

**(1986) 12 BOM CK 0029****Bombay High Court****Case No:** Criminal Appeal No. 201 of 1981

State of Maharashtra

APPELLANT

Vs

Shaikh Ukhan Shaikh Rehman

RESPONDENT

**Date of Decision:** Dec. 17, 1986**Acts Referred:**

- Prevention of Food Adulteration Act, 1954 - Section 16, 16(1), 2
- Prevention of Food Adulteration Rules, 1955 - Rule 17, 18, 29, 9

**Citation:** (1988) 1 BomCR 444**Hon'ble Judges:** A.D. Tated, J**Bench:** Single Bench**Advocate:** J.A. Bardey, P.P, for the Appellant; Prafulla B. Shah, for the Respondent**Final Decision:** Dismissed

### **Judgement**

A.D. Tated, J.

The State of Maharashtra preferred this appeal against the judgment and order dated 21st October, 1980 passed by the learned 3rd Joint Judicial Magistrate, F.C. Malegaon (Shri S.B. Deshpande), whereby he acquitted the respondent of the offence u/s 2(i)(j) read with section 16(1)(a) of the Prevention of Food Adulteration Act, 1954 and Rule 29 of Prevention of Food Adulteration Rules, 1955. The prosecution case was that on 24th May, 1973, the Food Inspector Shri Sashikant Bhalerao visited the restaurant of the accused at village Dongrale. He disclosed his identity and gave out his intention to draw sample of the food articles namely Khari-shev weighing 300 gms. from the accused. Accordingly the complainant purchased Khari-shev weighing 300 grams and he divided it-into three equal parts. He packed the three parts of the samples in three different dried and clean bottles. Thereafter he sealed them in the presence of panchas. He also obtained the necessary receipt for payment of the price of the Khari-shev to the accused. He served notice under Form No. VI, Exhibit-17, on the accused. The bottles containing the samples were corked and the same were put into a thick brown paper and all

the three bottles were labelled. Thereafter, the panchas put their signature on the labels. One of the samples was given to the accused for which the accused issued receipt Exhibit-18. The complainant drew a panchanama on the next day i.e. on 25th May, 1973. He forwarded one of the samples along with Form No. VII to the Public Analyst, Pune, by registered post acknowledgment due. Subsequently the second copy of the memo along with R/R was sent separately by post to the Public Analyst, Pune. He produced the copy of 3rd Print of Form No. VII. He received Public Analyst's report on 20th of August, 1973. It is Exhibit-19 and as per that report the sample contained extraneous non permitted coal tar dye with material-yellow and it was adulterated u/s 2(i)(j) of the Prevention of Food Adulteration Act, 1954 read with Rule 29 of Prevention of Food Adulteration Rules, 1955. The Food Inspector along with the necessary documents forwarded the report to the Commissioner of Food and Drugs, Bombay. He got the necessary permission from the Competent Authority on 17th October, 1973, which is filed at Exhibit-20. Thereafter, he filed the complaint in the Court of Judicial Magistrate, First Class, Malegaon on 3rd November, 1973. On 20th November, 1973, the Food Inspector issued a copy of Public Analyst's report to the accused along with his covering letter by registered post acknowledgment due. The acknowledgment receipt, Exhibit-20, received from the accused was filed alongwith the complaint. The 3rd part of the sample was also produced in the Court. After examining the complainant the charge was framed against the accused for the offence above on 25-3-1980. After recording the evidence adduced by the complainant and after examining the accused, the learned 3rd Lt. Judicial Magistrate F.C. Malegaon, acquitted the accused on 21st October, 1980.

2. Feeling aggrieved the State preferred this appeal on 20th of April, 1981.

3. The learned Public Prosecutor Shri V.S. Jadhav contends that the learned Judicial Magistrate was not right in observing that the complaint did not comply with the Rules 17 and 18 and also Rule 9(j) of the Preservation of Food Adulteration Rules, 1955. He submits that the learned 3rd Joint Judicial Magistrate F.C. did not at all consider the evidence of the complainant in its entirely and without complying his mind to the requirements of Rules 17 and 18, he held that those Rules were not complied with by the Food Inspector. He also contends that Rule 9(j) was enacted and inserted in the Rules 1976 and therefore the learned trial Judge was not right in observing that the complainant did not disclose the compliance of Rule 9(j) of the Prevention of Food Adulteration Rules, 1955. According to the learned Public Prosecutor the learned Magistrate in a very slip-shed manner held that the provisions of Rules 9(j), 17 and 18 of the Prevention of Food Adulteration Rules were not complied with and acquitted the accused.

4. The learned Counsel Shri P.B. Shah, appearing for the respondent contends that the alleged offence took place on 24-5-1970 and the complaint was lodged in the year 1973 and after a number of adjournments the charge was framed on 25th

March, 1980 and the judgment of acquittal was delivered on 21st of October, 1980. He submits that 13 years have passed after the alleged commission of the offence and it would not be proper for this Court after the lapse of 13 years to set aside the acquittal and convict the respondent. He also submits that the respondent is now about 80 years of age and the also closed the business for which he was inducted in the case.

