

(2011) 04 BOM CK 0034
In the Bombay High Court
Case No : Criminal Appeal No. 264 of 2000

The Maharashtra Government

APPELLANT

Vs

Shri Rajaram Digamber Padamwar, (Seller/Owner), Rajaram
Shankar Padamwar and Mohammad SalimHaji Harun

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Prevention of Food Adulteration Act, 1954 — Section 10(2), 11, 13, 13(2), 14A
Prevention of Food Adulteration Rules, 1955 — Rule 13(2), 14, 17, 44H, 9A

Citation : (2011) 04 BOM CK 0034

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : V.D. Rakh, app, for the Appellant; P.V. Mandlik instructed by A.S. Gandhi, for the Respondent

Final Decision : Dismissed

Judgement

Shrihari P. Davare, J.—This appeal is directed against the judgment and order of acquittal, dated 14.3.2000, rendered by the Judicial Magistrate, First Class, Kandhar, in R.C.C. No. 284 of 1995, thereby acquitting the Respondent No. 1 i.e. original accused No. 1Rajaram Digamber Padamwar for the offences u/s 7(1) r/w Section 2(ia)(a) punishable u/s 16(1)(a)(ii) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as, "the said Act") and also acquitting Respondent No. 2 i.e. original accused 2Mohammad Salim Haji Harun for committing breach of provision of Section 7(v) of the said Act and Rule of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as, "the said Rules") punishable u/s 16(1)(a)(i) of the said Act.

2. Briefly stated, the case of the prosecution is as follows:

It is alleged that on 27.4.1994 at about 12.45 p.m., accused No. 1 sold the packets of adulterated turmeric powder of "Taja Brand" to PW1 Food Inspector M.S. Patil at Kandhar and after verification of chemical analysis thereof, the said

turmeric power found to be adulterated, and as such thereby accused No. 1 has contravened the provisions of Section 7(1) r/w Section 2(ia)(a) and thereby committed an offence punishable u/s 16(1)(a)(ii) of the said Act. It is also alleged that Respondent No. 2 i.e. accused No. 2 has manufactured the said adulterated turmeric power and distributed and sold it in packets in the market, more particularly through Respondent No. 1 and contravened the provisions u/s 7(v) of the said Act and Rule 44H of the said Rules punishable u/s 16(1)(a)(i) of the said Act. Accordingly, the allegations against accused No. 1 are in respect of storage and selling of adulterated turmeric powder of Taja Brand and the allegation against Respondent No. 2 is that he is the manufacturer of the adulterated turmeric powder of "Taja Brand", and therefore, they have committed the offences as afore stated.

3. Moreover, the complainant Food Inspector i.e. PW2 G.B. More is claimed to have sent all the papers to the Joint Commissioner, Food & Drugs Administration, Aurangabad u/s 20 of the Act and obtained the consent through the Assistant Commissioner, Food and Drugs Administration, Nanded for filing criminal case against the accused persons, and accordingly, complaint was filed against the accused before the court on 16.10.1995. It was registered as R.C.C. No. 284 of 1995. The said complaint discloses the name of the witnesses, such as (1) M.S. Patil, Food Inspector, Food and Drugs Administration, Buldhana; (2) Milind Suryakant Mahajan, r/o Shivaji Chowk, Kandhar; (3) G.G. Joshi, Assistant Commissioner, Food and Drugs Administration, M.S., Nanded; and (4) S.B. Kamble, Public Analyst, District Health Laboratory, Nanded. Thereafter, summons came to be issued against the accused persons and they appeared in the case. Thereafter, evidence before charge was recorded before the court and the prosecution examined in all two witnesses and the Trial Court framed the charge against the accused at Exh. 63 on 13.7.1998. The accused pleaded not guilty to the charges levelled against them and claimed to be tried.

4. To substantiate the charges levelled against the accused and to prove the guilt against them, the prosecution examined in as much as five witnesses, as mentioned below:

PW1 Madhukar Sopan Patil, Food Inspector

PW2 Gulab Babaraoji Gore, Food Inspector, complainant

PW3 Subhash Balkishan Kamble, Junior Scientific Officer, Public Analysis, Solapur.

