evidence that he did not mix the formalin into the entire 750 ml. of the sample purchased by him, but he added 20 drops of formalin in each bottle after division of sample. This clearly indicates the breach of Rule 20 of the PFA Rules. Further what is important is that the panchanama under which this procedure was adopted, itself was not proved, inasmuch as the panch witnesses were not examined. This goes to the root of the matter. Once the panchanama is not proved, the entire edifice of receiving P.A. Report on the basis of this sample would have no sanctity. Also there was another infirmity, even assuming that the panchanama was to be accepted, P.W.2 – Anil N.Rana admitted in his cross examination that there was omission in the panchanama as well as in the complaint about the mode of division of the sample as described in the examination-in-chief which would result in breach of Section 11(1)(b).

7. Apart from these basic infirmities, the learned Trial Judge

is right in concluding that there was delay on the part of the prosecution in lodging the complaint on 17 April 1995 after the sample was drawn on 5 October 1994. The learned Assistant Government Pleader is not in a position to contend that the observations of the learned Trial Judge relying on the decision of this Court in *Shaikh Abdul Vs. State of Maharashtra (supra)* are incorrect and would in any manner lead to a perversity.

8. In the light of the above discussion, I find no perversity or any illegality in the impugned judgment and order passed by the learned Trial Judge acquitting the accused of the offence punishable under Section 2(ia)(a), (m) punishable under Section 16 of the Prevention of Food Adulteration Act, 1954. Appeal accordingly fails and is dismissed.

(G.S.KULKARNI, J.)