

(1988) 07 BOM CK 0064

In the Bombay High Court

Case No : Criminal Appeal No. 483 of 1983 and Cri. Appeal No. 36 of 1985

State of Maharashtra

APPELLANT

Vs

Bhalachandra Gangadhar Akul and Another

RESPONDENT

Date of Decision : 07-07-1988

Acts Referred:

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

Citation : (1988) 3 BomCR 169

Hon'ble Judges : S.C. Pratap, J;A.D. Tated, J

Bench : Division Bench

Advocate : S.S. Keluskar, P.P. in C.A. 483/83 and C.M. Kothari, P.P. in Cr.A. 36/85, for the Appellant; R.M. Agarwal, for respondent in C.A. 483/83 and V.B. Ganatra, in Cr. A. 36/85, for the Respondent

Final Decision : Dismissed

Judgement

A.D. Tated, J.—Both these appeals by State are directed against the acquittal of the accused of the offence punishable u/s 7(1)(v) read with section 16(1)(a)(i) of the Prevention of Food Adulteration Act. As both the appeals involve common question of law and facts, they are heard together and hence this judgement disposes of both those appeals.

2. In Criminal Appeal No. 483 of 83 a sample of chilly powder was taken on 23rd November, 1978 by the Food Inspector Shri A.T. Sawashe. The Public Analyst reported that the sample contains 18.40.% ash and edible common salt 12.40% both by weight. The sample was also sent to Central Food Laboratory which also reported that the sample contains total ash 18.40% by weight and added sodium chloride (salt) 13.55% by weight. The Public Analyst at Solapur, Shri Manohar Purohit who had examined the sample was examined. He admitted during cross examination that the ash percentage includes the salt. He states that the percentage of ash increases by use of salt.

3. In Criminal Appeal No. 36 of 85 the sample of chilly powder was taken on

22nd June, 1977. The report of the Chemical Analyser, Ex. C shows that the total ash is 14.70% and edible common salt is 9.75%.

4. In both the cases the Public Analyst reported that the chilly powder was adulterated but while giving opinion that the chilly powder was adulterated, the Public Analyst did not subtract the percentage of salt found in the powder from the total ash. If that is done then the percentage of ash found in both the cases is below 8% which is permissible under the law then prevailing. The trial Magistrate inter alia taking into consideration the above aspect of the matter acquitted the accused in both the cases. The accused No. 1 in Criminal Appeal No. 36 is dead and the appeal against him abates. The learned Magistrate in both the cases were right in deducting the common salt found in the samples from the total ash found therein, and in both the cases the balance ash did not exceed permissible 8% and as such the accused in both the cases were not liable to be convicted of the offences charged. It may be mentioned that Rule 53 which provides for classification of preservatives has been amended with effect from 31st January, 1979 and a proviso has been added. The two cases on the hand are before the amended Rule 53. In the result, there is no substance in both the appeals and they are hereby dismissed. Bail bonds stand cancelled.