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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1350 OF 2003

The State of Maharashtra at the instance
of Shri Krishna Nanu Bhosale, Food
Inspector, FDA, Pune.

..Appellant.

V/s.

1) Pradip Ramakant Zade,
Vendor of M/s. Bhandari Provision
Stores, situated at Ota No.136,
Ramoshiwadi, Gokhalenagar, Pune.

2) Shankar Tulshiram Bhandari,
Proprietor of M/s. Bhandari Provision
Stores, situated at Ota No.136,
Ramoshiwadi, Gokhalenagar, Pune. ..Respondents.

Mrs.M.R.Tidke, APP for the Appellant-State.

None for the Respondents.

Coram : N.M.Jamdar, J.

Date : 30 June, 2017

ORAL JUDGMENT

By this appeal, the State of Maharashtra has challenged the judgment and order dated 28 April 2003 passed by the Chief Judicial Magistrate, Pune acquitting the Respondents-accused for the

offences under section 7(i) read with section 2(ia) (a), 2(a)(j), 2(ia) (m) and section 7(v) of the Prevention of Food Adulteration Act, 1954 read with rules 23 and 28 of Prevention of Food Adulteration Rules, 1955 punishable under section 16 of the Prevention of Food Adulteration Act, 1954.

2. According to the prosecution, Respondent No.2 was the proprietor and Respondent No.1 was the vendor of M/s.Bhandari Provision Stores. On 31 July 2001, the complainant Food Inspector visited the premises and took samples of moogdal. Since the food sample did not conform to the standards in the Prevention of Food Adulteration Act and Rules, a complaint was lodged against the Respondents-accused. The prosecution examined three witnesses. The learned Magistrate, after considering the evidence, found that there was a breach of the mandatory provisions of the Act and the Rules, and accordingly acquitted the Respondents-accused of the offences charged.

3. I have heard Ms.Tidke, the learned APP for the State. None appears for the Respondents.

4. The prosecution examined three witnesses. Krishna Banu Bhosale, PW1, the Food Inspector, in his examination-in-chief stated about the procedure followed while taking the samples. However, in the cross-examination he gave various admissions which are fatal to the prosecution. He admitted that in the panchanama, he had not

mentioned that the pot used for the purpose of weighing the moogdal was clean. He stated that it is not mentioned in the panchnama that the paper used for wrapping the sample was clean. He also admitted that he did not clean the sample bottle and there was no document to show that the sample bottle was clean. It was not mentioned in the panchanama that the moogdal was equally wrapped in a plain brown paper by dividing it into three parts. It was not mentioned in the panchanama where the four seals were placed.

5. Considering these admissions and the panchanama, the learned Magistrate came to the conclusion that Rules 16 and 17 of Prevention of Food Adulteration Rules, 1955 and section 11 of the Prevention of Food Adulteration Act, 1954 were not followed. There was no cogent material to show that the sample which was sent to the Laboratory was intact and was not tampered with or was not contaminated in the process. The learned Magistrate also followed the decision of this Court in the case of ¹*State of Maharashtra V/s. Prabhudas Atalmal Baktani*. In view of the admissions of the Food Inspector regarding the manner in which the samples were drawn and absence of due procedure followed and mentioned in the panchanama, it cannot be said that the learned Magistrate committed any perversity in acquitting the Respondents. There is no merit in the appeal. The appeal is accordingly dismissed.

(N.M.Jamdar, J.)

¹ 1986 (3) PFA cases, 221