

(2018) 02 BOM CK 0043
In the Bombay High Court
Case No : 721 of 2002

The State of Maharashtra

APPELLANT

Vs

Mangala w/o Harishchandra Badkhal

RESPONDENT

Date of Decision : 12-02-2018

Acts Referred:

[Prevention of Food Adulteration Act, 1954](#), [Section 7\(i\)](#), [Section 2\(IA\)\(a\)](#), [Section 16\(1\)\(a\)\(II\)](#), [Section 16\(1\)\(a\)\(II\)](#), [Section 7\(v\)](#), [Section 13 \(2-E\)](#) -
Prohibition of manufacture, sale, etc. of certain articles of food - Definitions - Penalties
- Penalties - Prohibition of manufacture, sale, etc. of certain articles of food - Report of
public analyst

Citation : (2018) 02 BOM CK 0043

Hon'ble Judges : Rohit B. Deo

Bench : Single Bench

Advocate : Mayuri Deshmukh, R.R. Vyas

Judgement

1. The State is in appeal challenging the judgment and order dated 24-6-2002 rendered by the learned Chief Judicial Magistrate, Chandrapur in Regular Criminal Case 251/1998, by and under which the respondent-accused is acquitted of offence under Section 7(i) read with Section 2(ia)(a) punishable under Section 16(1)(a)(ii), 7(v) read with Rule 44-AAA punishable under Section 16(1)(a)(ii) of the Prevention of Food Adulteration Act, 1954 ("Act" for short).
2. The prosecution case is thus :
Mr. M.S. Kembalkar, Food Inspector, Chandrapur
accompanied by panch witness, Mr. Arun Meshram inspected the

proprietary firm of the accused "M/s. Shweta Spices Industries". Samples of black pepper were collected, one sample was sent to the Public Analyst, Public Health Laboratory, Nagpur for test and analysis on 28-11-1995 and the remaining samples were handed over to Local (Health) Authority and Assistant Commissioner, Food & Drug Administration, Chandrapur. The report of the Public Analyst, Public Health Laboratory, Nagpur dated 04-1-1996 was received on 10-1-1996. The said report states that the sample confirmed to the standards specified in the Prevention of Food Adulteration Rules, 1955 ("Rules" for short). Mr. M.S. Kembalkar requested the Local (Health) Authority and Assistant Commissioner Food & Drug Administration, Chandrapur to send the sample to another Public Analyst for test and analysis as is contemplated under Section 13 (2-E) of the Act. The second sample was sent for testing and analysis through Public Health Laboratory, Pune and the report was received on 23-2-1996 stating that the sample was coated with mineral oil in contravention of Rule 44-AAA of the Rules.

The Food Inspector Mr. Kamble instituted Criminal Case 251/1998 before the learned Chief Judicial Magistrate, Chandrapur, and by the judgment and order impugned, the accused is acquitted on the ground that Clause A.05.17 of Appendix "B" to the Rules permits extraneous matter including dust, stalks, leafy matter and other foreign matter to the extent of 3% by weight. The learned Chief Judicial Magistrate has held that mineral oil is a foreign matter and unless it is established that the percentage of mineral oil in the black pepper exceeds 3%, contravention of Rule 44-AAA of the Rules is not proved.

3. Smt. Mayuri Deshmukh, learned Additional Public Prosecutor submits that the reason recorded by the learned Chief Judicial Magistrate is contrary to the statutory scheme. The submission is well merited. Rule 44-AAA of the Rules reads thus :

"44-AAA. No person shall sell or offer or expose for sale or have in his premises for the purpose of sale under any description, food articles which have been coated with mineral oil, except where the addition of mineral oil is permitted in accordance with the standards laid down in Appendix "B"."

