

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.146 OF 2004

The State of Maharashtra]
(Through Food Inspector,]
F.D.A., State of Maharashtra]..Appellant
(Org. Complainant)

Vs.

1. Ankush Pandurang Bawalekar]
2. Mahadeo Pandurang Bawalekar]
Both r/o. Mahadeo Baug,]
Survey No.4, Ling Mala]
Mahabaleshwar, Dist. Satara]..Respondents

Mr.R.M. Pethe, APP for the Appellant-State.

Mr.Ganesh K. Gole a/w Mr.Ritesh Ratnam and mr.Viraj Shelatkar
for Respondent Nos.1 and 2.

CORAM : C.V. BHADANG, J.

DATE : 7 DECEMBER 2021

JUDGMENT :

. By this appeal, the Appellant-State, is challenging the acquittal of the Respondents from the offence punishable under Section 7(1) read with 2(ia)(a), 2(ia)(m) of the Prevention of Food Adulteration Act, 1954.

2. The prosecution case may be briefly stated thus :

The Respondent No.2 (Accused No.2) Mahadeo Pandurang Bawalekar is the Proprietor of *Mahadeobaug Strawberry Garden* which was being run at Lingmala Mahabaleshwar. The Respondent No.1 Ankush Pandurang Bawalekar (Since deceased) was vendor working in the said garden restaurant. On 9 May 1996 at about 5.00 p.m., the complainant Raosaheb Patil, PW-1 from the Food and Drug Administration Department, had visited the shop of the respondents and had purchased 900 grams mango ice-cream from out of the 2 kgs stored in the deep freezer in the said shop. The complainant also claims to have purchased a sample of strawberry ice-cream, however, the present prosecution is only in respect of the sample obtained from the mango ice-cream. The samples were purchased for an amount of Rs.80/- for which a bill was issued by the respondent No.1. According to the complainant the ice-cream was not bearing any label. The sample was collected in the presence of panch PW-3. PW-1 issued a notice in form No.VI (Exhibit-43). The sample was divided into three equal parts which were collected in dry and empty glass bottles. The complainant added 36 drops of formalin i.e. 40% aqueous solution of formaldehyde as preservative in each of the bottles. The bottles were accordingly sealed in the presence of the panchas and the panchnamma Exhibit-46 was drawn. A copy of the panchnamma

was given to the respondent No.1. One of the samples was sent to the public analyst at Pune along with Form No.VII by hand by Shri.A.B. Mane, who was the sampling assistant. The remaining two samples along with copies of Form-VII were sent to Local Health Authority (LHA), Satara by hand delivery through Mr.V.K. Waghmare. The report of the public analysis dated 15 June 1996 (Exhibit-54) was received through LHA on 28 June 1996 which showed the following ingredients in the ice-cream.

Total Solids	Milk fat	Proteins
% by wt.	%	% by wt
30.0	4.1	2.9

3. According to the prosecution the sample was not confirming to the standard of ice-cream as per item No.A.11.02.08 in Appendix 'B' of Prevention of Food and Adulteration Rules, 1955. The complainant after obtaining permission under Section 20 of the Act from the competent authority filed a complaint against the respondents on 17 January 1997.

4. The learned Judicial Magistrate First Class at Mahabaleshwar, explained particulars of the offence to the respondents to which they pleaded not guilty and claimed to be tried. The defence of the respondents was of total denial and false implication. It was contended that the samples were not collected as per rules.

5. At the trial, the prosecution examined three witnesses namely Raosaheb Bhau Patil, PW-1, Janardhan Vitthal Shinde, PW-2 and the panch Dattatray Dhondiba Doiphode, PW-3 and produced the record of the investigation. PW 3 had turned hostile and did not support the prosecution. The respondent did not lead any evidence in defence.

6. The learned Magistrate by the impugned judgment and order dated 18 July 2003 in SCC No.2 of 1997 has acquitted the respondents. Hence this appeal.

7. I have heard learned Additional Public Prosecutor for the appellant and learned counsel for the Respondent No.2. The respondent No.1 is reported to be dead and the appeal finally abated against him. With the assistance of the learned counsel for the parties I have gone through the record.

8. It is submitted by the learned Additional Public Prosecutor that the sample is shown to be collected as per rules. It is submitted that merely because 900 grams of ice-cream was first collected in a steel container and kept in sunlight for melting to ensure homogeneity will not show that there was any breach of the rules for collecting samples. It is submitted that out of a 2 kilo gram

ice-cream kept in deep freezer, 900 grams was purchased which is substantial quantity. He therefore, submitted that it cannot be said that the sample did not sufficiently represent the ice-cream which according to the prosecution was found to be not confirming to the required standards as per item A.11.02.08 of not Appendix-B of the 1955 Rules. It is submitted that the ice-cream contained a greater percentage of fats and lesser percentage of proteins, than what is prescribed. It is submitted that the notice as required by the Rules was served on the respondents and they failed to exercise their option to send one of the samples for analysis to Calcutta. He therefore, submitted that the learned Magistrate was in error in acquitting the respondents, by taking a hyper technical view of the relevant provisions of the Act and the Rules framed thereunder.

