
(2019) 02 BOM CK 0093

In the Bombay High Court

Case No : Criminal Revision Application (Revn) No. 124 Of 2012

Nanakram Govardhandas Chandkai And Ors

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 27-02-2019

Acts Referred:

Prevention Of Food Adulteration Act, 1954 — Section 2(ia)(a), 2(i)(a), 2(ia)(f), 7, 7(i), 16, 16(1)(a)(ii), 17

Prevention Of Food Adulteration Rules, 1955 — Rule 14, 16, 22

Citation : (2019) 02 BOM CK 0093

Hon'ble Judges : M.G. Giratkar, J

Bench : Single Bench

Advocate : Anil Mardikar, T.H. Udeshi

Final Decision : Allowed

Judgement

M.G. Giratkar, J

1. The present revision is against the judgment of conviction dated 05.08.2003 for the offence punishable under Sections 7(i) read with Section 2(ia)(a), Section 16(1)(a)(ii), 17, 7(i) and Section 2(ia) (f) of the Prevention of Food Adulteration Act, 1954 passed by the learned Judicial Magistrate, First Class, Malkapur in Regular Criminal Case No. 149 of 1996. The appeal bearing Criminal Appeal No. 33 of 2012 filed against the said judgment came to be dismissed vide judgment dated 09.07.2012 passed by the learned Additional Sessions Judge, Malkapur.

2. The case of the prosecution against the applicants/accused, in short, is that, on 06.10.1995 at about 01:30 p.m., complainant/ Food Inspector visited the shop of applicants (hereinafter referred as accused) and taken the sample of "Rava" from 50 kgs bag. The said sample was sent for analysis on 07.10.1995. It was examined by the Analyst on 15.11.1995. It was found during the analysis that the sample was having dead grubs and the same was unfit for human consumption.

3. On the basis of evidence adduced by the complainant and report of Chemical Analyzer, Pune, learned trial Court convicted the accused for the offence as stated above.

4. Heard Shri Anil Mardikar, learned Senior Counsel appearing on behalf of the applicants and Ms. T.H. Udeshi, learned Additional Public Prosecutor appearing on behalf of the respondent/State.

5. Shri Mardikar, learned Senior Counsel has pointed out the judgment of this Court in Criminal Revision Application No. 25 of 2015 (Santosh Dattatreya Mamidwar .v. The State of Maharashtra) dated 22.01.2019. He has also pointed the judgment of this Court in the case of Madhav Nagnath Wattamwar .v. The State of Maharashtra (reported in 2015 All MR (Cri) 4620) and submitted that the mandatory provisions of Rules 14, 16 and 22 are not followed by the Food Inspector. Learned Senior Counsel has pointed out the panchnama (Exh.28) and submitted that during the panchnama, dead grubs were not found and, therefore, there is every possibility that during transportation or because of passage of time from the date of taking sample to analysis of the same, that might have developed.

6. Ms. Udeshi, learned APP strongly opposes the revision application and supports the impugned judgments.

7. Offences punishable under the Prevention of Food Adulteration Act are technical. The Food Inspector has to follow the rules very strictly. He must be careful while taking the sample. After taking the sample, it should be kept in dry and clean jar and should be sealed horizontally and vertically in presence of panchas. It appears from the evidence on record that the Food Inspector has not taken care while taking the sample. He has not taken any care that the sample was kept in dry and clean jar. Panchnama (Exh.28) does not show that there was any dead grub. The sample was sent for analysis on 07.10.1995. It was examined by the Analyst on 15.11.1995 i.e. after one month. The possibility of adulteration of sample may be due to lapse of time.

8. The report does not show that the sample was injurious to the human life. In the cited judgment, it is observed that Rules 14, 16 and 22 of the Prevention of Food Adulteration Act are mandatory. It appears that those mandatory provisions are not followed by the Food Inspector. At the time of taking sample, it was not found adulterated. No such dead insects were found. The possibility of developing the same during the pendency of sample before examination cannot be ruled out. CA report does not show that it is injurious to the human life.

9. As per the observations in the case of State of Maharashtra .v. Sunil Bansilal Jain and another (reported in 2007(1) B Cr C 167), it is held that, "chilly powder was alleged to be adulterated as it was not found as per the standard prescribed in the Rules. Such case falls in clauses (1) and (m) of sub-section 2(i)(a). The article which is found of a sub-standard and it renders as injurious to health, then it can be said to be an adulterated food. The Authority i.e. the Public

Analyst or the Director of Central Food Laboratory are expected to give opinion as to whether the food article is found to be injurious to the health. Unless such an opinion is there, the food article cannot be said to have been proved to be adulterated one so as to amount to contravention of section 7 punishable under Section 16 of the Act."

10. In the present case, report of the Analyst (Exh.48) does not show that the seized "Rava" was found to be injurious to the health. In view of the cited judgments, the applicants/accused are entitled for acquittal. Hence, the following order.

Revision is allowed. Impugned judgments are hereby quashed and set aside. The accused are acquitted of the offence charged against them. Bail bonds stand cancelled. Fine amount, if any paid, be refunded to them. R and P be sent back.