

(1994) 01 BOM CK 0011

In the Bombay High Court

Case No : Criminal Application No"s. 1340, 1341, 1342 and 1343 of 1993

Arvind Ram Swaroop Maniyar and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 04-01-1994

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 10, 11(5)

Citation : (1995) 1 BomCR 234

Hon'ble Judges : M.S. Vaidya, J

Bench : Single Bench

Advocate : S.C. Bora, for the Appellant; Choudhary, Assistant Public Prosecutor, for the Respondent

Judgement

M.S. Vaidya, J.—Rule made returnable forthwith by consent in all the four matters, as the point involved in all these matters is common though the articles seized under the provisions of Prevention of Food Adulteration Act, 1954 differ in each case.

2. Heard Mr. Bora for the petitioners in all the proceedings and Mr. Choudhary, A.P.P. for the State.

3. The respondent-Food Inspector of Jalgaon, on or about 19-7-1993 and 20-7-1993 seized from the four petitioners certain food articles in large quantity, on an assumption that they were adulterated articles. In each case, the Food Inspector himself exercised the jurisdiction, which in fact, does not vest in him in law, to hand over the goods in the custody of the petitioners themselves on certain bond, subject to the condition that the articles should not be sold until further orders. The samples taken from the seized articles were sent to the public analyst and some time before 2-9-1993, the reports of the public analyst, which were adverse to the interest of the present petitioners, were received.

4. In all the four matters, the Food Inspector, then, preferred on 2-9-1993 to the Judicial Magistrate, First Class, Jalgaon, applications purporting to be applications

u/s 11(5) of the Prevention of Food Adulteration Act, 1954, with a prayer that necessary orders in respect of the seized property of turmeric powder be passed u/s 11(5) of the P.F.A. Act, 1954. Notices were issued to the present petitioners in all the four matters and on appearance, they had filed their respective contentions in the matter disputing even the correctness of the report of the public analyst.

5. Though section 11(4) of the P.F.A. Act, 1954, provided that unless the seized articles are destroyed under sub-section (4) of section 10, the seized food article shall be produced before a Magistrate as soon as possible and in any case not later than seven days after receipt of the report of the public analyst. In the present case, as the property was already delivered in the custody of the present petitioners on their respective bonds by the Food Inspector himself, the property in question was never produced before the Magistrate. On or about 19-10-1993, the Food Inspector himself had applied to the Magistrate for issuance of summons to the public analyst. But, on 26-10-1993 which was the date posted for recording the evidence, the aforesaid application was not pressed. It appears that the matters were argued elaborately before the learned Magistrate, and under orders dated 27-10-1993 passed separately in four different cases, the learned Magistrate allowed the application u/s 11(5), who passed an order in such proceeding directing that the seized property be retained by the present petitioners (the then non-applicants) on executing bond for certain sum with a surety in certain sum, subject to the condition that the seized articles shall be retained by the present petitioners in the same condition in which they were handed over to them till the decision of the dispute, in respect of the seized articles was over. The learned Magistrate also imposed a condition on all the four petitioners that they shall produce the seized property before the Court whenever called for. The applications u/s 11(5) were finally disposed of.

6. Mr. Bora, the learned Counsel for the petitioners in all the four matters submits that, in fact, there was no dispute at all pending between each of the petitioners and the Food Inspector after the final disposal of the applications u/s 11(5) of the P.F.A. Act made by the Inspector and that, therefore, the impugned orders themselves were orders passed without jurisdiction and were illegal orders. He referred to the provisions contained in sub-section 5(a) of section 11 of the P.F.A. Act and submitted that the learned Magistrate had jurisdiction in a proceeding initiated under that provision only the orders in terms of sub-clauses (a)(i) to (iv), and that the impugned orders were, in a way, only interlocutory orders. He submitted that at best, the learned Magistrate should have kept the proceedings u/s 11(5) pending and could have passed the impugned order as an interlocutory order pending the disposal of the proceedings initiated u/s 11(5) of the P.F.A. Act, 1954. Mr. Bora's main grievance was that when the property in question was not at all produced in any of the four cases before the Magistrate, the Magistrate should not have exercised the powers u/s 11(5) of the P.F.A. Act to pass any orders at all. His second principal grievance was that while disposing of the applications purporting to be applications u/s 11(5) of the P.F.A. Act, the

learned Magistrate observed that recording of the evidence was not at all necessary at that stage, though the non applicants had challenged the reports of the public analyst in each case. Mr. Bora submitted that the learned Magistrate was utterly wrong in making such observations and in disposing of the proceedings so as to require the petitioners in all the four cases to entertain the property in question ad infinitum, in as much as no formal dispute was pending in any Court between the Food Inspector on one side and the four petitioners on the other side. He, therefore, prayed that the impugned orders be set aside, that the proceedings u/s 11(5) of the Act be quashed and that the property in question be ordered to be returned to each of the petitioners.

