

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.49 OF 2004

Umakant s/o Narayan Amritkar,
Age : 35 years, Occu. Business,
R/o c/o Amritkar Provisions,
Shop No.2, Kanwar Nagar, Jalgaon,
Taluka and District Jalgaon

PETITIONER

VERSUS

1. The State of Maharashtra,
at the instance of Food Inspector,
Food and Drugs Administration,
Maharashtra State, Jalgaon

2. Rajendra s/o Ganeshprasad Lahoti,
Proprietor of M/s Lahoti Brothers
Industries, Pachora Road, Jalgaon,
Taluka and District Jalgaon

RESPONDENTS

AND

CRIMINAL REVISION APPLICATION NO.51 OF 2004

Rajendra s/o Ganeshprasad Lahoti,
Age : 35 years, Occu.
Proprietor of M/s Lahoti Brothers
Industries, Pachora Road, Jalgaon,
Taluka and District Jalgaon

PETITIONER

VERSUS

The State of Maharashtra,
at the instance of Food Inspector,
Food and Drugs Administration,
Maharashtra State, Jalgaon

RESPONDENT

Mr. K.C. Sant, Advocate for the petitioner
in Cri. Revision Application No.49/2004
Mr. D.B. Thoke, Advocate for the petitioner
in Cri. Revision Application No.51/2004 and for
respondent No.2 in cri.Revision Application No.49/2004
Mr. S.D. Ghayal, A.P.P. for the respondent/State

CORAM : SANGITRAO S. PATIL, J.

DATE : 18th JULY, 2018

ORAL JUDGMENT :

These Revision Applications have arisen out of the same judgment and order dated 29th January, 2004, delivered by the learned 3rd Additional Sessions Judge, Jalgaon in Criminal Appeal Nos.51 of 2002 and 56 of 2002, whereby the judgment and order dated 23rd September, 2002, passed in Regular Criminal Case (RCC) No.3 of 1995 by the learned Chief Judicial Magistrate, Jalgaon, came to be confirmed. Hence, they are being decided by this common judgment.

2. The petitioner in Revision Application No.49 of 2004 is the vendor, while the petitioner in Revision Application No.51 of 2004 is the manufacturer of iodized salt subject matter of the present petitions. The Food Inspector visited the shop of the vendor on 27th December, 1993 in the presence of panchas and purchased

three packets of iodized salt, containing 500 grams each for Rs.3/-. After completing necessary formalities, he took samples of iodized salt in three papers separately and sealed them. One of the samples was sent to the Public Analyst, who reported that the sample was not bearing batch number and iodine content therein being nil, did not conform to the standards of iodized salt Article No.A 15.01 as per Appendix B of PFA Rules, 1955. After completing necessary formalities and obtaining sanction for prosecution of the petitioners, the Food Inspector filed complaint against them in the Court of the learned Chief Judicial Magistrate, Jalgaon, for the offence punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 ("PFA Act", for short) read with Rule 50 of the Prevention of Food Adulteration Rules, 1955 ("PFA Rules", for short).

3. The learned Chief Judicial Magistrate framed charge against the petitioners, recorded the evidence of the Food Inspector and the witnesses produced by him and held the petitioners guilty for the offence with which they were charged. He sentenced each of them to suffer simple imprisonment for six months and to pay a fine of Rs.1000/-, in default to suffer simple imprisonment for

two months.

4. The petitioners challenged their conviction and sentence by filing Criminal Appeal Nos.51 of 2002 and 56 of 2002 respectively. The learned 3rd Additional Sessions Judge, Jalgaon heard both the sides, considered the facts of the case, appreciated the evidence on record and dismissed the appeals, holding that the petitioners have been rightly convicted and sentenced by the learned Chief Judicial Magistrate. The petitioners have challenged the said judgment and order passed by the learned 3rd Additional Sessions Judge by filing the present Revision Applications.

5. The main ground of objection raised by the learned counsel for the petitioners against their conviction and sentence is that there is breach of Rule 14 of the PFA Rules and therefore, the report of the Public Analyst cannot form basis for their conviction. The learned counsel for the petitioners contended that the samples were taken in brown papers. The brown papers cannot be treated as suitable containers for taking samples. The salt being a substance which gets moisturized in the air and particularly in humid atmosphere, taking sample thereof in a paper would

certainly interfere with the contents thereof. Taking sample in papers is not approved by the judicial pronouncements. They submit that since there is breach of Rule 14, the report of Public Analyst cannot be used against the petitioners. Therefore, the conviction on the basis of the said report is liable to be set aside. In support of their contention, the learned counsel have relied upon the judgments in the following cases :

(i) ***Nandu s/o Shivram Sananse and another Vs. The State of Maharashtra, Criminal Revision Application No. 33 of 2004***, decided by this court on 26th October, 2016;

(ii) ***Madhav Nagnath Wattamwar Vs. The State of Maharashtra, Criminal Revision Application No. 120 of 2003***, decided by this court on 4th March, 2015 and

(iii) ***Nandkishore s/o Mulchand Biyani and another Vs. The State of Maharashtra***, decided by this court on 2nd March, 2015.

