

Rane

\* 1/6 \* APEAL-631-1999 (SR. 902)  
Tuesday, 6.2.2018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 631 OF 1999

The State of Maharashtra  
(through A.D. Pawar)  
Food Inspector, Food and  
Drug Administration (M.S.)  
8/1 Murarji Peth, Bhagat  
Chitranagar, Solapur

....Appellant

V/s.

Mallinath Shivappa Malge  
(Milk Vendor)  
R/o. 335, Muslim Paccha Peth,  
Solapur.

....Respondent

\* \* \* \* \*

Mr. Ajay Patil, APP for the State, appellant.

Mr. Sachin Deokar i/by. Mr. V.V. Purwant, Advocate for  
the respondent.

**CORAM :-**

**SANDEEP K. SHINDE, J.**

**DATE :-**

**6TH FEBRUARY, 2018.**

**JUDGMENT :-**

1. The State has preferred this Appeal against the  
judgment and order of acquittal dated 17<sup>th</sup> May, 1999

passed by the Judicial Magistrate First Class, Solapur in Regular Criminal Case No. 34 of 1990 whereby the accused were acquitted of the offences punishable under Section 7(i) read with Section 2(ia)(a) and 12(ia)(m) of the Prevention of Food Adulteration Act, 1954 and under Section 7(i) of the said Act read with Rule 50 of the Prevention of Food Adulteration Rules, 1955 and Rule 5 of the Maharashtra Prevention of Food Adulteration Rules, 1962 punishable under Section 16 of the Prevention of Food Adulteration Act, 1958.

2. The respondent who was a milk vendor was prosecuted for having found milk in his possession which was containing milk fats 5% and not in conformity with the standards of the cow milk as per Item no. A.11.01.11 of Appendix-B of the Prevention of Food Adulteration Rules, 1955.

3. The Learned Trial Judge, after appreciating the evidence, acquitted the accused having found that the consent under Section 20 of the said Act granted by the

Joint Commissioner, Food & Drug Administration, Pune Division and Maharashtra State was not a valid one. The second ground on which the order of acquittal was recorded is that, the Food Inspector (P.W.1 herein) was found carrying with him, four phials filled with milk before purchasing milk sample in question. The Learned trial Judge, therefore disbelieved the case of the prosecution and resultantly acquitted the accused.

4. That aggrieved by the said order of acquittal dated 17<sup>th</sup> May, 1999 passed in R.C.C. No. 134 of 1990, the State has preferred this Appeal.

5. Heard Learned Counsel for the appellant and Mr. Deokar, Advocate for the respondent. Perused the record and proceedings.

6. With the assistance of the Learned Counsel for the parties, I have perused the evidence of P.W.4, Vijaykumar Surwate who was a panch witness to the panchanama drawn by P.W.1. I have also perused the panchanama at Exhibit-16. The panchanama reads that,

P.W.1, Pawar after purchasing the milk from the accused divided the same into three parts and sealed it in three empty bottles/phials. As against this, the pancha witness, Mr. Surwate deposed that Pawar P.W.1 was carrying 3 to 4 bottles which were filled with the milk. The prosecution has not explained this inconsistency either by re-examining the said witness or by leading such reliable evidence to show that the process of collecting the samples from the accused was correctly followed as required under the said Act and Rules. Thus, in view of the evidence of P.W.4, it cannot be said that the prosecution has drawn the samples in dry, empty bottles and followed the required procedure as contemplated under the said Act and Rules. The Learned trial Judge, has therefore correctly appreciated the evidence and as such the view taken by the learned trial Court cannot be said to be unreasonable.

7. That, so far as, consent under Section 20 is concerned, I have gone through the consent which is at

Exhibit-32. It shows that, the Competent Authority had referred to the relevant case papers. However, it appears the prosecution has not elaborated or particularize which papers were placed before the said Authority. Be that as it may, the consent order, Exhibit-32 would reveal that the authority concerned had also gone through the report of the Public Analyst and as such it cannot be said that the consent order was invalid or improper.

8. I, therefore, do not agree with the findings recorded by the Learned trial Judge, that the consent was improper.

9. Thus, upon considering the entire evidence on record, the fact remains that the evidence of the panch witness, otherwise casts shadow of doubt on the process of collecting of 'sample of milk' which is foundational fact of prosecution case. The irregularity noticed by panch witness while collecting milk sample can not be overlooked and therefore the findings recorded by the Learned Judge, on this premise cannot be said to be

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unreasonable. In view of this fact, the Appeal fails and dismissed accordingly.

**(SANDEEP K. SHINDE, J)**