

(1978) 07 BOM CK 0018
In the Bombay High Court
Case No : Criminal Appeal No. 755 of 1976

State of Maharashtra

APPELLANT

Vs

Shrinivas Subrao Shenvi

RESPONDENT

Date of Decision : 15-07-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 241

Prevention of Food Adulteration Act, 1954 — Section 13(2), 16(1), 16(1A), 16A, 2

Citation : (1978) 07 BOM CK 0018

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

Bench : Single Bench

Advocate : B.S. Deshpande, P.P, for the Appellant; V.B. Ganatra and L.V. Ganatra for respondent (original accused No.2), for the Respondent

Final Decision : Dismissed

Judgement

R.A. Jahagirdar, J.—The several irregularities in the prosecution out of which the present appeal arises cannot be appreciated unless the facts are stated in at least chronological order first.

2. On 23rd July, 1973 the Food Inspector of Kolhapur purchased 600 grams of chilli powder from a restaurant called Hotel Kalpana and Lunch Home, situated on Subhash Road at Kolhapur. One Gopal Achanna Shetty was the proprietor of the said establishment and one Srinivas Subrao Shenvi, the respondent in this appeal, was said to be the person in charge of the said restaurant. Obviously it means that the present respondent was a servant of Gopal Achanna Shetty, the proprietor of the restaurant. The chilli powder which was purchased by the Food Inspector was, as usual, divided into three equal parts and one sample of 200 grams was sent to the Public Analyst whose report shows that the sample examined by him contained extraneous colour thus bringing the adulteration of the sample within the meaning of section 2(i)(j) of the Prevention of Food Adulteration Act. On the basis of this report and indeed by incorporating the contents of this report, the Food Inspector filed this complaint which was

registered as Criminal Case No. 104 of 1974. In that complaint both the proprietor and the present respondent were made accused Nos. 1 and 2 respectively. I have been informed that accused No. 1 absconded during the trial and his case was separated and the trial proceeded against accused No. 2 alone. The complaint referred to above was filed by the Food Inspector on 16th January, 1974.

3. An application was made on behalf of the respondent on 16th July, 1974 u/s 13(2) of the Act requesting that one or the other of the two samples may be sent to the Director of the Central Food Laboratory at Calcutta. From the recitals in the certificate issued by the Central Food Laboratory at Calcutta, I notice that on 29th July, 1974 the sample was sent to the Central Food Laboratory which received the same on 12th August, 1974. No reply was received by the Food Inspector from Calcutta for a long time and he made an application to the Court of the Judicial Magistrate, First Class of Kolhapur, where the case was pending, for reminding the Central Food Laboratory about the samples sent to them. Again from the recitals mentioned in the certificate of the Central Food Laboratory a reminder seems to have been sent and thereafter the sample of the chilly powder was taken up for analysis by the Central Food Laboratory sometime after July, 1975. The report of the analysis made by the Laboratory is dated 21st August, 1975, and it discloses that the sample of chilly powder sent to that Laboratory was lumpy and insect infested with a few live insects. Not a word has been said about the extraneous colour in the sample analysed by the Central Food Laboratory. If the report of the public Analyst is to be accepted, then the offence disclosed is one u/s 2(i)(j) of the Act, whereas the offence disclosed by the report of the Central Food Laboratory is one u/s 2(i)(f) of the Act. They are not mutually even overlapping and must be held to be mutually exclusive thus disclosing two distinct offences in respect of the same commodity alleged to have been purchased by the Food Inspector. Another disturbing feature of this prosecution is the extraordinary delay in the analysis made by the Central Food Laboratory. I have already mentioned above that the sample was received by the Central Food Laboratory on 12th August, 1974. More than one year after that date the sample was taken up for analysis. This at any rate, in my opinion, explains the lumpiness of the sample and probably also the insects found in the sample.

4. Section 13(2) of the Act, as it then stood, required the Director of the Central Food Laboratory to send a certificate after the analysis of the sample to the Court in the prescribed form within one month from the date of the receipt of the sample specifying the result of the sample. He did not do this even within one year of the receipt of the sample. No value can, therefore, be attached to the result of the analysis carried out by the Central Food Laboratory.

