
(1983) 02 BOM CK 0037
In the Bombay High Court

Ramsharan Dwarkadas Gupta

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 17-02-1983

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 2(i)(j), 7(i)

Citation : (1983) CriLJ 1251

Hon'ble Judges : D.N. Mehta, J

Bench : Single Bench

Judgement

D.N. Mehta, J.

1.This judgment disposes of Criminal Revision Application No. 320 of 1981 as also Criminal Revision Application No. 321 of 1981 as both the applications arise out of common evidence and a common judgment and parties also are identical.

2. The petitioner in both the Revision Applications Ramsharan Dwarkadas Gupta has impugned the judgment and order of the learned Additional Sessions "judge, Greater Bombay, dated 14th April, 1981 dismissing his appeal and confirming the conviction and sentence passed by the learned Metropolitan Magistrate, 28th Court, Esplanade, Bombay, on 30th August, 1977.

3. Briefly stated the facts are that on 16th Sept., 1975 at about 4.00 P. M. Deoram Kisan Nehete (P. W. 1), the Food Inspector, employed in the Food and Drugs Department of the Government of Maharashtra along with Drugs Inspector Pandit and Panch witness G. G. Sohani visited the premises of Messrs. Mathuraprasad Kheduram, situated at Joshi Nivas, Aarey Road, Goregaon (East), Bombay. Nehete found the petitioner present in the shop. Nehete disclosed his identity as also the purpose of his visit. He intimated in Form VI his intention of drawing samples of pickles which were on sale in the shop for the purpose of analysis. Nehete stated that the firm of Messrs. Mathuraprasad Kheduram was engaged in the business of manufacturing pickles. Nehete purchased 900 grins. of Amba-Limbu pickle for Rs. 2.50 p. as also 900 grms. of Amba pickle for Rs.

2.50 p. The petitioner passed two separate receipts acknowledging the amount received from the Food Inspector. The Food Inspector has produced two duplicates of Form VI as also two receipts which were marked as Ext. "A", Exhibit A-1 and Ext. "B" and Ext. B-I respectively. Each of the receipts and the duplicate forms bore the signature of the Panch witnesses and the thumb mark of the accused. The accused also passed a cash-memo which has been marked as Ext. "C". The Cash-memo was also signed by the Panch witnesses as also bore the thumb mark of the accused. The Food Inspector thereafter divided each of the two samples into three equal parts, put them in dry clean bottles, wrapped them in brown paper, folded the top and bottom ends inside, pasted the labels tied by thread and sealed them. He took the signatures of the Panch witnesses as also the thumb mark of the petitioner on the labels. One bottle of each sample was given to the petitioner. On the next day i. e. on 17th Sept., 1975 Nehete delivered the two bottles containing Amba pickle and Amba-Limbu pickle along with Form VII to the Clerk of the Public Analyst. The Food Inspector obtained receipts for the delivery of these samples.

4. Nehete received the report of the Public Analyst in respect of the two samples on 24th Oct., 1975. He then forwarded copies of the two reports to the present petitioner on 24th Oct., 1975 and obtained his acknowledgment. Thereafter he filed a complaint with the Crime Branch (Drugs Control). The same has been treated as the First Information Report and marked as Ext. T.

5. It is the prosecution case that the petitioner did not hold a valid licence for manufacturing and selling pickles. The two samples of Amba pickle and Amba-Limbu pickle were found to be adulterated inasmuch as coal tar dye was found in excess of the standard quantity laid down under the Prevention of Food Adulteration Act.

The Food and Drugs Inspector thereafter obtained sanction to prosecute the accused from the Joint Commissioner, Food and Drugs Administration. The sanction in the two cases has been marked as Ext. "K" and Ext. K-I.

6. The petitioner was tried by the learned Metropolitan Magistrate, 28th Court, Esplanade, Bombay, The accused was convicted of the offence u/s 7 (i) read with Section 2(i) (j) of the Prevention of Food Adulteration Act, 1954 read with Rule 23 of the Prevention of Food Adulteration Rules, 1955 and punishable u/s 16 of the said Act and was sentenced to suffer rigorous imprisonment for six months and to pay a fine of Rs. 1,000/-, in default to suffer further rigorous imprisonment for six weeks. The petitioner was convicted on the second count u/s 7 (v) of the Prevention of Food Adulteration Act read with Rule 50 of the Prevention of Food Adulteration Rules and was sentenced to suffer rigorous imprisonment for three months and to pay a fine of" Rupees 200/-, in default to suffer two weeks further rigorous imprisonment. No separate sentence was passed on the third charge u/s 7 (i) of the Prevention of Food Adulteration Act, 1954 read with Rule 28 of the Prevention of Food Adulteration Rules.

