

(1982) 02 BOM CK 0041

In the Bombay High Court

Case No : Criminal Appeal No. 897 of 1978

Mukund Ukha Shimpi

APPELLANT

Vs

Premji Durgarai Shah and Another

RESPONDENT

Date of Decision : 17-02-1982

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13(2), 16(1), 2(1), 20, 7(1)
Prevention of Food Adulteration Rules, 1955 — Rule 4(3)

Citation : (1982) 1 BomCR 441

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

Bench : Single Bench

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

Judgement

M.L. Pendse, J.—This appeal is preferred by the Food Inspector, Thane Municipal Council, Thane, to challenge the legality of the judgement dated August 4, 1978 recorded by the Chief Judicial Magistrate, Thane, acquitting the accused u/s 2(1)(i), 7(1) and 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954.

2. The facts giving rise to the prosecution are as follows:

Original accused No. 2 is the owner of a Kirana Shop situate at Thane and Inspector Shimpi visited the shop on April 17, 1975 and at that time original accused No. 1 was present in the shop. Complainant Shimpi purchased 600 grams of chilly powder from original accused No. 1 and thereafter divided the purchased sample into three equal parts and all the three samples were put into plastic bag and properly labelled and sealed. One such sealed packet sample was sent to the Public Analyst's Office at Pune and the report of the Public Analyst was that the sample was genuine and not adulterated. The Food Inspector probably was not satisfied with the report and sought permission of the Chief Officer of the Thane Municipal Council to prosecute the accused. On grant of such permission, Inspector Shimpi filed the complaint before the Chief Judicial Magistrate, Thane on July 1, 1975. After the complaint was lodged, the

complainant moved the Magistrate to forward one of the sealed sample packets to the Director, Central Food Laboratory, Calcutta as contemplated u/s 13(2) of the Act. Under the Act it was open either for the complainant or to the accused to request the Magistrate to forward the sample to the laboratory at Calcutta for a report. The report received from Calcutta laboratory was that the chilly powder in the sample packet was adulterated. On receipt of this report, the Inspector again moved the Chief Officer and sought his permission for continuance of the prosecution which was already launched. The Chief Officer granted the approval on October 27, 1975 and thereafter the complainant led the evidence in support of the prosecution. The original accused No. 2 claimed that he was not present in the shop and not responsible for the sale.

3. The trial Magistrate acquitted both the accused mainly on three counts. It was held that as the report from the Public Analyst's Office, Pune was that the sample sent by the Inspector was not adulterated, there was no occasion for the Chief Officer to direct prosecution as no offence was found to have been committed. Secondly, the Magistrate held that the offence was disclosed for the first time on receipt of the report from the laboratory at Calcutta and, therefore, it was necessary for the Chief Officer to grant fresh sanction and for the Inspector to file a fresh case and it was not permissible to continue the prosecution which was earlier launched. Lastly, the Magistrate found that the requirement of mandatory Rule 4(3) of the Prevention of Food Adulteration Rules, 1955 were not complied with while sending the sample to the laboratory at Calcutta. On these three grounds the Magistrate entered an order of acquittal in favour of both the accused though the defence of accused No. 2 that he was not responsible as he was not present in the shop at the time of sale was not accepted. The original accused No. 1 died after the order of acquittal and, therefore, the appeal is preferred against original accused No. 2

4. Shri Tipnis, the learned Council appearing in support of the appeal submitted that the trial Magistrate was clearly in error in holding that there was no occasion for the Chief Officer to direct the prosecution because no offence was committed and also in holding that a fresh case ought to have been instituted after the receipt of report from the laboratory at Calcutta . I find considerable merit in the submission of the learned Council. Section 2(i) defines the expression "adulterated" and inter alia provides that an article of food shall be deemed to be adulterated if the article is sold by a vendor contains any other substance which affects injuriously the nature, substance or quality thereof. Section 7 of the Act prohibits manufacture, sale or distribution of any adulterated food. Section 16 of the Act provides for the penalties and it sets out that if any person sales any article or food which is adulterated, then he shall be liable in addition to the penalty under the provisions of the section 6 to face the prosecution and punishable with imprisonment for a term which shall not be less than six months., but shall extend to six years with a fine which shall not be less than Rs. 1000/-. Section 20 of the Act requires that no prosecution for an offence under the Act shall be instituted except by or the written consent of the Central

