

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.32 OF 2004**

The State of Maharashtra)
(at the instance of Shri Suresh Vithal Joshi,)
Food Inspector, FDA Pune)Appellant/Complainant

V/s.

1. Ashishkumar Dineshkumar Patel,)
Proprietor of M/s. New Rajashiri Oil Depot,)
situated at Shop No.7, Shannkaranand)
Society, Pune – Satara Road, Near Ramond)
Show Room, Pune – 9.)Respondent/Accused

Mr. S.V. Gavand, APP for State – Appellant.
Ms. Spenta Havewala, Advocate appointed as Amicus Curiae.
None for respondent.

**CORAM : K.R.SHRIRAM, J.
DATE : 17th FEBRUARY 2020**

ORAL JUDGMENT :

1 This is an appeal filed by the State impugning an order and judgment dated 21st July 2003 passed by the Chief Judicial Magistrate, Pune, acquitting accused of charges under Section 7 (i) read with Section 2 (ia) (a), 2 (ia) (m) punishable under Section 16 (*Penalties*) of Prevention of Food Adulteration Act 1954 (PFA).

2 On 13th February 2020 since nobody was present in Court representing respondent, the Court appointed Ms. Spenta Havewala, an Advocate, as Amicus Curiae. Before I proceed with the case, I must express my appreciation for the assistance rendered and endeavour put forth by Ms. Spenta Havewala, learned Amicus Curiae, for it has been of immense value in rendering the judgment.

3 The learned Amicus submitted that the Court need not go into the facts of the case because it is settled law that the Food Inspector should take the samples in clean and dried containers or bottles. Ms. Havewala relied on a judgment of this Court in ***B.A. Samant V/s. The State of Maharashtra***¹ and submitted that the failure on the part of PW-1, the Food Inspector, to take samples in clean and dried bottles, which to his knowledge were clean and dried, would certainly affect the credibility of prosecution's case. Ms. Havewala pointed out that in his cross examination, PW-1, the Food Inspector, has admitted that he did not clean the sample bottles on spot. Ms. Havewala pointed out that though PW-1 says that on the previous day he verified that the sample bottles were clean and dried, also admits that his deposition that he verified the sample bottles was for the first time in his examination in chief. PW-2, who is the panch witness, says on 24th November 2000, Food Inspector Joshi did not call him and told him to sign on some papers. PW-2 also says that the bottles were not cleaned in his presence and there were 2-3 seals on each sample bottle. Paragraphs 20 to 23 of *B.A. Samant (supra)* read as under :

20. In my judgment the contentions raised by Mr. Peerbhoy on behalf of the accused must be upheld in the present case, because, in the first place, there is no evidence to show that the Food Inspector complied with the provisions of Section 10(7) by taking independent witnesses for the purpose of entering, inspecting and taking sample from the shop of the accused. It was only after the bottles were filled in and the labels were put that witness Gopinath was made to sign on them. Secondly, the Food Inspector himself has not cared to state in his evidence that he had taken the samples in clean and dry bottles as required by Rule 14 of the Prevention of Food Adulteration Rules. It is true that breaches in the performance

1. 1968 SCC Online Bom 115

of his duties under Section 10(7) and Rule 14 may not necessarily result in vitiating the trial. But they certainly affect his credibility. A Food Inspector, who does not care to follow strictly the mandatory provisions of the Prevention of Food Adulteration Act, 1954 and the rules with which he is vitally concerned cannot be assumed to have much regard for truth even supposing that he may be truthful, I think, the rule of prudence requires the Court to insist on some corroboration to his evidence. In the present case, as stated above, the Food Inspector did not even care to examine the witness who had accompanied him. It may be argued that it is not necessary for him to examine the witness who accompanied him. Whenever his evidence is challenged or is liable to be challenged, it is desirable that the witness who accompanied the Food Inspector should be examined, so that the evidence of the witness will lend assurance and corroboration to the evidence given by the Food Inspector. It is necessary to guard against baseless allegation which might be made by the accused against him particularly because the Food Inspectors are likely to forget one or the other of the provisions laid down under the Prevention of Food Adulteration Act and the rules made thereunder, with regard to the manner in which the samples have to be taken and forwarded for analysis.

21. In the present case, however, witness Gopinath has been examined by the defence and he has stated emphatically that he did not see the empty bottles at all. The argument of Mr. Rege that no such case was put to the Foods Inspector by the accused is of no avail because the accused in this case was unrepresented and the Food Inspector himself did not state in his evidence that he had used clean and dry bottles as required by Rule 14; and, therefore, it was not necessary to ask him in his cross-examination anything about it. I have already referred to above, as to how the statement of the accused under Section 342 of the Criminal Procedure Code has been recorded in this case. If the accused has not specifically stated that the bottles were not clean and dry when they were filled in with the milk supplied by the accused, it cannot be said to be a ground, which debars him from arguing, on the facts and the circumstances of the case, that unless the compliance with the provisions of Rule 14 is strictly proved, the benefit of doubt which must arise in the present case as a result of the evidence of Gopinath (D.W.1) should be given to him.