PW4 Milind Suryakant Mahajan, panch witness in respect of panchanama Exh. 29

PW5 Gajanan Govind Joshi, Assistant Commissioner, Food and Drugs Administration, Nanded

5. The defence of the accused is of total denial, which was reflected through the crossexamination and their statements u/s 313 of the Code of Criminal Procedure. After scrutinizing and assessing the oral and documentary evidence on record and considering the rival submissions advanced by the learned Counsel

for the parties, the Trial Court acquitted Respondent Nos. 1 and 2 from the charges levelled against them, by judgment and order, dated 14.3.2000.

6 Being aggrieved and dissatisfied by the afore said judgment and order of acquittal, the Appellant/State has preferred the present appeal praying for the quashment thereof.

7 Before advertng the submissions advanced by the learned Counsel for the parties, it is necessary to scrutinize the material oral and documentary evidence, adduced and produced by the prosecution, and in the said context, at the outset, coming to the deposition of PW1 Madhukar Sopan Patil, Food Inspector, he stated that on 27.4.1994 at 12.45 p.m. he visited the provision shop of M/s Rajaram Shankar Padamwar, Shivaji Chowk, Kandhar along with his assistant and PW4 panch Milind Mahajan and disclosed his identity to the shop keeper and ensured about the owner of the shop and the said shop keeper stated that he himself was the owner of the shop and thereupon he showed the licence and PW1 Madhukar Patil noted the facts of the licence in his note sheets, which are produced at Exh. 25 and copy thereof bearing signature of panch was given to the said shop keeper i.e. accused No. 1. PW1 Patil also stated that he noticed that there were 60 packets of chilly powder manufactured by Janta Seva Mirch Masaley and each packet contained 50 gms. chilly powder. There were about 100 packets of turmeric powder produced by M.S. Food Product, Nanded under the name and style as, "Taja", and each packet contained 50 grms. turmeric powder, having batch No. 16 and manufacturing date of March, 1994 and the maximum retail price printed on each packet was Rs. 2/, as well as name and address of the manufacturer was printed thereon.

8 PW1 Patil stated to accused No. 1 that he intended to purchase 12 packets of chilly powder as well as 12 packets of turmeric powder for analysis, and accordingly, accused No. 1 sold him 12 packets of chilly powder and 12 packets of turmeric powder, respectively, and PW1 paid price thereof and accused No. 1 issued bill about the purchased goods and said bill is produced at Exh.26. Thereafter PW1 Patil issued notice u/s 14A of the Act to accused No. 1 with intention to collect the information from whom he has purchased the said goods. Thereupon, accused No. 1 stated that he did not possess the bills of purchased goods, but he assured that he would produce the original bill in his office and the office copy of the said notice is produced at Exh.27. PW1 issued notice under Form No. 6 informing accused No. 1 that he purchased the above goods for analysis as required under the said Act and produced the office copy thereof at Exh.28. He also stamped the specimen of seal which was utilized for purchase of packets of chilly powder and turmeric powder.

9 The purchased chilly powder was found to be of standard quality during analysis.

10 As regards the turmeric powder, PW1 Patil stated that he divided 12 purchased packets of turmeric powder in equal three parts and packed four

packets in dry clean and empty plastic pack and prepared three samples accordingly, which were labelled with the signatures of panch witness and signature of PW1 Patil and sealed as per the usual procedure and panchanama of the afore said things was prepared on the spot and the said packets were seized thereunder. The signature of accused No. 1 was obtained thereon and PW1 Patil also signed thereon and carbon copy of the panchanama was supplied to accused No. 1 and the said panchanama is produced at Exh. 29. Thereafter, PW1 Patil sent one sealed packet along with copy of Form No. 7 in a seal packet to the Public Analyst, Public Health Laboratory, Nanded on 28.4.1994 by hand delivery, and produced the office copy of Form No. 7 at Exh. 30. On 28.4.1994, he sent copy of Form No. 7 along with specimen impression of seal used to seal the sample and covering letter to the Public Analyst, Nanded and produced the office copy of letter at Exh. 31. He also sent the remaining two parts of the sample along with two copies of Form No. 7 along with the covering letter to the Local Health Authority Assistant Commissioner, Food and Drugs Administration, Nanded, and produced copy thereof at Exh. 32. He also sent specimen impression of a seal used for the seal of samples along with covering letter to Local Health Authority, Food and Drugs Administration, Nanded in a separate seal packet on 28.4.1994 and produced office copy thereof at Exh. 33.

11. Accordingly, PW1 Patil stated that he received the samples at Exhs. 34 and 35 and also received receipts from the Local Health Authority about the receipt of sample, which are produced at Exhs. 36 and 37. Thereafter, since he was transferred, he handed over the charge and the documents and papers to Shri Umrani, Food Inspector, Nanded.

