

(2017) 08 BOM CK 0044
In the Bombay High Court
Case No : 372 of 2003

State of Maharashtra

APPELLANT

Vs

Vilas Madhaorao Tundulwar

RESPONDENT

Date of Decision : 24-08-2017

Acts Referred:

[Prevention of Food Adulteration Act, 1954](#), [Section 7\(1\)](#), [Section 2\(IA\)\(m\)](#), [Section 2\(IA\)\(a\)](#), [Section 16\(1\)\(a\)\(2\)](#), [Section 16\(1\)\(a\)\(1\)](#) - P

Citation : (2017) 08 BOM CK 0044

Hon'ble Judges : Swapna Joshi

Bench : SINGLE BENCH

Advocate : S.Z. Haider, V.A. Laghate

Final Decision : Dismissed

Judgement

1. The State has preferred the present appeal against the judgment and order passed by the learned Judicial Magistrate First Class, Bramhapuri in Regular Criminal Case No.68 of 2000 dated 18-12-2002, thereby acquitting the accused for the offences punishable under Section 7(i) read with Section 2(ia)(a) punishable under Section 16(1)(a)(ii) Section 7(i) read with Section 2(ia)(m) punishable under Section 16(1)(a) (i) of the Prevention of Food Adulteration Act, 1954 and Rules thereunder.

2. I have heard Mrs. S.Z. Haider, the learned Additional Public Prosecutor for the State and Mr. V.A. Laghate the learned Counsel for the respondent. I have carefully gone through the record of the case.

3. The facts giving rise to the prosecution case lie in a narrow compass. Complainant Laxman Taksande was working at Chandrapur as a Food Inspector. Accused Vilas was a proprietor and vendor of M/s Madhao Kirana Stores, Gujar Ward, Bramhapuri, Taluka Bramhapuri, District Chandrapur. The accused was engaged in selling food articles including the groundnut oil at the said place. On

04-10-1999, at about 13.30 pm, the complainant along with panchas visited the premises of M/s Madhao Kirana Stores. The complainant inspected the premises. He noticed that 10 packed tins of 15 kgs. of Suraj Brand groundnut oil were kept for sale. He purchased 450 gms. of groundnut oil from the said shop. The complainant then divided 450 gms. of groundnut oil into three equal parts and put them in three clean, dry and empty glass bottles. Then he sealed those bottles by sealing with wax. Each part of the sample was wrapped in thick brown papers, folded its ends and pasted by means of gum. The complainant then sent one sealed part of the sample along with original memorandum in form no.7 to the Public Analyst, State Public Health Laboratory, Pune for analysis in a sealed pocket by registered post parcel, on 05-10-1999. On the same date, the complainant sent the remaining two sealed parts of the sample and two copies of memorandum in form no.7 along with forwarding letter to the Local Health Authority and the Assistant Commissioner, Food and Drugs Administration, Chandrapur by hand delivery. The report was received from the Public Analyst stating that the sample does not conform to the standards of groundnut oil as per the provisions of the Prevention of Food Adulteration Rules, 1955 [for short, "the Rules, 1955"]. The prosecution was launched. After recording of the evidence of the complainant, the charge was framed against the accused. In support of its case the prosecution examined only two witnesses and the learned Magistrate after considering the evidence came to the conclusion that there are infirmities in the prosecution case. Those infirmities are that, the sample was not representative sample and the prosecution has not complied with the provisions under Rules 14 and 16 of the Rules, 1955.

4. I have gone through the record of the case. I have heard Mrs. S.Z. Haider, the learned Additional Public Prosecutor for the State and Mr. V.A. Laghate the learned Counsel for the respondent.

5. Mr. V.A. Laghate the learned Counsel for the respondent vehemently argued that the learned trial Judge has rightly come to the conclusion that the prosecution has not properly prepared the sample. The sample was not properly stirred and it was not homogeneous and representative sample. He further contended that as the manner of sending of the sample for analysis was not proper and the sample was not collected in a clean vessel, the prosecution has failed to comply with the Rule 14 of the Rules, 1955. It is further stated that the prosecution has also failed to comply with the provisions under Rule 16(b) of the Rules, 1955 as the container was already wrapped in a thick papers and the ends of the paper were not neatly folded in and affixed by means of gum or other adhesive.

6. The learned APP contended that the learned trial Judge has not considered the aspect that the Food Inspector has followed the provisions of the Rules, 1955.

7. I have carefully gone through the record of the case. It is noticed that the prosecution has examined two witnesses. However, the prosecution solely relied upon the testimony of Abhijit (PW2). PW2 turned hostile. According to the

complainant, he has followed the entire procedure as contemplated under the Rules, 1955. It is, however, noticed that in this case the sample was taken by the Food Inspector from the 10 packed tins of 15 Kgs. of Suraj Grand Groundnut Oil. The panchanama (Exhibit40) in no manner indicates that the complainant had cleaned the surface of the tin before taking out the oil from it as a sample. Admittedly, the capacity of the tin was of 15 Kgs. and the oil in it was of 15 Kgs. The tin was completely filled in by the other oil. In these circumstances, when the mouth of the tin was opened some part of oil might have come out & again gone inside, after coming in contact with the cover tin. There is absolutely no evidence on record to show that the oil in the tin was stirred thoroughly for making the sample representative. It is thus noticed that the sample was taken from the tin and that oil was not stirred. Similarly, the testimony of the complainant does not throw any light on the aspect that the vessel in which the sample was taken was washed before using. According to the complainant, he had taken the sample in a clean, dry and empty vessel. However, the testimony of the complainant is silent on the aspect that the vessel was clean.

