



CriAppeal-538-2006

-1-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 538 OF 2006

The State of Maharashtra
(Bharatsing Umraosing Patil),
Food Inspector,
Food and Drugs Administration,
Maharashtra State.

... Appellant

Versus

1. Gorakh Arjun Marathe,
Vendor of Marathe Industries,
Back Side of Shetki Sangh,
Nandurbar, Taluka Nandurbar,
District Nandurbar (Old Dhule).
2. Mohan Arjun Marathe,
Age 34 years,
Proprietor of Marathe Industries,
Back Side of Shetki Sangh,
Nandurbar, Taluka Nandurbar,
District Nandurbar (Old Dhule).

... Respondents
[Ori. Accused]

.....

Mrs. Chaitali Chaudhari Kutti, APP for the Appellant-State.
Mr. C. C. Deshpande h/f Mr. C. R. Deshpande, Advocate for
Respondent Nos. 1 and 2.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 08.09.2026

Pronounced on : 10.09.2026

JUDGMENT :

1. State hereby challenges the judgment and order dated 20.02.2006 passed by learned J.M.F.C., Nandurbar acquitting accused in R.C.C. No. 164 of 1997 from charges under Sections 7(i) r/w 2(ia) (a), 2(ia)(i) and 2(ia)(m), Section 7(v) r/w Rules 28, 29 punishable under Section 16 of the Prevention of Food Adulteration Act, 1954 [for short, "PFA Act"].

2. In brief, case of prosecution in trial court is that, PW1, a Food Inspector, paid visit to the shop premises of accused, who was involved in the business of manufacturing and selling food articles like chilli powder. During visit, said article was found to be stuffed in gunny bag. He collected sample by drawing panchanama and after following the procedure, as contemplated under Rules and Regulations of the Act, he sent the sample for analysis. The analyst reported that sample did not confirm to the standards of chilli powder as per PFA Rules 1955 and after receiving consent from higher authorities, prosecution was launched against accused by filing private complaint. Learned trial court issued process, allowed the parties to adduce their evidence. Testimonies of PW1 complainant, PW2 Chief Officer of Nagar Parishad, PW3 staff working in Dispatch

Section were duly appreciated and finally accused came to be acquitted from all the charges. The said judgment and order of acquittal is the subject matter of appeal at the instance of the State.

3. Learned APP would appraise this Court about the story of prosecution in trial court. She took this Court through the length and breadth of evidence of PW1, PW2 and PW3. According to her, through the evidence of these witnesses, prosecution has proved beyond reasonable doubt that accused was involved in the business of manufacturing and sell of chilli powder which was found on analysis to be adulterated. Thus, according to her, adulteration is proved by prosecution in trial court and it is so evidence from the report of analyst. She further pointed out that, PW1 has adhered to all Rules and Regulations contemplated under the Act like giving prior notice, seeking explanation and thereafter initiating action. According to her, due procedure has been applied in consonance with the principles of natural justice and as such, there is no infraction or infirmity on his part, however, according to her, learned trial court has misread the evidence as well as misinterpreted the Rules and Regulations of the Act while acquitting the accused. Hence, she seeks indulgence by allowing the appeal.

4. In answer to above, learned counsel for respondent accused would justify the order of acquittal and he also took this Court through the evidence on record as well as the reasons and findings arrived at by learned trial court, and ultimately prays to dismiss the appeal for want of merits.

5. Before advertng to the appreciation of evidence part, it would be useful to reproduce, i.e. for reference, the relevant provisions under which prosecution was launched.

Sec. 2. Definitions. -

In this Act unless the context otherwise requires, -

(i)

(ia) “adulterated” – an article of food shall be deemed to be adulterated-

(a) if the article sold by a vendor is 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;

(b)

to

(h)

(i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;

(j)

to

(l)

(m) if the quality or purity of the article falls 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;

Provided that, where the quality or purity of the article, being primary food, has fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability, in either case, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause.

Sec.7. Prohibitions of manufacture, sale, etc., of certain articles of food.-

No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute-

(i) any adulterated food;

(ii) ...

to

(iv) ...

(v) any article of food for sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health;

(vi) ...

Explanation :- For the purposes of this section, a person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in cl. (iii) or cl. (iv) or cl. (v) if he stores such food for the manufacture therefrom of any article of food for sale.

Rule 28 and 29 of the PFA Rules, 1955 punishable u/s 16 of the PFA Act.

