

(1988) 07 BOM CK 0061
In the Bombay High Court
Case No : Criminal Appeal No. 459 of 1982

Balkrishna Mahadeo Apte

APPELLANT

Vs

Dhanaram Netaji Choudhari and Others

RESPONDENT

Date of Decision : 06-07-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 386
Prevention of Food Adulteration Act, 1954 — Section 16, 7
Prevention of Food Adulteration Rules, 1955 — Rule 9

Citation : (1989) 1 BomCR 412

Hon'ble Judges : S.C. Pratap, J;A.D. Tated, J

Bench : Division Bench

Advocate : V.D. Hon and R.N. Dhorde, for the Appellant; R.M. Agarwal, for respondent Nos. 1 and 2 and S.S. Phanse, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pratap, J.—Hearing Mr. V.D. Hon"ble learned Counsel for the appellant and Mr. R.M. Agarwal, learned Counsel for respondent Nos. 1 and 2 accused, and going through the impugned judgment and the record of the case, we are satisfied that this is not a case warranting interference with the impugned acquittal of the accused in a prosecution under the Prevention of Food Adulteration Act (for short "the Act").

2. Taking up first the case against accused No. 2, the fatal infirmity is that copy of the report of the Public Analyst was not served upon him. There is nothing on the record to show such service. Indeed, the complainant admits that he cannot say whether accused No. 2 has received copy of the report of the Public Analyst. The acquittal of accused No. 2 well deserves to be upheld on this short ground.

3. As regards accused No. 1 we find considerable discrepancy between the evidence of the complainant before the Court and the recitals in the panchanama prepared on the spot. The panchanama indicates that there has not been proper or even substantial compliance with Rule 16 of the Rules framed under the Act.

In the witness box, however, the complainant has improved and has sought to bring the matter squarely within the requirements of Rule 16. Re-appreciating the evidence, it is quite possible to hold that the said rule can be said to have been complied with. But then in an acquittal appeal, it would not be fair and just to substitute our inference on appreciation of evidence for the inference drawn by the learned trial Magistrate on his own appreciation of the evidence. If the inference drawn by the learned trial Magistrate is also a possible inference, this Court would not substitute its own inference in an appeal against acquittal. The learned trial Magistrate has, appreciating the evidence and the record, given to accused No. 1 benefit of doubt. We would not be justified in interfering therewith.

4. We may also observe that the sale here was of the year 1977. More than eleven years have since elapsed. The deficiency in the article is also marginal. No extraneous material has been found therein. In most respects, the article well conformed to the specifications. Only in certain minor respects, it did not fulfil the standards laid down in the specifications. There was, however, no adulteration and there was no extraneous ingredient or material. The contention of Mr. Agarwal, learned Counsel for the accused, that groundnut oil may even by lapse of long time reach a state where it may, even, at a subsequent given point of time, not strictly comply with all the specifications of that article, may have some merit herein. We need not, however, pursue this aspect in this appeal. Suffice it to note that in all the facts, and circumstances, we are not inclined to interfere.

5. In the result, the appeal fails and the same is dismissed.