

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1256 OF 2002

State Of Maharashtra)
Through: Mr.M.S.Kembalkar,)
Food Inspector, Pune.)...Appellant

Versus

1.Shri.Shekhar Govind Athawale)
2.Sou Kamal Govind Athawale)
3.Sou.Rohini Madhukar Athawale,)
4.Sou.Kavita Kishor Athawale)
5.Sou. Gauri Shekhar Athawale,)
6.M/s.Athawale Dairy Products,)
situated at 568, Shaniwar Peth, Pune 30.)...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 20 February 2002 of the learned Chief Judicial Magistrate, Pune, whereby respondents-accused stand acquitted of the offences

punishable under Section 7(i) read with Section 2(ia) (a), 2(ia)(m) read with Section 16 and 17 of the Prevention of Food Adulteration Act,1954.

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

P.W.1 Mohan Shankar Kembalkar is the food inspector and the complainant. On 18 December 1997 at about 12 noon he alongwith P.W.2 – Laxmikant, the panch witness visited M/s.Athavale Dairy Products, 568 Shaniwar Peth, Pune - Accused no.6, which was a concern dealing in the business of manufacturing and selling of milk, curd and various milk products. Accused No.1 – Shekhar Govind Athawale was present and was selling food articles who disclosed to P.W.1 that he is one of the partners of Accused No.6 – M/s.Athavale Dairy Products and Accused Nos.2 to 5 are the other partners. P.W.1 inspected the premises and prepared the inspection report (Exhibit 44). The inspection revealed that alongwith the other food articles 3 kgs of curd was found stored in one open unlabelled aluminum tray. It was informed by Accused No.1 that it was prepared from buffalo milk. P.W.1 purchased 600 gms. of curd for test and analysis and issued notice in Form VI to Accused No.1. The case of P.W.1 is that he followed the necessary procedure, a panchanama was undertaken, the samples of the curd were distributed in three containers, the samples were

forwarded to the Public Analyst (P.A.) and Local (Health) Authority. The Local (Health) Authority and P.A., Pune sent a report dated 16 February 1998 recording that the sample does not conform to the standard prepared for buffalo milk, as per PFA Rules. After completion of the investigation, the complainant submitted all the relevant documents to the Joint Commissioner, FDA, Pune seeking consent to prosecute the accused. On receipt of the consent, the complaint in question came to be filed in the Court of learned Chief Judicial Magistrate. The learned Trial Judge vide Exhibit 69 framed the charges. The accused pleaded not guilty and claimed to be tried. On behalf of the prosecution, the complainant - PW.1 examined himself and the other witness examined was PW.2 -the panch witness who turned hostile as in the cross-examination stated that the panchanama had not taken place in his presence.

3. The learned Trial Judge after considering the evidence on record has come to the conclusion that there was a basic non compliance of Section 11(1)(b) of the PFA Act., Rule 14, 15 and 16(c) of the PFA Rules which deals with the procedure required to be followed by the complainant in taking the samples and forwarding the same to the Public Analyst and other various aspects mandatorily required to be followed by the complainant. Also a report from the Central Food Laboratory, Calcutta

was obtained. The learned Trial Judge also observed that there was material variance between P.A. report and the report of the Central Food Lab, Calcutta, which indicate that the samples in question was not a representative sample. Apart from this, as observed by the learned Trial Judge, there was no evidence on record to show that proper care was undertaken to wash and clean the empty containers before the collected samples placed in those bottles. Further P.W.1 admitted in the cross examination that he had not given details of label description mentioned in the label as per Rule 15, in the panchanama and the complaint, this according to the learned Trial Judge clearly indicated that P.W.1 did not follow the mandatory procedure stipulated under Rule 15 of the PFA Rules. Taking into consideration all these basic infirmities in the procedure adopted, the learned Trial Judge concluded that the prosecution could not bring home the guilt of the accused that he had committed the offence in question.

4. I have heard Mr.Thakare, learned Assistant Government Pleader for the appellant., and with his assistance I have perused the evidence as placed on record as also the impugned judgment and order. On examining the evidence, it is quite clear that the mandate of Section 11(1)(b) of the PFA Act and Rules 14, 15 and 16(c) of the PFA Rules has

not been followed by the complainant in undertaking the investigation against the accused for the offence in question. It is a settled principle of law that right from collection of samples till the same are handed over to the Public Analyst for obtaining an appropriate report, number of requirements/safeguards are contemplated to be adhered by the concerned officer, so that a correct and an accurate report on the samples is obtained for further action to be taken in accordance with law. In the present case, the first infirmity is that the drawing of samples itself is not proved in view of the panch witness disowning the panchanama when he deposed that it had not taken place in his presence. Apart from this basic infirmity, as observed by the learned Trial Judge, there is grave doubt in placing of samples in bottles and adding of formalin not to the whole samples, but in the portion separated in the bottles. Further, there are serious defects in the labeling procedure as the Rules in question would mandate. All these irregularities would undoubtedly vitiate the report which is received from the P.A. authority. Such a report would have no sanctity tested on the mandate of the Rules. Further, there is substantial variance in the P.A. Analysis and the report of the Director of Central Food Lab., Calcutta which would also indicate that the sample was not at all representative. The findings of the learned Trial Judge are on the basis of the evidence placed on record and I do not find that there is any

perversity or illegality in the observations as made by the learned Trial Judge.

5. For the above reasons, the appeal fails and is accordingly dismissed.

(G.S.KULKARNI, J.)