
(1973) 07 BOM CK 0016

In the Bombay High Court

Case No : Criminal Appeal No. 161 of 1971 (with Cri. Appeal No. 220 of 1971)

State of Maharashtra

APPELLANT

Vs

Tukaram Manikrao Wagh and another

RESPONDENT

Date of Decision : 05-07-1973

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 10, 11, 12, 13, 13(5)

Citation : (1973) MhLj 988

Hon'ble Judges : N.B. Naik, J

Bench : Single Bench

Advocate : H.S. Ghare, for the Appellant; M.N. Ingle and P.H. Gulhane For respondents Nos. 1 and 2, V.V. Naik, Hony. Asstt. to the Addl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

N.B. Naik, J.—These two appeals filed by the State of Maharashtra and the Corporation of the City of Nagpur, respectively, arise out of the self same order of acquittal of the respondents-accused by the learned Special Judicial Magistrate, First Class (Corporation), Nagpur, acquitting both the accused-respondents of the charge u/s 16 (i) (a) read with section 7 (i) of the Prevention of Food Adulteration Act, 1954, The facts giving rise to these appeals are these :

On April 28, 1970, one Mr. Turang, purporting to act as a Food Inspector within the local limits of the City of Nagpur Corporation, took 660 mm. of milk from accused No. 1, who is the son of accused No. 2, and is alleged to have sold the milk for and on behalf of accused No. 2. Mr. Turang followed the procedure prescribed under section 11 of the Act. The sample was sent to the Public Analyst, who opined that it was adulterated. On these facts both the accused were prosecuted on the basis of a complaint filed by the Corporation of the City of Nagpur, through its Health Officer. Both the accused pleaded not guilty to the charge and claimed to be tried. The defence of accused No. 2 was one of total denial. So far as accused No. 1 is concerned, he contended that his father had no

concern with his business and that he deals in milk in his own independent right. He disputed that the sample was taken by the Food Inspector in his presence, although he admitted that he had received the intimation in Form No. 6, for which he has made his signature. He denied that he was paid the price.

2. The trial of the case being concluded, it appears that at the time of the addresses, an objection was raised by the learned Advocate for the accused about the maintainability of the prosecution on the ground that since Mr. Turang did not possess the prescribed qualifications for being appointed as a Food Inspector, the prosecution is incompetent.

3. Since Mr Turang was admittedly appointed as Food Inspector by an order of the Government dated August 14, 1968, published in the Government Gazette dated August 29, 1968, and he did not possess the requisite qualifications prescribed by Clause (4) of the Prevention of Food Adulteration (Amendment) Rules, 1968, which came into force on August 24, 1968, the learned Magistrate accepted the contention on behalf of the accused-respondent. It was, however, contended on behalf of the prosecution, that notwithstanding the fact that Mr. Turang's appointment as Food Inspector was not valid, the prosecution is competent inasmuch as, u/s 12 of the Act, it was perfectly permissible even for a private person to purchase sample of food for being sent to the Public Analyst. In that view of the matter, it was contended that Mr. Turang's act of taking the sample would be an act of a private individual u/s 12 of the Act and, therefore, the prosecution was validly instituted. The learned Magistrate repelled that contention observing as under :-

Having thus held that Shri Turang was not a validly appointed Food Inspector, the question would be to see if the samples taken by him in his capacity as a private purchaser or a Sanitary Inspector can fulfil the conditions or not. I am inclined to give a negative reply to this. The words used in section 10 of the Food Inspector (which ought to read as Prevention of Food Adulteration Act) are that he shall have power "to take samples", while the words used in section 12 in connection with a private person, i. e., ""purchaser". So the two acts are quite distinct from one another. In the present case had Shri Turang ""purchased" the sample as a private person though acting as a Sanitary Inspector, then his case could have fallen within the ambits of section 12 of the Act and not of section 10. By making an erroneous representation as Food inspector, he has introduced an element of compulsion upon the vendor accused to give the samples which he was not authorised to do, in fact. It must therefore be held that his act does not come under any of the two categories, the first one having fallen under erroneous or assumed authority and the other having actually not made at the time of that act. So it must be held that Shri Turang did not take the samples as per rules. Hence my finding in the negative on point No. 2 also.