9. The learned counsel for the respondent No.2 pointed out that the respondent No.1 who was present in the shop and who is referred to as a vendor has expired on 18 November 2017. It is submitted that the respondent No.2 has not been served with any notice under section 14 read with relevant provisions of the Rule. The learned counsel pointed out the postal acknowledgments which bear the signature of the respondent No.1 who is dead. It is submitted that the provisions regarding the collection of the sample have to be strictly complied with as they have an object to be achieved that is to ensure that the sample is not contaminated and

property represents the food article from which the sample is taken. It is submitted that the learned Magistrate after considering the evidence in the context of the relevant provisions, has rightly found that the complainant had failed to comply with the provisions and therefore the finding of acquittal in the submission of the learned counsel does not require interference. The Additional Public Proprietor has placed reliance on the decision of this Court in case of *The State of Maharashtra V/s. Gopal amrut Wankhede*¹

10. The learned counsel for the respondent has placed reliance on the decision of this Court in *Bhojumaal Dhanumal Kundal and Ors Vs Shirpur Warwade Municipal Council, Shirpur and Ors.*² and in *Santosh S/o Dattatreya Mamidwar V/s. The State of Maharashtra*³.

11. I have carefully considered the rival circumstances and the submissions made. This prosecution arises under the Prevention of Food Adulteration Act, 1954 and the Rules of 1955 framed thereunder.

12. The specific violation and breach found is that the sample was not confirming to the requirements of entry A.11.02.08

¹ 1989 SCC Online Bom 83

² MANU/MH/0029/1984

³ Criminal Revision Application No.25 of 2015 decided on 22.01.2019 (Nagpur Bench)

of Appendix-B to the 1955 Rules. The said entry pertains to milk ice or milk lolly. It says that the food item shall confirm to the microbiological requirements prescribed in Appendix-D and shall confirm to the following requirements.

- (1) Total Solids (m/m) Not less than 20.0 percent
- (2) Milk Fat (m/m) Not more than 2.0 percent
- (3) Milk Protein (N x 6.38) Not less than 3.5 percent

13. The report of the public analyst discloses that the sample was found containing the following ingredients on analysis.

Total Solids	Milk fat	Proteins
% by wt.	%	% by wt
30.0	4.1	2.9

14. It can thus be seen that insofar as total solids are concerned, the sample satisfied the requirement of not being less than 20%. The only variance is in the matter of the contents as to milk fats and proteins. The milk fat is on a higher side i.e. 4.1% while the proteins are on a lower side i.e. 2.9%. In other words the sample was not found to contain any adulterated, or unwholesome substance, which may be directly injurious to health. However, the fact remains that there was a certain variance found insofar as the contents as to fats and proteins are concerned.

15. The learned Magistrate has considered the prosecution evidence and has found that there was no proper compliance of Rule 14 of the 1955 Rules. Rule 14 pertains to the manner of contacting and sending samples for analysis, which have been held to be mandatory by this Court in the case of *Bhojumaal Dhanumal Kundal and Ors (Supra)* and in the case of *Santosh S/o Dattatreya Mamidwar*. This court has found that the provisions of the Rules, 1955 are mandatory in nature. It is necessary to note that the relevant provisions about the manner in which the sample is to be collected and sealed and sent to the public analysis aim at ensuring that there is no contamination of the sample and the sample represents the concerned food article from which the said sample is obtained.

16. Apart from the said aspect I also find that the option given to the accused under Section 13(2) to get the sample analysed from the Central Food laboratory at Calcutta, although is shown to be sent to both the respondents the acknowledgments at Exhibit Nos.68 and 69 are both signed by Respondent No.1, Ankush Bawalekar who is the vendor, who has since expired. Thus prosecution has not shown the service of the said option on the respondent No.2. It is necessary to note that the said aspect is also of some significance.

17. In the case of *Gopal Amrut Wankhede (Supra)*. The learned Chief Judicial Magistrate had acquitted the accused No.2 on the ground that the procedure relating to taking of the sample was not properly followed and secondly the public analyst has not given any details of his qualifications and therefore the report was not acceptable. The Division Bench on facts, found that the report of the Public Analyst clearly shows that the sample which was forwarded was not in accordance with the standard prescribed for the groundnut oil under the act and the Rules framed thereunder. This Court noticed that the Analyst had conducted 'helphen test', finding the presence of cotton seed oil in the sample and thus it was not in accordance with the quality as prescribed in the relevant entry of Appendix-B. In my considered view, the case clearly turned on its own facts.

18. I have carefully gone through the impugned judgment and I do not find that it deserves interference in an appeal against acquittal. It is now well settled that this Court is justified in interfering with the finding of the acquittal only where such finding is either shown to be perverse or the view taken by the Trial Court, is an impossible view and not otherwise (See the decision of the Supreme Court in *Chandrappa & Ors v/s. State of Karnataka*⁴).

4 (2007) 4 SCC 415

Applying these principles, no case for interference is made out. The appeal is without any merit and is accordingly dismissed.

C.V. BHADANG, J.