

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

CRIMINAL APPEAL NO.164 OF 2002

State At the instance of
Rajendra Shankar Bhatkar,
Food Inspector, Food and
Drug Administration,
Maharashtra State,
'Raghukul' 852/8, B ward,
Subhash Road,
Kolhapur.

... Appellant.
(Orig.Complainant)

Versus

1. Sadashiv Ningappa Malgar,
Vendor and person in-charge,
of toddy shop, situated at
Birdev Chowk, A/p. Peth Vadgaon,
Tal.Hatkanangle, Dist.Kolhapur.

2. Narayan Bhimappa Iligar,
Proprietor of toddy shop, situated at
Birdev Chowk, A/p. Peth Vadgaon,
Tal.Hatkanangle, Dist.Kolhapur.
(Appeal stands abated against respondent
no.2 as per Court's order dated
28.11.2011)

.... Respondents.

Mr AA Palkar, APP for the State-
Ms Trupti Khamkar, Advocate for Respondent.

...

Coram : R.N.Laddha,J.

Date : 7 September 2023.

....

Judgment :

Heard Mr A.A.Palkar, learned Additional Public Prosecutor for the appellant State and Ms Trupti Khamkar for the first respondent. The second respondent passed away while the appeal was pending, and as a result, the appeal against him was abated by an order dated 28.11.2011.

2. The Government of Maharashtra has filed this appeal to challenge the Judgment dated 07.07.2001 passed by the Judicial Magistrate, First Class, Peth Vadgaon. The Judgment acquitted both accused (respondents herein) of offences under Sections 7(i) read with 2(ia)(a), to (ia)(h), punishable under Sections 16(1)(a)(ii) and 16(1-A) (I) of the Prevention of Food Adulteration Act, 1954.

3. The complainant, Rajendra Shankar Bhatkar, was working as a Food Inspector in Kolhapur district. Accused No.1 was a vendor, and accused No.2 owned a toddy shop in Peth Vadgaon, where they conducted business of

manufacturing, stocking and selling food items, including toddy. On 28.09.1998, the complainant visited the shop, disclosed his identity, and bought 1500 ml of toddy. The samples were sent to the Public Analyst, Kolhapur, and upon receiving the report, that the samples did not meet the prescribed standards, launched prosecution against the accused.

4. The prosecution, in support of the charge, examined the complainant Rajendra Bhatkar and four more witnesses. However, the trial Court found serious infirmities in the prosecution's case and concluded that the accused could not be convicted. In the present case there is a violation of Section 11(1)(b) of the Prevention of Food Adulteration Act, 1954, and Rule 14 of the Prevention of Food Adulteration Rules, 1955, which can be seen from the records and was also found in the Judgment of the trial Court. The infirmities in the case of prosecution are as follows : (i) the complaint and panchnama did not mention the collection of toddy in a dry and clean pot; (ii) the dry and clean measuring cylinder to measure the sample; (iii) the cleaning and drying of inner and outer caps before pouring the sample into sample bottles; (iv) the stirring of the toddy sample after adding copper sulphate,

which was admitted by the complainant but not noted in the complaint and panchanama; (v) the complainant's admission that he did not receive an acknowledgement of the letter sending Form No.VII to the Public Analyst or of the documents and samples sent to the authority.

5. Mr AA Palkar, the learned Additional Public Prosecutor, argued that the order of acquittal is not in accordance with the law. However, this Court does not agree with these submissions. The trial Court correctly identified the infirmities in the prosecution's case. The Prevention of Food Adulteration Act, 1954, has strict requirements, and failure to meet them results in the prosecution's inability to prove the charge. In such a situation, the trial Court rightly found the accused/respondents not guilty of the offence.

6. Furthermore, it is a settled principle of law that an individual who has been acquitted is entitled to two presumptions. The first presumption is based on the fundamental principle of criminal jurisprudence that every person is presumed innocent until proven guilty by a competent Court of law. The second presumption arises after the acquittal, where the individual's innocence is not only

presumed but also reinforced, reaffirmed, and strengthened by the verdict of the trial Court.

7. Resultantly, this appeal fails and is hereby dismissed.

[R.N.Laddha, J.]

CHITRA
SANJAY
SONAWANE

Digitally signed
by CHITRA
SANJAY
SONAWANE
Date:
2023.09.07
19:50:05
+0530