
(1975) 09 BOM CK 0022
In the Bombay High Court

Sambaji Abaji Patharkar

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 22-09-1975

Acts Referred:

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

Citation : (1976) CriLJ 1854

Hon'ble Judges : Apte, J

Bench : Single Bench

Judgement

Apte, J.—The petitioner in this petition challenges the order passed in appeal by the Additional Sessions Judge, Poona, confirming the order of conviction and sentence passed against the petitioner by the trial Court for an offence u/s 16 (1) (a) (i) read with Section 7 (i) of the Prevention of Food Adulteration Act, 1954.

2. The petitioner is a grocery merchant carrying on business at Shop No. 1501, New Bazar, Khadkia suburb of Poona. On May 21, 1971, respondent No. 2 B. R. Dharmadhikari, who is the Food Inspector in the employ of the Municipal Corporation of Poona, visited this shop and purchased 450 grams of tur dal which was kept for sale in the shop. He gave the accused to understand that he had purchased that sample for being sent to Public Analyst for examination. Thereafter following the usual procedure of dividing the sample in three equal parts and keeping each sample in a dry sealed packet, one of the packets was handed over to the accused, one was retained by the Inspector and the third was sent to Public Analyst who on examination reported that the sample which obviously weighed 150 grams contained coal tar dye viz. Yellow Tartrazine and, therefore, it contravened the provisions of Rule 29 of the Prevention of Food Adulteration Rules which prohibit the use of coal tar dye in food stuff. The accused was, therefore, prosecuted for committing an offence u/s 7 (i) read with Section 16 (1) (a) (i) of the Prevention of Food Adulteration Act, inasmuch as the article of food viz. tur dal which he sold was found to be adulterated.

3. It appears that at the trial at the instance of the accused, the sample which was given to him was also sent to the Director of Central Food Laboratory at Calcutta who also certified vide Exh. 26 that that sample also contained coal tar dye, namely, tartrazine. Accepting the evidence of the prosecution, therefore, the trial Court convicted the petitioner of the aforesaid charge and sentenced him to suffer R. I. for six months and to pay a fine of Rs. 2000/-, in default of payment of fine he was further directed to suffer R. I. for two months. The appellate Court also confirmed the order of conviction and sentence. Hence this petition.

4. Mr. Ketkar, the learned Advocate who appears for the petitioner, invited my attention to Rule 22 of the Prevention of Food Adulteration Rules which prescribes quantity of sample to be sent to Public Analyst for various articles. Item No. 19 mentioned in the Schedule given under this rule deals with pulses, cereals and the like and in last column, the approximate quantity to be supplied to the Public Analyst is 250 grams. Mr. Ketkar contends that in the present case admittedly the total quantity of sample purchased by the Food Inspector was 450 grams and when divided into three parts, each part weighed 150 grams and, therefore, the sample supplied to the Public Analyst did not conform to this rule and therefore there was infraction of this rule and consequently the accused was entitled to be acquitted.

5. In support of this contention, Mr. Ketkar relied on the Supreme Court decision in Rajaldas Gurunamal Pamanani Vs. The State of Maharashtra, That was a case in which the article of food concerned was compounded asafoetida and for compounded asafoetida, Rule 22 of the Rules framed under the Prevention of Food Adulteration Act the prescribed approximate quantity of 200 grams was required to be supplied to the Public Analyst, but actually the quantity supplied was 100 grams. The accused in that case was therefore prosecuted for similar offence. The trial Court acquitted the accused but the High Court reversed the order of acquittal and convicted the accused u/s 16 (1) (a) (ii) of the Act. While acquitting the accused, the Supreme Court observed in Para 17 as follows:

The appellant also contended that samples were not taken in accordance with the provisions of the Act and the rules thereunder. Rule 22 slates that in the case of asafoetida the approximate quantity to be supplied for analysis is 100 grams and in the case of compounded asafoetida 200 grams. The Public Analyst did not have the quantities mentioned in the Rules for analysis. The appellant rightly contends that non-compliance with the quantity to be supplied caused not only infraction of the provisions but also injustice. The quantities mentioned are required for correct analysis. Shortage in quantity for analysis is not permitted by the statute.

Consequently the appeal was allowed and the accused was acquitted by the Supreme Court.

6. M/s. N. B. Shetye and S. A. Wale who respectively appear for the Food Inspector and the State of Maharashtra contended that the Supreme Court has

not held that R. 22 was a mandatory rule and that therefore it was not incumbent on the Food Inspector to send the exact quantity to the Public Analyst as mentioned in the rule, but the rule only mentions approximate quantity. According to them, therefore, despatch of 150 grams would not in any way result in injustice to the accused. It was particularly emphasized that neither the Public Analyst nor the Director of Central Food Laboratory stated in their report that the quantity sent to them was incapable of analysis or was insufficient for analysis and to arrive at the correct conclusion.

7. No doubt, there is some force in this contention. However, in the Supreme Court case also it does not appear that the Public Analyst or the Director of Central Food Laboratory had stated that the quantity sent to them was incapable of proper analysis. They had analysed and sent their report. The Supreme Court ruling therefore is incapable of being distinguished on this ground.

8. My attention was also invited to my own judgment in Criminal Revision Application No. 673 of 1974 decided on 18th/ 19th March 1975. That was a case of a sample of black pepper. In that case also the aforesaid Supreme Court ruling was pointed out to me but as on facts it was held by me that the quantity supplied to the Public Analyst was exactly as was required under Rule 22, there was no infraction or infringement of the provisions of Rule 22 of the said Rules, The conviction of the revision petitioner in that case was maintained.

9. In the present case it cannot be denied that the quantity supplied was much less than the prescribed quantity to be supplied to the Public Analyst. The rule requires 250 grams approximately to be supplied to the Public Analyst but in fact only 150 grams were supplied. The difference in the quantity prescribed and the quantity supplied to the public Analyst must be within a reasonable limit. The difference of 100 grains cannot be said to be within reasonable limit.

10. The result, therefore, is that in view of the Supreme Court decision, the order of conviction cannot be sustained. The lower appellate Court has tried to distinguish the Supreme Court ruling on the ground that the Supreme Court has not held that the rule was mandatory and had found that injustice was caused to the accused by not sending the required quantity of sample. But although the Supreme Court has not held that the rule was mandatory and therefore infraction was fatal to the prosecution case, the ratio decidendi of the case comes to that.

11. In the result, the petition is allowed and the rule is made absolute. The order of conviction and sentence is set aside and the petitioner is acquitted of the charge u/s 16 (1) (a) (i) read with Section 7 (i) of the Prevention of Food Adulteration Act, 1954. Fine if already recovered is directed to be refunded to the accused. Bail-bond of the accused stands cancelled.