
(1983) 03 BOM CK 0032

In the Bombay High Court

Case No : Criminal Writ Petition No. 495 of 1982

Mohamed Hanif Kasim Maniyar

APPELLANT

Vs

Pralhad Mahadeo Kamble and Another

RESPONDENT

Date of Decision : 25-03-1983

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (1983) 1 BomCR 648

Hon'ble Judges : V.S. Kotwal, J

Bench : Single Bench

Advocate : A.G. Pawar, N.D. Hombalkar, P.P, for the Appellant;

Judgement

V.S. Kotwal, J.—On October 6, 1977 Pralhad Mahadeo Kamble, the Food Inspector visited a bakery conducted by the petitioner herein at Barsi in Solapur District. He was accompanied by two panch witnesses. Samples of two varieties of biscuits were purchased. The necessary formalities were observed as the sample was divided into three parts. A detailed panchanama was recorded. In due course both the samples were forwarded to the Public Analyst who certified both not conforming with the standard under the Rules and those were adulterated. Ultimately two complaints were filed by the Food Inspector in the Court of the Judicial Magistrate, First Class, Barsi, against the petitioner for an offence u/s 7 read with section 16 of the Prevention of Food Adulteration Act. The two cases were numbered as Criminal Case No. 757 of 1979 and Criminal Case No. 758 of 1979.

2. Process was issued and accused appeared in both the cases. However, for quite some time there was no effective progress in the two proceedings. On 26-5-1980 the complainant remained absent. The learned Magistrate in both the cases remarked that the complainant had remained absent on a previous occasion also. However, he did not pass any order adverse to the complainant but adjourned both the matters to 9-6-1980 making it clear that the complainant should remain present on that day as no further allowance would be made.

3. The complainant was absent even on the scheduled date i.e. 9-6-1980. The accused was present. The learned Magistrate, therefore, dismissed both the complaints for non-prosecution as no evidence was led and discharged the accused in both the proceedings.

4. On July 30, 1980 the complainant filed fresh complaints wherein he explained as to why he could not remain present on the scheduled dates in the earlier proceedings. According to him, on both those occasions he had to attend a criminal proceeding at Solapur as the Food Inspector and that is why he could not remain present in Barsi Court. It appears that on the same day the learned Magistrate who was presumably satisfied with the explanation, issued fresh process against the accused in both the complaints. Even though this occurred in July 1980 there was absolutely no progress and the accused contends that he received the summons for the first time in the year 1982 and he had also received a communication from his Advocate in June and September 1982 and that is how he learnt about the filing of the fresh complaints only in the year 1982, whereafter he moved this Court under Article 227 of the Constitution of India for quashing the said two orders.

5. Shri A.G. Pawar, the learned Counsel is heard on behalf of the petitioner and Shri N.D. Hombalkar, the learned Public Prosecutor on behalf of the State.

6. I have already indicated the course of events right from the inception of 1977 till the filing of the petition in 1982 and, therefore, it is unnecessary to re-state all those facts.

7. The raid was effected in October 1977 and even then the complaints were filed in the year 1979, for which also there is no explanation about the delay. The learned Magistrate's order indicates that the complainant used to remain absent on some occasions which were not stray. He had also remained absent on 26th May, 1980 when the learned Magistrate in order to give him one more chance adjourned it to 9th of June, 1980. On both these dates and even prior to 26th May, 1980 as per the remarks of the learned Magistrate, the complainant had remained absent. No arrangements were made to make any motion before the Court. The learned Magistrate was justified in dismissing the complaints and discharging the accused since no evidence was led. The fresh complaints were filed on 30th of July, 1980, though the original complaints were disposed of on 9th June, 1980. There is no explanation as to why the complainant waited for that period.

8. The explanation sought to be tendered by the complainant was that on both these dates he was busy in connection with the criminal case at Solapur. According to him, the same case at Solapur was fixed on both these dates. That would however suggest that on 26th of May, 1980 when complainant could have moved well in advance about the Scheduled dates. Even then he did not bother to enquire with the Court at Barsi as to what had happened to these cases and he only attended Solapur Court even on the 9th June, 1980. He does not appear

to have contacted even the learned Assistant Public Prosecutor incharge. There is on that count itself hardly any justification put forth by the complainant in support of his filing fresh complaints. The learned Magistrate has not discussed that aspect but has merely issued process.

9. Though this was done in July 1980, still there was no progress till 1982. The accused asserts that he received the summons first time in the year 1982 and he also received communication from his Advocate in that year in May when he learnt for the first time that fresh complaints have been filed. This appears to be more probable under the circumstances. This course of two years from 1980 to 1982 is also not properly explained.

10. It would thus mean that at every stage there is some delay on some count to which the accused had not contributed. An incident of the year 1977 which came to an end in 1980 is now sought to be re-agitated afresh in 1982 and even thereafter. The accused is an old person of 70 years. He has asserted on oath in the petition that he has left Barsi and has also given up bakery business and has shifted to Bombay since last three years and has been doing petty work of selling glass bangles. There is no challenge from the State to this assertion.

11. Having regard to all these features, the interest of justice would demand that the proceedings should be closed and it is not worth allowing it to be continued.

12. In the result, the rule is made absolute. The process issued in Criminal Cases Nos. 1237 and 1238 of 1980 against the petitioner by the learned Judicial Magistrate, First Class, Barsi under the relevant provisions of the Food Adulteration Act is set aside and the proceedings of both these cases are quashed, with the result that the petitioner-accused is discharged in both the cases.