28. Synthetic food colours which may be used.-

No synthetic food colours or a mixture thereof except the following the shall be used in food :

Sl. No.	Colour No.	Common Name	Colours Index (1956)	Chemical Class
1	Red	Ponceau 4 R	16255	Azo
		Carmoisine	14720	Azo
		Erythrosine	45430	Xanthene
2	Yellow	Tartrazine	19140	Pyrazolone
		Sunset Yellow FCF	15985	Azo
3	Blue	Indigo Carmine	73015	Indigoid
		Brilliant Blue FCF	42090	Triarymethane
4	Green	Fast Green FCF	42053	Triarymethane

29. Use of permitted synthetic food colours prohibited.-

Use of permitted synthetic food colours in or upon any food other than those enumerated below is prohibited-

- (a) Ice-cream, milk lollies, frozen dessert, flavoured milk, yoghurt, ice-cream mix-powder.
- (b) (b) Biscuits including biscuit water, pastries cakes confectionary, thread candies, sweets, savouries (dalmoth, mongia, phuluab, sago papad, dal biji only);

- (c) Peas, strawberries and cherries in hermitically sealed container preserved or processed papaya, canned tomato juice, fruit syrup fruit squash, fruit cordial, hellies, jam, marmalade, candies crystallied or glazed fruits.
- (d) Non-alcoholic carbonated and non-carbonated ready to serve synthetic beverages including synthetic syrups, sherbets, fruit beverage, fruit drinks synthetic soft drink concentrates;
- (e) Custard powder;
- (f) Jelly crystal and ice-candy
- (g) [omitted]
- (h) Flavour emulsion and flavour paste for use in carbonated or non-carbonated beverage only under label declaration as provided in Cl. (13) of sub-rule (zzz) of Rule 42.

Whereas, **Section 16** of the PFA Act deals with penalties.

6. Heard both sides to their satisfaction. In this appeal by State, principal ground of challenge is that, public analyst had, after analyzing the sample, noticed as under :

<i>“Microscopic Examination</i>	<i>:- Chilly Structure;</i>
<i>Test for Colour</i>	<i>:- Synthetic viz Red and Orange Oil soluble colour detected”</i>

Said report is at Exhibit 33. It is submitted that learned trial court erred in holding that microscopic test is not permissible. According to learned APP, Appendix B, A05.05 of the PFA Rules 1955 deals with chillies, and the produce has to be free from added colouring matter, coating of mineral oil and other harmful substances.

7. Para 32 of the impugned judgment contains a comparative chart mentioning the percentage of components mentioned the P.A. Report as well as the standard prescribed under the Rules. For ready reference, the said chart is reproduced hereunder :

Sr. No. 1	Moisture as prescribed not more than 12.0% by weight	As found in sample in P.A. Report 9.4% by weight
Sr. No. 2	Total ash percentage as prescribed not more than 8.0 by weight	As found in sample in P.A. Report 4.2% by weight
Sr. No. 3	As prescribed Ash insoluble in dilute H.C.L. not more than 1.3% by weight	As found 0.52% by weight in P.A. Report
Sr. No. 4	Non volatile ether extract percentage not less 12.0% by weight	As found 23.9% by weight in P.A. Report
Sr. No. 5	Crude fiber as prescribed in total not more than 30.0%	As found 22.12% by weight in P.A. Report

8. On carefully going through the report under question, it is noticed that, essential parameters are within permissible limit. However, analyst has reported that on microscopic examination of chilli powder, he noticed synthetic viz red and orange oil soluble colour.

9. Further, it is also noticed that, the table A.05.05.01 of Appendix B has defined chillies and capsicum to mean the powder obtained by grinding clean ripe fruits or pods of the capsicum Annum L and capsicum frutescens L, and that it shall be free from mould, living and dead insects, insect fragments, rodent contamination. The powder shall be dry, free from dirt, extraneous colouring matter, flavouring matter, mineral oil and other harmful substances. The chilli powder may contain any edible vegetable oil to a maximum limit of 2.0% of weight under a label of declaration for the amount and nature of oil used, and its percentage is also provided in the form of chart. However, here, the analyst has not noticed any extraneous matter or material and what he reported is finding “synthetic viz red and orange oil soluble colour” on microscopic examination. Even on microscopic analysis, exact percentage has not been recorded by the analyzer.

