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**(1977) 04 BOM CK 0029**

**In the Bombay High Court**

**Case No : Criminal Application No. 551 of 1977**

Murlidhar Dullabhdas Wani

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

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**Date of Decision : 12-04-1977**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 4  
Penal Code, 1860 (IPC) — Section 272, 273, 274, 275, 276  
Prevention of Food Adulteration Act, 1954 — Section 11, 13, 16, 17, 7

**Citation :** (1978) 80 BOMLR 160 : (1978) MhLj 149 : (1977) MhLj 54

**Hon'ble Judges :** Deshmukh, J;Aggarwal, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## **Judgement**

Deshmukh, J.—This is an application by the five accused persons for quashing the charge framed against them and to discharge them from the prosecution.

2. The undisputed facts, are as follows; The petitioners are the traders whose godown and shops were raided by the food inspector on November 29, 1972. Purchase of Bajara was effected for the purpose of analysis under the provisions of the Prevention of Food Adulteration Act, 1954. All formalities were performed and a sample attached. One portion of the sample was sent to the public analyst and a report was received dated January 29, 1973 that the Bajara is adulterated inasmuch as it contains 5 per cent, of the damaged grain. In due course a complaint was lodged against the petitioners on November 26, 1973 under the provisions of Sections 7 and 16 read with Section 17 of the said Act

3. On November 20, 1975, the petitioners-accused moved the Magistrate by an application to send the sample produced in Court to Calcutta for being examined by the Director of the Central Food Laboratory. That application was granted and a report dated July 17, 1976 was received from the Director declaring that the sample sent to him was not adulterated. In view of this report which was received u/s 13 of that Act, the petitioners applied by an application dated

December 3, 1976 for discharging them from the prosecution. The learned Magistrate passed an order that there was no provision that in view of report of the Director, Central Food Laboratory, Calcutta, Court need not take evidence. Hence the application was rejected.

4. On the same day the learned Magistrate recorded the statement of the food inspector and adjourned the case for framing charge. Ultimately on March 24, 1977, he has framed a charge under which the accused are told that they have sold adulterated Bajara on November 29, 1972 and thereby committed offence punishable u/s 7 read with Sections 16 and 17 of the said Act and they were directed to be tried for the said charge. It is against this framing of charge that the petitioners have filed the present petition.

5. We are surprised at the course adopted by the learned Magistrate. The learned public prosecutor appearing before us conceded that the framing of the charge by the learned Magistrate is indefensible and he would not be able to support the same. We think that he is more than right in making that statement. The only observation of the learned Magistrate relevant to the subject appears below the application dated December 3, 1976 in which he observes that there was no provision that the Court shall not record evidence in view of the report received from the Director of Central Food Laboratory, Calcutta. We find it difficult to understand what precisely is meant by that observation. The position in law is so clear and simple that any other course than the one we propose seems to be impossible in the case.

6. All prosecutions not only for the offences under the Penal Code but any other Act for the time being in force are to be tried according to the provisions of the Code of Criminal Procedure, 1973. However, if there is any other law which requires a different course to be adopted to that extent the Procedure Code stands modified or superseded. Otherwise, the provisions of the Code alone determine the manner of trial of a criminal offence. That has been very clearly laid down by Sub-section (2) of Section 4 of the present Code. Sub-section (1) of Section 4 says that all offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions of the Code, Sub-section (2) thereof says that all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences.

7. It is, therefore, amply clear that the learned Magistrate had to try the present offence under the provisions of the Code of Criminal Procedure, 1973. So far as the stage reached in the proceedings before him, he had merely issued process and no evidence was yet recorded. When he issued the process he had the report of the public analyst before him, which was prima facie evidence of the commission of the offence. Issuance of the process was proper. However, the accused persons are given a right u/s 13 of the said Act. Under that section the

accused can make an application to the Court for sending a part of the sample mentioned in Sub-clause (i) or Sub-clause (ii) of Clause (c) of Sub-section (1) of Section 11 to the Director of the Central Food Laboratory for a certificate. The Court has no choice but to send that sample for examination. Sub-section (3) of that section declares that the certificate issued by the Director of Central Food Laboratory shall supersede the report given by the public analyst under Sub-section (1). Sub-section (5) of that section further lays down that any document purporting to be a report signed by a public analyst, unless it has been superseded under Sub-section (5), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under the Prevention of Food Adulteration Act or under Sections 272 to 276 of the Penal Code; provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein.

8. These being the provisions of the Prevention of Food Adulteration Act it is obvious that where in a case like this the Director of the Central Food Laboratory, Calcutta, issues a certificate, not only that supersedes the public analyst's report issued earlier but is a conclusive piece of evidence of the facts stated therein. In the present case the report of the Director, Central Food Laboratory, Calcutta, which is conclusive for these proceedings, is that the sample sent to him is not adulterated. It is, therefore, clear that the learned Magistrate had before him a certificate which indicated that no offence at all was committed by the accused persons. In other words, there was no evidence before him even to frame a charge. At best for the purpose of formally taking this report on record, he could have put the food inspector in the witness-box and asked him a few formal questions to show how the final and conclusive report in the case was that the grain which was attached and for which the accused were being prosecuted was not adulterated. That would create a situation where there was no evidence at all to frame a charge.

9. Under the provisions of the Criminal Procedure Code in an inquiry before framing a charge when the Magistrate finds that there is no evidence even to frame a charge, or there is no prima facie evidence disclosing any offence, it need not be added that the Magistrate has to discharge the accused. If the learned Magistrate needed any guidance for discharging the accused, it was to be found in the Procedural Code and not in the provisions of the Prevention of Food Adulteration Act. It is unfortunate that he has ignored those provisions and has proceeded to frame a charge. W the record is seen, the cross-examination of the food inspector clearly shows that a report, exh. 25, has been received from the Director of the Central Food Laboratory and that report shows that the sample of grain is not adulterated. With this conclusive evidence on record, what was the material on which the charge could be framed? We are at a loss to know how the learned Magistrate could frame a charge and still tell the accused that the sample taken from them was adulterated when there was conclusive evidence on his

record that it was not adulterated.

10. In the circumstances, the framing of the charge by the learned Magistrate is clearly erroneous and the charge itself must be quashed and the accused persons must be discharged as there is no evidence against them at all to frame a charge.

11. Accordingly we make the rule absolute, quash the charge framed by the Magistrate and discharge the accused, as there is no evidence of commission of any offence against them.