

(1980) 06 BOM CK 0006

In the Bombay High Court

Case No : Criminal Revision Application No. 748 of 1979

Rajaram Kalicharan Yadav

APPELLANT

Vs

The State of Maharashtra and another

RESPONDENT

Date of Decision : 27-06-1980

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1), 2, 7
Prevention of Food Adulteration Rules, 1955 — Rule 17, 44

Citation : (1981) CriLJ 1603

Hon'ble Judges : Mehta, J

Bench : Single Bench

Judgement

1. The petitioner in this Revision Petition has impugned the Judgment and Order of the learned Sessions Judge, Thane, dated 23-11-1979 whereunder the Appeal filed by the Petitioner was dismissed and his conviction and sentence passed by the learned Chief Judicial Magistrate, Thane, was confirmed.
2. The petitioner, who will hereinafter be referred to as "the Accused", was charged before the learned Chief Judicial Magistrate, Thane, u/s 7(i) and 2(i)(c) read with Section 16(1)(a) of the Prevention of Food Adulteration Act, 1954.
3. The prosecution case was that the Accused was the supplier of buffalo milk to the workers of Warden Company situated at Wagle Estate, Thane. On 6-11-1975 the Accused supplied buffalo milk to the said Company. The Company as usual distributed the milk amongst its workers. Sometime later it was noticed that some of the workers vomited and it was suspected that they has suffered from food poisoning. As a result of a Complaint filed by the Company, the Food Inspector, i.e. the Complainant in this case, Shri Shimpi, visited Warden Company in the evening of the same day and obtained samples of the milk from the cans in which milk had been supplied. Shimpi obtained 750 ml. of buffalo milk from each of the two cans in the presence of witnesses. Shimpi paid for the sample of milk obtained by him and the Accused passed a receipt for the same. The receipt has been marked as Ex. 17. Thereafter notice in Form No. VI was

served on the Accused. Shimpi divided the sample into three equal parts and poured the milk into three dry, clean and empty bottles. Thus three bottles of each sample were prepared. In each of the bottles 20 drops of formalin were added as preservative and all the six bottles were corked, wrapped, labelled, marked and duly sealed. One sealed sample bottle of each of the samples was given to the Accused who passed a receipt acknowledging the same. Thereafter one sealed sample bottle of each of the samples was sent to the Chemical Analyser by railway parcel. Copy of the specimen seals used, covering letter and Memorandum were separately sent under seal and by Registered Post Acknowledgment Due to the Public Analyst, Poona. The acknowledgments from the Public Analyst, have been marked as Exhibits 20 to 24.

4. The Public Analyst's Report was received on 16-12-1975 and the Report started that one of the samples contained unadulterated milk whereas the other sample contained 16.7% of water and, therefore, did not conform to the standard laid down under the Prevention of Food Adulteration Rules and was adulterated. Thereafter sanction of the Chief Officer of the Municipal Council, Thane, for prosecuting the Accused was obtained and a Complaint was filed in the Court of the Chief Judicial Magistrate, Thane, against the Accused. The learned Chief Judicial Magistrate, was pleased to convict the Accused under Sections 7(i) and 2(i)(c) of the Prevention of Food Adulteration Act read with Rule 44B of the Prevention of Food Adulteration Rules. The Accused was sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. 1000/-, in default to suffer further rigorous imprisonment for three months.

5. Aggrieved by the said conviction and sentence the Accused appealed to the Court of Session at Thane. The learned Sessions Judge by his Judgment and Order dated 23-11-1979 was pleased to dismiss the Appeal of the Accused and to confirm the conviction and sentence.

6. The Accused has now approached this Court in Revision against the said conviction and sentence passed on him.

7. Shri Chitnis, the learned Advocate appearing on behalf of the Accused, has submitted only one point of law for my consideration. According to Shri Chitnis the Prosecution had failed to establish that the provisions of Rule 17 had been complied with by the Food Inspector and, argued Shri Chitnis, Rule 17 being mandatory, the same struck at the root of the Prosecution Case and the Accused was entitled to be acquitted.

8. It will be pertinent at this stage to cite Rule 17 before the same was amended with effect from 4-1-1977. The old Rule was in the following terms :-

"Rule 17, Containers of samples how to be sent to the Public Analyst. -

The container of samples for analysis shall be sent to the public analyst by registered post or railway parcel or air freight, or by hand or by any other suitable means of transport available in a sealed packet, enclosed together with a

memorandum in Form VII in an outer cover addressed to the Public Analyst." (The rest of the rule is not relevant for the purpose of this discussion).