10. The Hon'ble Apex Court in the case of ***Jagdish Chandra v. State of Uttar Pradesh*** reported in AIR 1981 SC 1233, has observed as under :

“Where the accused was convicted for selling adulterated ‘dalchini’ (cinnamon) but the Public Analyst performed only microscopic test and not the chemical test for analysing an alleged adulterated sample of Dalchini (Cinnamomum Zeaylanicum Knees), the accused could not be convicted on the report of the Analyst as the prosecution could not be said to have proved beyond reasonable doubt that what the accused sold to Food Inspector was in fact cinnamon (Dalchini).

Items A.05.06 and A.05.06.01 of App.B would show that the percentage of the various ingredients such as ash, insoluble in HCL, or volatile oil or moisture in the sample of Dalchini, cannot be ascertained with any degree of accuracy by mere ocular examination under a microscope. Chemical tests including treatment of the ash in the sample with Hydrochloric Acid would be a must

The learned public prosecutor, though unable to counter this legal contention, yet he would make an attempt to point out that this is not a case wherein the sample was not subjected to chemical analysis and consequently, the legal contention raised by the learned Counsel for the petitioners is of no

avail. He would actually draw my attention to the Public Analyst's report. The public Analyst would in fact report that the sample contains ash insoluble in dilute HCL in excess of the maximum permitted limit to the extent of 15 percent. This, the Public Prosecutor would say, would throw some light that the sample in fact was subjected to chemical analysis, though this report does not disclose in explicit and express terms that the sample was subjected to chemical analysis. This argument of the learned Public Prosecutor, I am unable to accept, for the simple reason that the report of the public Analyst mentioned the heading of the first column as 'Microscopic Examination' and under this column, "Moisture contents, Total ash. Ash insoluble in dilute HCL" are mentioned. This will pin-pointedly show that all these contents are detected by the Analyst only on microscopic examination and not otherwise. In such state of affairs, I have no hesitation in coming to the conclusion that the sample was not at all subjected to chemical analysis. In such a situation, it naturally follows that the legal contention of the learned Counsel for the petitioners on this aspect of the matter, ably supported by the decision of the Supreme Court as referred to above, has to be accepted."

11. The above referred judgment is also referred and relied by the Madras High Court in the case of ***Madurai Pandian Co-operative Mini Super Market, Madurat and others v. State by Food Inspector, Madurai Corporation*** [Cri MP No. 4667/1985 decided on

09.09.1988]. A similar view is taken by the Rajasthan High Court in *Niranjan G. Khatri and others v. State of Rajasthan* [S. B. Cr. Misc. Petition No.1517/2012 decided on 18.07.2012].

12. In the light of above settled position, there is no error on the part of learned trial court in precluding the results which were yielded on microscopic examination as, neither the very Act nor legislature provides or acknowledges such test to be carried out or relied. Microscopic examination is not analytical test or chemical analysis test, and as such, has no sanctity.

13. The another ground raised before learned trial court by present respondent-accused is that, there is non compliance of Section 13(2) of the PFA Act. Section 13(2), for ready reference, is reproduce hereunder :

“13. Report to Public Analyst. -

(1)

(2) On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person, if any, whose name, address and other particulars have been disclosed

under Sec. 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both may make an application to the Court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.”

14. Here, it is noticed that PW2, who is a Chief Officer of a Local Body, has set up a claim before the court that, there is compliance of Section 13(2) of the PFA Act. However, record and judgment of learned trial court shows that, though said witness asserted and accepted compliance of Section 13(2) and assured to place on record the acknowledgment signed by accused about receipt of P.A. Report, the same has not been placed on record. What PW3 seems to have done is that he has merely produced postal receipt containing vague address of accused to be resident of Nandurbar. Postal address of accused is not appearing therein and therefore, mere production of copy of covering letter is not sufficient compliance and law to this extent has been touched and dealt by this High Court at Principal Seat in the case of ***Pimpri Chinchwad Nagarpalika v. Giriraj Chiranjilal Sharma and another*** [1998 Cri.L.J. 4354] while deciding Criminal

Appeal No. 179 of 1985, as well as in the case of ***State of Maharashtra v. Vinayak Mahadeorao Waze and another*** 2005 Cri.L.J. 2100 wherein it has been categorically held that mere production of copy of covering letter is not sufficient evidence of delivery and Rule 9(A) to have not been complied with.

15. Therefore, due to such non compliance of mandatory procedure, definitely prejudice has been caused to the accused before learned trial court.

16. In view of the above, as there is no infirmity or illegality in the of manner of appreciation, this Court does not find it to be a fit case to interfere. Hence, the following order :

ORDER

The Criminal Appeal is hereby dismissed.

[ABHAY S. WAGHWASE, J.]

vre