

State of Maharashtra through Shri Laxman Zibljaji Taksande, Food Inspector Vs Pankaj S/o Arun Kalbande

Court: BOMBAY HIGH COURT

Date of Decision: May 24, 2017

Acts Referred: [Code of Criminal Procedure, 1973](#), [Section 378\(4\)](#) - Appeal in case of acquittal
[Prevention of Food Adulteration Act, 1954](#), [Section 20](#), [Section 7\(1\)](#),

Hon'ble Judges: A.S. Chandurkar

Bench: SINGLE BENCH

Advocate: S. M. Ukey, V. A. Laghate

Final Decision: Dismissed

Judgement

1. By this appeal filed under Section 378(4) of the Criminal Procedure Code, 1973, the judgment dated 27-11-2002 in Regular Criminal Case

No.49/2000 acquitting the respondent for having committed offence punishable under Section 16(1)(a) (ii), Section 7(i) read with Section 2(ia) of

the Prevention of Food Adulteration Act, 1954 is under challenge.

2. It is the case of the prosecution that the respondent was engaged in selling food articles including groundnut oil. On 4-11-1999, the Food

Inspector visited the shop of the respondent and purchased 450 grams of groundnut oil. This oil was divided into three equal parts and filled in

three bottles. The samples were thereafter wrapped and were sent for analysis. After receiving the report of said analysis, the documents were

submitted to the Joint Commissioner who granted consent for launching the prosecution. On that basis, a complaint came to be filed against the

respondent under provisions of Section 7(1) of the said Act. The prosecution led its evidence and at the conclusion of the trial, the learned Judicial

Magistrate First Class acquitted the respondent on the ground that the respondent was entitled for benefit of doubt. It was held that there was

contravention of Rule 14 of the Prevention of Food Adulteration Rules, 1955 (for short the Rules). It was further held that there was

noncompliance of provisions of Section 13(2) of the said Act. Being aggrieved, the present appeal has been filed.

3. Shri Ukey, learned Additional Public Prosecutor for the appellant submitted that all necessary compliances had been made by the Food

Inspector before the complaint came to be filed. He submitted that there was compliance with provisions of Section 13(2) by giving necessary

intimation as contemplated by said provisions to the respondent. He referred to the documents at Exhibits 42 and 57 in that regard. He then

submitted that before the samples were collected, the oil had been stirred and hence, provisions of Rule 14 of the Rules had been duly complied

with. He referred to the deposition of PW1 at Exhibit11 in that regard. He then submitted that the provisions of Rules 17 and 18 were also

complied with and, therefore, the learned Magistrate was not justified in granting benefit of doubt to the respondent. In support of his submissions,

the learned Counsel placed reliance upon the judgment in the case of State of Maharashtra Vs. Shri Popat Panachand Shah & Anr. 2004 ALL

MR (Criminal) 1022. He, therefore, submitted that the appeal deserves to be allowed.

4. Shri V. A. Laghate, learned Counsel for the respondent supported the impugned judgment. According to him, various mandatory provisions of

the Rules had not been complied with. He submitted that before the samples were taken, the stock from which the samples were taken was not

stirred and, therefore, it could not be said that the samples had representative character. According to him, the samples were not carefully sealed

as required by Rule 14 which was clear from the panchanama at Exhibit19. He further submitted that the bottles in which samples were taken were

not washed due to which the report of chemical analysis could not be relied upon. In that regard, he placed reliance upon the judgment of the

Division Bench in the case of the State of Maharashtra Vs. Gitaram Kaluram 1993(2) Prevention of Food Adulteration Cases 238. He then

submitted that the sealing of the samples was not in the manner required by Rule 16(b) of the Rules. He further submitted that the consent given

under Section 20 of the said Act was by the incharge authority and not by the Joint Commissioner as required. He fairly stated that provisions of

Section 13(2) of the said Act had been duly complied with. In support of his submissions he placed reliance upon the judgment of the Division

Bench at the Nagpur Bench in Criminal Application No.760 of 1996 dated 4-7-1997 (Nagpur Municipal Corporation Vs Ramprasad Manchand

Sharma) as well as the judgment of learned Single Judge in State of Maharashtra Vs. Ramesh Shriniwas Rao 1985(IV) of All India Prevention of

Food Adulteration Journal 212. He submitted that the respondent had been rightly acquitted by the trial Court.

5. With the assistance of the learned Counsel for the parties, I have perused the records of the case and I have given due consideration to the

respective submissions.

6. The prosecution had examined the Food Inspector who had obtained necessary samples and his deposition is at Exhibit 11. In his deposition, he

has stated that after purchasing the groundnut oil, the samples were divided in three equal parts and they were put in three cleaned, dried and

empty bottles. Thereafter, the cork of each bottle was sealed and each bottle was labeled. The ends of the wrapper were folded and pasted. He

has then referred to grant of consent at Exhibit-40. In his cross-examination, he admitted that before taking the sample of the oil, the bottles must

be shown to the accused and the panchas. This fact was not mentioned in the panchanama. He further admitted that he had not stirred the oil

before taking its sample. He further stated that there was no necessity of putting any seal on the lid of the bottle.

7. The next witness examined was Venkatesh Vaidya at Exhibit-46. He was the panch witness, but he did not support the case of the prosecution.

The learned Judicial Magistrate First Class on consideration of this evidence found that it was admitted by the Food Inspector that he had not

stirred the oil before taking its sample. Another aspect which found favour with the learned Magistrate was the noncompliance with the provisions

of Rules 17 and 18 thereof.

8. The perusal of the entire material on record indicates that the samples had been collected by the Food Inspector without stirring the entire

material. Similarly, there is absence of evidence that the sample bottles were cleaned and dried before the sample was poured therein. In Municipal

Corporation of City of Nagpur (supra), in the panchanama, it was not mentioned that before taking the sample, the entire material had been stirred.

Though this aspect was deposed by the Food Inspector, the same was treated as an improvement and not accepted. The aspect of failure to

mention that the entire material had been stirred has been held to be fatal. The aspect of failure to stir the groundnut oil before taking its sample

would indicate that the sample is not of representative character which aspect has been considered by the Division Bench in Ramprasad Manchand

Sharma (supra). The Division Bench in Gitaram Kaluram (supra) has held that failure to establish that the sample bottles were cleaned and dried

before the sample was poured was a fatal infirmity. These aspects go to the root of the case of the prosecution and in view of the admissions given

by the Food Inspector in his cross-examination, the same would be fatal to the case of the prosecution.

9. In so far as the non-compliance of the provisions of Section 20 of the said Act are concerned, there was no suggestion given to the Food

Inspector in his cross-examination that the consent was granted by an Officer not competent to do so. Though the learned Counsel for the

respondent sought to rely upon the notification appointing the concerned Joint Commissioner subsequently, it is not necessary to go into that aspect

as the impugned judgment is liable to be maintained on account of non-compliance of other mandatory provisions. Similarly, I find that there has

been compliance with provisions of Section 13(2) of the said Act in the light of documents at Exhibits 42 and 57.

10. In so far as the decision relied upon by the learned Additional Public Prosecutor in the case of Popat Panachand Shah (supra) is concerned,

the same is on the aspect of substantial compliance with provisions of Rules 14 and 16 of the Rules. However, once it is found that the sample as

taken was without stirring and, therefore, not of representative character, the ratio of said decision cannot assist the case of the prosecution.

11. In view of aforesaid discussion, it cannot be said that the learned Judicial Magistrate First Class while acquitting the respondent took in a

perverse view requiring interference. There being no merit in the appeal, the same stands dismissed. Order accordingly.