Government or State Government or the local authority or a person authorised in that behalf by the Central or the State Government or the local authority. This section clearly provides that an offence liable to punishment u/s 16 is complete when a vendor sells any article or food which is adulterated. In other words, the commission of the offence is complete as soon as a sale is effected. The question as to whether the article which is sold was adulterated or otherwise is to be determined by the presiding authority before whom the prosecution is launched. The grant of sanction or permission prior to the institution of the prosecution is provided with a view to safeguard or prevent launching of frivolous or false prosecution at the behest of either the Food Inspector or the purchaser of any article. It is not for the sanctioning authority to determine whether the offence has been proved to have been committed by the accused. The grant of sanction or the launching of the prosecution is not made dependent upon the report of the Public Analyst. In spite of the report favourable to the accused, it is open for the sanctioning authority and for the Food Inspector to launch the prosecution and that is clear by the plain reading of sub-section (2) of section 13 of the Act. That sub-section provides that after the institution of the prosecution, either the accused or the complainant may on payment of prescribed fee, make an application to the Court for sending the part of the sample to the Director of Central Food Laboratory. The fact that the section enables even the complainant to make the application is clearly indicative of the fact that the complainant need not be shut out by the report of the Public Analyst. It is possible that the complainant and the sanctioning authority may come to the conclusion that the report sent by the Office of the Public Analyst is not accurate and in such case the prosecution cannot be shut out and the accused cannot claim that no offence whatsoever was committed. It is necessary to note that the report of the Public Analyst or even that of the Director of Food Laboratory, Calcutta, is only a piece of evidence to establish the complaint of the prosecution. The question whether the offence is committed or not is to be determined by the Court with reference to the evidence produced by the complainant and merely because the report of the Public Analyst was in favour of the accused it cannot be concluded that the accused had not committed any offence and there was no occasion for the Chief Officer to grant sanction or for the Food Inspector to launch the prosecution. The view taken by the trial Magistrate on this aspect is clearly erroneous and the order of acquittal cannot be sustained on this count.

5. The finding of the trial Magistrate that the Food Inspector ought to have filed a fresh complaint after securing a fresh sanction from the Chief Officer on receipt of the report from the laboratory at Calcutta is also clearly fallacious. The institution of the prosecution on July 1, 1975 was in no manner defective. The report from Calcutta was obtained by the complainant merely as a piece of evidence to support the prosecution case. The trial Magistrate was clearly in error in assuming that the offence could be said to have been committed only when the report was received from Calcutta. As mentioned hereinabove, the offence is complete as soon as the vendor sells an article of food, which according to the

complainant was adulterated. Whether the claim of the complainant is correct or not is to be determined by a competent Court and commission of an offence is not made dependent on the report of the Public Analyst or one received from the laboratory at Calcutta. The institution of the criminal case before the Magistrate after obtaining the permission of the Chief Officer was perfectly in order and it was not necessary for the Food Inspector to secure a fresh approval from the Chief Officer after the receipt of the report from Calcutta. The Food Inspector seems to have merely apprised the Chief Officer of the report and the conclusion of the trial Magistrate that the Food Inspector ought to have secured in order of discharge in the present case and should have filed a fresh case is totally incorrect. In my judgement, the order of acquittal passed on this ground also cannot be sustained.

6. The third ground on which the trial Magistrate recorded the order of acquittal cannot be said to be faulty in any manner. The trial Magistrate found that the complainant made the application after launching the prosecution for forwarding the sample to the laboratory at Calcutta in accordance with the provisions of section 13(2) of the Act. Rule 4 of the Prevention of Food Adulteration Rules, 1955 provides that the sample of food for analysis under sub-section (2) of section 13 of the Act shall be sent through a messenger or by registered post in a sealed packet enclosed together with a memorandum in Form 1 in an outer cover addressed to the Director. Sub-rule (3) of Rule 4 further provides that the copy of the memorandum and a specimen impression of the seal used to seal the container and the cover shall be sent separately by registered post to the Director. The trial Magistrate found that there is no evidence regarding dispatch of memorandum and specimen impression of the seal sent separately by registered post, and therefore, Rule 4(3) was clearly violated. It is hardly required to be stated that the compliance with the rule is mandatory and the failure to observe it would result in acquittal of the accused. Shri Tipnis did not dispute that a case it is found that the rule is violated, then the order of acquittal cannot be disturbed, but submitted that there is a letter on record sent by the trial Magistrate while forwarding the sample to the Director of the Food Laboratory indicating that the copy of the memorandum and specimen impression of the seal was sent separately by registered post. There are several difficulties in the way of Shri Tipnis to substantiate this submission. In the first instance, the letter on which reliance is placed is not exhibited at the trial Magistrate, who decided the case, did not take any notice of the letter because it was addressed to the Director of the laboratory by his predecessor and the complainant made no effort to produce it on record and get it exhibited. If the prosecution has chosen not to place any reliance on this letter, the result is that the accused had no opportunity to meet the contents of the said letter and in these circumstances it would not be appropriate to permit Shri Tipnis to make any use of the said letter. Secondly, even assuming that the contents of the letter are accurate, that itself is not sufficient compliance with the requirements of the rule. Shri Tipnis was unable to point out any material from the record to establish

that in fact in accordance with the letter written by the Magistrate the seal and the memorandum was sent by separate registered packet. It was very easy for the prosecution to produce the requisite material to substantiate the claim and as the prosecution has failed to do so, it cannot be claimed that the judgment of the trial Magistrate suffers from any infirmity. On this ground, the trial Magistrate was perfectly justified in recording the order of acquittal.

7. Accordingly, though I find that the order of the trial Magistrate cannot be sustained on the first two counts, the order of acquittal will have to be upheld on the last ground. The appeal, accordingly fails and is dismissed.