4. In that view of the matter, the learned Magistrate took the view that there was no point in deciding the case on merits and that the accused were entitled to an acquittal,

5. Aggrieved by that order of acquittal, Criminal Appeal No. 161 of 1971 is filed by the State and the City of Nagpur Corporation has filed Criminal Appeal No. 220/1971 challenging the legality of the order of acquittal which was, passed by the teamed Magistrate.

6. It is not disputed before me that Mr. Turang who was appointed as a Food Inspector by an order of the Government dated August 14, 1968,, which was published in the Government Gazette dated August 29-, 1968, does not possess the prescribed qualifications and, therefore, his appointment as a Food Inspector is not valid. But then as was urged before the teamed Magistrate, it is urged on behalf of (he Corporation of the city of Nagpur and the State, that notwithstanding that Mr. Turang was not qualified to be appointed as a Food Inspector, since it is perfectly permissible even for any person other than the Food Inspector to purchase an article of food for analysis u/s 12 of the Act, and since the report of the Public Analyst prima facie shows that the milk was adulterated, and since the prosecution undoubtedly was launched on a complaint filed by the Corporation of the city of Nagpur, which is a local authority mentioned in section 20 of the Act, the learned Magistrate was not justified in coming to the conclusion that no offence was committed by the accused and acquitting both the accused. Section 12 of the Food Adulteration Act states as under:

12. Nothing contained in this Act shall be held to prevent a purchaser of any article of food other than a Food Inspector from having such article analysed by the public analyst on payment of such fees as may be prescribed and from receiving from the public analyst a report of his analysis:

Provided that such purchaser shall inform the vendor at the time of purchase of his intention to have such article so analysed :

Provided further that the provisions of sub-section (1), sub-section (2) and sub section (3) of section 11 shall, as far as may be, apply to a purchaser of article of food who intends to have such article so analysed, as they apply to a food inspector who takes a sample of food for analysis ;

Provided also that if the report of the public analyst shows that the article of food is adulterated, the purchaser shall be entitled to get refund of the fees paid by him under this section.

It would, therefore, appear that though Mr. Turang was not qualified to be appointed as a Food Inspector, he could certainly purchase the sample for analysis u/s 12 of the Act, provided he complies with the requirements of that section. The prosecution does claim, that Mr. Turang has taken the requisite precautions and complied with the requirements of section 12 of the Act Whether he has really complied with or not is a matter which could be decided on merits, in the light of the evidence which is already led. But prima facie, it is claimed on behalf of the prosecution, that he has complied with all the requirements of section 12 of the Act. The learned Magistrate, as I have pointed out, however

took the view, that since there was an element of compulsion in the act of Mr. Turang in taking sample by representing himself to be a Food Inspector, it could not be held that he is a purchaser within the meaning of section 12 of the Act. But then this view is not correct in view of the observations of the Supreme Court in *Mangaldas v. State of Maharashtra* 1966 Mh.L J 505 (SC) = A I R 1664 S C 128. wherein it is observed :

The Act gives a special definition of "sale" in section 2 (xiii) which specifically includes within its ambit a sale for analysis. A sale for analysis must be regarded as sale even if the transaction contains an element of compulsion

This decision is followed with approval in *The Food Inspector v. Cherukatul Gopalan* A I R 1971 S C 1725. Therefore, it would appear that the learned Magistrate was not right in holding, that because Mr. Turang had taken the sample by representing himself to be a Food Inspector, he could not be said to be a purchaser mentioned in section 12 of the Act.

