

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

230 CRIMINAL REVISION APPLICATION NO. 169 OF 2005

The State of Maharashtra

... Applicant
(Org. Complainant)

Versus

Farukali Wahidali Shayed
Age: 30 Years, Occu: Business
R/o: Shirpur, District Dhule

... Respondent
(Orig. Accused)

...
Mr. P.K. Lakhotiya, APP for Applicant/State
Mr. B.R. Warma, Advocate for Sole/Respondent
...

**CORAM : V. K. JADHAV, J.
DATED : 18th JANUARY, 2019**

ORAL JUDGEMENT :-

1. Heard the learned APP for the applicant/State and the learned counsel Mr. B.R. Warma for the sole respondent/accused.

2. This is the Criminal Revision Application preferred by the applicant/State against the judgment and order passed by the 2nd Additional Sessions Judge, Dhule dated 24.09.2004 in Criminal Revision Application No. 37 of 2003. By order dated 20.02.2003 in RCC No. 104 of 2002, the Judicial Magistrate, First Class, Shripur has decided to frame the charge against the respondent/accused for the offences

punishable under Sections 7(i) read with Section 2(a) and Section 7(v) read with Rule -24 and 32 (C) (f) (&) (I) and Section 7 (ii) read with Section 2 (ix) of P.F.A. Act 1954 and under Section 16 (i) (a) (I) of the P.F.A. Act. Being aggrieved by the same, the respondent/accused has preferred Criminal Revision Application No. 37 of 2003 and the learned IInd Additional Sessions Judge, Dhule by impugned order allowed the said Criminal Application, set aside the order of framing of charge passed by the trial Court on 20.02.2003 and discharged the respondent/accused from the charges framed against him. Being aggrieved by the same, the State has preferred this Criminal Revision Application.

3. Firstly, this Criminal Revision Application against the judgment and order passed by the learned Additional Sessions Judge, Dhule in Criminal Revision Application No.37 of 2003 itself is not maintainable. Secondly, the learned Additional Sessions Judge has rightly considered the various aspects in this case. The Food Inspector has visited the cold drinks shop of the respondent/ original accused situated at Shirpur. The respondent/ original accused was present in the manufacturing unit. The Food Inspector has purchased nine bottles each containing 250 ml Masala Soda for Rs.45/- under the receipt. The Masala Soda was contained in the

glass bottle, which were in a sealed pack condition labelled as "Limca (R)" serves chilled 250 ml. Then Food Inspector gave the notice in Form No.14-A of the PFA Act. The sample was collected by dividing three sealed glass bottles into three parts each. They were sealed and sent to Public Analyst. The report of the P.A. was received disclosing that the synthetic colours, namely, Tartrazine, sunset yellow FCF and carmoisine detected. The PA has reported that the sample contravened Rule 24 of PFA Rules, 1955 because on the label, there is no mention about the extraneous addition of colour matter on the label. It is further reported that the sample contravened Rule 32 (c) (f) (i) of the P.F.A. Rules because month and year of the manufacture, complete address of the manufacturer and month and year in capital letter to which the product is best for consumption were not mentioned in the bottle as well as on the cork. The Joint Commissioner has given the sanction and after following the usual course, the complaint has been filed by the Food Inspector. The evidence before the charge has been led on behalf of the Food Inspector and accordingly, the learned trial Court has decided to frame the charge for the aforesaid offences.

4. On careful perusal of the judgment and order of the learned Additional Sessions Judge, I find that the learned Additional Sessions Judge has dealt with the matter by referring the relevant provisions of PFA Act. As per provisions of Section 11 (1) (b) of the PFA Act. When a Food Inspector takes a sample of food for analysis, in terms of clause (b) shall divide the sample into three parts and mark and seal or fasten up each part in such a manner as its nature permits and take the signature or thumb impression of the person from whom the sample has been taken. Admittedly, the Food Inspector has not collected the sample from the nine bottles by dividing the contents thereof in three parts, he has simply divided the bottles in three parts i.e. three each in one part and as such there is no compliance of Section 11 (1) (b) of the P.F.A. Act. The Food Inspector has committed illegality in collecting the samples. None of the nine bottles could be representative sample of each other regarding the contents.

5. Furthermore, in terms of Rule 14 of the P.F.A. Rules, sample of the food for the purpose of analysis shall be taken in clean, dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation or in the case of dry substance, entrance of

moisture and shall be carefully sealed. However, in the facts of the present case, there is no compliance of Rule-14 of the P.F.A. Rules.

6. It seems that, the Sanctioning Authority has not applied its mind to the facts and circumstances of the case. In the instant case, as rightly observed by the learned Additional Sessions Judge that there is no case that the samples were found adulterated. So far as the product Masala Soda is concerned, no rules have been set to prescribe standards of Masala Soda. Further, the report of the Public Analyst does not show that the sample was in any way found adulterated. In spite of these facts, the sanctioning authority has given sanction for prosecuting the respondent/original accused for the offence punishable under Section 7(i) read with Section 2(ia)(a). The consent order does not disclose as to why launching of prosecution against the offender is necessary in the public interest.

7. Further, the respondent/accused used Limca bottles as a measures. Even the Food Inspector has also admitted that the respondent/accused informed to him that he was a small Manufacturer and he used those bottles as measuring jar. It is thus clear that the Masala Soda was not sold in packed

bottles as alleged by the Food Inspector. If this is so, there is no question of contravention of Rule 24 of PFA Rules 1955 nor the contravention of Rule 32 (c)(f)(i) of PFA rules. There is no question of putting a label on the Limca Bottle about the extraneous addition of colour matter on the label and further the month and year of the manufacture, complete address of the manufacturer and month and year in capital letters to which the product is best for consumption. The learned Additional Sessions Judge has, therefore, rightly observed that the evidence on record if it goes un-rebutted would not warrant the conviction of respondent/accused of the offence with which he has been charged.

8. In view of the above discussion, I find no substance in this Criminal Revision Application. The Criminal Revision is liable to be dismissed. Hence, I proceed to pass the following order:

ORDER

(a) The Criminal Revision Application is hereby dismissed and accordingly disposed of.

(b) Rule discharged.

(V. K. JADHAV, J.)
