

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 40 OF 2006

Prakash Parmanand Gurbakshani,,
Age : 35 years, Occ. Business,
Proprietor of M/s. Prakash Kirana Stores,
Khanapur, Taluka Raver,
District Jalgaon.

..Applicant

VERSUS

The State of Maharashtra
(through the Food Inspector,
Food and Drug Administration,
Jalgaon).

..Respondent

...
Advocate for Petitioners : Ms. Monica Dahat h/f Mr. Joydeep
Chatterjee

APP for Respondent/State : Ms. Vaishali S. Choudhari

...
CORAM : S.G. MEHARE, J.

RESERVED ON : OCTOBER 09, 2024

PRONOUNCED ON : OCTOBER 22, 2024

JUDGMENT :-

1. The applicant has impugned the judgment and order of the learned Judicial Magistrate First Class, Raver passed in R.C.C. No.155 of 1993 dated 23.02.2001 and the judgment and order of the learned 2nd Additional Sessions Judge, Jalgaon in Criminal Appeal No.15 of 2001 dated 03.02.2006. Both Courts convicted the applicant for the offence punishable under Section 7(i) r/w Section 16 of the Prevention of Food Adulteration Act, 1954 ('Act of 1954' for short). The applicant was sentenced to suffer R.I. for one year and directed to

pay a fine of Rs.1,000/- in default to pay the fine amount, he was to suffer R.I. for 15 days.

2. The prosecution case in brief was that the applicant was running a grocery shop. The Food Alteration Officer/complainant visited his shop with panchas on 07.08.1992. The cotton oil seed was stored in the backside of his shop. The complainant expressed his intention to purchase and draw the samples from the cotton oil seed and did local formalities. Accordingly, the samples were taken from the container of cottonseed oil. Those were divided into three parts and sealed. The necessary notices as required under the Act of 1954 were served to the applicant. On 10.08.1992, the complainant sent the samples for analysis to the State Food Laboratory. On the same day, he handed over two sealed samples to the Local Health Authority. On 15.09.1992, he received the report from the State Food Laboratory with a remark that the sample did not conform to the standard as per Item No. A.17.02 of the Prevention of Food Adulteration Rules, 1955. On 14.09.1993, he had received the sanction from the Assistant Commissioner (Maharashtra State), Jalgaon on 24.09.1993. On 09.11.1993, he filed the complaint to the Court. On the same day, the Court issued the process to the accused. The Local Health Authority addressed a letter with the laboratory to the applicant intimating to him that he may apply to the Court for sending another sample for the test to the Central Food Laboratory within ten days of the receipt

of the intimation. The accused appeared on 13.01.1994 before the Court and on the same day applied to the Court for sending the samples to the Central Food Laboratory. The Court received the report of the Central Food Laboratory conforming the earlier analysis report of the State Food Analyst Laboratory. The Court appreciating the evidence held the accused guilty as mentioned above.

3. The learned counsel for the applicant has vehemently argued that the panch witness to the memorandum panchnama Exhibit-30 was dead. Even, another panch witness alive was not examined. Therefore, it violated Section 10(7) of the Act of 1954 and the seizure of the samples was not proved. It was fatal to the prosecution.

4. As against this, the learned APP has vehemently argued that there was no second witness to the memorandum panchnama. However, the sole panch witness was dead. Therefore, the complainant had proved that memorandum panchnama. Hence, it cannot be said that the said memorandum panchnama Exhibit-30 was not proved.

5. Section 10 of the Act of 1954 speaks of the Powers of the Food Inspectors. Sub-section (7) of Section 10 provides that where the Food Inspector takes any action under clause (a) of sub-section (1), sub-section (2), sub-section (4) or sub-section (6), he shall [call one or more persons to be present at the time when such action is

taken and take his or their signatures]. The section provides for calling one or more persons to be present as panch witnesses. Therefore, calling only one witness to the memorandum panchnama is not bad in law. When the sole panch was dead or the panchas do not support the prosecution, the complainant or the person who prepared such panchnama may prove such panchnamas and it may be received in evidence where the substantial evidence against the accused is clinching and acceptable. Therefore, this Court does not find any substance in the argument of the learned counsel for the applicant. The Court also does not find that Exhibit-30 bear the signatures of another panchas. The so-called another person Mr. Tadwi was not the panch to the memorandum panchnama Exhibit-30. In view of the facts, the argument of the learned counsel for the applicant cannot be accepted that the memorandum panchnama Exhibit-30 was not proved and it violated Section 10(7) of the Act of 1954.

6. The next limb of the argument of the learned counsel for the applicant was that the complainant had demanded the applicant a bribe of Rs.5000/-. He did not pay, hence, he brought the samples with him and lodged a false case against him. However, she could not produce a complaint/report against the complainant for demanding a bribe of Rs.5,000/-. In the absence of any cogent evidence, bare

words blaming the public servant for asking for a bribe and lodging a false case against him cannot be accepted.

7. She further argued that the complaint was delayed by one year. Therefore, the applicant could not get an opportunity to get the samples tested from the Central Food Laboratory in time. In the meantime, the shelf-life of the samples/cottonseed oil was over. So naturally, the test before was against came adverse.

