
(2019) 01 BOM CK 0083

In the Bombay High Court

Case No : Criminal Revision Application No. 25 Of 2015

Santosh

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:

Prevention Of Food Adulteration Act, 1954 — Section 2(ia)(a), 7, 7(i), 16, 16(1)(a)(ii)
Code Of Criminal Procedure, 1973 — Section 313
Prevention Of Food Adulteration Rules, 1955 — Rule 14, 22

Citation : (2019) 01 BOM CK 0083

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

Bench : Single Bench

Advocate : A.A. Choubey, A.A. Naik, I.J. Damle

Final Decision : Allowed

Judgement

1. The present revision is against the judgment of conviction by Chief Judicial Magistrate, Yavatmal for the offences under Sections 7(i) read with Section 2(ia) (a) punishable under Section 16(1)(a)(ii) of the Prevention of Food Adulteration Act, 1954 and sentenced the applicant (hereinafter referred to as 'accused') to suffer rigorous imprisonment for three months and to pay fine of Rs. 1,000/- in default to suffer simple imprisonment for 15 days. The said judgment was challenged in Regular Criminal Appeal No. 7/2012 before the Sessions Judge, Yavatmal. The said appeal came to be dismissed on 20-2-2015.

2. The case of the prosecution against the accused in short is as under.

That Food Inspector Shri Chavan visited the shop of accused under the name and style as M/s. Vyankatesh Provisions on Arni Road, Yavatmal, on 6-8-2005 at about 1.45 p.m. Accused was present in the shop. Food Inspector Shri Chavan taken sample of chilly powder admeasuring about 750 gms. It was divided into three parts and sealed in a bottle and panchanama was prepared. One part of the sample was sent to Public Analyst, Amravati on 8-8-2005. After receipt of report of Public Analyst and after obtaining sanction from local health authority,

the complainant filed complaint against accused before the Chief Judicial Magistrate, Yavatmal.

3. Learned Chief Judicial Magistrate framed the charged.

After framing charge, witnesses were examined. Statement of accused under Section 313 of the Code of Criminal Procedure was recorded. After hearing the prosecution and defence, learned Chief Judicial Magistrate, Yavatmal convicted the accused as stated above.

4. Heard learned counsel Shri Choubey for the accused. He has submitted that mandatory provisions of Rule 14 are not followed by the Food Inspector Shri Chavan. He has pointed out cross-examination and submitted that Food Inspector not personally cleaned and dried empty plastic jar. Nobody was directed to clean it at the time of taking sample. Learned counsel Shri Choubey has submitted that as per the provisions of Rule 22, sample was not taken in sufficient quantity. Learned counsel has submitted that the report of Public Analyst, Exhibit 46 does not show that sample of chilly power was unfit for human consumption. Learned counsel Shri Choubey has submitted that accused applied for sending one part of sample to Central Food Laboratory, Mysore in the year 2006 and it was sent to said laboratory in 2010 after lapse of three years, therefore, valuable right of the accused is infringed. Learned counsel Shri Choubey has submitted that independent panch witnesses not examined by the prosecution.

Therefore, sole testimony of P.W. 2 wrongly relied by the trial Court.

Learned counsel submitted that prosecution has failed to prove the guilt of accused beyond reasonable doubt, hence, accused is entitled for acquittal. At last, he prayed to allow the revision.

5. Heard learned Additional Public Prosecutor Shri Damle for the State/non-applicant. He has strongly supported the impugned judgments and submitted that sample which was sent was found adulterated, therefore, accused is rightly convicted by the trial Court.

6. Offences punishable under the Prevention of Food Adulteration Act are to be proved strictly by following the mandatory rules. Rule 14 of Prevention of Food Adulteration Rules, 1955 reads as under.

14. 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.

7. Evidence of complainant Food Inspector, Shri Venkat H. Chavan shows that he has not followed the mandatory provisions of Rule 14. He has specifically admitted in his cross-examination as under.

"I had packed chilly powder in clean, dry and empty plastic jar. I had taken those

jars from my office. I carried those jars with me. I did not clean those jars. The same were cleaned from company and in packed condition. I cannot say as to from which company those jars were received. ..."

This particular evidence clearly shows that Food Inspector Shri Chavan not personally cleaned the jars. He has not directed any other person to clean jars at the time of taking sample, therefore, Rule 14 of the Prevention of Food Adulteration Rules is not complied.

