
(1978) 07 BOM CK 0010
In the Bombay High Court
Case No : Criminal Appeal No. 763 of 1976

State of Maharashtra	Vs	APPELLANT
Bashir Ahmed Osman and Another		RESPONDENT

Date of Decision : 18-07-1978

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (1978) 07 BOM CK 0010

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Advocate : S.B. Patil, P.P, for the Appellant; V.B. Ganatra and L.V. Ganatra, for the Respondent

Final Decision : Dismissed

Judgement

R.A. Jahagirdar, J.

The order of acquittal passed by the learned Judicial Magistrate of First Class at Aurangabad in Criminal Case No. 2 of 1974 is challenged by the State in this appeal. The two respondents in this appeal were the accused in the criminal case which had been launched at the instance of the Food Inspector of Aurangabad on the ground that the accused sold to the Food Inspector pan masala, betel-nuts etc. which were found to be adulterated on analysis. The prosecution case was that on 17th July, 1973, the Food Inspector of Aurangabad visited the shop which is now found to be owned by accused No. 2 and obtained sample from accused No. 1 who was present at the shop at the time. It was the defence of accused No. 1 that he had no concern whatsoever with the shop from which the samples were taken and that he was forced to give articles of food to the Food Inspector. Accused No. 2 who is the owner of the shop was not present at the time when the Food Inspector made the statutory purchase from his shop. The findings of facts recorded by the learned trial Magistrate and not disputed in this appeal are that accused No. 1 was at the relevant time an employee of the state Transport Corporation and was neither the servant nor an agent of accused No. 2 who

owned the shop. Correspondingly the finding is that accused No. 2 was the owner of the shop. According to the Food Inspector who had given evidence in this case, accused No. 2 came when the samples were being sealed, but it is admitted that on none of the documents which were prepared at that time the signature of accused No. 2 appears. It is also an admitted position that one of the samples which should be given to the vendor had not been given to accused No. 2.

2. The learned trial Magistrate on this State of evidence was compelled to acquit both the accused No. 1 was neither the servant nor otherwise authorised by accused No. 2 to sell any article of food from the shop of accused No. 2. Even, if accused No. 2 is to be proceeded against for the sale of an article from his shop which was later found to be adulterated, he should have been given a part of the sample purchased by the Food Inspector. Under law he is entitled to such a sample for the purpose of defending himself when prosecuted. In the instant case he has been denied this means of defence. I do not see how I can find my way to interfere with the order of acquittal recorded by the learned trial magistrate on these grounds.

3. In the result, the appeal must fail, and is hereby dismissed. The order of acquittal recorded by the learned Judicial Magistrate, First Class, Aurangabad, in Criminal Case No. 2 of 1974 is confirmed. Bail bonds of the accused shall stand cancelled.