
(1988) 07 BOM CK 0079
In the Bombay High Court
Case No : Criminal Appeal No. 143 of 1984

State of Maharashtra

APPELLANT

Vs

Navinchandra Kantilal Mehta and others

RESPONDENT

Date of Decision : 12-07-1988

Acts Referred:

Citation : (1988) 07 BOM CK 0079

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

Bench : Division Bench

Judgement

S.C. Pratap, J.—This is an acquittal appeal arising out of prosecution under the Prevention of Food Adulteration Act (for short "the Act").

2. The article was plain toffee. The acquittal has been recorded in favour of the accused has been recorded in favour of the accused on the ground that there has been in this case breach of R. 22A of the Rules framed under the Act. Mr. Hombalkar, learned Public Prosecutor, submitted that there is no such breach while Mr. N. B. Shah appearing for the respondents, contended that this was a case of clear breach of R. 22A. The learned trial Magistrate has held that there has been breach of the said rule.

3. Hearing rival submissions on this aspect, we find, in the facts and circumstances of this case, that the view taken by the learned trial Magistrate is a possible view of the matter. The conclusion reached by him cannot be said to be one which could not have been reached on the record. If such be the position, and this being an acquittal appeal, the accused would be entitled to the benefit of doubt on the basis of the view taken by learned trial Magistrate and which view, as indicated, can as well be said to be a possible view. Unless the said view can be effectively dislodged and demolished, it is not possible nor open to the appellate Court hearing an acquittal appeal to reverse the impugned acquittal only because another view of the matter was possible or preferable.

4. In the result, and only on his short and limited ground, this appeal fails and

the same is dismissed. Bail bonds to stand cancelled.

A. D. TATED, J. :- 5. I fully agree with my learned brother that this is not a case for interference with the acquittal in appeal. However, it is necessary to consider whether R. 22A of the Rules requires that the sealed containers should not be opened and sample should not be taken after opening the sealed containers. R. 22-A reads thus :

"Contents of one or similar sealed containers having identical labels to constitute the quantity of a food sample - Where food is sold or stocked for sale or for distribution in sealed containers having identical label declaration, the contents of one or more of such containers as may be required to satisfy the quantity prescribed in R. 22 shall be treated to be a part of the sample."

In the present case plain toffee was sold. There is nothing to indicate that toffee was in a sealed container. Toffee was wrapped with paper of manufacture. The removal of the wrapper in order to get the required quantity as per R. 22 of the Rules cannot be said to be a contravention of R. 22-A of the Rules. However, as two views in the matter are possible, I agree with my learned brother that this is not a fit case for interference in the appeal. Hence, appeal is dismissed.

53. Appeal dismissed.