

(2015) 03 BOM CK 0245

In the Bombay High Court

Case No : Criminal Revision Application No. 4 of 2001

Nandkishore and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 14(a), 16(1)(a)(1), 7(i)

Citation : (2015) ALLMR(Cri) 2184

Hon'ble Judges : V.M. Deshpande, J

Bench : Single Bench

Advocate : Joydeep Chatterji, for the Appellant; D.R. Kale, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

V.M. Deshpande, J.

1. Being aggrieved by the Judgment and Order of conviction passed by the learned Chief Judicial Magistrate, Jalna on 25th April, 1994 in Regular Criminal Case No. 62 of 1992, whereby the learned Chief Judicial Magistrate, convicted the applicants for the offences punishable under Section 7(i) read with Section 16(1)(a)(1) of the Prevention of Food Adulteration Act, 1954 (In Short, the P.F.A., Act) and were directed to suffer rigorous imprisonment for two years and to pay fine of Rs. 2000/- each, and in default of payment of fine, to undergo rigorous imprisonment for further six months each, together with the judgment and order dated 4th January, 2001 passed by the learned 2nd Additional Sessions Judge, Jalna in Criminal Appeal No. 15 of 1994 whereby, the lower appellate court dismissed the Criminal Appeal preferred on behalf of present applicants and confirmed their conviction and order of sentence.

FACTS

(i) The Applicants were carrying their business at Mondha Road, Jalna under the trade name "Ambika Tea Company".

(ii) On 2nd January, 1990 Complainant - Jagannath s/o. Dattatraya Gonjari, who was Food Inspector visited the said establishment alongwith two panch witnesses Syed Ayub Ali s/o. Babamiya and Ramkisan Mittal. Upon such visit, the Food Inspector disclosed his identity and his intention and purpose to visit the shop. The Food Inspector noticed that, tea powder of different variety was sold. That time, he found servants were packing tea in the name and brand as "Santoor Tea Supplier" Mondha Road, Jalna. He demanded and purchased tea power, stored in packed gunny bag. He demanded and purchased 375 Grains tea power as sample by making the payment of Rs. 12/- and 75 paise, as purchase price. He obtained the receipt for the same (Exhibit - 47). Thereafter, he issued notice under Section 14(a) of the P.F.A., Act to disclose the name of supplier or manufacture (Exhibit - 48). Upon it, accused No. 1 disclosed that tea powder was purchaser from Narendra Tea Company, Jalgaon. Food Inspector issued notice in Form No. VI. After taking sample and analysis (Exhibit-49) Food Inspector also issued notice under form Nos. IV and V (Exhibit 50 and 51). Thereafter, Food Inspector divided the sample in three equal parts and put it in dry, clean and empty bottles. It was then properly closed and labels were affixed thereon.

(iii) On 3rd January, 1990 he sent one of the sealed sample alongwith memorandum form No. VII in sealed packet with covering letter to the Public Analyst, Aurangabad. Said covering letter is at Exhibit - 55. Food Inspector received report of the Public Analyst through Local Health Authority on 15th February, 1990. Report of Public Analyst is at Exhibit-72. Said report shows that, sample does not confirm to the standard of tea as per the P.F.A. Rules, 1955 and the vegetative structure other than tea is observed.

(iv) On 13th November, 1991 he sent report of Public Analyst alongwith necessary papers to the Local Health Authority, Jalna for sending the same to the Joint Commissioner, Food and Drug Administration for obtaining the Consent. Consent was obtained on 26th December, 1991. The said is at Exhibit-76. Thereafter, complaint was lodged in the court of the learned Chief Judicial Magistrate, Jalna. Same was registered as Regular Criminal Case No. 62 of 1992.

(v) Charge was framed against the accused on 8th November, 1993. In order to bring home the guilt, prosecution has examined P.W. No. 1 Jagannath Dattatraya Gonjari - Food Inspector and Complainant, P.W. No. 2 Kwaja Samiullah s/o. Rehmatullah, Assistant Commissioner, Food and Drug Administration, Jalna and panch witness Syed Ayub s/o. Babamiya as P.W. No. 3.

(vi) As observed in opening paragraph of the judgment after appreciation of the prosecution evidence the accused were convicted by the learned court below and the learned Appellate Court confirmed the same in Criminal Appeal No. 15/1994.

I have heard Mr. Joydeep Chatterji, learned counsel for the Applicants and Mr. D.R. Kale, learned Addl. Public Prosecutor for the State.