8. Learned counsel Shri Choubey has pointed decision in the case of M/s. Ultadanga Oil Mill and another Vs. The Corporation of Calcutta [1963(2) Cri.L.J. 448 (Vol. 67, C.N. 134)] in which it is held that "in cases under the Prevention of Food Adulteration Act where penalties are severe the requirements in the matter of taking samples should be very carefully observed. Prevention of Food Adulteration Rules do not deal in details with the manner or procedure of taking samples except what is provided in Rule 14 but Rule 14 lays down a salutary provision that if the phial or the bottle in which the sample is taken is not clean, dry, in other words, if it contains other matter, sediments etc. which might be responsible for variations in the standard of quality, then it cannot be said that the results of analysis are dependable."

9. In the case of State of Gujarat Vs. Punabhai Ramabhai Machhi [2005 Cri. L.J. 3631], it is held that "Rule 14 is mandatory. Complainant - Food Inspector admitted in his deposition that helpers were responsible for cleaning bottles. He himself had not cleaned bottles. Prosecution failed to examine or led any positive evidence to prove that bottles were cleaned by examining helper. Mandatory provisions to Rule 14 not complied with. Accused is entitled for acquittal."

10. In the present case, P.W. 2 Shri Chavan has specifically stated in his cross-examination that he himself not cleaned the bottles. He has not stated who cleaned the said bottles. On the other hand his evidence shows that the bottles were in packed conditions and nobody cleaned the bottle, therefore, valuable right of the accused is prejudiced in view of Rule 14, therefore, on this count, accused is entitled for acquittal.

11. Learned counsel Shri Choubey has submitted that as per Rule 22, requisite sample was not taken. Sample of chilly powder was taken by P.W. 2. Chilly powder comes in item 52 i.e. 'food not specified'. Quantity of sample to be sent to analysis must be 500 gms. Food Inspector Shri Chavan taken sample of 750 gms. It was divided into three parts. One part i.e. 250 gms was sent to Public Analyst. He has not followed the mandatory provisions of Rule 22 of the Prevention of Food Adulteration Rules. In the case of Rajaldas Pamnani Vs. State of Maharashtra [1975 Mh.L.J. 44], Their Lordships of Hon'ble Supreme Court have held that "the quantity as mentioned in Rule 22, Prevention of Food Adulteration Rules is required for correct analysis. Shortage in the quantity is not permitted by the statute. Non-compliance with the rule as to requisite quantity would cause not only infraction of the provisions but also injustice. If the

quantity sent to the analyst is short of requisite quantity no conviction can be based on the report of public analyst."

12. In the present case, as per Rule 22, sample of chilly powder was to be sent to Public Analyst and quantity of sample should have been 500 gms. P.W. 2 Shri Chavan sent sample of only 250 gms. Therefore, it is clear that he has not followed the mandatory provisions of Rule 22 of the Prevention of Food Adulteration Rules.

13. Public Analyst Report, Exhibit 46 does not show that sample of chilly powder was found injurious to health. In the case of State of Maharashtra Vs. Sunil Bansilal Jain and anr. [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 (l) 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. The Public Analyst's report in the present case does not make mention that the food article sent for analysis was found injurious to health. Positively in absence of any other evidence, it cannot be said that it is adulterated one, punishable under section 7 read with section 16 of the Act. Hence, the judgment of the acquittal recorded by the Judicial Magistrate First Class needs no interference."

14. In the present case, Exhibit 46, Public Analyst Report does not show that sample of chilly powder was injurious to health and, therefore, the conviction awarded by the trial Court on the basis of Public Analyst Report is not sustainable.

15. As per the evidence of P.W. 2 Shri Chavan, the sample was taken in presence of panch witnesses. In their presence, panchanama, Exhibit 38 was prepared. Not a single panch not examined by the prosecution. Therefore, sole testimony of P.W. 2, Food Inspector Shri Chavan is not corroborated by the independent witnesses.

16. Accused applied for sending one part of sample to Central Food Laboratory in the year 2006 but sample was sent in the year 2010. Therefore, mandatory provisions of the Prevention of Food Adulteration Rules, 1955 not followed by the trial Court. The prosecution has failed to prove that sample of chilly powder was adulterated and injurious to health. Mandatory provisions for taking sample as per Rule 22 not followed by the Food Inspector. Food Inspector not followed the mandatory rule i.e. Rule 14. Therefore, accused is entitled for acquittal.

In that view of the matter, following order is passed.

ORDER

- (i) Revision is allowed.
- (ii) Accused/applicant is acquitted of offences charged against him.
- (iii) Bail bond of accused/applicant stands cancelled.
- (iv) Fine amount, if paid, be refunded to the accused/applicant.
- (v) R & P be sent back to the trial Court.