7. The petitioner being aggrieved by the said conviction and sentence passed by the learned Metropolitan Magistrate filed two appeals in the Court of Session at Greater Bombay. The learned Sessions Judge by his judgment and order dated 14th April. 1981 was pleased to dismiss the two appeals.

8. The petitioner has now approached this Court in these two Revision Applications in connection with the two appeals in respect of the two articles i. e. Amba pickle and Amba-Limbu pickle.

9. Shri Pradhan, the learned advocate appearing on behalf of the petitioner herein, has canvassed only one submission of law in these appeals. Shri Pradhan submitted that Rule 16 of the Prevention of Food Adulteration Rules was mandatory in its nature and not directory. He contended that the provisions of Rule 16 had not been strictly complied with by the Food Inspector Nehete and that being the case the entire procedure of packing and sealing of samples was vitiated and the accused was entitled to be acquitted. Rule 16 referred to the manner of packing and sealing the samples obtained by the Food Inspector from the accused and it laid down various steps to be taken by the Food Inspector after obtaining the samples and before the same were delivered to the Public Analyst for the purpose of analysis.

10. Shri Pradhan has relied on three un-reported rulings of this Court wherein it has been held that Rule 16 of the Prevention of Food Adulteration Rules, 1965 was mandatory and not merely directory. The first of the rulings relied upon by Shri Pradhan is in Criminal Appeal No. 531 of 1975 delivered by Shimpi, J. on 24th Sept., 1976. Reported in (1978)2 Mar LR 495 That was an appeal by the State filed against the order of acquittal passed by the trial Court. In dealing with the appeal against acquittal, Shimpi, J. was pleased to observe:

I am not concerned with the other evidence and the contentions raised on behalf of the accused for the purposes of disposing of this matter, because these two points were taken into consideration by the learned Magistrate that the sample was not pasted and there was a clear breach of Rs. 14 and Reported in (1978) 2 Man LR 495.16 of the Prevention of Food Adulteration Rules, 1955, which are mandatory and it is established that there is no convincing evidence to show that what was examined by the Public Analyst was the article sold by the accused to the complainant.

11. The next ruling relied upon by the learned advocate for the petitioner was in Criminal Appeal No. 698 of 1976 delivered by my learned brother Jahagirdar, J. on 12th July, 1978. Jahagirdar, J. after considering the provisions of Rs. 16 and 17 and Rs. 7 and 18 and after considering various authorities of this Court was pleased to observe as follows:

If this is so, there is also no difficulty in holding that the requirement of these rules are mandatory. It has been held by this Court that Rs. 7 and 18 are mandatory (see Baliram Feru Paul v. State (1975) Bom LR 350 and also Laxmandas Sarvottamdas Doshi & Co. v. State of Maharashtra (1975) Bom LR

408. If Rule 7 is mandatory, it must follow that the provisions of Rule 17 also are mandatory compliance with which must be directly proved by the prosecution.

The container of the sample has to be packed and sealed in the manner provided under Rule 16. The container as per that rule is wrapped and packed in a fairly strong thick paper which itself is secured by means of strong threads. There are four impressions of the seal to be affixed on this paper inside which there is the container. The packet which is now ready after the steps are taken as per Rule 16 is to be again put in an outer cover under Rule 17. After the sealed packet and the memorandum in Form VII are inserted in the outer cover, the latter in turn has to be sealed. On a harmonious reading of all the relevant rules, this interpretation is inevitable.

12. Finally, Shri Pradhan relied on an unreported ruling of this Court in Criminal Appeal No. 507 of 1980 delivered by my learned brother Gadgil, J. on 24-1-1983. The learned Judge sitting singly was pleased to observe:

This evidence would therefore indicate that all the necessary requirements as are contemplated by Rule 16 except the requirement of sealing the packet or cover at four distinct and clear places have been complied with. It is true that the Public Analyst's report (Ext. 37) states that the seal affixed on the container and the outer cover of the sample tallied with the specimen impression of the seal separately sent to him by the Food Inspector. It was contended by Shri Patil for the State that this observation of the Public Analyst in his report could be accepted. However, in my opinion, it will be too risky to base a conviction of the accused on the abovementioned statement of the public Analyst in his report, particularly when the Food Inspector has not stated that the wrapper or cover containing the sample was sealed at four distinct and clear places as required by Rule 16. It is for this lacuna that the accused would be entitled to a benefit of doubt and as such the appeal stands dismissed.

13. Shri Pradhan has contended that the ratio of the above rulings is that the provisions of Rule 16 are mandatory and if that be so then he has referred me to the evidence of the Food Inspector Nehete to show that the Food Inspector has not strictly complied with the provisions of Rule 16.

