

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 897 OF 2002
WITH
CRIMINAL APPEAL NO. 16 OF 2003**

The State of Maharashtra
at the instance of Shri S. S. Salvankar
Food Inspector, Sangli Office of the
Assistant Commissioner, Food & Drug
Administration (M.S.), Sangli.

... Appellant
(Orig. Complainant)

Versus

- 1] Shri Hemant Laxman Pawar
(Vendor and Proprietor) of
Surbhi Enterprises "Shivgouri",
Maji Sainik Vasahat, Miraj,
District Sangli.
- 2] Shri Sudhakar Kalyanrao Patankar
(Supplier)
Prof. Of Suruchi Food Products
W-73, M.I.D.C.Kupwad, Sangli.

... Respondents
(Orig. Accused)

Mr. J. P. Yagnik, APP for Appellant in both the Appeals.
Mr. Vaibhav A. Sugdhare for Respondents in both the Appeals.

**CORAM : PRAKASH D. NAIK, J.
DATE : MARCH 9, 2018.**

P.C. :-

. Both the Appeals are preferred by the State challenging the
common Judgment and Order dated 20th February 2002 passed by the

Judicial Magistrate First Class, Miraj, District Sangli in Regular Criminal Case No. 68 of 1993 and Regular Criminal Case No. 69 of 1993, thereby acquitting the Respondents for the offence punishable under Section 16 of the Prevention of Food Adulteration Act, 1954.

2. The brief facts of the prosecution case are as follows :

The Complainant is serving as Food Inspector for Sangli District. He was authorized to launch the prosecution for and on behalf of State. On 17th August 1992 the Complainant along with panch witness paid visit to “Surbhi Enterprises” situated at Ex-servicemen Society, Miraj. The Accused No.1 was present at the said premises. He was looking after the business. The Complainant disclosed his identity and inspected the shop premises and demanded mango and lime pickle for analysis. The Complainant purchased 900 grams of mango pickle in oil and 500 grams of lime pickle from Accused No.1. The Complainant paid cost of both the pickles. He obtained receipt therefor. The notice was issued to the Accused and he was called upon to give the name of the supplier. Thereafter it was disclosed that the pickle was purchased from M/s Suruchi Food Products, M.I.D.C. Kupwad. The pickle was divided into three equal parts and put it in dry, clean and empty polythene bags. The bags were air-tighted by means of candle. Labels were affixed on each part. The signature of the vendor, panch witnesses were obtained. The Complainant thereafter sent

one part of sample to the Public Analyst in a sealed packet by hand delivery. The copy of Form – VI, specimen seal impression were also sent to Public Analyst separately. The remaining parts of the samples were provided to the Local Health Authority, Miraj. The Complainant had correspondence with the supplier “Suruchi Food Products”. Thereafter the report of the Public Analyst was received. It was reported that both the samples did not conform to the standards prescribed under the Prevention of Food Adulteration Rules. The papers were forwarded to the Joint Commissioner, Food and Drugs Administration for obtaining consent for launching the prosecution. On receipt of the consent, the complaint was launched.

3. The Accused were tried before the Court of learned Judicial Magistrate First Class, Miraj vide Regular Criminal Case No. 68 of 1993 and Regular Criminal Case No. 69 of 1993. Regular Criminal Case No. 68 of 1993 is in respect of food article viz – Mango pickle and Regular Criminal Case No. 69 of 1993 related to Lime pickle. Both the cases pertain to storing adulterated food articles. As two different food articles were taken for analysis and both were found to be adulterated, two separate cases were filed. The complaints were filed on 22nd March, 1993. The court took cognizance on the same day and issued summons to the Accused. The charge was framed on 6th June 2000 for the offences under Sections 7(i)

read with Section 2(ia) (a) and 2(ia) (m) punishable under Section 16 of the Prevention of Food Adulteration Act, 1954. The prosecution examined the Complainant – Shri Sharad Shantaram Salvankar as PW-1, Shri Satish Panditrao Kulkarni as PW-2 and Shri Madhav Anil Diwan as PW-3. The prosecution also placed on record several documents in support of its case. The witnesses were cross-examined by the defence. After recording the evidence of the witnesses, the statement of accused was recorded under Section 313 of the Code of Criminal Procedure. The learned Magistrate by common Judgment and Order dated 20th February 2002 acquitted the Accused of the offence for which they were charged. Two separate Appeals were filed challenging the order of acquittal.

4. The learned APP appearing for the Appellant-State has submitted that the trial court has committed an error in acquitting the Accused. There was sufficient evidence against the Accused. The charges levelled against the Accused were proved by way of oral and documentary evidence. The trial court has committed an error in holding that the Food Inspector has not obtained the sample of pickles in clean, washed and dry polythene bags. The documents pertaining to the case including Public Analyst Report were sent to the competent authority to accord sanction to prosecute the Accused. The authority accorded the sanction on the basis of the record. The Polythene bags used for taking samples were shown to the

Accused and panch witnesses and the labels as per Rule 15 pasted on the sample parts. The Polythene bags were sealed with wax. All the requisite procedure contemplated under the Act and Rules were complied with. It was thus submitted that the trial court ought not to have acquitted the Accused.

