
(1988) 06 BOM CK 0035
In the Bombay High Court
Case No : Criminal Appeal No. 684 of 1981

State of Maharashtra	Vs	APPELLANT
Tarachand Nathalal Shah		RESPONDENT

Date of Decision : 21-06-1988

Acts Referred:

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

Citation : (1988) 4 BomCR 23

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

Bench : Division Bench

Advocate : M.D. Gangakhdekar, P, for the Appellant; M.A. Rane, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pratap, J.—There is no merit in this acquittal appeal arising out of prosecution under the provisions of the Prevention of Food Adulteration Act (for short "the Act"). It is unnecessary to relate the facts and circumstances leading to the prosecution case as the same have been succinctly set out in his judgment by the learned trial Magistrate.

2. Going through the evidence as also the detail judgment of the trial Court, we find ourselves in agreement with the reasoning and the conclusion of the learned trial Magistrate. In the first instance, there is no satisfactory proof that the article in question catachu edible, sample whereof was taken by the Food Inspector was kept by the accused in his shop for the purpose of sale. The evidence casts considerable doubt on this basic aspect. Evidence indicates that sample of the said article was obtained from the house of the accused who was residing nearby to his shop. Still further, both the panchas examined by the prosecution have turned hostile and do not support the case of the prosecution. We have then go to by the solitary testimony of the Food Inspector. In this context it is relevant to note that though the Food Inspector was accompanied by yet another Food Inspector called Mali, and though both the panch witnesses have turned hostile,

the prosecution did not choose to examine Mali who accompanied the Food Inspector in this case. His evidence would have thrown light on the veracity or otherwise of the prosecution case and would have been if true, supported the case of the prosecution and the evidence of the Food Inspector. For reasons best known, however, the prosecution has failed to examine Mali. Though it is in a given case possible to rest a conviction on the sole testimony of a solitary witness, may be complainant, this is not a case where we would be justified in doing so. Still further, the evidence on the record is also not very clear on the receipt of price by the accused of the food article sold to the Food Inspector. The bill (Exhibit 7) is not shown as cash memo nor is it shown as credit memo. There is also no signature of the accused to the effect that he has received the price of the article in question. The accused, in fact, denied having received any price. And for reasons best known, the complainant did not obtained any writing from the accused for the price purported to have been paid to him.

3. Such then being the lacunae and the infirmities and this being an appeal against acquittal, we would not be justified in interfering. Well settled is the rule that where two reasonable conclusions are possible on the evidence on record, a Court should, as a matter of judicial caution, refrain from interfering with an acquittal. The instant case is, however, one where even two reasonable conclusions are not possible. On the evidence on record, only one reasonable conclusion is possible and that is in favour of the accused, resulting in granting him benefit of doubt and recording an order of acquittal. Although the power of the High Court hearing an acquittal appeal to reassess evidence and reach its own conclusions are as extensive as in an appeal against an order of conviction, yet when the High Court finds that the view taken by the trial Magistrate is a possible view of the matter and a reasonable conclusion well justified as the evidence and materials on record, the Appellate Court would refrain from interfering with the acquittal.

4. In the result, this appeal fails and the same is dismissed.