12. During crossexamination, he stated that he does not remember whether he has taken samples from other shop keepers. He also stated that he called only one panch witness and accused No. 1 was present in the shop and he purchased samples simultaneously i.e. chilly powder manufactured by Janta Seva Micha Masalla and turmeric powder manufactured by M/s Food Products under "Taja" brand. He stated that he purchased 12 packets of turmeric powder each containing 50 gram. turmeric powder, which was kept on a rack by the accused and which was personally delivered by accused No. 1 and said packets were packed as it is and there was no leakage and same were shown to PW4 panch Milind Mahajan.

13. Moreover, he stated that he has not mentioned on every form that he narrated the contents of form in Marathi to accused No. 1. He further stated that he kept four turmeric powder packets in another polythene bag as it is. So also, he kept other packets in another polythene bag in three sets thereof, since he possessed polythene bags for packing the samples officially. It is stated in the panchanama that samples were packed in a clean and dry polythene bags. Hence, suggestion was given to him that the polythene bags which were possessed by him were not clean and dry, but he denied the same. He further stated that he drew the panchanama after sealing of the purchased articles and

returned to Nanded on the same day and deposited the samples at Public Health Authority, Nanded. He also stated that he deposited duplicate copy of Form No. 7 along with specimen signature in the office of Public Analysis, Nanded separately and obtained the receipt of deposit of samples and deposit of specimen seal separately. The suggestion was given to him that the analysis report issued by the Public Analyst is false, but same was denied by him. PW1 Patil admitted that accused No. 1 never submitted the bill of purchased goods of turmeric powder before him.

14. Coming to the deposition of PW2 Gulab Babaraoji Gore complainant, who stated that he was working as Food Inspector at Nanded since 1994 and received the case papers from Food Inspector Umrani in a charge on 4.8.1994 and demanded the original bill of turmeric powder purchased by accused No. 1 from accused No. 2. Accordingly, the accused produced original bill dated 22.4.1994, which is marked Exh. 40. Thereafter, he stated that notice was issued to accused No. 2 reflecting the fact that sample of turmeric powder was collected from accused No. 1 for analysis, which was supplied by accused No. 2 and copy of the said notice is produced at Exh. 41. He also stated that he sent copy of Form No. 6, dated 27.4.1994 to accused No. 2 along with notice dated 20.5.1994 and same was served upon him and he produced the acknowledgment thereof at Exh. 42. He further stated that he perused the analysis report dated 30.5.1994 and found that the sample analysed was of substandard and the said analysis report is produced at Exh. 43.

15. He also deposed that he received letters about collection of information from Licensing Authorities in respect of issuance of license to accused No. 1, which are produced at Exhs. 44 and 45. Moreover, additional information was demanded from accused Nos. 1 and 2 through letters and office copies thereof are produced at Exhs. 46 and 47. Accordingly, accused No. 1 submitted his information on 16.7.1994 and same is produced at Exh. 48. Moreover, accused No. 1 also produced photo copy of renewal of his license. Besides, the Licensing Authorities also supplied the information about accused Nos. 1 and 2, which are produced at Exhs. 49 and 50. He further stated that he submitted his report and sought permission for filing complaint against accused Nos. 1 and 2 from the Joint Commissioner, Food and Drugs Administration, Aurangabad. Accordingly, he received the consent letter to file complaint against accused Nos. 1 and 2 on 14.8.1995, which is produced at Exh. 51. Pursuant to the said consent letter, he lodged the complaint against accused Nos. 1 and 2 on 16.10.1995. He also stated that he issued notices u/s 13(2) of the said Act to the Local Authority.

16. During crossexamination, he stated that he perused the public analysis report and percentage of rice starch is not shown in the said report. Hence, he volunteered that there is no need to mention exact percentage of rice starch as per Rule 44H of the said Rules. He also admitted that he has not sent notice as required u/s 13(2) of the said Act to the accused. He also stated that he does not know as to whether the said notice was served upon the accused.

17. That takes me to the deposition of PW4 Milind Suryakant Mahajan, who deposed that on 27.4.1994, PW1 M.S. Patil, Food Inspector called him to act as Panch at the shop of accused No. 1 Rajaram, and PW1 M.S. Patil purchased 12 packets of turmeric powder weighing each of 50 grams and same were divided into three parts. He also stated that same were packed in brown paper and Food Inspector prepared three packings thereof and sealed the same with the help of wax and thread. He also stated that said Food Inspector might have paid Rs. 25/ for the said packets. He further stated that the Food Inspector obtained his signature and panchanama was shown to him and he further stated that the contents thereof were read over to him and he admitted it to be true, which was marked Exh. 29. He also identified accused Rajaram before the court.