8. Section 11 of the Act of 1954 imposes the duty on the Food Inspector to serve a notice in writing to the person from whom the samples are taken that he intends to collect the samples analyzed and he was to send one of the parts of the analysis to the public analyst under the intimation to the Local Health Authority. Sub-section (2) of Section 13 of the Act of 1954 imposes a duty upon the Local Health Authority to forward a copy of the result of the analysis, if it is adverse, to the accused or the person from whom the samples are collected, after instituting prosecution against such person. Then, the accused may within ten days from the receipt of the copy of the receipt may apply to the Court for getting the samples analyzed by the Central Food Laboratory. This section does not provide for waiting till the Court issues the summons to the accused. The complainant had addressed a letter to the Local Health Authority dated 10.11.1993 that the prosecution had been filed against the applicant informing him that the next date was 08.12.1993. The Assistant Commissioner,

Food and Drugs, Jalgaon who was also the Local Health Authority had issued a letter to the applicant dated 12.11.1993 which the applicant had received on 17.11.1993 informing him that he may apply to the Court for sending the second sample to the Central Food Laboratory within ten days. However, the record does not reveal that after the receipt of this notice on 17.11.1993, the applicant applied to the Court to send the samples to the Central Food Laboratory. He appeared in the Court on 13.01.1994 and the same day applied for sending the samples to the Central Food Laboratory. These facts establish that the applicant did not exercise his right under Section 13(2) of the Act of 1954 within ten days. Therefore, she could not argue that the samples were sent to the Central Food Laboratory belatedly after the shelf-life of the cottonseed oil was over. Be that as it may, even the samples were sent belatedly as per the request of the applicant. Again an adverse report was received that the samples were not as per the required standard.

9. The learned counsel for the applicant has vehemently argued that the applicant was in jail. He is suffering from various ailments. Therefore, his sentence be reduced.

10. Section 16 of the Act of 1954 provides for the penalties. Different penalties have been provided for the different offences as provided in the Act. The applicant was tried for the offence punishable under Section 2(ia)(a), 2(ia)(m) of the Act of 1954. Sub-

clause (ia) defines the 'adulterated articles of food'. Sub-clause (a) of that sub-clause is for selling of such adulterated articles by the vendor that were not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be. Sub-clause (m) from the same section is about the quality or purity of the article falling below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health. The laboratory reports were that the samples were not of the required standard. However, it was not injurious to health. The punishment as per Section 16 for the offences committed under sub-clause (a) or (m) of Section 2 of the Act 1954 shall be not less than six months but it may extend to three years, and with a fine which shall not be less than one thousand rupees. The proviso to that section provides that if the offence is under sub-clause (i) of clause (a) and with respect to an article of food, being primary food, which is adulterated due to human agency or with respect to an article of food which is misbranded within the meaning of sub-clause (k) of clause (ix) of Section 2; or if the offence is under sub-clause clause (a) but not being an offence with respect to the contravention of any rule made under clause (a) or clause (g) of sub-section (1-A) of section 23 or under clause (b) of sub-section 2 of Section 24, the Court may, for any adequate and special reasons to be

recorded, impose a sentence of imprisonment for a term which shall not be less than three month but it may extend to two years and fine which shall not be less than five hundred rupees. The offence punishable under sub-clause (m) of Section 2 does fall under the above proviso clause. Therefore, the sentence of imprisonment for a term not less than six months could not be reduced to three months. The applicant as argued had undergone the sentence for sixty days which was the minimum punishment, therefore, also the sentence as provided under the first proviso can not be reduced. In the circumstances, there appears no error of law in imposing the penalty against the applicant by the Trial Court as well as the Appellate Court.

11. In the alternative, she had prayed for extending the benefit of the Probation of Offenders Act. The documents placed on record support her contention that the applicant is suffering from various ailments and probably, he may be bedridden. There are no complaints against him that before or after the present crime, he was the accused or convicted of the identical offence.

12. The Hon'ble Supreme Court in the case of Tarak Nath Kesari Vs. State of West Bengal, Criminal Appeal No.1444 of 2023 (Arising out of SLP (Cri) D No.28476 of 2018) dated 10.05.2023, held that even if there is a minimum sentence provided in Section 7 of the Essential Commodities Act, in our opinion, the appellant is entitled to the benefit of probation, the EC Act, being of the year 1955

and the Probation of Offenders Act, 1958 being later. Even if a minimum sentence is provided in the EC Act, 1955, the same will not be a hurdle for invoking the applicability of provisions of the Probation of Offenders Act, 1958. In that case, the Hon'ble Supreme Court has referred the case of Lakhvir Singh Vs. The State of Punjab and Ors, (2021) 3 SCC 763.

13. In view of the law laid down by the Hon'ble Supreme Court in the case of Tarak Nath Kesari (supra), there appears no impediment to exercise the powers under Section 4 of the Probation of Offenders Act, though the minimum sentence has been provided in the Act. The Hon'ble Supreme Court laid the law that the benefits of the Probation of Offenders Act could even be extended for the offence punishable under the Prevention of Food Adulteration Act, 1954. Considering the deteriorating health of the applicant and his subsequent conduct after conviction, it is expedient to release him on probation of good conduct. Hence, the following order :

ORDER

- (i) Criminal Revision Application is partly allowed.
- (ii) The judgment and order of the learned Judicial Magistrate First Class, Raver passed in R.C.C. No.155 of 1993 dated 23.02.2001 and the judgment and order of the learned 2nd Additional Sessions Judge, Jalgaon in Criminal Appeal No.15 of 2001 dated 03.02.2006, stand maintained. However, instead of

sentencing him at once to the punishment, it is expedient to release him on probation of good conduct.

(iii) The applicant be released on executing the bond for one year of Rs.10,000/- (ten thousand) with an undertaking to appear and receive the sentence when called upon during the said period, and in the meantime, he should keep peace and good behaviour.

(iv) The bonds as directed above be furnished before the learned Trial Court within four weeks from today.

(v) The fine amount, if any, deposited be returned to the applicant.

(vi) The surety and bail bonds stand cancelled and the surety is discharged.

(vii) Record and proceeding be returned to the learned Trial Court.

(viii) Rule is made partly absolute in the above terms.

(S.G. MEHARE, J.)