

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

348

CRA-AS-86-2015
DECIDED ON: 10.02.2023

State of Punjab

.....Appellant

VERSUS

Mukesh Babu and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr.Amit Rana, Sr. DAG, Punjab
for the appellant.

Mr. Amit Bansal, Amicus Curiae,
for respondents no.1 and 2.

MANJARI NEHRU KAUL, J

The instant appeal has been preferred to impugn the judgment and order dated 09.11.2011, passed by the Chief Judicial Magistrate, Ludhiana, in Criminal Complaint No.77/19.02.2001, whereby the respondents – accused were acquitted of the charges framed against them under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1955 (hereinafter referred to as ‘The Act’).

The case of the prosecution, in a nut shell, may be noticed as thus: On 28.09.2000, at about 12 noon, when the Food Inspector inspected the premises of accused no.1, i.e Shri Arihant Oil and General Mills, Raikot Road, Jagraon, the accused were found in possession of about 1000 tins of mustard oil meant for sale for human consumption. The complainant, after serving a notice on Form VI upon the accused, drew samples of the aforesaid mustard oil. Though the complainants tried to join independent witnesses, however, in vain. The complainant purchased 375 gms of mustard oil for analysis from accused no.1 for a sum of Rs.10/- against proper receipt. The sample so purchased by the complainant was divided into three sample portions of 125 gms each and stored in three dry

and clean glass jars and thereafter sealed properly. Each sample portion was labelled and wrapped separately in a strong thick paper. After carrying out the requisite formalities, signatures of the accused were obtained on each of the samples in the manner as prescribed including preparation of spot memo. One part of the sample was sent to the Public Analyst while the remaining two were deposited with the Local Health Authorities. As per the report received from the Public Analyst, the contents of the samples contained sediments. Hence, the sample was declared to be adulterated and unfit for human consumption. Resultantly, the complaint in question was instituted against the respondents.

After considering the evidence led and material on record, the Court below acquitted the respondents – accused.

Learned State counsel has vehemently argued that the trial Court gravely erred in failing to appreciate that it was not the defence of the accused that the sample had not been taken in dry and clean bottles. The only contention raised by the accused was that the jars had not been cleaned by PW1 Food Inspector personally and in his presence.

Learned State counsel while inviting the attention of this Court to Rule 14 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as ‘The Rules’) has argued that the Rule nowhere stipulates that the containers should have been cleaned by the Food Inspector personally while drawing the samples much less in the presence of the accused. He submitted that the aforementioned Rule only necessitates that the sample had to be taken in clean and dry bottles / jars which had been done in the instant case.

Learned State counsel argued that even the samples had

been received by the ‘Public Analyst’ in an intact condition.

Per contra, Amicus Curiae appearing for the respondents submitted that the trial Court had rightly acquitted the respondents – accused as PW1 Food Inspector had himself admitted that the jars had not been personally cleaned by him or even in the presence of the accused. He further submitted that the Food Inspector was evasive as to who had cleaned the jars and it was not disputed by him that the jars had not even been cleaned by anyone in the presence of the accused. Therefore, it was evident that the provisions of Rule 14 of The Rules had been violated. He further submitted that other than some sediments found in the sample sent, no other adulteration was detected in the report. Learned counsel argued that, since the jars had not been cleaned properly, that was the reason behind the presence of sediments.

Learned counsel, in support of his contention, has relied upon the law laid by the High Court of Judicature at Bombay Nagpur Bench in **Criminal Revision Application no.25 of 2015, titled Santosh versus The State of Maharashtra, decided on 22.01.2019, Criminal Appeal No. 838 of 2002, titled The State of Maharashtra v. Rajesh Ganpat Vengurlekar, decided on 03.12.2015** and the law laid down by The High Court of Gujarat at Ahmedabad in **R/Criminal Appeal No. 1275 of 2015, titled State of Gujarat v. Nimeshbhai Vitthalbhai Gandhi, decided on 22.06.2022.**

I have heard learned counsel for the parties and have gone through the file, as well as the case laws relied upon very carefully.

Rule 14 of the Rules provides that the sample for the purposes of analysis has to be taken in clean and dry bottles. Any violation of this Rule would render the results of the analysis unreliable. Therefore, due procedure must be followed under the rules.

the provision in the Rules a mere formality and a futile exercise. Equity demands that there must atleast be some evidence or supporting material to the effect that the jars were clean at the time of taking the samples. In the present case, PW1 has admitted that the jars were not personally cleaned by him much less in the presence of the accused. In the absence of any testimony of any such person, who had cleaned the jars, the only inference which can be drawn is that the jars were not cleaned at the time of taking of the sample for which the Court below rightly gave the benefit of doubt to the accused.

In the above facts and circumstances, this Court does not find any illegality or error in the impugned judgment and order whereby the respondents–accused were acquitted of the charges framed against them under Section 16(1)(a)(i) of the Act. The present appeal is, therefore, dismissed.

10.02.2023

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**(MANJARI NEHRU KAUL)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No