18. In crossexamination, he stated that he perused the packing of sample as well as personally verified the packets of turmeric powder purchased by the Food Inspector and same were packed in a plastic bag and brand thereof was, "Taj Brand" and seal thereof were in tact. He further stated that accused No. 1 informed the Food Inspector that the Company has supplied the packings of turmeric powder to him and he sold it in retail as it is. He admitted that he did not notice the fact of breaking of seal of packets of turmeric powder. He also stated that the Food Inspector prepared packings of each sample before him. Hence suggestion was given to him that the Food Inspector prepared the panchanama for samples before his arrival, but same was denied by him.

19. Turning to the deposition of PW3 Subhash Balkishan Kamble, Junior Scientific Officer, Public Analyst's Office, Solapur, who stated that he was posted at Nanded office from November 1993 till December, 1997 and on 28.4.1994 he received sample of turmeric powder and duplicate copy of Form No. 7 along with specimen seal from PW1 M.S. Patil. He stated that he tallied the specimen seal with the seal affixed on the container and found that sample was fit for analysis. Thereafter he got analysed the turmeric powder from the Chemist, namely P.B. Halkunde in their Laboratory and they noticed rice starch and common salt in turmeric powder. However, they found that there was salt of 2.31 per cent adulterated in turmeric powder. However, he could not calculate the exact percentage of adulterated rice starch and stated that there is no specific method to find out percentage of rice starch if adulterated in turmeric powder. Accordingly, he prepared the analysis report and prepared four copies thereof and sent the same to the office of Food and Drugs Inspector, Nanded and copy thereof is produced at Exh. 43. He further stated that adulteration of any foreign substance in turmeric powder is prescribed under Rule 44 (H) of the said Rules, as well as he stated that he found that the analysed sample was adulterated one.

20. During cross-examination he admitted that he analysed the sample after 14 days of its receipt, but till then the said sample was kept in the custody of Chemist. He also stated that he possessed the form on which the result of analysis of sample is noticed. However, he could not state as to whether it is mentioned on the form of analysis that samples analysed were found in tact

before its analysis. As regards analysis, he stated that he opened the sample on 28.4.1994 and found four packets of turmeric powder packed in a container, and thereafter he handed over two packets out of four for analysis purpose. Accordingly, he received its report from Chemist on 11.5.1994, but he could not state on which date which chemical test was completed. As regards the said reports, he stated that the same were upto the permitted level except starch test and the turmeric powder contained starch. He also stated that microscopic test was carried out in this particular case and same was mentioned in the report. He further stated that he noticed kinds of rice starch and turmeric powder under the microscope, but stated that they did not conduct any other chemical test to bifurcate the rice starch and turmeric powder. He further stated that on the basis of results, test report was submitted by the Chemist. However, he could not state how much other samples were analysed by the Chemist during the analysis of turmeric sample simultaneously. Hence, suggestion was given to him that there was possibility of adulteration of foreign substance in their laboratory, but same was denied by him. Suggestions were also given to him that there was mistake on the part of the Chemist at the time of analysis of sample and the said Chemist analysed the sample negligently, but same were denied by him.

21. That takes me to the testimony of PW5 Gajanan Govind Joshi, Investigating Officer, who was serving as Assistant Commissioner, Food and Drugs Administration, Nanded at the relevant time i.e. on 26.7.1993 and PW1 M.S. Patil was working as Food Inspector in his office. He stated that PW1 M.S. Patil, Food Inspector handed over two sealed packets to him on 28.4.1994 and in one packet out of the same, there were two sealed counter parts of the samples taken, and in addition to that there were two copies of Form No. 7; whereas in the second packet, two specimen seal impressions of the seal used for sampling and a covering letter were found. He further stated that after receipt of the above two packets from M.S. Patil, Food Inspector, he gave two separate receipts on the same day i.e. 28.4.1994 and said receipts are produced at Exhs. 36 and 37, respectively. He admitted that the said receipts bear his signatures.

