

(1979) 08 BOM CK 0037

In the Bombay High Court

Case No : Criminal Appeal No's. 643, 707, 708 to 718, 722, 733 to 735, 738 and 764 to 768 of 1979 (for admission)

In Re: State of Maharashtra

Date of Decision : 17-08-1979

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 2, 7
Prevention of Food Adulteration Rules, 1955 — Rule 16

Citation : (1979) 08 BOM CK 0037

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : S.S. Parkar, P.P. in Criminal Appeal No. 643 of 1979, M.D. Gangakhedkar, P.P. in Criminal Appeal Nos. 708 to 711 of 1979, R.G. Deo, P.P. in Criminal Appeal Nos. 712 to 718 and 722 of 1979, R.T. Walawalkar, P.P. in Criminal Appeal Nos. 733 and 735 to 738 of 1979, R.M. Kachare, P.P. in Criminal Appeal No. 707 of 1979, for the Appellant;

Final Decision : Dismissed

Judgement

S.C. Pratap, J.—This appeal is directed against the order of acquittal rendered in favour of the accused by the learned Chief Judicial Magistrate, Satara, in a prosecution instituted against him under the provisions of the prevention of Food Adulteration Act. In my view, the reasoning of the learned Judicial Magistrate is justified and the ultimate conclusion reached by him deserves to be confirmed. The article in question in the present case was itself described as A.B.C. dust. It was, of course, tea powder, but it was openly sold as tea dust. Report of the Public Analyst indicated that the characteristic smell of tea was absent. Now, when the article itself is sold as tea dust, it is doubtful what weight can be given to this analysis to the effect that the characteristic smell of tea was absent. There is no evidence before the Court as to what exactly is meant by the characteristic smell of tea. Indeed the smell would differ from quality to quality and it would, of course not be exactly the same. There is no uniform standard as such regarding any characteristic smell of tea. Again, as stated above, the article in this case was tea dust. Consequently, the smell of such an article would indeed

not be the same as in the case of tea leaves so called.

2. There are also other infirmities in the case of the prosecution. The Food Inspector admits that the ends of the envelope were not pasted by any adhesive whatsoever. This would be an infraction of Rule 16 of the Rules under the Act which cannot be lightly ignored in the case of an article such as tea dust, the smell whereof is likely to alter and change as a result of the tea dust being kept open and without any seal. Then again, there is no satisfactory evidence before the Court to show that it was the accused who had actually given or delivered these boxes from Coimbatore for being taken to Koregaon in Satara District of Maharashtra. The prosecution had failed to lead cogent evidence in that behalf. Different addresses of the tea company in question without any further particulars or without any further evidence lead to a clear doubt as to who exactly was the owner or the proprietor of the company at Coimbatore and as to whether it was one and the same owner who owned these different owners who owned these different companies. The address of the said company also differs. Indeed, even the name of the said company differs. There has been no marking or any writing on the box. There is also no satisfactory evidence about sealing. The possibility of tampering cannot consequently be safely ruled out. In these circumstances, it would be unsafe to convict the accused. As is well settled, suspicion however strong cannot take the place of proof.

3. Furthermore, as held by the Supreme Court in *Satbir Singh and Another Vs. State of Punjab*, it is not enough that it is just possible for the High Court to take a contrary view and while interfering with acquittal, the High Court should be in a position to clearly demonstrate the unworthiness of the conclusions of the trial Court having regard to all the relevant evidence on the record. This, indeed, is not at all a case of the said nature. It is not possible to fairly and reasonably hold that the conclusion reached by the learned trial Magistrate is such that no reasonable body of men, properly instructed in law, can reach or that the conclusion is so palpably wrong as to shock the sense of justice or that it is a conclusion based on evidence at all. Such being the position on the facts and circumstances of the present case and the aforesaid being the test laid down by the Supreme Court, I find myself unable to take any different view of the matter than the one taken by the learned trial Magistrate.

4. In the result, the impugned order of acquittal deserves to be confirmed. This appeal against the same will, therefore, fail and the same is dismissed.

Criminal Appeal Nos. 708 to 718, 722 , 733, 735 to 738 764 to 768 and 707 of 1979.

5. For the reasons stated in my judgment in Criminal Appeal No. 643 of 1979, these appeals fail and the same are dismissed.