

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

CRIMINAL APPEAL NO. 1345 OF 2006

The State of Maharashtra	..Appellant
V/s.	
Eknath Bapusaheb Raijadhav	..Respondent

Mr. S.R. Agarkar, APP for the Appellant/State.
None for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 29 OCTOBER 2021

JUDGMENT

1. By this Appeal, the State is challenging the Judgment and Order dated 11.10.2004 passed by the learned Chief Judicial Magistrate, Kolhapur in Regular Crime Case No. 326 of 2002 (old Reg. Crime Case No. 72 of 1994). By the impugned Judgment, the learned Chief Judicial Magistrate has acquitted the Respondent from the offence under the Prevention of Food Alteration Act, 1954.

2. The prosecution case is that the complainant A.S. Kulkarni, who was at the relevant time working as a Food Inspector along with staff and panchas had visited M/s. Vikas Ice Cream and Cold Drink Factory run by the Respondent at about 3.00 pm of

20.10.1993. According to the complainant, he inspected the premises and obtained 600 grams of ice-candy from the establishment of the Respondent and the said ice-candy was melted in a pot which was cleaned and dried. It was then divided into three parts which were sealed and one of the parts was sent to the Public Analyst and other to the Local Health Authority on 21.10.1993. According to the complainant, the Respondent refused to accept the price of the ice-candy or to issue a receipt/invoice and also refused to sign the panchanama and the copy of the Form VI under Section 14-A of the said Act. The Public Analyst by his report dated 12.11.1993 found that the sample was containing Saccharine and dulcin which are prohibited under the said Act and the Rules thereunder. According to the complainant, substance dulcin is carcinogenic in character. The complainant then sent a proposal to the Joint Commissioner (Pune Division) Food and Drugs Administration, Maharashtra State for obtaining consent under Section 20 of the said Act. The Joint Commissioner accorded the consent on 16.08.1994 after which the complaint came to be filed against the Respondent under the relevant Section before the learned Chief Judicial Magistrate at Kolhapur.

3. The learned Chief Judicial Magistrate framed charge for the offence punishable under Section 7(i) read with Section 2(ia) (a), 2(ia) (b), 2(ia)(c) and 2(ia) (m) and Section 7(v) read with

Rule 47 of the Rules to which the Appellant pleaded not guilty and claimed to be tried. According to the Appellant, he was not present in his factory at the time of visit of the complainant and the sample was not taken from his factory.

4. At the trial the prosecution examined PW-1 Arun Kulkarni PW-2 Salauddin Momin, PW-3 Harun Pathan. The Respondent did not lead any evidence in defence.

5. The learned Chief Judicial Magistrate has found that the complainant had contravened Rule 16(b) & (c) and Section 11 (1) (c) of the Act as the samples were not shown to be taken and sealed as per Rules. The learned Chief Judicial Magistrate also found that the report of the Public Analyst has not been satisfactory proved by examination of the Public Analyst. The learned Chief Judicial Magistrate also found that the report dated 12.11.1993 of the Public Analyst does not show as to the date of which the sample was analysed. For all these reasons, the learned Chief Judicial Magistrate found that the prosecution had failed to establish the charge, beyond reasonable doubt.

6. I have heard the learned APP. None appears for the Respondent. With the assistance of the learned APP, I have gone through the record.

7. It is submitted by the learned APP that the Respondent in his statement under Section 313 of the Cr.P.C. has not stated about his absence in the factory when the samples were taken. It is submitted that the Respondent failed to issue a receipt/invoice and also refused to sign the panchanama and notice under Form VI. The learned APP pointed out that the complainant subsequently sent Rs.25/- by money order towards the price of the sample which was also not accepted by the Respondent/accused. It is submitted that the Respondent cannot take benefit of his failure/refusal to issue the receipt and to sign the relevant documents. It is submitted that notwithstanding the fact that the panch witness PW-3 has turned hostile, the charge is proved on the basis of the evidence of the complainant PW-1.

8. I have considered the circumstances and the submissions made. The learned Chief Judicial Magistrate has referred to the relevant portion of the Act and the Rules and more particularly to Rule Nos. 14 and 16 which require the sample to be obtained and sealed in a specific manner. The Rules aim at obtaining the sample without possibility of contamination or adulteration at the subsequent stage. The learned Chief Judicial Magistrate has found on the basis of the evidence of the complainant that there was a breach of the provisions of Section 11 read with Rule 14 and 16 under the said Act. In this case, PW-3 failed to support the prosecution. That apart what is significant is that neither

there is any receipt/invoice about purchase of 600 grm of the ice-candy nor the panchnama or Form VI bears the signature of the Respondent. According to the Respondent, he was not present when the complainant had visited his establishment. In the statement under Section 313, he has denied the entire charge as being false. The Respondent had sent a reply dated 28.10.1993 (Exh.36) to the Assistant Commissioner informing that the visit was made behind his back. He has denied that the ice-candy and the powder was seized from his establishment. Be that as it may, in my considered view, two possibilities arise. First the Respondent having refused to issue a receipt, to sign panchnama and to acknowledge the copy of the notice Form VI. Equally there is a second possibility that the Respondent was not present and therefore, in all probability neither there is a receipt nor the spot panchnama bears the signature and Form No. VI bears the acknowledgment of the Appellant. The factum of the adulterated substance being obtained/seized from the establishment would go to the root of the matter. Considering the over all circumstances, in my considered view the Respondent is entitled to benefit of doubt. Thus, no case for interference is made out in view of the scope of an appeal against acquittal. It is now well settled that the appellate court is justified in interfering in such cases only where the finding recorded by the Trial Court is found to be perverse or is an impossible view. (see the decision of the

Supreme Court in *Chandrappa and Ors. V/s. State of Karnataka*¹).

9. In the result, the Criminal Appeal is hereby dismissed.

(C.V. BHADANG, J.)

This judgment is corrected as per speaking to the minutes of the order dated 23/11/2021.

1 (2007) 4 Supreme Court Cases 415