5. The learned Judicial Magistrate has written a very perfunctory judgment in this case while holding that there has been no compliance of Rules 17 and 18 and also Rule 9(j) of the Prevention of Food Adulteration Rules, 1955. He has not stated what was the omission on the part of Food Inspector and also did not consider whether such omission vitiates the investigation of the crime. The learned Judicial Magistrate recorded the reasons and the findings in his judgment. It reads thus :

"In support of the case the prosecution examined in all the three witnesses. It appears from the evidence of Food Inspector Shri Bhalerao recorded at Exhibit-14 that he had admitted in the cross examination that he has not kept any notes of his work pertaining to this case. He has also admitted that this complaint is silent regarding the mandatory Rule 17 and 18 P.F.A Act. He has also admitted that signature of the accused at Exhibit-21 does not tally with the signature of the accused at Exhibit-21 does not tally with the signature at Ex. 16. He has also admitted that complaint does not disclose the Compliance of Rule 9(j) of P.F.A. Act".

6. It may be mentioned that the original Rule 9(j) was deleted and a new Rule 9(j) was substituted in the year 1977. The original Rule reads as follows :-

"To send by hand or registered post, a copy of the report received in Form III from the Public Analyst to the person from whom the sample was taken, in case it is found to be not conforming to the Act or Rules made thereunder, as soon as, the case is filed in the Court."

After amendment on 13-2-1974, the sub-clause (j) reads as follows :---

"To send by registered post, a copy of the report received in Form III from the Public analyst to the persons from whom the sample was taken within ten days of the receipt of the said report. However, in case the sample conforms to the provisions of the Act or Rules made, thereunder, then the person, may be informed of the same and report need not be sent."

7. The Food Inspector in his deposition has stated that he had on 20th November, 1973 sent a copy of Public Analyst's report by registered acknowledgment to the accused. He also produced a copy of covering letter and also postal acknowledgment receipt, Exhibit-21, sent by the accused. Therefore, there has been a proper compliance of Rule 9(j) as it existed in the year 1973. It is not known why the learned Magistrate stated in his judgment that there has not been a proper compliance of Rule 9(j) of Prevention of Food Adulteration Rules. Rules 17 and 18 of

Prevention of Food Adulteration Rules read as follows :

"Containers of samples how to be sent to the Public Analyst.--The container of sample for analysis shall be sent to the public analyst by registered post or railway parcel or air freight, or by hand in a sealed packet, enclosed together with a memorandum in Form VIII in an outer cover addressed to the public analyst".

(Proviso not reproduced as not necessary).

Rule 18. Memorandum and impression of seal to be sent separately. A copy of the memorandum and a specimen impression of the seal used to seal the packet shall be sent to the public analyst separately by registered post or delivered to him or to any person authorised by him."

7-A. The Food Inspector Shri Bhalerao in his deposition has stated that the sample taken from the accused was divided into three equal parts. The said three parts of the sample were poured into three bottles which were clean, neat and dry bottles. All the three bottles were corked and the same was put into a thick brown paper and all the three bottles were labelled with it. He further states that the said labels bear the signatures of the Panchas. The bottles were vertically and horizontally tied with the threads and those bottles were sealed with lacquer. One part of the samples was given to the accused. He produced a receipt, Exhibit-18, which was sent by the accused as an acknowledgment of receiving one part of the sample. He drew panchanama in the presence of Panchas. He states that on 25th May, 1973, he forwarded one sample along with Form No. VII to the Public Analyst Pune by Registered A.D. parcel. Subsequently the second copy of the memorandum along with R/R was sent by independent post to Public Analyst, Pune. He produced a copy of the third print of Form No. VII. He received the Public Analyst's report on 20th of August, 1973 and as stated earlier he sent copy thereof to the accused on 20th November, 1973. The evidence of complainant that shows that he had complied with the Rules 17 and 18. It is rather difficult to know why the learned Magistrate stated that the Rules 17 and 18 were not complied with. Merely on the basis of the statement of the complainant in his cross-examination that his complaint was silent regarding the mandatory Rules 17 and 18, the learned Magistrate was not right in holding that there was no compliance of Rules 17 and 18. The complainant stated during his cross-examination that the signature on the acknowledgment Exhibit-12 did not tally with the signature of the accused on the panchanama, Exhibit-16. He has also admitted in the cross-examination that the complaint did not disclose the compliance of Rule 9(j). It is difficult to understand why such omnibus admissions were given by the complainant in this cross-examination.

8. I fully agree with the learned Public Prosecutor that the judgment of the trial Court is slip shed and perfunctory. He had not at all discussed the evidence of the complainant and other witness and without considering their evidence he observed that the mandatory Rules 17 and 18 were not complied with. He also did not

consider the old Rule 9(j) which was on the statute book on the date of the alleged offence and also on the date when the complainant sent the copy of the Public Analyst's report to the accused, observed that the complainant did not comply with the Rule 9(j). The judgment of the trial Magistrate is so perfunctory that it cannot be called a judgment and in fact it was necessary to set aside the judgment and send the case back to the trial Court to record a proper judgment in the case. The judgment was delivered in the year 1980 and now 5 years have passed thereafter. The same Magistrate may not be at that section and he might have also been promoted or might have retired. Therefore, it would not be proper to send back the matter to the learned Magistrate to write a properly reasoned judgment. The alleged offence took place about 13 years back and the accused has else gone sufficiently old. The learned Public Prosecutor also fairly concedes that in the circumstances of the present case no interference in the acquittal of respondent is called for.

9. In the result, the acquittal of the accused, though for different reasons is maintained and the appeal is dismissed.