

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal NO. 1253 OF 2002

The State Of Maharashtra)
(Through Food Inspector, FDA, Pune)...Appellant

Versus

1.Annis Rajjak Bagwan)
2.Nazir Ibrahim Bagwan)
3.Mrs.Bilkis Gulam Hussain Bagwan)
4.Mrs.Anjum Isak Bagwan.)...Respondents

Mr.Deepak Thakare, APP for the State/Appellant.

None for the Respondents.

CORAM : G.S. KULKARNI, J.**DATED : 16th May, 2017**

Judgment:

1. This appeal by the State is directed against the judgment and order dated 23 April 2002 of the learned Chief Judicial Magistrate, Pune, whereby accused Nos.2 to 5 stand acquitted of the offences under Section 2(ia)(a), 2(ia)(j) read with Section 7(i) and Section 7(v) punishable under Sections 16 and 17 of the Prevention of Food Adulteration Act, 1954 (for short 'PFA Act').

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

under:-

P.W.1-Mohan Shankar Kembalkar is the Food Inspector. On 8 January 1999 he alongwith P.W.3-Eshwar Phulchand Avghade - panch witness visited M/s.Hotel Neelam Palace's, Saiba Veg and Non-Veg Restaurant at Phaltan Road, Baramati, District Pune-Accused No.6. Accused No.1 Niranjan was found to be the vendor and cashier of Accused No.6. P.W.1 after inspection demanded and purchased 900 gms of chicken tikka and paid its price. P.W.1 had issued notice in Form VI and under Section 14-A of the Prevention of Food Adulteration Act to accused No.1 who was present in the premises and was looking after the business. P.W.1, then, divided the purchased food article into three parts and added 24 drops of formalin as preservative in each part of the sample. The samples were then sealed and labelled. P.W.1 has stated that he has followed all the procedure as per the provisions of PFA Act and Rules of sampling and accordingly, prepared the panchanama. P.W.1 then sent one part of the sample to Public Analyst, Pune (P.A.) alongwith the relevant documents. On 27 January 1999, P.W.1 received a report from the P.A., according to which the sample contained synthetic food colour namely sunset yellow CFC. After completion of necessary investigation, P.W.1 submitted all the relevant documents as per the requirement to the Joint Commissioner, FDA, Pune and received consent to prosecute the accused.

On receipt of the consent, the complaint in question came to be filed against all the accused.

3. By an order dated 2 May 2001 the trial of Accused Nos.2 to 5 was separated and the complainant was directed to file a separate complaint against Accused No.1-vendor and Accused No.6-Hotel. The complaint was thus adjudicated by the learned Trial Judge against Accused Nos.2 to 5.

4. On behalf of the prosecution, to bring home the guilt of the accused, evidence of the complainant P.W.1-Mohan- Food Inspector and P.W.2 -Kundalik Bodhala Shelar, Assistant Commissioner (Food) and that of P.W.3 – Eshwar Phulchand Awghale, the panch witness was led. It may be observed that P.W.3 turned hostile and the panchanama in question thus could not be proved on behalf of the prosecution.

5. The defence of the accused is on the basis of certain fatal irregularities in the procedure adopted by the complainant in drawing the samples and forwarding them to the Public Analyst and the Local (Health) Authority. The learned Trial Judge after taking into consideration the evidence on record has come to a conclusion that the offences against the

