

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 1284 OF 2002

The State Of Maharashtra)
 Through: Shri.S.A.Chougule,)
 Food Inspector, FDA, Pune.)...Appellant

Versus

1.Mr.Avinash Vamanrao Oturkar)
 Vendor & Partner of M/s.C.T.Distributors,)
 Sadashiv Peth, Pune.)
)
 2.Mr.Sudhir Chintaman Tembere,)
 Partner of M/s.C.T.Distributors,)
 Sadashiv Peth, Pune.)
)
 3.M/s.C.T.Distributors,)
 858/59, Sadashiv Peth, Pune-30)
)
 4.Mr.Chandrakant Hirachand Shah,)
 Partners of M/s.Shah & Associates,)
 Shahupuri, Kolhapur.)
)
 5.Mr.Girish Chandrakant Shah,)
 Partner of M/s.Shah & Associates,)
 Shahupuri, Kolhapur.)
)
 6.M/s.Shah & Associates, 610/K,)
 Vardhaman Chambers, Shahupuri,)
 Kolhapur – 416001.)
)
 7.V. Shreeniwas Reddy, Proprietor of)
 British Biologicals, 3rd floor, Block No.3,)
 Jayanagar, Bangalore -560011.)...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 17 April 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)(j) and Section 7(v) read with Sections 16 and 17 of the Prevention of Food Adulteration Act, 1954 (for short PFA Act) read with Rules 29, 37 of the Prevention of Food Adulteration Rules, 1955 (for short 'PFA Rules').

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

P.W.1-Sukumar Annu Choughule is the food inspector. On 30 August 1999, P.W.1 alongwith the panch witness P.W.3-Mahesh Avinash Chavan visited the premises of Accused No.1 named and styled as 'M/s.C.T.Distributors' situated at Sadashiv Peth, Pune-30, when accused no.1 was present and looking after the business of selling B-protein food

articles. On introducing himself and the panch witness, P.W.1 undertook an inspection of the premises and purchased jars of B-Protein Mango flavour each weighing 200 gms., by paying an amount of Rs.1158/- as samples. A cash memo (Exhibit 31) to that effect was obtained. A notice in Form VI of collection of the sample, was issued under Section 14-A of the Prevention of Food Adulteration Act,1954 to accused No.1 on which his acknowledgement was obtained. These three sealed jars bearing identical labels and weighing 200 gms were divided in three equal parts with each part consisting of one jar of 200 gms. P.W.1 thereafter put the three jars in three clean, dry and empty polythene bags and sealed the polythene bags on candle heat and then they were tied by thread horizontally and vertically and sealed by using sealing wax. P.W.1 then pasted labels bearing details of said sample and fixed the L.H.A. slips.

3. According to P.W.1, after completing the above formalities, a panchanama was drawn and signed by him and the panch witness and acknowledgement was obtained on the original copy of the panchanama (Exhibit 34). The samples were thereafter forwarded to the Public Analyst (P.A.) at Pune under a covering letter under the signature of P.W.1 on 31 August 1999 seeking a report. On the same day (31 August 1999) two sealed parts of the said sample with two copies of form No.VII, in a sealed

packet alongwith the covering letter under the signature of P.W.1 were forwarded by hand delivery to the Local (Health) Authority, Pune. On 1 November 1999, P.W.1 received report of P.A. through L.H.A., Pune stating that the said sample of B-protein Mango flavour contains protein and iron content less than what was declared on the label and thus contravened Rule 37 as also it contains extraneous synthetic colour namely tartrazine and sunset yellow F.C.F. which violated Rule 29 of the PFA Rules. On completion of the investigation, the complaint in question came to be filed against Accused Nos.1 and 2 who are the partners of Accused No.3. Accused Nos.4 and 5 are the partners of Accused No.6 who appears to be the distributor of the product in question, and accused No.7 the proprietor and manufacturer of the product B-Protein Mango flavour.

4. On behalf of the prosecution, apart from the evidence of P.W.1 the food Inspector / complainant, P.W.2 Dr.Anil Moreshwar Rawetkar, working as Medical Officer (Health) discharging duties under the Prevention of Food Adulteration Act with the Pune Municipal Corporation, was examined. P.W.3 is Mahesh Avinash Chavan who is a panch witness, who turned hostile stating in his testimony that he had no personal knowledge of the contents of the panchanama and the panchanama did not take place in his presence.

