

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.1564 OF 2003**

The State of Maharashtra )  
(at the instance of Shri A.G. Patil, Food )  
Inspector, Raigad) ) ....Appellant/Complainant  
V/s.

1. Shri Kiran Bhagwandas Shah, )  
Adult, Occ.: Business, )  
Vendor and Nominee of M/s. Shah )  
Bhagwandas Shamji and Sons, Bazarpeth, )  
Alibag, District – Raigad )  
2. M/s. Shah Bhagwandas Shamji and Sons, )  
Alibag, Bazarpeth Alibag, Tal. Alibag, )  
District – Raigad )  
3. Shri Hasmukh Ganpat Barot, )  
Adult, Occ.: Business, )  
Nominee of M/s. Kenia Trading Company, )  
220, Narshi Natha Street, Bombay – 400 009. )  
4. M/s. Kenia Trading Company, )  
220, Narshi Natha Street, Bombay – 400 009. ) .....Respondents/Accused

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Ms. Pallavi Dabholkar, APP for State – Appellant.  
Mr. Gaurav Parkar for respondent nos.1 and 2.

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**CORAM : K.R.SHRIRAM, J.  
DATE : 26<sup>th</sup> FEBRUARY 2020**

**ORAL JUDGMENT :**

1 This is an appeal impugning an order and judgment dated 25<sup>th</sup> June 2003 passed by the Chief Judicial Magistrate, Raigad-Alibag, acquitting the respondents (the accused) of offences under Section 7 (i) read with Section 2 (ia) (a), 2 (ia) (m) punishable under Section 16 (*Penalties*) and Section 17 of Prevention of Food Adulteration Act 1954 (PFA).

2 It is prosecution's case that complainant – Arun Ganpat Patil (PW-1) on 30<sup>th</sup> January 1996 at about 3.30 p.m. went alongwith panch

witness (PW-2) to the premises of M/s. Shah Bhagwandas Shamji and Sons at Alibag. At that time, accused no.1 was present in the shop. PW-1 demanded and purchased 450 gms. of groundnut oil from a packed tin labelled as tiger brand and M/s. Kenia Trading Company was shown as the manufacturer. The price was paid and after obtaining receipt, complainant gave intimation in form VI to accused no.1. Notice under Section 14-A of PFA also was given. Accused no.1 then disclosed that he has purchased groundnut oil from accused no.4. The sample was divided by PW-1 in three equal parts and each part was then kept in clean and dry bottle. Samples were sent for analysis and the Public Analyst stated that the sample received by them does not conform to the standards prescribed under PFA Rules.

3                Prosecution after obtaining sanction under Section 20 of PFA, filed the complaint. After investigation, chargesheets were filed and the accused pleaded not guilty to the charges framed and claimed to be tried. Prosecution to prove its case, led evidence of three witnesses, viz., Amrut Ganpat Patil, complainant as PW-1; Lalusing Sohanji Purohit, panch witness as PW-2, who was declared hostile; and Shriniwas Pandurang Kulkarni, Senior Clerk in the office of Assistant Commissioner, FDA, Raigad as PW-3.

4                One of the grounds on which the acquittal order was passed is that the sanction, which was mandatory under Section 20 of PFA, could not be proved. The person, who had signed the sanction order, had died by the time the matter came up for trial. Prosecution could have certainly produced

his successor or somebody else from the authority's office to prove the sanction order, which has not been done.

5                Secondly, the panch witness (PW-2) has turned hostile. PW-2 says though he signed the panchnama, he does not know its contents. PW-2, in his cross examination, says it is not true to say that PW-1 had taken sample in his presence or purchased oil and paid its price.

6                PW-1 does not say that he was personally certain or satisfied that the bottles, in which he put the samples, were clean. Moreover, the report of Public Analyst, which is at Exhibit 47, does not state why the sample did not meet the standards of groundnut oil as per PFA Rules. It simply says "the sample does not conform to the standards" but what is the standard required to be met, has not been mentioned. The report of Public Analyst, therefore, is rather vague. Infact the test for rancidity and other tests are all given as negative.

7                On the issue of sanction, the Apex Court in ***State of Maharashtra V/s. Mahesh Jain***<sup>1</sup> has referred to ***Mohd. Iqbal Ahmed V/s. State of Andhra Pradesh***<sup>2</sup> where the Apex Court held "it is well settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void, *ab initio*. The Apex Court in ***Nanjappa V/s. State of Karanataka***<sup>3</sup> held that Section 19 of PC Act which provides that no Court shall take cognizance of an offence

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1. (2013) 8 SCC 119

2. (1979) 4 SCC 172

3. (2015) 14 Supreme Court Cases 186

punishable under Sections 7, 11, 13 and 15, alleged to have been committed by a public servant, without the sanction which was couched in mandatory terms and acts as complete bar to prosecution without previous sanction. In the absence of valid sanction the Court is not competent to take the cognizance of the case and the trial itself will be void-ab-initio. Therefore, the trial based on invalid sanction is null and void and there is no bar on prosecution after obtaining fresh sanction, can pray for re-trial. If the sanction itself is invalid, the Trial Court cannot come to the conclusion of acquitting or convicting accused, as it was not competent to take cognizance of the alleged offence. With an invalid sanction, the trial itself will be nonest in the eyes of law. In that case, the Trial Court must discharge accused and parties may be relegated to a position where prosecution can be initiated after obtaining sanction afresh from the competent authority.

8            In a case under the PC Act, where there was no previous sanction, a Single Judge of this Court in ***Laxman through the legal heirs and another V/s. State of Maharashtra***<sup>4</sup> relying upon *Nanjappa (Supra)* observed in that case that time of 20 years had lapsed as the incident happened in March 1999 and concluded that no purpose could be achieved by directing a fresh trial.

9            In the case at hand, the incident happened on 30<sup>th</sup> January 1996. The case was received by the Trial Court on 26<sup>th</sup> September 1996 and

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4. 2019 SCC Online Bom 1020

was registered on the same day. It was decided on 25<sup>th</sup> June 2003, duration being 6 years, 8 months and 29 days. The appeal has been lodged in this Court on or about 29<sup>th</sup> December 2003 and was admitted on 6<sup>th</sup> July 2004.

Should I set aside the order and permit the launch of fresh prosecution against accused at this distinct point of time, is what we have to consider next. In my view, putting the clock back at the stage when the prosecution witnesses themselves may not be available, would serve no purpose. That apart, the Trial Court had, even upon appreciation of the evidence, although it was not required to do so, had held that the prosecution has failed and acquitted accused.

10            In the circumstances, appeal dismissed.

**(K.R. SHRIRAM, J.)**