

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.881 OF 2002**

The State of Maharashtra
(Through Food Inspector, Food
& Drug Admn., M.S. Satara)

... Appellant

Vs

1 Gajanan Pimpala Rajmane,
Age 55 years, the vendor of
M/s. Kirana Bhusar Shop,
situated at G.P.H.No.420,
A/p. Mardi, Tal: Man,
Dist: Satara

2 Ramchandra Gajanan Rajmane,
Age 25 years, the proprietor of
M/s. Kirana Bhusar Shop,
situated at G.P.H.No.420,
A/p. Mardi, Tal: Man,
Dist: Satara

... Respondents

...

Ms. Veera Shinde, the learned Additional Public Prosecutor for the
Appellant/State.

CORAM : SANDEEP K. SHINDE J.
DATE : 29TH OCTOBER, 2018

ORAL JUDGMENT :

The learned Judicial Magistrate, First Class, Dahiwadi,
Satara acquitted the accused of the offences punishable under
Sections 7(i) read with 2(ia)(a), 2(ia)(m) and under Section 16 of

the Prevention of Food Adulteration Act, 1954 vide judgment and order dated 8.2.2002. Against it, this Appeal has been preferred by the State under Section 378(1) of the Code of Criminal Procedure, 1973. The learned Trial Judge acquitted the accused on the following two grounds:

(1) Prosecution has failed to prove beyond reasonable doubt that the sample of food article, i.e., of “Tata Iodised Salt” was collected from the shop owned by the Accused No.2 in presence of independent witness in-as-much as P.W.2 had deposed that his signature was obtained on the blank paper;

(2) Mandate of provisions of Section 13(2) was not followed in-as-much as the report of the result of analysis was not forwarded to accused which defeats his valuable right to get the sample of article of food kept by the local (Health Authorities) analysed by Central Food Laboratory.

2 Heard the learned the learned Additional Public Prosecutor for the State. Perused evidence on record.

3 Admittedly, mandate of provisions of Section 13(2) has not been followed which is a valuable right available to the Accused to get the sample analyzed from Central Food Laboratory. In the case of **Rameshwar Dayal v. State of Uttar Pradesh 1995 Supp. (4) SCC 659**, it is held thus;

“.....The sample taken was found to be adulterated. On the record it appears that the report of the Public Analyst is not supplied to the accused as required under Section 13(2) of the Act. Consequently, he could not get his own sample examined by the Central Laboratory. It is a very valuable right given to him. Rules also provide that such a report should be supplied to the accused within a certain period. The question arose in a similar case where this rule is mandatory or directory. We need not launch into such a discussion in this case. We are satisfied that serious prejudice has been caused to the appellant because of non-supply of the Public Analyst's report as required under Section 13(2) of the Act. The High Court having noticed this, yet rejected the plea on the mere ground that such an objection was not raised before the trial court. It is not a question of an objection, but it is a question of prejudice. Such a point can be raised even at a later stage if material on record supports the same. In the result the conviction and sentence are set aside. The appeal is allowed accordingly.”

4 In view of this, I do not see any reason to interfere with the finding recorded by the learned Judge. Appeal stands dismissed.

(SANDEEP K. SHINDE, J.)