The statutory scheme is that no person shall sell or store in his premises for the purpose of sale black pepper which is coated with mineral oil, except where the addition of mineral oil is permitted in accordance with the standards laid down in Appendix "B". The reliance placed by the learned Chief Judicial Magistrate on Clause A.05.17 of Appendix "B" is misplaced. The legislative intent is that use of mineral oil in black pepper is impermissible unless the use is specifically permitted. No provision is brought to my notice which specifically permits the use of mineral oil in black pepper. In the teeth of the specific provision, the learned Chief Judicial Magistrate committed a serious error of law in holding that mineral oil can be considered as "other foreign matter" and unless it is established that the percentage of the mineral oil exceeds 3%, contravention of Rules is not established.

4. However, notwithstanding the erroneous reason recorded by the learned Chief Judicial Magistrate, I am not inclined to allow the appeal. The record reveals that having received the first report on 10-1-1996, Mr. Kembalkar (P.W.2) requested the Local (Health) Authority and Assistant Commissioner, Food & Drug Administration, Chandrapur to send black pepper sample to another Public Analyst for test and analysis. Section 13 sub-section (2-E) of the Act reads thus :

"Section 13. Report of Public Analyst - (1) The Public Analyst shall deliver (2-E). If, after considering the report, if any, of the Food Inspector or otherwise, the Local (Health) Authority is of the opinion that the report delivered by the public analyst under sub-section (1) is erroneous, the said Authority shall forward one of the Parts of the sample kept by it to any other public analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the article of food is adulterated, the provisions of sub-sections (2) to (2D) shall, so far as may be, apply."

5. A learned Single Judge of this Court has observed in Shri Santoshkumr Ramchandra Rathi vs. State of Maharashtra, through Mr. S.P. Nandanwar, Food Inspector, Food and Drug Administration, Wardha reported in 2017 SCC Online Bom. 7457, thus :

"19. Sub-section (2-E) of Section 13 of the said Act, reads as under :

Section 13. Report of Public Analyst - (1) The Public Analyst shall deliver

(2-E). If, after considering the report, if any, of the Food Inspector or otherwise, the Local (Health) Authority is of the opinion that the report delivered by the public analyst under sub-section (1) is erroneous, the said Authority shall forward one of the Parts of the sample kept by it to any other public analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the article of food is adulterated, the provisions of sub-sections (2) to (2D) shall, so far as may be, apply.

20. From the said provision, it is clear that the power is vested with the Local (Health) Authority to send other part of samples to any other Public Analyst for analysis.

21. Aforesaid provision of Sub-section (2-E) of Section 13 of the said Act opens with, if, after considering the report, if any, of the Food Inspector or otherwise, the Local (Health) Authority is of the opinion that the report delivered by the public analyst under sub-section (1) is erroneous, the said Authority can send the sample for re-analysis to any other public analyst.

22. Thus, for exercising powers under Sub-section (2-E) of Section 13 of the said Act, firstly there should be a report of a Public Analyst given under Sub-section (1) of Section 13 of the said Act and it should be before the Authority. Once that report is before the Local Health Authority and if the Authority is of the opinion that the report is erroneous, the said Authority can send the other sample for re-analysis.

23. In the present case, report Exhibit 36 of the Public Analyst at Nagpur was before PW2 the Assistant Commissioner, Food and Drugs Administration at Wardha Shri Baban Baburaoji Gayki on 19.9.1992. According to the evidence of Shri Baban Gayki, he decided to send report of the Public Analyst at Nagpur for showing Tea power is upto standard and genuine. Shri Baban Gayki is totally silent in his evidence that after perusing report Exhibit 36 of the Public Analyst at Nagpur, it was his opinion that the said report is erroneous."

I am in respectful agreement with the afore reproduced observations of the learned Single Judge.

6. No evidence is adduced whatsoever, that the Local (Health) Authority was satisfied that the first report received is erroneous. In this view of the matter, and for reasons other than the reasons recorded by the learned Chief Judicial Magistrate, the accused is entitled to be acquitted of the offence under Section 7(i) read with Section 2(ia)(a) punishable under Section 16(1)(a)(ii), 7(v) read with Rule 44-AAA punishable under Section 16(1)(a)(ii) of the Act.

7. The appeal is without substance and is rejected.