7. Now, simply because Mr. Turang was not qualified to be appointed as a Food Inspector, the learned Magistrate straight away proceeded to hold that no offence was committed by the accused and without deciding the case on merits, he acquitted both the accused. In support of that view, the learned Magistrate relied on a decision of the Allahabad High Court reported in *Medical Officer of Health, Municipal Corporation Vs. Gulzari*, . That was a case where admittedly the Public Analyst whose report was sought to be used as evidence u/s 13 (5) of the Act, did not possess the requisite qualifications for being appointed as a Public Analyst. Therefore, it would follow that his report could not be read as evidence under sub section (5) of section 13 of the Act. So in that view of the matter that the order of acquittal of the accused was confirmed by the High Court. There could be no analogy between that ruling and the case on hand. In [the instant case we are concerned with the validity of a prosecution launched by the local authority on the basis of the report of a Public Analyst, to whom the Food Inspector who was not qualified to be appointed as such, had sent the sample for analysis. The sample may be taken for analysis either by the Food Inspector who is appointed u/s 9 of the Act or by any person other than a Food Inspector, u/s 12 of the Act. Therefore, if the Food Inspector who has purchased the sample is not qualified to be appointed as such, since he does not cease to be a citizen or a private person, the purchase by him could not cease to be a purchase by any person other than the Food Inspector as mentioned in section 12 of the Act. Therefore, the decision in *Medical Officer of Health v. Gulzari* relied upon by the learned Magistrate has no application to the case of a Food Inspector who is not qualified to be appointed for that post.

8. In this Court reliance was placed by the learned Advocate for the accused respondents on the decision of Tripathi J. in *Shabbir Abdul Rehman v. State* A T R 1969 All. 478. No doubt, as in the instant case, in that case also the Food Inspector, who had taken the sample on August 8, 1963, on the basis of which the prosecution was launched, was not qualified to be appointed as a Food

Inspector. On these facts Tripathi J. observed as under in para 11 at page 479 :

That being so, in my opinion, Shri Apan had no authority as Food Inspector to take a sample of the milk from the applicant and his prosecution on the basis of the analysis of that sample is misconceived and not sustainable in law.

In that view of the matter the conviction of the accused was set aside. But then in this judgment the question of treating the Food Inspector as purchaser u/s 12 of the Food Adulteration Act and the consequences arising therefrom have not at all been considered. There is nothing in the judgment to show that this aspect of the case was agitated before the learned Judge. 1 here is also no discussion of the law or the provisions of the Prevention of Food Adulteration Act in the judgment. Therefore, it is difficult to get any light or assistance from this judgment.

9. I have already accepted the view of the appellants that although Mr. Turang was not qualified to be appointed as a Food Inspector, his act of taking the sample and sending the same for analysis to the Public Analyst can be covered by the enabling provisions of section 12 of the Act. It is, however, argued by the learned Advocates for the accused-respondent (that in that case the complaint should have been filed by Mr. Turang in his capacity as a private purchaser as provided under the proviso to section 20 of the Prevention of Food Adulteration Act. Section 20 provides :-

20 (1) No prosecution for the offence under this Act shall be instituted except by or with the written consent of, (the Central Government or the State Government or a local Authority or a person authorised in this behalf by general or special order, by the Central Government or the State Government or a local authority);

Provided that the prosecution (or an offence under this Act may be instituted by a purchaser referred to in section 12, if he produces in Court a copy of the report of the public analyst along with the complaint".

As we read section 20 (1) the main clause, there is nothing in it to show that the Central Government or the State Government or a local authority, or a person authorised in that behalf could institute the prosecution only on the basis of the report of a Public Analyst about the sample sent to him by the Food Inspector. In fact, there is absolutely no mention of the Food Inspector or the report of the Public Analyst in that section. All that the main section does is to provide, that the prosecution shall not be instituted except as provided therein. It is not disputed in the instant case that the prosecution is instituted by the Corporation of the City of Nagpur through its Health Officer. Therefore, prima facie the prosecution is validly instituted u/s 20 (1) of the Act. As I have stated, there is no mention in section 20 (1) of the Act, that the authorities or the persons mentioned therein could institute the prosecution only on the basis of a sample taken by the Food Inspector. So also there is nothing in that section to prevent the authorities mentioned therein from starting a prosecution on the basis of a report of the public analyst to whom the sample was sent by the purchaser u/s

