abetting liable for the offence. Therefore, as regards, accused 2 and 3, who are the petitioners herein, it has to be stated that there is absolutely no basis at all to proceed against them. Of course, the learned counsel for the petitioners has also produced extracts from the Registrar of Companies to the effect that as on 15.7.1994, the 2nd accused has resigned from service and that on 9.5.1994, the 3rd accused was relieved from service of the company."

9. The view taken by Madras High Court squarely applies to the facts and circumstances of the present case. Thus, this criminal application is required to be allowed in terms of its prayer clauses and accordingly I proceed to pass the following order:-

ORDER

I. Criminal application is hereby allowed in terms of prayer clause "C".

II. Criminal application is accordingly disposed of. Rule is made absolute in the above terms.

Result:- Petition allowed.

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ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(I.K. Jain, J.)
Criminal Revision Application No.52 of 2011
Decided on 19 October, 2016
Nagpur Bench

GURUMUKHADAS HOTCHAND BHOJAWANI - Petitioner(s).

Versus

STATE OF MAHARASHTRA - Respondent(s).

Law Covered:- ***(A) Food Adulteration Act, 1954 — Section 14-A —Conviction under — No prosecution launched for the charge of storing for sale, adulterated food — Crucial Question — whether contravention of Section 14-A alone would attract penal action — Packed tins contained labels with clear name & address of manufacturer — Non explanation —regarding action taken by the food Inspector on getting the information through the label — Held,***

It was for the Food inspector to show that even though the name and address of manufacturer was shown on the label he required the information from the accused — Held, unless such requirement is established provisions of Section 14-A would not be attracted — Acquittal. (Para 14)

(B) PFA Act — Section 13(2) — Non-compliance of — No prosecution was taken up for storing for sale, adulterated food — No opportunity was given to the accused to send the sample to C.A. — Held, the accused was deprived of his right to challenge the sample — Failure of the Prosecution to assign any reason for not prosecuting the accused — when sample was found adulterated — Acquittal. (Para 14)

(C) PFA Act — Section 14-A — Vendor to disclose the name, etc., of the person from whom the article of food was purchased — Contravention of — Requirement u/s 14-A not proved — Held, prosecution could not duly establish that accused contravened the provisions of Section 14-A. (Para 15)

(D) Food Adulteration Act, 1954 — 16(1-C), 16(1)(d) & 20 — Conviction under 16(1-C) & 16(1)(d) — Distinct offence — Prohibition u/s 20 — If it is a distinct offence Section 20 prohibits the prosecution to be launched without sanction — For want of sanction distinct offences would not sustain— Acquittal. (Para 16)

Facts:- *It was alleged that Complainant, the Food Inspector, visited the shop of the accused dealing in edible oil and other grocery articles on wholesale and retail basis. As per the case of prosecution the complainant purchased 750 gms. of groundnut oil filled the same in glass bottle and duly sealed the sample. He issued notice to the accused under PFA Act and asked him to produce purchase bills of groundnut oil. Accused failed to disclose the name and address of the person from whom the oil was purchased.*

Though accused made an endorsement on notice that he would submit the purchase bills within 2-3 days he failed to comply. Reminder was issued to the accused and he informed that he did not have purchase bills. In the meanwhile report from Public Analyst was received stating that groundnut oil sample was not conforming to the prescribed standard.

Accused was not prosecuted for the charge of storing for sale, adulterated oil. Complaint was restricted to the charge that accused contravened the provisions of Section 14-A of the Act and made him liable to punishment under Section 16(1-C) of the Act. It was also alleged in the complaint that accused prevented the complainant from proceeding against manufacturer and distributor of the adulterated groundnut oil and thereby

committed an offence punishable under Section 16(1)(d) of the PFA Act. The accused was convicted by the trial Court and the conviction was confirmed by the Sessions Court.

In the present appeal the crucial question decided by the hon'ble Court was, whether contravention of Section 14-A alone would attract penal action in the absence of launching of prosecution for the charge of storing for sale, adulterated oil.

It was observed by the honourable Bombay High Court that all the tins were packed and containing labels with clear name and address of manufacturer. Complainant did not explain either in complaint or in evidence what did he do on getting the information through the label on packed tins of groundnut oils. It was for him to show that even though the name and address of manufacturer was shown on the label he required the information from the accused. It was held that unless such requirement is established provisions of Section 14-A of the PFA Act would not be attracted.

Law of relief:- Without sanction u/s 20, PFA Act, distinct offences would not sustain.