5. In my opinion, the trial Magistrate could not proceed with the prosecution which was originally launched on the basis that the accused had committed the offence of adulteration as defined in section 2(i)(j) of the Act. Under law the

report of the Central Food Laboratory supersedes the Public Analyst's report and if the Central Food Laboratory's report discloses another offence, a fresh sanction would be necessary to prosecute the accused of the offence newly disclosed. This is the view which I have taken in (Criminal Revision Application No. 470 of 1977, decided by me on 21st June, 1978). The prosecution should have been thrown out on the ground at that stage.

6. Despite this, the learned trial Magistrate has taken a couple of unusual steps in this prosecution. From the record I notice that the offence with which the accused was charged was one u/s 7(i) read with section 16(1)(a)(i) of the Prevention of Food Adulteration Act. I do not find that even charge was framed in this case. But the learned Magistrate misdirecting himself that he could proceed with the case as a summary case, accepted the plea of guilt of the accused and proceeded to sentence him to suffer simple imprisonment for one day and to find of Rs. 100/-.

7. There are two patent errors in the procedure adopted by the learned trial Magistrate. The offence was committed on 23rd July, 1973 and even if the summary procedure being provided in section 16-A of the Act which came into force on 1st April, 1976 was available for trying this offence, the trial Magistrate could not have resorted to the procedure prescribed in section 16-A of the Act because the offence had been committed long before this section came into force.

8. Secondly, the offence of adulteration as disclosed in the previous report was one u/s 2(i)(j) of the Act; the offence disclosed by the report of the Central Food Laboratory was u/s 2(i)(j) of the Act. Even if it is held that the summary procedure prescribed in section 16-A of the Act could be adopted for an offence committed before this section came into force, the Magistrate could not adopt that procedure in the instant case. The learned trial Magistrate failed to notice that simultaneously with the insertion of section 16-A in the Act, several other amendments were also made in section 16 of the Act. Section 16(1) mentions that subject to the provisions of sub-section (1-A), if any person has committed the offences mentioned in Clauses (a) to (g) of sub-section (1), then he shall be liable to particular penalty specified therein. Sub-section (1), of section 16, therefore, is controlled by sub-section (1-A) of section 16. Sub-section (1-A) says that if any person whether by himself or by any other person on his behalf, imports into India or manufactures for sale, or stores or sells or distributes any article of food which is adulterated within the meaning of any of the sub-clause (e) to (l), both inclusive, of Clause (ia) of section 2, then he shall be liable to the penalty specified therein. In other words, the offence in respect of adulteration as defined in sub-clause (e) to (l) of Clause (ia) of section 2 are to be dealt with under sub-section (1-A) of section 16 and not under sub-section (1) of section 16.

9. Now, if one looks to the provisions of section 16-A which specifically mentions that all offences punishable under sub-section (1) of section 16 shall be tried in a summary way, one notices that the offences mentioned in section 16(1-A) could

not be, the subject-matter of summary trial u/s 16-14 of the Act. The offences disclosed by both the reports in the instant case are covered by sub-section (1-A) of section 16 and could not be the subject matter of summary trial by the learned trial Magistrate who completely failed to notice the changes that were brought about in section 16 while resorting to the procedure prescribed u/s 16-A of the Act.

10. As, I have already mentioned above, the learned trial Magistrate has accepted the plea of guilty which itself, in my opinion, is not properly recorded because the accused has not accepted the ingredients of the offences which were alleged against him. In fact in view of the two conflicting reports, it was incumbent upon the Magistrate to explain to the accused which particular offence he is alleged to have committed which the learned trial Magistrate has not done. The plea of guilty in the instant case could not be accepted and an order of conviction could not be passed on that plea of guilty.

11. The state has preferred the appeal asking for the enhancement of the sentence awarded by the learned trial Magistrate. Since, now I am satisfied that the entire procedure adopted by the trial Magistrate was illegal and the order of conviction itself is illegal, the question of enhancing the sentence does not arise at all. On the other hand, the order of conviction and sentence will have to be set aside

12. In the normal course in view of the necessity of a fresh sanction becoming necessary as a result of the disclosure of another offence by the Central Food Laboratory, the complaint will have to be returned to the Food Inspector. This is so in view of the decision of the Supreme Court in *Nagraj Vs. State of Mysore*, which view I have followed in my judgment referred to earlier.

13. In the result, this appeal is dismissed. On the other hand, the order of conviction and sentence recorded on 25th May, 1976 by the learned Judicial Magistrate of First Class, Kolhapur, in Summary Case No. 104 of 1974 is set aside. The complaint filed by the Food Inspector of Kolhapur shall be returned to him. Fine, if it has been paid by the respondent accused, shall be refunded to him.