2. The learned counsel submitted that, there is clear cut violation of Rules 14 and Rule 18 of "the P.F.A. Rules, 1955. He submitted that these Rules being

mandatory in nature; its violation renders conviction erroneous. He submitted that, in fact, the court below ought not to have convicted the accused, since the Food Inspector has completely failed to adhere with the mandatory Rules. He relied upon:-

(i) Laxmandas Sarvattamdas Doshi and Company Vs. State of Maharashtra, reported in 1975 Maha. L.J. 622.

(ii) Suresh Raghunath Gupte Vs. Taraknath Rajnarayan Mishra and Ors., reported in 2001 ALL MR (Cri) 1996, and submitted that Criminal Revision Application be allowed.

3. Per contra, learned Additional Public Prosecutor has submitted that, both the courts below on available material on record, in his submission, has rightly reached to the conclusion that there is no violation of any of the mandatory Rules hence, he prayed for dismissal of Criminal Revision Application.

4. Rule 14 of the Prevention of Food Adulteration Rules, 1955 reads as under:-

Manner of sending samples for analysis.-Samples of food for the purpose of analysis shall be taken in clean dry bottles or jars or in other suitable containers which shall be closed sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture and shall be carefully sealed.

Rule 18 of the Prevention of Food Adulteration Rules, 1955 reads as under:-

Memorandum and impression of seal to be sent separately. - A copy of the memorandum and specimen impression of the seal used to seal the packet shall be sent, in a sealed packet separately to the public Analyst by any suitable means immediately but not later than the succeeding working day.

Thus, it is clear that Food Inspector is obliged to take sample which are meant for analysis in clean dry-bottles or jars or in other suitable containers. It is for the complainant and the Food Inspector to adduce sufficient evidence in that behalf.

5. In the present case, no doubt true, the Food Inspector (P.W. No. 1) has stated in his evidence that he kept the sample in three dry, clean and empty bottles however, his evidence is completely silent from where he procured the empty bottles in which the sample was kept. His evidence does not reflect that the containers were with him when he made visit to the shop of the accused. In that behalf the evidence of P.W. No. 3 Syed Ayub s/o. Babamiya, panch and independent witness throws light that those containers were brought from adjoining store by name Raj Kiran Stores. His evidence also reveals that, even the scale was also brought from M/s. Raj Kirana Stores.

6. Now, when the containers were brought from the adjoining M/s. Raj Kirana Stores, what was its state of affair, is not brought on the record. Further the evidence of Food Inspector is completely silent that the said were brought from the adjoining grocery shop and thereafter. Food Inspector either personally or

through anybody has cleaned those jars containers and were in dry state. In that view of the matter, there is no doubt in my mind that the prosecution has utterly failed to prove that, mandatory provisions in the nature of Rule 14 was strictly followed by the complainant - Food Inspector. Further mandate of Rule 18 is also not complied with by the Food Inspector. The reported cases, as pointed out by the learned counsel for the applicants clearly show that Rule 18 is mandatory in nature. Evidence of the Food Inspector-Jagannath is totally silent in that behalf.

7. Further in my view, the report of Public Analyst (Exhibit - 72) is of no use for the prosecution in view of the following admissions given by the independent witness P.W. No. 3 Syed Ayub s/o. Babamrya:-

"It is true that, some part of quantity of sample fell down while fitting in the container and the same was lifted and refilled."

In view of the aforesaid clear cut admission, the report of Public Analyst Exhibit - 72 loses its importance.

8. In view of the aforesaid discussion and in view of the fact that there is violation of mandatory Rules, Judgment and Order of conviction cannot stand and liable to be set aside.

9. It will have to be mentioned that, on 26th September, 2014 this court [Coram: M.T. Joshi, J.] issued Non-Bailable-Warrant against present Applicants. It is reported that, those Non-Bailable-Warrant are not still executed. Since today the case is decided on its own merit and it is found that, Judgment and Order of conviction is liable to be set aside. Non-Bailable-Warrant issued against the applicants dated 26th September, 2014 are hereby recalled. In view of the above, I pass the following order:-

ORDER

(i) Criminal Revision Application is allowed.

(ii) Judgment and Order of conviction dated 25th April, 1994 passed by the learned Chief Judicial Magistrate, Jatna. Dist. Jama in Regular Criminal Case No. 62 of 1992; together with the Judgment and Order dated 4th January, 2001 passed by the learned 2nd Additional Sessions Judge, Jatna, Dist Jatna in Criminal Appeal No. 15 of 1994 are hereby quashed and set aside.

(iii) The applicants - accused are acquitted for offences for which they were charged.

(iv) Fine amount paid by the applicants shall be refunded to them.

(v) Order of issuance of Non-Bailable-Warrant against the applicants dated 26th September, 2014 is recalled.

(vi) Their bail bond stand cancelled.

(vii) Rule is made absolute.