Held:- The next contention raised by the applicant is regarding non compliance of Section 13(2) of the PFA Act. As admitted by complainant no prosecution was taken up for storing for sale, adulterated oil. No opportunity was given to the accused to send the oil sample to C.A., thereby depriving him of his right to challenge the sample. Prosecution failed to assign any reason for not prosecuting the accused when sample was found adulterated. In view of these facts elicited in the cross examination of complainant grounds raised on behalf of applicant cannot be said to be without substance. (Para 14)

So far as contravention of Section 14-A is concerned it is punishable under Section 16(1-C). Prosecution could not duly establish that accused contravened the provisions of Section 14-A as the requirement under Section 14-A is not proved by the prosecution. (Para 15)

Regarding contravention punishable under Section 16(1)(d), it can be seen from the simple reading of the provisions of Section 16(1)(d) and Section 16(1-C) of the Act that it is a distinct offence. If it is a distinct offence Section 20 prohibits the prosecution to be launched without sanction. For want of sanction even the alleged offence under Section 16(1)(d) would not sustain against the accused. (Para 16)

Counsel:- ***For Petitioner(s):*** *Shri Anjan De, Advocate.*

For Respondent(s): *Shri P.S. Tembhare, Additional Public Prosecutor.*

JUDGMENT

KUM. INDIRA JAIN, J.: - This Revision Application takes an exception to the judgment and order dated 17-02-2011 passed by the learned Sessions Judge, Bhandara in Criminal Appeal No. 23 of 2009 and judgment and order dated 18-04-2009 passed by the leaned Chief Judicial Magistrate, Bhandara in Regular Criminal Case No.228 of 2005.

2. For the sake of convenience applicant is referred as an 'accused' and respondent as 'prosecution' in their original status as were referred before the trial and appellate Courts.

3. The prosecution case briefly stated is as under :-

Complainant was appointed as Food Inspector. On 09-09-2005 he visited M/s Sindh Kirana Stores at Bada Bazar, Bhandara. Accused was dealing in edible oil and other grocery articles on wholesale and retail basis. During inspection of the shop complainant found 40 packed tins each tin weighing 15 Kg. of groundnut oil (Royal Gold Brand Mungfalli Tel). Two barrels containing refined Soyabean oil each having 180 Kg. oil were also found stored for sale. In the present case controversy is in respect of 40 packed tins of groundnut oil. So far as Soyabean barrels are concerned separate prosecution was launched and accused was acquitted of the offences alleged therein.

4. It is the case of prosecution that complainant purchased 750 gms. of groundnut oil filled the same in glass bottle and duly sealed the sample. He issued notice to the accused under Section 14-A of the Prevention of Food Adulteration Act, 1954 (hereinafter referred as 'PFA Act' for brevity) and asked him to produce purchase bills of groundnut oil. Accused failed to disclose the name and address of the person from whom oil was purchased. Though accused made an endorsement on notice that he would submit the purchase bills within 2-3 days he failed to comply. Reminder was issued to the accused and he informed that he did not have purchase bills. In the meanwhile report from Public Analyst was received stating that groundnut oil sample was not conforming to the prescribed standard.

5. Accused was not prosecuted for the charge of storing for sale, adulterated oil. Complaint was restricted to the charge that

accused contravened the provisions of Section 14-A of the Act and made him liable to punishment under Section 16(1-C) of the Act. It was also alleged in the complaint that accused prevented the complainant from proceeding against manufacturer and distributor of the adulterated groundnut oil and thereby committed an offence punishable under Section 16(1)(d) of the PFA Act. Charge came to be framed against the accused vide Exhibit-37. He pleaded not guilty to the charge and claimed to be tried. He raised multiple defences as under :-

(i) Groundnut oil was available in open market and one can purchase the same without bills.

(ii) Law does not prohibit such purchase even when purchased without bills.

(iii) Accused is not prosecuted for allegedly storing adulterated oil which should be the main charge and the solitary charge under Section 14-A would not sustain in law.

(iv) Accused has shown purchase bills to the complainant on his first visit but he did not accept the bills.

(v) All the tins were packed each containing a label clearly showing the name of manufacturer.

(vi) False implication.

6. In support of its case prosecution examined complainant Bhaskar Gopal Nandanwar Food Inspector and a panch witness Prakash Motiram Panjawani. On going through the evidence adduced in the case learned Magistrate convicted the accused of the offences punishable under Sections 16(1-C) and 16(1)(d) of the Prevention of Food Adulteration Act and sentenced him to undergo simple imprisonment for six months and to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for three months each. Both the sentences were directed to run concurrently.

7. Accused challenged the judgment of conviction before the Sessions Court in appeal. Considering the evidence and material placed on record appellate Court dismissed the appeal. Hence this revision.

8. Heard Shri Anjan De, learned Counsel for the applicant and Shri P.S. Tembhare, learned Additional Public Prosecutor for the State. After giving anxious consideration to the facts and

circumstances of the case, submissions advanced on behalf of the parties, evidence on record and the judgment delivered by the trial Court and the appellate Court, for the below mentioned reasons this Court is of the opinion that the prosecution could not establish the charge against the accused and the order of conviction is unsustainable in law.

9. At the outset it may be mentioned here that edifice of the prosecution case rests on the solitary evidence of Food Inspector (PW-1) Shri Nandanwar. So far as (PW-2) Panjawani panch witness is concerned he did not support the prosecution.

