



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.406 OF 2005

The State of Maharashtra,
Through Shri. R. S. Bhatkar,
Food Inspector,
Food and Drugs Administration,
(M.S.) Dhule, Champa Bag,
Sakri Road, Dhule

.... **APPELLANT**
(Original Complainant)

VERSUS

Shri Dinesh Bhaskar Bhadane,
Proprietor of M/s Anand Oil Mill,
at Gondur, Tal. And Dist. Dhule

.... **RESPONDENT**
(Original Accused)

....
Mr. R. B. Dhaware, APP for the Appellant-State
Mr. Nilesh N. Desale, Advocate for Respondent

....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 28/02/2025

PRONOUNCED ON : 23/04/2025

JUDGMENT :

1. The appellant – State has preferred this appeal against the judgment and order dated 08/02/2005 in Regular Criminal Case No.290 of 1993 passed by the learned Judicial Magistrate (First Class), Dhule i.e. the learned trial court. Under the impugned judgment and order, the learned trial court has acquitted the

present respondent / accused from the offence under Sections 7(i) read with Section 2(ia)(a), 2(ia) (m) Sec. 7(v) read with Rule 50 of Prevention of Food Adulteration Rules 1955 read with Rule 5 of Maharashtra Prevention of Food Adulteration Rule 62 punishable under Section 16 of Prevention of Food Adulteration Act, 1954.

2. The story of the prosecution in brief is as under :

The respondent / accused is the proprietor of M/s Anand Oil Mill, situated near Shivaji Madhyamik Vidyalaya at Gondur Taluka and District : Dhule. On 09/10/1992 at about 10.00 a.m., the respondent / accused was present in the premises of his mill and was supervising the manufacturing and selling edible oil stored for sale in the premises. The complainant i.e. Food Inspector after disclosing his identity, took sample of groundnut oil stored in the premises for sale from open barrel of 15 Kg., and gave notice of intention of drawing sample, in form No.VI to the respondent / accused. The respondent / accused gave cash memo pursuant to purchase of 450 grams of groundnut oil. The parts of said sample were sealed and panchanama to that effect was prepared. One copy of the panchnama was also given to the respondent / accused. Thereafter, the complainant on 12/10/1992 sent one sealed part to the Public Analyst, Pune. On the same day the

complainant handed over remaining two sealed parts of the sample to the Local Health Authority i.e. Assistant Commissioner, Food and Drugs Administration Dhule. The complainant then got report of Public Analyst Pune dated 17/11/1992 from Local (Health) Authority, Assistant Commissioner, Food and Drugs Administration, Dhule on 07/12/1992. As per the said report, the sample was declared as 'not up to the standard' and therefore, the respondent / accused was tried for the above mentioned offence, but acquitted by the learned trial court.

3. The learned APP vehemently argued that as per the report of Public Analyst, the sample of groundnut oil was found below the standard and there was no defect in the procedure adopted by the complainant in obtaining the sample. According to him, the learned trial court should have convicted the respondent / accused on the basis of report of the Public Analyst.

4. On the contrary, the learned counsel for the respondent / accused supported the impugned judgment and pointed out that the panch witness had not stated that the bottles in which sample was taken, were cleaned.

5. Heard rival submissions. Also perused documents on record alongwith impugned judgment.

6. On going through the entire impugned judgment, it appears that the learned trial court though observed that proper procedure was followed in obtaining the sample, but acquitted the respondent / accused mainly on the ground that the report of Public Analyst could not established the fact that the contents of sample were injurious to public health. The procedure adopted by the complainant in respect of obtaining the sample and sending it to the Public Analyst, is not seriously disputed and therefore, only it is to be seen whether on the basis of report of Public Analyst, the respondent / accused can be convicted. It is specifically observed by this Court (Nagpur Bench) in the case of ***Nizamuddin Siddikbhai Tigala vs. The State of Maharashtra in Criminal Revision Application No.39 of 1985, decided on 25/07/1985*** that the Public Analyst must find out that when a sample falls below the prescribed standard, whether it is injurious to human health or not. On this background, if the report of Public Analyst in this matter, which is at Exhibit-32, is perused, then it is evident that though the sample was found below standard, but it is not mentioned in the said report that whether the said adulterated

sample was injurious to human health or not. The report also indicates the date when the sample was analyzed. Further, it appears that the said Public Analyst had in fact caused it to be analyzed for finding out the result of the analysis. Thus, the said Analyst himself had not analyzed the sample. No evidence is coming on record as to who had actually analyzed the sample and on whose direction. Therefore, the observation in the case of **Nizamuddin Siddikbhai Tigala** (*supra*) definitely applies. The learned trial court has observed all these things and then opined that the aforesaid report Exhibit-32 of the Public Analyst was vague and defective. Therefore, on the basis of such defective report of Public Analyst it is not advisable to convict the respondent / accused. Therefore, the acquittal recorded by the learned trial court against the respondent / accused is justified and no interference in the impugned judgment is called for at the hands of this court. Resultantly, the appeal stands dismissed.

(**SANDIPKUMAR C. MORE, J.**)