

(1982) 02 BOM CK 0048

In the Bombay High Court

Case No : Criminal Revision Application No. 15/20 of 1979

Krishna Shivaji Bhosale

APPELLANT

Vs

Mangaldas Bhanudas and Others

RESPONDENT

Date of Decision : 17-02-1982

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(2), 2, 7
Prevention of Food Adulteration Rules, 1955 — Rule 4(3)

Citation : (1982) 1 BomCR 767

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Advocate : V.P Tipnis, for the Appellant; M.D. Gangakhedkar, for the Respondent

Judgement

M.L. Pendse, J.—These two revision applications are filed by the Food Inspector, Thane Municipal Council, Thane, to challenge the legality of the order dated October 19, 1978 passed by the Chief Judicial Magistrate, Thane in Criminal Case No. 2986 of 1975 and 2983 of 1975 discharging the accused of the offence punishable under sections 2(i), 7 and 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954. Both the revision applications can be conveniently disposed of by a common judgment as the order of discharge in both the matters proceeds on the same grounds.

2. The Chief Judicial Magistrate came to the conclusion that the prosecution launched by the Food Inspector after obtaining permission of the Chief Officer was not valid because the report of the Public Analyst was in favour of the accused and to the effect that the food article sold was not adulterated. The trial Magistrate also held that after the report was received from the Director of Laboratory, Calcutta, the Food Inspector ought to have obtained a fresh sanction of the Chief Officer and filed a fresh case. In a companion matter, being Criminal Appeal No. 897 of 1978 decided by me, I have found that the reasoning assigned by the Magistrate is clearly erroneous and I would have set aside the order of discharge if the order of the Magistrate proceeded only on those grounds.

But the trial Magistrate also held that Rule 4(3) of the Prevention of Food Adulteration Rules was not complied with as the specimen seal sent to the Director were not of the Court but of the Food Inspector and this clearly contravened section 13(2) of the Act. Shri Tipnis points out that the record indicates that the seal and the memorandum sent to the Director at Calcutta was of the Court itself and not of the Food Inspector. There is some merit in the submission of the learned Counsel, but I am not inclined to set aside the order of discharge in these two cases because Shri Tipnis was unable to point out anything on record to establish that there was compliance with sub-rule (3) of Rule 4. Shri Tipnis was unable to point out that the copy of the memorandum and the specimen impression of the seal used to seal the container and the cover was sent separately by registered post to the Director, Calcutta. Shri Tipnis made a faint attempt to suggest that in case the order of discharge is set aside and the two cases are sent down for fresh hearing, it is possible for the prosecution to lead evidence to establish compliance of Rule 4. I am not inclined to grant this prayer as I find that the cases were instituted in the year 1975 in respect of the offence alleged to have been committed in the early part of the year 1975, and more than seven years have lapsed from that time. It would be indeed very has to the accused to undergo a fresh trial after more than seven years. In these circumstances, I am not inclined to disturb the order of discharge passed by the trial Magistrate in both these matters.

4. Accordingly, both the revisions fail and the rule is discharged in both the petitions.