10. It appears from the evidence of (PW-1) Shri Nandanwar that on 09-09-2005 he visited the grocery shop of the accused along with panch witness Prakash Panjawani. He explained the purpose of his visit to the accused. He found 40 packed tins each containing 15 kg groundnut oil stored in the shop. Complainant purchased 750 gms. of groundnut oil from the accused, divided the same in three equal parts and duly sealed the samples. Inspection note (Exhibit-16), panchanama (Exhibit-22) came to be drawn and a notice under Section 14-A was issued to the accused. Complainant admits in his cross examination that all 40 tins were packed and were containing labels showing the name and address of manufacturer. He also admits that he did not proceed against the manufacturer whose description was mentioned on the label. It is also an admitted fact that no prosecution was launched for storing the groundnut oil which according to the prosecution was found adulterated by the Public Analyst. The only charge against the accused is under Section 14-A of the PFA Act which reads as under :-

> "**14-A. Vendor to disclose the name, etc., of the person from whom the article of food was purchased.-** Every vendor of an article of food shall, if so required, disclose to the Food Inspector the name, address and other particulars of the person from whom he purchased the article of food.]"

11. The crucial question that crops up here is whether contravention of Section 14-A alone would attract penal action in the absence of launching of prosecution for the charge of storing for sale, adulterated oil. The object of Food Adulteration Act is to have a check on manufacturers, distributors, dealers or agents and make them more responsible for the marketing of the food articles. Section 14-A basically deals with disclosure of the name of the person from

whom accused had purchased the food articles and in case of non disclosure liable for contravention of provisions of Section 14-A of the Act.

12. In the case on hand it is not in dispute that all 40 tins were packed. They were containing labels with clear name and address of manufacturer. Complainant did not explain either in complaint or in evidence what did he do on getting the information through the label on packed tins of groundnut oils. It was for him to show that even though the name and address of manufacturer was shown on the label he required the information from the accused. Unless such requirement is established provisions of Section 14-A of the Act would not be attracted. Complainant has miserably failed and both the Courts have ignored this important aspect of law.

13. It can be further seen from the reasoning recorded by the trial Court and the First Appellate Court that almost negative burden was placed on the accused. This is not permissible in criminal prosecution. Prosecution has to stand on its own legs and then the turn comes to the accused to disprove the facts established against him.

14. The next contention raised by the applicant is regarding non compliance of Section 13(2) of the PFA Act. As admitted by complainant no prosecution was taken up for storing for sale, adulterated oil. No opportunity was given to the accused to send the oil sample to C.A., thereby depriving him of his right to challenge the sample. Prosecution failed to assign any reason for not prosecuting the accused when sample was found adulterated. In view of these facts elicited in the cross examination of complainant grounds raised on behalf of applicant cannot be said to be without substance.

15. So far as contravention of Section 14-A is concerned it is punishable under Section 16(1-C). Prosecution could not duly establish that accused contravened the provisions of Section 14-A as the requirement under Section 14-A is not proved by the prosecution.

16. Regarding contravention punishable under Section 16(1)(d), it can be seen from the simple reading of the provisions of Section 16(1)(d) and Section 16(1-C) of the Act that it is a distinct offence. If it is a distinct offence Section 20 prohibits the prosecution to be launched without sanction. For want of sanction even the alleged offence under Section 16(1)(d) would not sustain against the accused.

17. In this view of the matter this Court is of the opinion that the charge levelled against the accused was not duly proved. The view taken by the trial Court and the First Appellate Court is not based on proper appreciation of evidence and is unsustainable in law. In the result Revision Application needs to be allowed. Hence, the following order :-

(i) Criminal Revision Application No. 52 of 2011 is allowed.

(ii) Impugned judgment and order passed by the learned Chief Judicial Magistrate, Bhandara in Regular Criminal Case No. 228 of 2005 and judgment and order passed by the learned Sessions Judge, Bhandara in Criminal Appeal No. 23 of 2009 dated 17-02-2011 are quashed and set aside.

(iii) In consequence thereof applicant-accused is acquitted of the offence under Section 14-A punishable under Section 16(1-C) and 16(1)(d) of the Prevention of Food Adulteration Act.

(iv) Bail bonds of the applicant-accused stand cancelled.

(v) In the circumstances of the case no order as to costs.

(vi) Rule is made absolute in the aforesaid terms.

***Result*:-** Criminal Revision Application allowed.

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ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(B.P. Dharmadhikari & Kum. Indira Jain, JJ.)

Criminal Appeal No. 448 of 2002 And Criminal Appeal No. 619 of 2002

Decided on 9 January, 2017

Nagpur Bench

SHIVAJI LAXMAN JAVARKAR & ORS. ***- Petitioner(s).***

Versus

STATE OF MAHARASHTRA ***- Respondent(s).***

Law Covered*:-** ***(A) Indian Penal Code, 1860 — Sections 323, 324 & 325 — Criminal Trial — Counter case — Snatching of weapon