

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO. 15 /2018

(Amol s/o Rambhau Chaknalwar and others Vs. State of Maharashtra, through the
Food Inspector, Gadchiroli)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri Sachin Zoting, Advocate for Petitioners.
Shri N. Jawade, Addl.P.P. for Respondent.

CORAM: ROHIT B. DEO, J.

DATE: 16th MARCH, 2018.

The petitioners are challenging the order dated 20-4-2015 rendered by the Chief Judicial Magistrate, Gadchiroli in Criminal Case 143/2011, by and under which, the application seeking discharge is rejected and the confirming revisional order dated 06-10-2017 of the Sessions Court, Gadchiroli in Criminal Revision Application 15/2015.

2. The application seeking discharge is predicated on the premise that the result of the analysis by the public analysis and Central Food Laboratory, Mysore reveals that only a slight variation with the statutorily prescribed standards was detected in the sample of Ice Cream. The

submission, which has not found favour either with the learned Chief Judicial Magistrate or with the revisional Court is that since the analysis report does not disclose any foreign item in the sample of the Ice Cream, the prosecution would be an abuse of the process of law since the material on record is not sufficient to warrant a full fledged trial.

3. A judgment of this Court in Chandrkant Gulabchand Pardesi and another -v- State of Maharashtra and another, 2008 (4) Mh.L.J.(Cri.)345 was pressed into service before the courts below to buttress the submission that the petitioners deserve to be discharged.

4. The revisional Court has observed that unless the expert i.e. Public Analysis Examination is examined, it would not be appropriate to record a finding that the analysis of the sample discloses only a slight variation. This finding is unexceptionable. Firstly, a finding that the variation is slight can only be reached after the evidence is recorded and secondly, and more importantly, it cannot be

laid down as a general rule that if the variation is slight no offence under the provisions of the Food and Adulteration Act, 1954 or the rules framed thereunder, is made out. The significance of the slight variation would depend on the product and it is ultimately for the learned Trial Court to consider the significance of the variation and to record appropriate findings, after the evidence is adduced.

5. No case is made out to invoke writ jurisdiction.

6. The petition is sans merit and is rejected. Needless to say the observations in this judgment are made only in the context of the scope and ambit of Section 239 of Criminal Procedure Code and every submission and / or defence is left expressly open for the learned Judicial Magistrate First Class to consider and adjudicate.

JUDGE