22. It is recited in his deposition that the Public Analyst, Nanded had given a report on 30.5.1994, but it does not reflect what was sent to Public Analyst, District Health Laboratory and it was received on 3.6.1994 and one of the copies of the said report was handed over to the Food Inspector Patil and copy thereof is produced at Exh.43. Moreover, original report was also filed before the court, which bore his signature and date, which is marked Exh. 88. Thereafter the Food Inspector communicated him in respect of filing of present case against the accused on 17.10.1995, which is produced along with list Exh. 85 at Sr. No. 4, and which is marked Exh.89, which bore the signature of Food Inspector Gore and his signature in token of receipt thereof. Accordingly, an intimation was given to the accused in respect of filing of case against them in the court by letter dated 18.10.1995 and the said letter/notice, along with copy of the report of Public Analyst, District Health Laboratory, was sent by R.P.A.D., as well as separate letter was sent to each of the accused and office copy thereof dated

18.1.1995 is filed by him on record, which is marked Exh.90. He also produced postal receipts of R.P.A.D. showing that the said letters were sent to the accused by R.P.A.D. and marked Exh.91. The said letter was received by accused No. 1 and his postal acknowledgment is produced on record and marked Exh.92. However, the letter sent to accused No. 2 was returned back without service to him and same is produced on record and marked Exh.93 and same was received back by the investigating officer on 31.10.1995.

23. During crossexamination, he admitted that he has not made it sure that signature appearing on the acknowledgment receipt Exh. 92 was of accused No. 1, as well as he cannot say whether the signature on Exh. 92 was not of accused No. 1. He also further stated that he cannot assign any reason why second attempt was not made for the service of notice upon accused No. 2. He also admitted that he has not inquired with the Public Analyst, Nanded why he has not mentioned the percentage of rice starch in his report. He further admitted that he has not made inquiry with the Public Analyst about such percentage, because he did not feel it necessary. Witness volunteered that according to Rule 44 (H) of the said Rules, no foreign starch should be present in turmeric powder as foreign starch includes foreign substance. Moreover, he stated that turmeric powder contains starch in itself. He admitted that he does not know how much percentage of starch was there in turmeric powder. Hence, suggestion was given to him that only when in general analysis the adulteration could not be identified by their eyes, then only microscopic examination is carried out, but same was denied by him. He further admitted that microscopic examination was carried out. He also stated that microscopic test has not been prescribed under the said Act.

24. On the background of the afore said evidence, learned A.P.P. Shri V.D. Rakh, canvassed that the prosecution witnesses 1 to 5 have supported the prosecution case fully and the prosecution has proved all material and important facts against the accused and the prosecution has proved the charges levelled against the accused beyond reasonable doubt. Moreover, learned A.P.P. submitted that compliance of Rule 9A of the said Rules is not attracted, since the sample packet was not broken, but the Trial Court held that the prosecution witnesses failed to follow or to comply or they have violated the mandatory provisions of Rules 13 (2), 9A and 14 of the said Rules, and consequently, acquitted accused No. 2. Learned A.P.P. further submitted that since the Trial Court held that accused No. 1 proved that he purchased the packets of turmeric powder from accused No. 2 and bill to that effect has been produced at Exh.40, he was absolved from the criminal liability, and therefore, the prosecution could not prove the case against accused No. 1, and consequently, acquitted him on the erroneous footing.

25. Accordingly, learned A.P.P. urged that the impugned judgment and order of acquittal, rendered by the Trial Court is unsustainable, and therefore, same deserves to be quashed and set aside and accused Nos. 1 and 2 need to be convicted and sentenced for the charges levelled against them, respectively.

26. Shri P.V. Mandlik, learned Senior counsel for the Respondents countered the said argument vehemently and submitted that Rule 44 (H) of the said Rules in respect of restriction on sale of common salt has been deleted with effect from 30.9.2000 as per G.S.R. dated 13.9.2000. Moreover, as regards Section 10(2) of the said Act, there is no evidence to show that samples taken were from the turmeric powder for sale. Moreover, it is also submitted that the procedure to be followed u/s 11 of the said Act by the Food Inspector has not been complied with. It is also canvassed that 12 packets were purchased by PW1 Food Inspector M.S. Patil from accused No. 1 and the quantity of the turmeric powder therefrom was not collected together and was not separated in three parts for analysis purpose; whereas 12 packets were separated in three equal parts, which is not permissible, and accordingly, the sampling was not done by the Food Inspector properly, which causes prejudice to the accused and vitiates the trial.