6. The learned counsel for the petitioners further contend that the Consenting Authority has not applied mind to the facts of the case and accorded sanction for prosecution of the petitioners mechanically. The sanction order is vague and general. Therefore, on this count also, the conviction of the petitioners is liable to be set aside. In support of this contention, they relied on the judgments in the following cases :

(a) ***Maheshkumar Hanumanprasad Tiwari Vs. R. B. Rithe, Food Inspector, LEX(BOM) 1985 7 60*** and

(b) ***Ghininath Bhimrao Patekar Vs. State of Maharashtra, LEX(BOM) 1987 2 27***

7. The learned APP, on the other hand, submits that as per Rule 14 of the PFA Rules, the sample of food article for the purpose of analysis thereof could be taken in clean and dry bottles or jars or in other suitable containers. He submits that the paper would be a suitable container for taking sample of salt. Accordingly, the Food Inspector has taken sample in the brown paper. As such, there is no breach of Rule 14 on the part of the Food Inspector. He submits that Consenting Authority has applied mind to the facts of the case and rightly granted sanction for prosecution of the petitioners. The learned APP supports the impugned judgments and orders and press that Revision Applications may be dismissed.

8. Rule 14 of the PFA Rules reads as under:-

"Manufacturers, distributors and dealers to give warrant.- No manufacturer or distributor of, or dealer in, any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed

form about the nature and quality of such article to the vendor:

Provided that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of, or dealer in, such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this section.

9. In the case of **Nandu s/o Shivram Sananse** (supra), cited on behalf of the petitioners, the samples of turmeric powder were taken by the Food Inspector in a clean and dry paper. It was observed that the samples drawn in a polythene container or thick paper are not suitable container as provided under Rule 14. As such, the report of the Analyst based on such defective process of drawing and preserving samples cannot form basis for conviction. In the same judgment, there is a reference to the case of **State of Maharashtra Vs. Bhaskar Rajeshwar Gangashettiwar & others, 2003 Bom.C.R. (Cri.) 1617**, wherein it is held that if Rule 14 is not complied with, the report of public Analyst will be hardly of any assistance.

10. In the case of **Madhav Nagnath Wattamwar**

(supra), samples of Mug Dal were taken in plastic jars. There was no evidence to show as to from where the Food Inspector had procured dry, clean and empty plastic jars for taking samples. In the circumstances, it was held that there has been breach of Rule 14 of the PFA Rules. Therefore, the conviction of the accused therein for the offence punishable under Section 16 of the PFA Act was set aside.

11. In the case of **Nandkishore s/o Mulchand Biyani and another** (supra), the samples of tea powder were taken in bottles. In that case also, there was no evidence to show as to from where the Food Inspector had procured the empty bottles in which the samples were taken. On that ground, the conviction of the accused therein under Section 16 of the PFA Act was set aside.

12. In the present case, the Food Inspector states that the samples of iodized salt were taken in brown papers. The learned counsel for the petitioners pointed out to the panchanama (Exh.41), wherein it is mentioned that the samples were taken in polythene bags and then they were wrapped in brown paper. The learned counsel submit that this fact itself creates doubt about taking samples of salt properly by the Food Inspector.

Moreover, as held in the case of **Nandu s/o Shivram Sananse** (supra), the samples drawn in polythene container or thick paper are not suitable as provided in Rule 14. If this factual position is considered, the report of the Public Analyst on the basis of the samples taken either in polythene bags or in brown paper, would be of no help to the Food Inspector to establish guilt of the petitioners for the above mentioned offence. There is a patent breach of Rule 14 of the PFA Rules in taking samples of the salt. If that be so, the conviction of the petitioners for the above mentioned offence on the basis of the report of Public Analyst would not be sustainable.

13. So far as the question in respect of consent is concerned, I do not find much substance in the contention raised by the learned Counsel for the petitioners since the consent order (Exh.69) is quite exhaustive, which *ex-facie* shows application of mind on the part of the Consenting Authority.

14. The Trial Court and the Appellate Court did not consider the basic flaw in taking samples on the part of the Food Inspector. Samples were taken in breach of the provisions of Rule 14 of the PFA Rules. Therefore,

conviction of the petitioners on the basis of the report of the Public Analyst would not be sustainable. The conviction of the petitioners for the above mentioned offence is liable to be quashed and set aside. The impugned judgments and orders, therefore, cannot be said to be legal, proper and correct. They are not sustainable. The Revision Applications will have to be allowed.

15. In the result, I pass the following order:-

ORDER

- (i) The Criminal Revision Applications are allowed.
- (ii) The impugned judgment and order, convicting the petitioners, are quashed and set aside.
- (iii) The petitioners are acquitted of the offence punishable under Section 16 of the P.F.A. Act read with Rule 50 of the PFA Rules.
- (iv) The bail bonds of the petitioners are cancelled. They are set at liberty.
- (v) The amount of fine deposited by the petitioners be refunded to them.

(vi) Rule is made absolute in the above terms.

(vii) The Revision Applications are disposed of accordingly.

[SANGITRAO S. PATIL]
JUDGE

npj/crirevn49-51-2004