
(1986) 03 BOM CK 0062
In the Bombay High Court
Case No : Criminal Appeal No. 872 of 1981

State of Maharashtra

APPELLANT

Vs

Hiralal Maganlal Doshi and Others

RESPONDENT

Date of Decision : 03-03-1986

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1), 17, 2

Citation : (1986) 3 BomCR 82

Hon'ble Judges : A.D. Tated, J

Bench : Single Bench

Advocate : P.M. Vyas, P.P, for the Appellant; S.R. Chitnis, for the Respondent

Final Decision : Dismissed

Judgement

A.D. Tated, J.—The State preferred this appeal against the order of acquittal passed by the learned Judicial Magistrate, First Class, Vaduj, in Criminal Case No. 509 of 1979 decided on 23rd March, 1981 acquitting the respondents-accused of the offences punishable u/s 7(i) read with section 2(ia)(a), 2(ia)(b) and 2(ia)(m) and section 16(1)(a)(ii) read with section 17 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act").

2. The respondents-accused have their grocery shop at Khatav in Satara District. On 18th September, 1978 the Food Inspector visited the shop and among other things he obtained a sample of ground-nut oil. The Public Analyst found that the sample of ground-nut oil adulterated, due to finding of free fatty acid for more than 3% and as such the oil sold by the respondents was adulterated, and on that basis the respondents were prosecuted for the above mentioned offences. The learned Judicial Magistrate found that the complainant-Food Inspector failed to prove that he obtained ground-nut oil from the respondents in a clean dry pot and thereafter divided it three parts and put it into three dry and clean bottles, and, therefore, the report of the Chemical Analyst finding the oil adulterated could not be accepted for convicting the respondents. On a short point he acquitted the respondents.

3. The State, feeling aggrieved, preferred this appeal at the instance of the Food Inspector.

4. Section 11(1)(a) & (b) of the Act requires that when a Food Inspector takes a sample of food for analysis, he shall (a) give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample and to the person, if any, whose name, address and other particulars have been disclosed u/s 14-A; and (b) except in special cases provided by rules under the Act, divide the sample then and there into three parts and mark and seal or fasten up each part in such a manner as it permits and take the signature or thumb impression of the person from whom the sample has been taken in such place and in such manner as may be prescribed.

5. Rule 14 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as "the Rules"), requires that 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. The reading of section 11(1)(b) of the Act with Rule 14 of the Rules requires that the Food Inspector should obtain the sample of food in a dry jar or pot and divide it in three equal parts and put it in three clean and dry bottles, jars or suitable containers and thereafter close the said containers sufficiently tight to prevent leakage, evaporation, or in the case of dry substance, entrance of moisture.

6. In the present case Food Inspector Yeshwant Ganpat Mali (P.W. 1) states that he purchased 375 grams of ground-nut oil from the respondents-accused and took it in a clean and dry pot, and thereafter he divided the sample of ground-nut oil in three equal parts and those three parts of the sample in three clean and dry bottles. Thereafter he tightly corked those bottles and fixed sample label on each bottle. This part of the testimony of the complainant-Food Inspector was challenged by the defence and the cross-examination of the complainant was accordingly directed. During the cross-examination the attention of the witness was drawn to the panchnama Ex. 15 contemporaneously prepared. On seeing the panchnama the complainant admitted that Food Inspector Patankar who wrote the panchnama as per his instruction failed to write in it that the sample of the ground-nut oil was taken in a clean and dry pot. He also admitted that Patankar did not write in the panchnama that sample was taken in three bottles. According to him, Patankar through oversight committed the mistake in not mentioning those facts in the panchnama.

7. The learned Public Prosecutor wants that though there is an omission in the panchnama that the oil was taken in a clean dry pot and thereafter it was divided into three parts and put into the bottles, the testimony of the complainant-Food Inspector should have been accepted by the learned Judicial Magistrate. I am unable to agree with the learned Public Prosecutor. The testimony of the complainant is neither supported by the panchnama Ex. 15 nor by the panch Baban Anant I gave (P.W. 3). Baban gave admitted during his cross-examination

that the Food inspector did not bring any pot with him and the sample was not taken in a pot. He also admitted during the cross-examination that he did not see the act of pouring the ground-nut oil in the bottles. There is no reference to the bottles in the panchnama and the panch also did not see the oil being put in the bottles. Under such circumstances, it cannot be said that the learned trial Magistrate was wrong in rejecting the testimony of the complainant which is not supported by the panchnama and panch Baban. Unless oil sample is taken in a dry and clean pot and put into clean and dry bottles after dividing it into three parts, the possibility of moisture or any other foreign substance remaining in the pot or in the bottles and contaminating the sample cannot be ruled out. Therefore, I find that the learned Judicial Magistrate was right in rejecting the testimony of the complainant and also the report of the Public Analyst and acquitting the respondents-accused.

8. There is no substance in the appeal and it is hereby dismissed.