27. It is further canvassed by learned Senior counsel that sample taken by the Food Inspector was not taken in bottle or jar or container, but it was taken in a polythene bag and same is not permissible. He also submitted that the prosecution did not comply with the mandatory provisions of Rules 14 to 17 of the said Rules, as well as the Food Inspector has not complied with Section 11 of the said Act. As regards the report of Public Analyst in accordance with Section 13 of the said Act, learned Senior Counsel Shri Mandlik submitted that there is noncompliance of Section 13(2) of the said Act. It is also canvassed that although it has come on record that one Mr. P.V. Halkunde, Chemist, who analysed the samples, and although he was available, was not examined by the prosecution for the reasons best known to the prosecution, and no explanation has been given by the prosecution for his non examination. In fact, the prosecution has examined PW4 Subhash Kamble, Public Analyst, but in the absence of evidence of Chemist Halkunde, who actually analysed the sample quantity, the testimony of PW4 Subhash Kamble cannot be of any aid and assistance to the prosecution.

28. As regards the report of Public Analyst Exh.88, it is submitted that all the ingredients of turmeric powder shown therein are within the permissible limits prescribed under Rule A.05.20.01 pertaining to turmeric (Haldi) powder, which prescribes that the said powder shall conform to the following standards:

The resultant analysis of the sample of turmeric powder as per report of the Public Analyst Exh.88 dated 30.5.1994 is as follows:

29. The afore said report discloses that the analysis was made by microscopic examination, wherein sample starch was found. Accordingly, it is submitted that the resultant analysis of the sample of turmeric powder is within the limits as prescribed by afore stated Rules and sodium chloride contained 2.31 per cent i.e. salt, which is not hazardous to human being, and therefore, the sample of turmeric powder does not come within the mischief of alleged charges against the accused.

30. To substantiate his argument, Shri Mandlik, learned Senior Counsel for the Respondents placed reliance on the judicial pronouncement of this Court in the case of *State of Maharashtra v. Lakhmichand Suganchand Agrawal and Ors.*, reported at 1998 ALL MR 953, which is as follows:

8. It is, therefore, clear that the quantity to be sent for analysis is to be purchased in bulk and it is to be divided into three parts. Each sample has then to be sealed and fastened up in such manner as its nature permits and the signature or thumb impression of the person from whom the sample has been taken is to be then obtained. It is clear that in the instant case food Inspector has not followed this procedure.

....

The purpose of making such a provision is that each sample should represent the whole bulk from which the sample was obtained. Therefore, it was wrong on the part of the Food Inspector to collect the sample without following the procedure laid down under the Act. The order of acquittal is, therefore, rightly recorded.

31. Shri Mandlik, learned Senior Counsel for the Respondents also placed reliance on the judicial pronouncement of Patna High Court in the case of *Binod Kumar v. State of Bihar*, reported at 2004 FAJ 465, which is as follows:

4. It is clear from the evidence of PW2 that the Food Inspector kept the sample in a polythene bag and sent it to the Public Analyst in the same packet although under proper seal. The evidence of PW2 was clear to the effect that admittedly no independent witness was examined to support the alleged sample taking by the Food Inspector. However, violation of Rule 14 of the Food Adulteration Rules, 1955, is more than obvious. Admittedly, sample was kept and sealed in a polythene bag. In view of the above violation of the Act and Rule, I am of the opinion that conviction recorded by the two courts below is bad in law.

32. Accordingly, learned Senior Counsel Shri Mandlik submitted that the prosecution has failed to make out any case for adulteration and PW1 Food Inspector M.S. Patil has failed to follow the procedure which was required to be followed while taking the samples in accordance with Rules 14 to 17 of the said Rules and the sample was taken in a polythene bag and not in a clean bottle or jar as contemplated and the said short comings vitiated the prosecution case and the Trial Court has rightly acquitted the accused persons and there are no extra ordinary reasons to interfere therein, and hence, urged that present appeal be dismissed and acquittal rendered by the Trial Court be upheld.