5. The learned Counsel Shri Sugdhare for the Respondents submitted that there is no reason to interfere in the order passed by the trial court. On the basis of the evidence before the Court in the form of testimony of witnesses and the documents, the trial court has acquitted the Accused by assigning cogent reason. The findings given by the trial court is a possible view which should not be substituted in the Appeal against an order of acquittal. The evidence of the prosecution witnesses suffers from serious infirmity which was taken into consideration by the trial court, and therefore, no interference is warranted in the impugned Judgment. The order of acquittal is supported by valid reasons reflected in the Judgment under challenge which does not call for interference by the Appellate Court.

6. I have gone through the documents on record. Perused the evidence of the witnesses and the reasons assigned by the trial court. The Accused were facing trial for the offence punishable under Sections 7(i) and 16 of the Prevention of Food Adulteration Act and Rules thereunder.

The prosecution has examined three witnesses. PW-1 is the Complainant, PW-2 is the Chief Officer of Miraj Municipal Council and PW-3 is panch witness. The panch witness was declared hostile. The trial court has given a finding that there was violation of mandatory provisions of the Prevention of Food Adulteration Act and Rules at the instance of Complainant while collecting, packing and dispatching the samples of the food articles in question. There was a breach of Rules 14, 17 and 18 of the said Act. The sample collection is defective and the same was not collected in container. While packing the samples, ends of the paper were not folded in and paper seal was not pasted on the bottle to the top which is the breach of Rule 16 (c) of the said Act.

7. The trial Court passed the Judgment in two cases viz – Regular Criminal Case No. 68 of 1993 and 69 of 1993. The Complainant was subjected to cross-examination. The line of attack at the instance of defence through cross-examination was relating to non-observance of Rules 14 to 18 pertaining to the procedure of taking sample till it was dispatched for analysis. The Complainant was confronted with Memorandum [Exh.42]. He admitted that the Memorandum is silent about having shown the polythene bags to the Accused and panch witnesses for assuring them that it is clean, dry and empty. The Complainant admitted that the Memorandum does not indicate that he had put up the wax seals on the

counter-part of the samples. The details on the label to be pasted as required by Rule 15 have also not been mentioned in the Memorandum. The folding of ends of brown paper inside, use of gum or other adhesive for pasting the slip does not find mention in the Memorandum. The Complainant also admitted to have not sealed the mouth of the polythene bags in which he took the sample and the Memorandum is also silent about the making of specimen seal impression in qua-duplicate. He deposed that panchanama is silent regarding details on a label pasted in accordance with Rule 15. The sample packet do not bear batch number, code number, or serial number. PW-2 has deposed that Exh.52 and 61 do not bear the endorsement indicating having forwarded the reports of Public Analyst to the Food Inspector. No inward register indicating the receipt of sample part is maintained at Miraj Office. The same is the case in respect of outgoing of sample part from office.

8. The panch witness (PW-3) did not support the prosecution. He only claimed to have remained present at the shop premises. PW-2 has admitted in the evidence that he has not initialed the documents received by him from the Complainant. The trial court after analyzing the evidence of the witnesses in paragraph 19 of the impugned Judgment has observed that in view of oral evidence of the Complainant and on perusal of the documents [from Exh. 39 to 51 and 53 to 60] it does not appear that the

Complainant had informed the Accused No.1 that he was taking samples for analysis. The trial court further observed that perusal of Memorandum [Exh.42] does not disclose that the Food Inspector had assured the Accused and the panch that the polythene bags in which the sample was put up were clean and dry. The counter-parts and its container have not been shown to have been closed and seals were put thereon. The folding of ends of brown paper inside, use of gum or other adhesive for pasting it also does not find mention in the Memorandum. Thus, the Memorandum does not disclose the compliance of Rules. The trial court, therefore, observed that the oral evidence of the complainant tantamount to improvement made by him before the Court as his version is not spelt out in the documents.

9. The Complainant in his evidence has admitted to have not sealed the polythene bags containing samples with wax which amounts to breach of Rule 14 of the Said Act. There was no compliance of Rule 17. The sealed container and the Memorandum in Form – VII was required to be sent in sealed packet to the Public Analyst which was not done in the present case. In the evidence of the complainant, it is also disclosed that he had put up the sealed sample packet along with Form – VII in one sealed packet and the same was sent to Public Analyst through messenger. The evidence, however, does not indicate the compliance of Rule 17 in letter and spirit. Although the Public Analyst Report disclosed that the samples

did not conform to the prescribed standards, the said report does not bear the date on which the samples were analyzed.

10. Rule 12(a) of the said Act mandate every manufacturer, dealer selling an article of food to vendor shall give either separately or in the bill or label or cash memo warranty in form VI-A. The bill was not in compliance with the said Rule. The evidence on record thus indicate that there is breach of Rules 14 and 17. The evidence of the Complainant reflects improvement. In the circumstances, it will have to be held that the view taken by the trial court is a possible view which does not warrant interference. Unless there is perversity in the Judgment of the trial court acquitting the Accused, there is no reason to disturb the impugned Judgment. On analyzing every aspects as stated above and the evidence on record, no case is made out to set aside the impugned Judgment of acquittal. Hence, I pass following order.

ORDER

Criminal Appeal Nos. 897 of 2002 and 16 of 2003 are dismissed.

PRAKASH D. NAIK, J.