accused were not proved by the prosecution due to severe procedural infirmities and irregularities. The observations of the learned Trial Judge shows that the collection of the sample which required adding formalin drops in the entire sample collected which was admittedly not done, but it was independently added in three separated samples, so also no evidence of the lids of the sample bottles being cleaned and dried, were fatal to the case of the prosecution. This was held to be in breach of Rule 14 and 20 of the PFA Rules, 1955. Further the requirement of labelling as per Rule 15 of the PFA Rules, 1955, was absent as also both, the complaint and memorandum of panchanama were silent about the compliance thereof. Also the complaint and panchanama did not disclose that the signatures of the witness, accused No.1 and the complainant to be put partly on paper slip and partly on wrapper as required under Rule 16(c) of the PFA Rules. It was observed that there was no evidence to show that accused Nos.2 to 5 were the partners and accused No.1 was the vendor of accused No.6-firm. However, accused Nos.2 to 5 placed on record a copy of the agreement showing that the premises in question were given to one Narendra Bolar and Kirit Rathod to be used for business purpose and accused Nos.2 to 5 had no concern with the alleged restaurant i.e. accused No.6. Also there was no evidence put forth on behalf of the prosecution to show that accused Nos.2 to 5 have any concern with the day to day

business of accused No.6. Also there was no evidence to show that accused Nos.2 to 5 appointed accused No.1 to run the restaurant.

6. Apart from the above fatalities to the case of the prosecution, the panch witness was declared hostile and as he did not support the case of the complainant. The panchanama itself, therefore, could not be proved. There was no evidence placed on record to show that signatories of Exhibit 53 and Exhibit 56 in the PA's office were authorised to accept the sample. The learned Trial Judge referring to the decision of this Court in the case "*The State of Maharashtra Vs. Vithelrao s/o. Thanusao Bodkhe, Proprietor of M/s.Bodkhe Kirana Stores, Chandrapur*"¹ observed that if the P.A. himself is unable to state as to who has received the sample in his office, then it is a case of clear breach of Rule 7 of PFA Rules and the accused would be required to be acquitted. The learned trial Judge has further observed that the sample in question of the article being cooked food was drawn on 8 January 1999 and the complaint in question was filed on 17 July 1999 after lapse of six months and that the accused would be right in contending that they have lost their valuable right of getting sample analysed from the Director, Central Food Lab. under Section 13(2) of the PFA Act. The contention of the accused relying on the decision of this Court in the case of "*The State of Maharashtra vs.*

1 1997(1) PFA Cases Page 239

Laxman N.Khamkar² wherein the Court had held that the complaint being filed after four and half months, the right of the accused under Section 13(2) stands defeated, was thus accepted. Accordingly, the learned Trial Judge acquitted the accused of the offences in question.

6. I have heard Mr.Thakare, learned APP for the State-Appellant. With his assistance, I have perused the impugned judgment, the depositions of the prosecution witnesses and the documents as placed on record. Mr.Thakare, the learned APP though would argue that the impugned judgment and order be set aside, however, the learned APP, could not point out any perversity or illegality in the findings recorded by the learned Trial Judge which will persuade me to accept his request.

7. A perusal of the evidence on record clearly indicates that not one but there are several infirmities in the case of the prosecution. As observed by the learned trial Judge, there is basic non compliance of PFA Rules as noted above in taking the samples and forwarding the same to the Public Analyst and the Local (Health) Authority. The panchanama itself could not be proved. The statutory rules pertaining to receipt of samples are not followed. Apart from this, there is no evidence to show that respondent Nos.2 to 5 are actually conducting the business and can

2 1977(I) PFA Cases page 13

be prosecuted for the offence in question. On the contrary on behalf of the defence, evidence was produced to show that they are not in-charge of the business and the same was handed over to some third party. The decisions as relied on the part of defence are apposite to show that compliance with the requirements of the PFA Act and Rules is necessary in order to analyse the samples. Also filing of the complaint within a reasonable time was necessary so that the benefits under Section 13(2) of the PFA Act would be available to the accused. All these mandatory requirements stand completely obliterated by the haphazard procedure adopted by the complainant. All these factors necessarily would result in the acquittal of the accused, as rightly concluded by the learned Trial Judge.

8. In the light of the above discussions, I see no perversity and illegality in any of the findings as recorded by the learned Trial Judge. There is no merit in the present appeal. The appeal is accordingly dismissed.

(G.S.KULKARNI, J.)