33. I have perused the oral and documentary evidence adduced and produced by the prosecution, as well as perused the impugned judgment and order dated 14.3.2000 and considered the submissions advanced by the learned Counsel for the parties anxiously, as well as perused the observations made and ratios laid down in the judicial pronouncements cited by the learned Counsel for the Respondents carefully and it is evident that Rule 44H of the said Rules in respect

of restriction on sale of common salt has been deleted with effect from 30.9.2000 as per G.S.R. No. 716(E), dated 13.9.2000. Moreover, as canvassed by the learned Senior counsel for the Respondents, as regards compliance of Section 10(2) of the said Act, there is no evidence to show that the samples were taken from the turmeric powder for the sale, as well as the procedure in accordance with Section 11 of the said Act was complied with by the Food Inspector M.S. Patil. Moreover, it is evident from the evidence that PW1 M.S. Patil Food Inspector has not taken bulk quantity of turmeric powder for sample purpose. It is also evident from the evidence on record that Food Inspector M.S. Patil while sampling separated 12 packets in three equal parts i.e. four packets each containing turmeric powder therein and he did not collect the turmeric powder from the said 12 packets together and did not separate the said quantity of turmeric powder in three parts for analysis purpose and the said such separation of 12 packets itself in three parts as samples for analysis purpose is not permissible, which leads to the position that sampling was not done by PW1 Food Inspector M.S. Patil properly, which certainly causes prejudice to the Respondents/accused and since the sampling of the turmeric powder itself is faulty, there is substance in the submissions advanced by the learned Senior Counsel Shri Mandlik for the Respondents. In the said context, reliance can very well be placed on the judgment of Division Bench of this Court in the case of *State of Maharashtra v. Lakhmichand Suganchand Agrawal and Ors.*, reported at 1998 ALL MR 953, (supra).

34. Moreover, it is also apparent from the evidence on record that PW2 M.S. Patil Food Inspector has not taken the sample in bottle or jar or container, but took the sample in a polythene bag and sent to the Public Analyst, which is not permissible and such taking of sample in polythene bag amounts to violation of mandatory provision of Rule 14 of the said Rules, and therefore, conviction cannot be based against the Respondents on such defective sampling and the view adopted by the learned Single Judge of Patna High Court (in the case of *Binod Kumar v. State of Bihar*, reported at 2004 FAJ 465, (supra) supports the said proposition.

35. So also, the submissions made by the learned Senior Counsel Shri Mandlik for the Respondents that the prosecution has not complied with the mandatory provisions of Rules 14 to 17 of the said Rules in respect of sealing, fastening and dispatching of samples, as well as PW1 M.S. Patil Food Inspector has not complied with Section 11 of the said Act in respect of procedure to be followed by the Food Inspectors cannot be overlooked while assessing the evidence on record.

36. As regards the compliance of Section 13(2) of the said Act, after receiving the report of Public Analyst, the reasoning adopted by the learned Trial Judge that notice thereof was properly served upon accused No. 1 and the defence of violation of mandatory provision u/s 13(2) of the said Act i.e. serving of notice to accused No. 1 is not available to accused No. 1, appears to be proper. In the said

context, it is material to note that accused No. 1 has submitted the bill of purchase of packets of turmeric powder from accused No. 2, which is produced at Exh.40 and it has come in the evidence of (PW2) that accused No. 1 has produced the original bill dated 22.4.1994 along with letter dated 18.5.1994 Exh.39 and the said letter is addressed to the Assistant Commissioner, Food and Drugs Administration (M.S.), Nanded and it is admitted fact that PW1 M.S. Patil Food Inspector visited the shop of accused No. 1 on 27.4.1994 and purchased 12 packets of turmeric powder from his shop. Hence, considering the said aspect, it is amply clear that accused No. 1 purchased the said packets of turmeric powder from accused No. 2 on 22.4.1994 as per bill Exh.40, which were consequently purchased by PW1 M.S. Patil Food Inspector from accused No. 1 on 27.4.1994 for analysis purpose, and accordingly, since accused No. 1 purchased the packets of turmeric powder from accused No. 2 as per printed bill Exh.40, accused No. 1 has been absolved from the liability, since accused No. 2 is the manufacturer of the said turmeric powder.

37. As regards the report of Public Analyst in accordance with Section 13 of the said Act, PW3 Subhash Kamble, Junior Scientific Officer categorically stated in his deposition that he got analysed the turmeric powder from the Chemist in the Laboratory, namely P.B. Halkunde, who is subordinate to him and he received the test report from the said Chemist on 11.5.1994. However, he could not state on which day which chemical test was completed. Pertinently, although PW3 Subhash Kamble admitted in his testimony that said P.B. Halkunde, Chemist is alive, the said material witness, who, in fact, carried out the analysis of the turmeric powder, was not examined by the prosecution. It is important to note that PW3 Subhash Kamble admitted in his deposition that he prepared analysis report on the basis of result of test reports submitted by Chemist, but he cannot state how much other samples were analysed by the Chemist during the analysis of turmeric powder sample simultaneously. Therefore, it is significant to note that PW3 Subhash Kamble has no personal knowledge; whereas P.B. Halkunde, Chemist, who carried out the analysis of the sample of turmeric powder, although was alive, was withheld and not examined by the prosecution and the said inaction on the part of the prosecution sustains fatal blow to the case of the prosecution.