7. Mr. Choudhary, the learned A.P.P. appearing on behalf of the Food Inspector, initially tried to support the order of final disposal of the proceedings and submitted that in view of the adverse report of the public analyst in all the four cases, there was nothing wrong if the Magistrate had contemplated that some proceedings would be initiated by the Food Inspector as against each of the petitioners. He admitted that in none of the four cases any prosecution was launched against any of the petitioners, who have approached this Court. But, according to him, if at all such prosecution was to be launched then the seized property in question would be the muddemal property in those cases. However, finally he conceded that as the applications made by the Food Inspector in all the four cases were applications u/s 11(5) of the Act, the Magistrate had to pass some final orders as contemplated by sub-section 5(a) of section 11 of the P.F.A. Act, 1954.

8. For considering the point involved in this case, it is necessary to make reference to the provisions contained in sections 8 to 13 of the P.F.A. Act. Section 8 speaks of appointments of public analysts and section 9 speaks of the appointments of the Food Inspectors by the Central Government or by the State Government. Section 10 of the Act confers on the Food Inspector several powers including the power to take samples of any article of food from any person selling such article or any person, who is in the course of conveying, delivering or preparing to deliver such articles to a purchaser or a consignee after the delivery of such articles to him. Sub-section (1)(b) of section 10 empowers the Food Inspector to forward the samples for analysis to the public analyst appointed for a particular local area. Incidental powers of entry, seizure, etc. are conferred by various sub-sections of section 10. Section 11(1) then provides that when a Food Inspector takes a sample of food for analysis, he shall give notice in writing, then and there of his intention to have it analysed, to the person from whom he has taken the sample and to the person, if any, whose name, address and other particulars have been disclosed to him u/s 14-A. Sub-section (1)(c) of section 11 enables the Food Inspector to send one of the parts of the sample so taken for analysis to the public analyst under intimation to the Local Health authority and to send remaining two parts to the Local Health Authority. The urgent action on the part of the Food Inspector is contemplated by section 11(3), which lays down that when a sample of any food article or adulterant is taken under sub-section

(1) or sub-section (2) of section 10, the Food Inspector shall, by the immediately succeeding working day, send a sample of the article of food or adulterant or both, as the case may be, in accordance with the rules prescribed for sampling to the public analyst. Sub-section (4) of section 11 imposes a duty on the Food Inspector that an article of food seized under sub-section (4) of section 10, unless destroyed under sub-section (4-A) of section 10 and any adulterant seized under sub-section (6) of that section, shall be produced before a Magistrate as soon as possible and in any case, not later than seven days, after the receipt of the report of the public analyst. The proviso to that sub-section lays down that if an application is made to the Magistrate in this behalf by the person from whom any article of food has been seized, the Magistrate shall by order in writing direct the Food Inspector to produce such articles before him within such time, as may be specified in the order. This section enables the aggrieved person to move the Court to require the Food Inspector to produce the seized article before the Magistrate even earlier than the period contemplated in sub-section 4 itself. Then follows sub-section (5), which empowers the Magistrate to pass certain orders in respect of the seized articles. The sub-section 5(a) may be quoted ad verbatim with advantage.

(5) If it appears to the Magistrate on taking such evidence as he may deem necessary -

(a) that the article of food produced before him under sub-section (4) is adulterated or misbranded, he may order it -

(i) to be forfeited to the Central Government, the State Government or the local authority as the case may be; or

(ii) to be destroyed at the cost of the owner or the person from whom it was seized so as to prevent its being used as human food; or

(iii) to be so disposed of as to prevent its being again exposed for sale or used for food under its deceptive name; or

(iv) to be returned to the owner, on his executing a bond with or without sureties, for being sold under its appropriate name or, where the Magistrate is satisfied that the article of food is capable of being made to conform to prescribed standards for human consumption after reprocessing, for being sold after reprocessing under the supervision of such officer as may be specified in the order.

Sub-section (6) lays down that if there appears to the Magistrate that such article of food is not adulterated or the adulterant is not an adulterant, the person from whose possession the article of food or adulterant was taken, shall be entitled to have it restored to him and it shall be in the discretion of the Magistrate to award such person from such fund as the State Government may direct in that behalf, such compensation not exceeding the actual loss which he has sustained, as the Magistrate may think proper. This provision, thus contains

a sort of control of improper seizure of the food articles or the adulterants and empower the Magistrate to compensate adequately the person from whom the property was seized, for the loss sustained by him. Section 12 confers on the purchaser to have the food analysed. Section 13 contains several provisions regarding the report of public analyst. The provisions material for the purposes of these applications indicate that in certain contingencies, the seized food articles can be sent to the Director of the Central Food Laboratory for analysis and report. Sub-section (5) of section 13 lays down that any document purporting to be a report signed by a public analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under the P.F.A. Act, 1954, or under sections 272 to 276 of the Indian Penal Code. The proviso to that sub-section further lays down that any document purporting to be a certificate signed by the Director of Central Food Laboratory (not being a certificate with respect to the analysis of the part of the sample of any article of food referred to in the proviso to sub-section (1-A) of section 16) shall be final and conclusive evidence of the facts stated therein.

