

(1985) 06 BOM CK 0014

Bombay High Court (Aurangabad Bench)

Case No: Criminal Revision Application No. 117 of 1984

Shaikh Abdul

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision: June 13, 1985

Acts Referred:

- Evidence Act, 1872 - Section 102
- Prevention of Food Adulteration Act, 1954 - Section 16, 7
- Prevention of Food Adulteration Rules, 1955 - Rule 19, 20

Citation: (1986) 2 BomCR 675

Hon'ble Judges: Sharad Manohar, J

Bench: Single Bench

Advocate: S.A. Deshmuk and N.M. Mulajkar, for the Appellant; R.G. Deo, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

Sharad Manohar, J.

The question involved in this petition is covered by the judgment of this Court reported in 1982, Maharashtra Law Journal, P. 181. Even Mr. Deo, appearing for the State, fairly conceded this position.

2. The facts are very simple :---

From the petitioner, who is allegedly a milk Vendor, sample was taken by the Food Inspector on 19-1-1980. The usual procedure was followed. One of the samples of the milk was sent to the Public Analyst and his Report was received by the Local Health Authority on 5-2-1980. The authority, however, dragged its feet for the full period of 4 months further and did not institute prosecution before 7-6-1980 and thereafter on 9-6-1980 a notice was given by the local authority to the petitioner u/s 13 of the Food Adulteration Act informing him that he was at liberty to send to the

Director of Central Food Laboratory another sample of milk. There is a dispute as to whether such a notice was received by the petitioner or not. But the lower Court has recorded a finding in that behalf and I find no reason to disagree with the same. The fact, however, remains that at the most the petitioner would have asked for the 2nd sample to be sent to the Director, by making an application in that behalf on or before 19-6-1980. The sample would have been thereafter sent to the Director. This means that the sample of the milk would be reaching the Director long after the expiry of the period of 6 months. From the very nature of things, the milk could not remain un-decomposed for that much of period, exceeding even 6 months. There is no evidence in this case that the milk was kept in the cold storage. The only contention is that preservative was added. It has been held by our Court in 1982. MLJ 181, that even assuming that the preservative was added, the normal course is that the milk would get decomposed and it is futility to send the sample for analysis after that period. In these circumstances, the normal presumption would be that the milk must have been decomposed. If the Department wanted to prove that the milk had remained in fact even after such a longer period, it was for the prosecution to prove that fact by examining proper experts in that behalf.

3. Just 3 days ago, on 10-6-1985, I have held, while deciding (Criminal Revision Application No. 104 of 1984), that if the 2nd sample was in fact sent to the Director of Central Food Laboratory for analysis and if the Director had sent his report giving his opinion as regards the adulteration of milk without mentioning that it was sent to him in a decomposed state, then the presumption about the fact that the milk must have been decomposed could not be raised. In the peculiar facts of that case I had sent the matter for retrial to the Court with the direction that the Director of the Central Food Laboratory should be examined by the Court as Court witness to prove that the fact that the sample of milk received by him was received in normal condition and not in the decomposed condition.

In the present case, the question of examining the Director does not arise at all, because the 2nd sample was not analysed by the Director. This is a clear case of doubt and the benefit must go to the accused.

4. The petition is, therefore, allowed.

The order of conviction and sentence is set aside. Fine, if paid, is ordered to be refunded. The bail bond stands cancelled. The rule earlier issued is made absolute.