22. Further a grave doubt arises with regard to the contents of the two samples which were analysed in this case because of the striking discrepancy between the analysis by the Public Analyst and the one by the Director of Central Food Laboratory, with regard to the water contents of the two bottles. So far as milk fat is concerned, the difference is only of 0.1 per cent, in the report of the Public Analyst and the one given by the Director of Central Food Laboratory. With regard to the milk solids other than milk fat the difference is 0.3 per cent. These differences can be considered to be negligible. But it is difficult to understand how there could be one bottle with 21 per cent of water and the other with 17 per cent. The main question in

this case is whether the accused can be convicted merely relying on the evidence of the Food Inspector and the report of the Director of Central Food Laboratory for holding that the accused sold adulterated milk. In view of the fact that the Food Inspector did not lead any evidence with regard to the following of the procedure under Rule 14 and did not try to explain how this difference in the two reports was caused, it will be difficult to convict the accused relying on the evidence of the Food Inspector alone.

23. Further, a doubt is created in accepting his evidence because of the statement of the defence witness, Gopinath, who stated that he did not see the empty bottles. As I have stated above, the offences under Section 16 of the Prevention of Food Adulteration Act are grave ones and before an accused person can be convicted the Court must be satisfied beyond any reasonable doubt that the accused sold the adulterated article of food. In the present case a grave doubt arises with regard to the way in which the samples were taken by the Food Inspector and if it is not satisfactorily established that the sample that was taken was in a clean and dry bottle, it would be reasonable to doubt whether the sample that was sent to the Director of Central Food Laboratory was the article of food which the accused sold or the article, which was mixed with some water which was already there in the container used. This is not to suggest that the water in the bottle might have been deliberately put in, but it is quite possible that while cleaning those bottles some water remained in them and Rule 14 which required that the bottles should be clean and dry was not complied with. Therefore, in the absence of any reliable evidence on this point led by the prosecution, the prosecution case must fail.

4 Ms. Havewala submits that Rule 14 of PFA Rules 1955 prescribes the manner of sending samples for analysis. Ms. Havewala submitted that samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers and in this case, as per the evidence, there is a breach of Rule 14.

5 In ***State of Maharashtra V/s. Vilas Madhavrao Tundulwar***² the Court has held that the provisions under Rule 14 of PFA Rules 1955 are mandatory and the non compliance of the said rule will vitiate the

2. 2018 ALL MR (Cri) 2100

prosecution. Paragraphs 10 to 12 of the said judgment read as under :

10. On the ground of breach of Rule 14 of the Rules, 1955, Mr. V.A. Laghate the learned Counsel for the respondent, invited my attention to the Rule 14 of the Rules, 1955, which reads as under :

*“14. **Manner of sending samples for analysis** – Samples of 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.”*

11. In this regard, according to the complainant the sample bottles in which the sample was taken were not cleaned on the spot before the panchas and the accused. It is to be noted that the panchanama does not speak of the fact that the bottle was cleaned. Moreover, after filling the oil in the bottle and cleaning it by lid, the mouth of the bottle was not sealed. The panchanama (Exhibit-40) indicates that the sample of groundnut oil which was purchased was divided into three equal parts and poured in a clean, empty and dry bottle and lid was affixed to it tightly thereafter the label was pasted by means of gum. Significantly, the panchanama is silent on the aspect of sealing. According to the complainant after purchasing the groundnut oil, the samples were divided in three equal parts and they were put in three cleaned, dry and empty bottles. Thereafter, the cork of each bottle was sealed and each bottle was labelled. The ends of the wrapper were folded and pasted. However, the bare testimony of the complainant on this aspect cannot be relied upon and it is missing in panchanama (Exhibit-40).

12. This Court in case of Bhojimal Dhanumal Kundal and another V/s. Shirpur Warwade Municipal Council, Shirpur and another, reported in 1986 Cri.L.J. 931 held that, the provisions under Rule 14 of Rules, 1955 are mandatory and the non compliance of the said Rule will vitiate the prosecution.

6 The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka***³

in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal.

Paragraph 42 reads as under :

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reapprciate and

3. (2007) 4 SCC 415

reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

7 There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, accused having secured acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting accused, the Trial Court observed that the prosecution had failed to prove its case.

8 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with. I cannot find any fault with

the judgment of the Trial Court.

9 Appeal dismissed.

(K.R. SHRIRAM, J.)