14. In order to appreciate the submission of Shri Pradhan, it will be pertinent at this stage to refer to the provisions of Rule 16 and thereafter to the testimony of the Food Inspector in order to find out whether the Food Inspector had complied with the mandatory provisions of that Rule. Rule 16 lays down various steps that a Food Inspector has to take whilst packing and sealing the samples. The manner of packing and sealing the samples has been elaborately laid down in this Rule. Rule 16 is in the following terms:

16. Manner of packing and sealing the samples All samples of food sent for analysis shall be packed, fastened and sealed in the following manner, namely:

(a) The stopper shall first be securely fastened so as to prevent leakage of the

contents in transit;

(b) The Bottle, Jar or other container shall be completely wrapped in fairly strong thick paper. The ends of the paper shall be neatly folded in and affixed by means of gum or other adhesive;

(c) A paper slip of the size that goes round completely from the bottom to top of the container, bearing the signature and code and serial number of the Local (Health) Authority, shall be passed on the wrapper, the signature or the thumb impression of the person from whom the sample has been taken being affixed in such a manner that the paper slip and the wrapper both carry a part of the signature or thumb impression:

Provided that in case, the person from whom the sample has been taken refuses to affix his signature or thumb impression, the signature or thumb impression of the witness shall be taken in the same manner;

(d) The paper cover shall be further secured by means of strong twine or thread both above and across the bottle, jar or other container, and the twine or thread shall then be fastened on the paper cover by means of sealing wax on which there shall be at least four distinct and clear impressions of the seal of the sender, of which one shall be at the top of the packet, one at the bottom and the other two on the body of the packet. The knots of the twine or thread shall be covered by means of sealing wax bearing the impression of the seal of the sender.

Now it may be pointed out here that Sub-rule (c) of Rule 16 will not be applicable to the present case for the reason that this sub-rule came into effect from 4-1-1977 by Notification No. GSR 4(E), dated 4-1-1977. The offence in the instant case was committed on, 16-9-1975. Therefore, apart from the provisions of Sub-rule (c), the provisions of Sub-rules (a), (b) and (d) will apply.

15. Now let us see whether the Food Inspector had complied with the necessary steps laid down under this Rule. In his evidence Nehete stated :

I divided each sample in three equal parts. I took each part in a dry clean bottle, wrapped it with brown paper, folded the top and bottom ends inside, pasted labels, tied by thread and duly sealed. I took the signature of Panch witness P. B. Pandit and thumb mark of the accused on labels. I gave one part of each sample to the accused.

Now from this cryptic evidence of the Food Inspector it would appear that the requisitions contained in Sub-rule (a) to the effect that the stopper should be first secured so as to prevent leakage of the contents in transit, was not complied with. The Food Inspector has stated that he had wrapped the bottle with brown paper and to that extent the first part of Sub-rule (b) appears to have been complied with. The latter part of Sub-rule (b), however, has not been complied with by the Food Inspector. The latter part of Sub-rule (b) stated that the ends of the paper should be neatly folded in and affixed by means of gum or other adhesive. All that the Food Inspector has stated is that he had folded the

top and bottom ends inside and pasted labels. He has not stated that he had affixed by means of gum the folded ends of the brown paper.

16. With regard to Sub-rule (d) it provided that the paper cover should be secured by means of a strong twine or thread both above and across the bottle, jar or other container, and the twine or thread shall then be fastened on the paper cover by means of sealing wax on which there shall be at least four distinct and clear impressions of the seal of the sender, of which one shall be at the top of the packet, one at the bottom and the other two on the body of the packet. Now the Food Inspector has merely stated that he did the thread and duly sealed. Now assuming that the first part of Sub-rule (d) has been substantially complied with the second part which calls for four distinct and clear impressions of the seal does not appear to have been complied with for the reason that the Food Inspector merely stated that he had the packet "duly sealed". The last requisition of Sub-rule (d) that the ends of the twine or thread should be covered by means of sealing wax bearing the impressions of the seal of the sender, has also not been complied with.

17. It, therefore, appears to me that the requirements of Rule 16 have not even been substantially complied with by the Food Inspector at the time when he recovered the samples and forwarded the same to the Public Analyst. If once it is held that the provisions of Rule 16 are mandatory, and as I have pointed out with reference to the various authorities that that is so then the non-compliance of the provisions of this Rule would adversely affect the prosecution case. It would cast grave doubt as to the contents of the packet which were received by the Public Analyst. In these circumstances, the benefit of doubt ought to have been given to the accused and he should be acquitted.

18. In the result, the Rule is made absolute in both the Revision Applications. The conviction and sentence passed on the petitioner in Case Nos. 402/S and 403/S of 1976 are set aside. Bail bonds of the accused to stand cancelled. Fine, if paid, to be refunded.