38. As regards the compliance of Section 13(2) of the said Act in respect of accused No. 2, it appears that accused No. 2 was not served at all and Form No. 7 was not sent along with the sample by the Food Inspector, and the said fact is evident from the R.P.A.D. Packet Exh.93, and therefore, the liability of accused No. 2, who is the manufacturer of the said turmeric powder, is also absolved in view of noncompliance of Section 13(2) of the said Act.

39. Coming to the report of the Public Analyst Exh.88, apparently there is substance in the submissions made by the learned Senior Counsel Shri Mandlik for the Appellant that all the ingredients of turmeric powder shown therein are within the permissible limits prescribed under Rule A.05.20.01 pertaining to

turmeric (Haladi) powder, which conforms the prescribed standards in respect of moisture, total ash, ash insoluble in dilute H Cl, test for lead chromate and total starch, as mentioned in para No. 28 herein above. Besides, it cannot be ignored that although microscopic examination was not prescribed under the Act, PW5 Gajanan Joshi admitted that such microscopic examination was carried out.

40. Moreover, there is also substance in the submission made by learned Senior Counsel regarding the sodium contents in the sample of turmeric powder, which is within the limits as prescribed by the afore said Rules, since the sodium chloride contained 2.31 per cent i.e. salt, which is not hazardous to human being, and hence, it is amply clear that the sample of turmeric powder does not come within the mischief of alleged charges against the accused.

41. Having the comprehensive view of the matter, I am inclined to accept the submissions advanced by the learned Senior Counsel Shri Mandlik that the prosecution has failed to make out any case for adulteration, and as discussed herein above, PW1 M.S. Patil has failed to follow the procedure, which was required to be followed while taking the samples in accordance with Rules 14 to 17 of the said Rules, and more particularly, the sample which was taken by him in polythene bag and not in clean bottle or jar, as contemplated in the afore said Rules, vitiates the prosecution case, and the Trial Court has rightly acquitted the accused persons. Besides that, after scrutinizing and analysing the evidence, the view adopted by the Trial Court while acquitting the accused persons is a possible view, and same does not appear to be perverse, and therefore, no interference therein is called for in the present appeal, and hence, there is no substance in the present appeal and same is devoid of any merits, and therefore, same deserves to be rejected.

42. Before departing, it is inevitable to make mention that, the learned A.P.P. while making the arguments before the learned Trial Judge cited the Ruling of Kerala High Court in the case of Food Inspector v. James, (reported in Prevention of Food Adulteration Cases) 1998 (1) 320 and while discussing the observations made in the said Ruling, the learned Trial Judge has observed in para No. 31 of the impugned judgment that:

With great respect, I do not agree with the "view taken" and observations made by Their Lordships in the above case law. Moreover, the said case law is admittedly of Kerala High Court and the same is not binding on this Court.

43. Moreover, while making submissions before the learned Trial Judge, learned A.P.P. also cited Ruling in the case of Rambhai v. State of Madhya Pradesh (Reported in Prevention of Food Adulteration Cases) at 1991 (1) 6 as stated in para 34 of the impugned judgment, but the learned Trial Judge, after considering the said ratio laid down in the said Ruling, observed in para No. 35 of the impugned judgment that:

After going through the observations made by Their Lordships in the above case law, I am of the opinion that though the Ruling is applicable to the present case,

however, according to me, with great respect the view taken in the observations of the Ruling is not correct.

44. It manifestly appears from the text and tenor of the observations made by the learned Trial Judge in para Nos. 31 and 35 of the impugned judgment that same do not conform with the judicial discipline and propriety, and apparently amount to disrespect, and therefore, the Registrar General is directed to take suitable action against the concerned Judge, if he is in Judicial Service.

45. In the result, present appeal, which is sans merits, stands dismissed and office to take necessary steps to initiate suitable action against the learned Trial Judge, if he is in Judicial Service, as per the afore said directions. Office to send a copy of the impugned judgment, dated 14.3.2000 and also copy of the present judgment to the Registrar General for the necessary compliance.