

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

CRIMINAL APPEAL NO.11 OF 2005

The State of Maharashtra)....Appellant
V/s.
Vasant Shankarrao Vibhute)....Respondent
(Org.Accused)

Mrs.Anamika Malhotra for appellant.
None for respondent.

**CORAM : K.R.SHRIRAM,J
DATE : 2.11.2020**

ORAL JUDGMENT:-

1. The judgment and order dated 16th September 2004 passed by Chief Judicial Magistrate, Kolhapur acquitting respondent of offence under section 2(ia) (a), 2(ia) (b), 2(ia)(c), 2(ia)(m), and rule 50 of Prevention of Food Adulteration Act, (PFA), is assailed by the State of Maharashtra in this appeal.

2. The complaint was originally filed on 19th October 1993 by Food Inspector, Kolhapur, Food and Drug Admn. Maharashtra State, Kolhapur, on the basis of allegedly adulterated samples gram flour (besan) collected from the shop of the accused on 6th February 1993. On 18th May 1998 order of discharge under Section 249 of Cr. P. C.

was passed by the trial court. The said order of discharge was challenged in revision and got set aside. The matter was remanded for re-trial on merits. The impugned order of acquittal was passed after trial.

3. The present appeal came to be admitted on 7th December 2005 and action under Section 390 of Cr. P. C. was ordered. Office remarks indicates that warrant of arrest executed and original accused is released on bail. Further, it also indicates that notice was duly served on respondent. Today none present for respondent.

Heard learned Additional Public Prosecutor Ms. Malhotra. With the assistance of APP considered the memo of appeal and records and proceedings.

4. Prosecution's case in brief is that on 6th February 1993 Food Inspector visited shop belonging to Vasant Shankarrao Vibhute, accused, and purchased 600 gm of gram flour. For the said purchase, bill was demanded and obtained. The sample taken was divided into three parts and necessary procedure was followed to send to the Public Analyst. Upon receipt of report from the Public Analyst, matter was placed before the Joint Commissioner, Pune, for according his sanction for prosecution. The Joint Commissioner, Pune, by exercising

power vested in him under Section 20 of PFA accorded his sanction on 6th October 1993 for prosecution under Section 7 (i) (iii) r/w Section 2 (ia), (a), 2(ia), (b), 2(ia) (c) and 2 (ia) (m) r/w Rule 50, punishable under Section 16 of PFA.

5. The respondent has been acquitted basically on two counts. Firstly, that date of examination of allegedly adulterated food is not mentioned by the public analyst in his report and; secondly, statement made by the officer on behalf of his predecessor who investigated into the matter, cannot form a best piece of evidence for conviction.

6. As regards the first count of the trial court for acquittal, the trial court relied upon and found support from two reported judgments, one of which is of this High Court in the ***State of Maharashtra vs. Radheshyam Gopikishan Mantri***¹ and the other is of Rajasthan High Court in the matter of ***Sohan vs. The State***². It is correct that without the date of examination in the report by the Public Analyst it becomes difficult for the Court to know as to when the articles of food were examined by him. That leaves room for the argument that by the time they were analysed the articles of food had undergone a change. The view taken by this Court in Radheshyam

¹[1982(2) Bom. C. R. 11]

² (AIR 1963 Raj. 17 (V 50 C 9)

Mantri (supra) is based on the decision of the Supreme Court reported in (1977 Food Adul. Journal, 39) where it was held that it is expected from the Public Analyst to give every significant detail and process adopted by him to arrive at his conclusions that the substance reported to him for examination is adulterated.

It is a matter of record that samples of gram flour were collected on 6th February 1993 and forwarded to Public Analyst on 8th February 1993 and received by him on same date. However, the report by Public Analyst was submitted on 15th March 1993. There is almost one month and seven days between submission of sample and report by Public Analyst.

7. The second count for acquittal is that the samples were collected by one officer who got transferred to an other place before sanction for prosecution is received from the Joint Commissioner, Pune Division. The official who had collected sample was not brought before the court as witness of prosecution. The successor in public office is not barred from giving evidence, but he cannot be termed as witness of fact. The Act contemplated the procedure for collection of samples and that has to be strictly adhere while collecting samples. The predecessor who collected the samples and prepared a report should have been brought before the court for examination as witness

of fact. The successor in public office may not be in position to depose about cleanness of bottles and other formalities which his predecessor had followed then.

8. Therefore, I hold that the judgment of the trial court is based on sound reasoning and does not warrant any interference.

Appeal dismissed.

Bail and bond furnished by the respondent stands cancelled.

Writ to that effect alongwith records and proceedings of trial court be forwarded to trial court within two weeks from today.

(K.R.SHRIRAM,J)