8. In the case of State of Maharashtra v. Gitaram Kaluram, reported in 1993(2) Prevention of Food Adulteration Cases 238, this Court has observed that the sample bottles should be cleaned and dried before the sample was taken. The panchanama is also silent on the aspect that the vessel in which sample oil was taken was washed in the presence of the panchas and the accused. In fact it was necessary to clean the vessel as the sample was taken for scientific analysis. Significantly, the sample should be representative because if it is not so, the subsequent analysis becomes worthless and as the sample was not representative, the report under certificate would have no evidentiary value.

9. In unreported judgment of this Court in Criminal Appeal No.735 of 2003 (State of Maharashtra through Shri A.S. Tayade, Food Inspector, Food and Drug Administration, Yavatmal, District Yavatmal v. Shri Lanchand Zaverilal Dungarwal and others), it is observed that, oil was not stirred so as to get homogeneous and representative sample and as there was no reliable evidence to show that it was representative sample, the learned trial Court has rightly arrived at a conclusion that if the sample is not proved to be representative, the subsequent analysis report cannot be relied upon. The learned trial Judge has rightly observed that the Food Inspector has nowhere mentioned that he has collected stirred sample of groundnut oil.

10. On the ground of breach of Rule 14 of the Rules, 1955, Mr. V.A. Laghate the learned Counsel for the respondent, invited my attention to the Rule 14 of the Rules, 1955, which reads as under :

" 14. Manner of sending samples for analysis

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."

11. In this regard, according to the complainant the sample bottles in which the sample was taken were not cleaned on the spot before the panchas and the accused. It is to be noted that the panchanama does not speak of the fact that the bottle was cleaned. Moreover, after filling the oil in the bottle and cleaning it by lid, the mouth of the bottle was not sealed. The panchanama (Exhibit40) indicates that the sample of groundnut oil which was purchased was divided into three equal parts and poured in a clean, empty and dry bottle and lid was affixed to it tightly thereafter the label was pasted by means of gum. Significantly, the panchanama is silent on the aspect of sealing. According to the complainant after purchasing the groundnut oil, the samples were divided in three equal parts and they were put in three cleaned, dry and empty bottles. Thereafter, the cock of each bottle was sealed and each bottle was labelled. The ends of the wrapper were folded and pasted. However, the bare testimony of the complainant on this aspect cannot be relied upon and it is missing in panchanama (Exhibit40).

12. This Court in case of Bhojmal Dhanumal Kundal and another v. Shirpur Warwade Municipal Council, Shirpur and another, reported at 1986 Cri.L.J. 931 held that, the provisions under Rule 14 of Rules, 1955 are mandatory and the non compliance of the said Rule will vitiate the prosecution.

13. With regard to the compliance of mandatory provisions, Rule 16(b) of the Rules, 1955, reads as under :

" 16(b) The bottle, jar or other container shall then be completely wrapped in fairly strong thick paper. The ends of the paper shall be neatly folded in and affixed by means of gum or other adhesive."

14. The complainant before the Court in his deposition stated that after purchasing the groundnut oil he divided 450 gms of groundnut oil into three equal parts and put them in three clean, dry and empty glass bottles. Then he sealed those bottles by sealing with wax. Each part of the sample was wrapped in thick brown papers, folded its ends and pasted by means of gum. The complainant has stated that the ends of the paper were folded & pasted with gum. He has not stated that he folded ends of the paper "in" which is mandatory. The complainant has not stated that he had affixed the ends of the paper of the container by means of gum.

15. In case of the State of Maharashtra v. Ramesh Shriniwas Rao, reported in IV-1985 All India Prevention of Food Adulteration Journal 212, it is observed that Rule 16(b) is mandatory and under the said rule it is mandatory to the Food Inspector to affix the ends of paper of the container by means of gum or other adhesive and its breach goes to the root of the matter and the accused be entitled for acquittal.

16. Thus so far as the breach of mandatory provisions under Rules 14 and 16 of the Rules, 1955 and the fact that the sample was not representative, it is to be

noted that the accused had given sample from sealed pack of Suraj Brand Groundnut oil which he had obtained from M/s. P.D.T. Trading Company, Maskasath, Itwari, Nagpur. Significantly, no action has been taken against the said Company. Thus, in view of the fact that there was non compliance of Rules 14 and 16(b) of the Rules, 1955, the accused is entitled for acquittal and the learned trial Judge has rightly acquitted the accused.

17. The learned trial Judge has appreciated the evidence in right perspective. There is no illegality or perversity noticed in the judgment delivered by the Ld. JMFC, Bramhapuri. It is well settled principle of law that in exercise of its appellate jurisdiction particularly in appeal against acquittal, it is not open to this Court to substitute its own view with a view taken by the lower Court, unless the view taken by the lower Court is illegal, perverse or against the principle of law.

18. There are no sufficient grounds made out by the appellant/State to interfere with the impugned judgment and order. In these circumstances, the appeal deserves to be dismissed and accordingly it is dismissed.