9. According to Shri Chitnis, there was no evidence on the record to show that the sample was accompanied by a Memorandum in Form VII and that the outer cover had also been sealed. This absence of evidence, according to Shri Chitnis, meant that the Food Inspector had committed a breach of the provisions of Rule 17.

10. Shri Chitnis relied upon certain unreported Judgments of our Court in order to substantiate his submission that Rule 17 of the Prevention of Food Adulteration Rules was mandatory. Shri Chitnis cited an unreported Judgment in Criminal Appeal No. 698 of 1976 along with Criminal Revision Application No. 531 of 1977 (Reported in (1979) 2 MLR 79 decided by my brother Jahagirdar, J. on 12-7-1978. My brother Jahagirdar, J. was pleased to observe :-

"Rule 17 itself does not, no doubt, specify that the outer cover is to be sealed in any particular manner but only speaks of the container of the sample being sent in sealed packet along with the memorandum in Form VII in an outer cover addressed to the Public Analyst. If it is held, as I am inclined to hold, that Rule 17 envisages a situation where a packet which has emerged after the steps have been taken as per Rule 16 has to be put in outer cover along with the memorandum in Form VII and that outer cover is also to be sealed, then on evidence in both the cases it is found that this procedure has not been followed."

11. Shri Chitnis also relied upon an unreported Judgment of a Division Bench of this Court in Criminal Appeal No. 1071 of 1976 in the case of State of Maharashtra v. Purshottam decided by Dharmadhikari and Kotwal, JJ. on 17-1-1979. The learned Judges observed :-

"In this context a reference was also made to the decisions of this Court viz. Criminal Appeal No. 698 of 1976 State v. Ramkaran Ganpatlal and Criminal Revn. Appln. No. 531 of 1977 Mohammad Ismail v. G. D. Deo decided on 12-7-1978 (Reported in (1979) 2 MLR 79 by Jahagirdar, J. as well as the decision of Kotwal, J. in Criminal Appeal No. 545 of 1976 State v. Mallu Rama decided on 4-9-1978. In view of the admitted position that the mandatory provisions of Rule 17 are not complied with and on that count the accused is entitled to an acquittal, in our opinion, it is not necessary to decide the wider question, which is wholly academic, so far as the present appeal is concerned."

12. Shri Chitnis has pointed out the evidence of the Food Inspector Mukund Shimpi (P.W. 1) to the effect that he prepared three sample bottles of buffalo milk for each sample. In all the six bottles 20 drops of formalin were added. Thereafter all the six bottles were corked, wrapped, labelled and marked as also duly sealed. Thereafter one sealed sample bottle of each sample was given to the Accused. Ex. 9 is the acknowledgement regarding one such sealed sample bottle. Thereafter one bottle of each of the samples was sent to the Public Analyst, Pune, by railway parcel under seal. Ex. 20 is the acknowledgement of the said

parcel by the Public Analyst, Pune, Shimpi stated that he sent a memorandum copy of the specimen seal used and the covering letter under a sealed cover by registered post A.D. to the Public Analyst, Pune. According to Shri Chitnis the evidence of Shimpi did not indicate even the fact that while forwarding the sample, he had forwarded the same together with a memorandum in Form VII. According to Shri Chitnis, failure to comply with this provision of Rule 17 was fatal to the prosecution. In support of his argument Shri Chitnis also relied upon the Report of the Public Analyst wherein it was stated that the Public Analyst received the sample of buffalo milk for analysis properly sealed and fastened and that the seal was found to be intact and unbroken. Shri Chitnis has submitted, and justifiably, that even the Public Analyst did not mention the fact that the sample was accompanied by a memorandum in Form VII. This was apart from the fact that there was no evidence that the outer packet was also sealed as held to be mandatory by this Court.

13. On a perusal of the evidence of Shimpi as also the Report of the Public Analyst, it becomes apparent that the sample which had been forwarded to the Public Analyst at Pune was not accompanied by the memorandum in Form VII as required by Rule 17 of the said Rules. This being the case, there can be no doubt that the Food Inspector had violated the provisions of Rule 17. Rule 17 of the Prevention of Food Adulteration Rules 1955 being mandatory in its nature, a breach thereof would be fatal to the Prosecution and the Accused would be entitled to an acquittal.

14. In the result, the Rule is made absolute. The conviction and the sentence of the Accused are set aside. Bail bond of the Accused to stand cancelled. Fine, if paid, to be refunded to the Accused.

15. Rule made absolute.