9. Mr. Bora relied upon all these provisions to contend that a certificate of the public analyst, though it could be tendered in evidence, was by itself, not a piece of final and conclusive evidence of the facts stated therein, as was the case in respect of a certificate signed by the Director of the Central Food Laboratory. He submitted that, therefore, when section 11(5) contemplated an inquiry at the hands of the Magistrate to satisfy himself on certain points including, whether or not, the article seized by the Food Inspector was an adulterated article or was an adulterant, it was incumbent upon the Magistrate to have recorded the evidence of at least the public analyst to satisfy him as to the nature of the article and then to enable him to pass appropriate order as contemplated by Clauses (i) to (iv) of sub-section 5(a) of section 11 of the P.F.A. Act. He submitted that the Magistrate was wrong in not recording any evidence at all and in observing (in paragraph 8 of his impugned order), that it was not necessary at all at that stage to record the evidence in the matter. He submitted that if at all the Magistrate wanted to pass only an interlocutory order pending the final decision of the dispute, it was possible for him to pass an interlocutory order, because in this particular case, the Food Inspector himself had never produced the articles before the Magistrate and had, in fact, delivered those articles to the four petitioners. Therefore, when the matters were placed before the Magistrate for dealing with them u/s 11(5) of the P.F.A. Act, it was necessary for the Magistrate himself to ensure that the articles were, at least, symbolically in his own custody. If the articles were those presumed to be symbolically in the custody of the Magistrate, for the purposes of enabling him to proceed u/s 11(5), the order of the type that was finally passed on 27-10-1993 below the application u/s 11(5) of the P.F.A. Act, was only an interlocutory order. Such orders as were passed by the Magistrate were not in consonance with order in terms of the provisions contained in Clauses (i) to (iv) of sub-section 5(a) of section 11 of the P.F.A. Act,

1954. The Magistrate was certainly wrong in finally disposing of the proceedings u/s 11(5), without even asking, whether or not, any prosecution was launched by the Food Inspector against any of the petitioners for the offences, if any constituted, by possessing, etc. the seized articles. The Magistrate had led himself to very peculiar situation by passing an interlocutory order in a matter when no proceeding was pending before him in respect of articles seized from any of the petitioners. This has really caused injustice to the present petitioners, because unless and until the prosecution was launched against each of them by the Food Inspector, they had no forum, where they could move for return of the property. Again, if the Magistrate was not adequately satisfied as to whether or not, the seized articles were adulterated articles or adulterants, it was within his powers under sub-section (6) of section 11 of the P.F.A. Act to restore the articles to the petitioners finally. The Magistrate has, thus, fallen in a legal error in not passing any orders either in terms of Clauses (i) to (iv) or sub-section 5(a) of section 11 of the P.F.A. Act, 1954 or under sub-section (6) thereof and yet the proceedings are finally disposed of in all the four cases. This was certainly not correct and it is necessary to mend the error committed by the learned Magistrate.

10. Under these circumstances, the impugned orders dated 27-10-1993, passed by the learned Magistrate required to be modified and, further directions are required to be given to the learned Magistrate for disposal of the proceedings initiated before him u/s 11(5) of the P.F.A. Act. Therefore, the following directions are given :

(1) In paragraph No. 1 of the impugned orders, after the words "application is" and before the words "allowed in following terms", the word "partly" shall be added, and at the end of that paragraph, the words "for the purposes of passing interlocutory orders in proceedings u/s 11(5) of the P.F.A. Act", shall be added.

(2) At the commencement of paragraph No. 2, the words "pending the inquiry u/s 11(5) of the P.F.A. Act" shall be added;

(3) Paragraph No. 4 of the impugned orders shall be deleted totally and shall be substituted by the following paragraph No. 4 -

"The Judicial Magistrate, First Class, Jalgaon, shall record such evidence as he may deem fit, necessary for the purposes of enabling him to pass final orders either u/s 11(5)(a) (i) to (iv) or u/s 11(6) of the P.F.A. Act, 1954. The next date for recording such evidence shall be 18th January, 1994. If the parties desire that certain specific evidence should be recorded by the Magistrate, according to law, they can apply immediately to the Magistrate accordingly and the Magistrate shall, then, if he deems it necessary for the decision of the proceedings u/s 11(5) of the P.F.A. Act, summon the said witnesses for recording their evidence, according to law".

11. In the light of these directions, the observations in paragraph No. 8 of the impugned order, "that it was not necessary to record the evidence at this stage"

has been over ruled.

12. After recording the evidence as the Magistrate may deem it necessary, the Magistrate shall proceed to decide according to law, as expeditiously as possible, the proceedings initiated against the four petitioners u/s 11(5) of the P.F.A. Act.

13. All the four petitions are disposed of accordingly.

Rule made absolute in all the four applications.

Rule made absolute.