5. The learned Trial Judge considering the evidence on record has observed that in undertaking the analysis of the samples there was a breach of the mandate of Rules 7, 14, 15 and 16(d) of the PFA Rules and thereby acquitted the accused. The learned Magistrate has observed that polythene bag could not have been used as a container, as there was likelihood of tampering. It is also observed that there was no 'lak seal' on the mouth of the container namely the plastic bag. The learned Magistrate, referring to the decision of this Court in the case “***State of Maharashtra Vs. Prabhudas Atalmal Baktani***”¹, observed that non adherence to Rule 14 which requires that the sample should be sent to P.A. in dry and clean container would stand breached and same would be fatal to the case of the prosecution. It is further observed that there is breach of Rule 15 inasmuch as the memorandum/panchanama (Exhibit 34) and the statement of the complainant (Exhibit 26) do not specifically disclose name of the sender with official designation, date and place of collection, nature of article submitted for analysis as mandated by the said Rule. It is further observed that sealing procedure is defective and not in compliance with Rule 16(d) of the PFA Rules. It is observed that there is also discrepancy in the P.A.report with regard to the batch number which is mentioned as “BMF 141” and not as only “141” as referred in the other

1 1986(3) PFA Cases page 221

documents including the purchase invoice of the sample. An infirmity in the P.A. report is observed that it does not disclose the process of analysis undertaken while analysing the sample, and that the P.A. has not shown which factor is used for coming to the said conclusion. It is also observed that Exhibit 38 which is the P.A.'s receipt of the sample does not show that the P.A. who issued the report (Exhibit 58) had seen and compared seal on the sample part, with specimen impression of seal, when they were received in office on 31 August 1999. It is further observed by the learned Magistrate that there is no evidence to the effect that at the time of receipt of the sample, specimen impression of seal, was compared by the concerned officer, which was violating Rule 7 of the PFA Rules. Another infirmity which is noted is that P.A. report, refers to the sample collected on 31 August 1999 and not the sample collected on 30 August 1999 as stated by P.W.1. It is, thus, observed that it cannot be said that the P.A. report is in compliance of sample dated 30 August 1999. This according to the learned Magistrate was sufficient to hold that the accused lost their valuable right of getting the sample analysed from Central Food Lab. Calcutta. The learned Judge on these observations concluded that the accused were required to be acquitted of the offences in question.

6. I have heard Mr.Thakare, learned APP for the State-Appellant.

With his assistance, I have perused the evidence on record as also the impugned judgment and order.

7. At the outset, it may be observed that Mr.Thakare, learned APP is unable to point out any perversity or illegality in the findings recorded by the learned Trial Judge, whereby the learned Trial Judge has concluded that ex facie there is a breach of Rule 7, 14, 15, 16(d) of the PFA Rules which interalia pertain to drawing of samples, the requirements of the method of forwarding the same to the P.A. to obtain report. It is a settled principle of law that it is mandatory for the concerned authorities to follow the procedure as contemplated under the PFA Rules to obtain an accurate report from the P.A. Only when the procedure so stipulated is followed and on due observance of the same, a PA report is received, the same can have a sanctity and acceptance in evidence in the adjudication of a complaint of commission of an offence under Section 7(i) read with Section 2(ia)(a), 2(ia)(j) and Section 7(v), Section 16 and 17 of PFA.Act,1954. In the present case, there is no manner of doubt that there is a patent breach of the said Rules in drawing of the sample, in the procedure of sealing as noted above and observed by learned Trial Judge. Further P.W.3 Mahesh-the Panch witness, also turned hostile and disowned the panchanama by stating that the panchanam has not taken place in his

presence. This was fatal to the case of the prosecution as the whole edifice to obtain the P.A. report on samples as referred to in the panchanama, would fall to the ground. Mr.Thakare does not dispute this position as would emerge, that the panchanama itself being not proved on behalf of the prosecution, all the other consequential steps were an exercise in futility.

8. Thus on examining the evidence on record, I do not find any perversity or illegality in the observations as made by the learned Trial Judge. The appeal, therefore, fails and is accordingly dismissed.

(G.S.KULKARNI, J.)