12 of the Prevention of Food Adulteration Act. Now, since in this case prima facie the sample was taken by Mr. Turang by following the provisions of sections 11 and 12 of the Act and the report of the Public Analyst prima facie shows that the milk was adulterated, I fail to see how it could be said that the prosecution is incompetent in limini and the accused are entitled to an acquittal without going into the merits of the case. I cannot agree with the submissions of the learned advocates for the accused-respondents that since it is not disputed that Mr. Turang was not a validly appointed Food Inspector, the prosecution could be only instituted under the proviso to section 20 by a complaint filed by Mr. Turang as a purchaser. As the main provisions stands, it is perfectly open to a private purchaser to send the report of the Public Analyst to the authorities mentioned therein and then on the basis of that report and the papers, it is perfectly open for the authorities mentioned in section 20 (1) to initiate the prosecution. It is, therefore, not necessary to fall back upon the proviso. It is also open to a private purchaser to file his own complaint along with the report of the public analyst as mentioned in the proviso. Therefore, since there is absolutely no mention of the

Food Inspector in section 20 (1) of the Act, it is perfectly open for the authorities to initiate the proceedings. I am, therefore, of the view that notwithstanding the fact that Mr. Turang was not qualified to be appointed as a Food Inspector, since the prosecution has been validly instituted u/s 20 (1) of the Act, the Magistrate must dispose of the case on merits.

10. Now, since Mr. Turang was not validly appointed as a Food Inspector, he could not have exercised the powers of a Food Inspector which are enumerated in section 10 of the Act and for the same reason no offence could have been committed by the accused, either under sub-section (b) or (c) of sub-section (1) of section 16 either for preventing Mr. Turang from taking the sample or for preventing him from exercising any other powers under the Act. But the fact that Mr. Turang was not a qualified Food Inspector would not, in my opinion, affect the evidentiary value of the Public Analyst showing that the milk in question was adulterated. Having regard to the fact that even a private person other than the Food Inspector can validly purchase the article of food for sample u/s 12 of the Act, the case has got to be approached in the light of that section read with section 20 (1) of the Act. If that is so, it would appear that the learned Magistrate was in error in acquitting the accused without deciding the case on merits.

11. The view I am taking is supported by a decision of the Allahabad High Court reported in *Municipal Board v. Angan* 1970 or. L. J. 123. The facts of that case were identical with our case, inasmuch as in that case also, it was found that Mr. Apan, Food Inspector, who had taken the sample, did not possess the requisite qualifications for being appointed as a Food Inspector. In that case also, it was argued before the High Court as is done before me, that if the sample of the article of food is taken by a private person u/s 12 of the Act, only he could file a complaint under the proviso to sub-section (1) of section 20 and not the Medical

Officer of Health. This contention was repelled by Singh J. by observing as under:

I do not, however, think there is anything in the Act which prohibits a complaint being filed under the main clause of section 20 of the Act, even in cases where the article of food may have been purchased as a sample by a private purchaser u/s 12, sub-section (1) of section 20 does not any down that a complaint may be made under that sub section only when the procedure prescribed u/s 11 of the Act has been followed by the Food Inspector himself. The procedure prescribed u/s 11 is to some extent made applicable even to the taking of a sample of article of food by a private purchaser u/s 12. It to that extent the provisions of sections 11 and 12 of the Act have been complied with, there is nothing in the Act to prohibit the filing of a complaint tinder the main clause of Sub-section (1) of section 20 even in case the sample of the articles of food is taken by a private purchaser.

With respect I agree with that view and it would, therefore, appear that the learned Magistrate was in error in acquitting the accused without deciding the case on merits.

12. In the result, the appeals are allowed and the matter is remitted to the Magistrate for disposing the case on merits.

13. The appeals are allowed. The order of acquittal of the accused-respondents dated March 10, 1971 is set aside. The case is sent back to the Magistrate for disposal according to law in the light of this judgment. The accused to appear before this lower Court on August 14, 1973.