

2. The FIR bearing Crime No. 168 of 2018 dated 12-10-2018 for the offence punishable under Section 354 of IPC registered with Bembali Police Station, District Osmanabad, as well as chargesheet filed by respondent No.1 - State for the alleged offence under Section 354 of IPC vide RCC No. 142 of 2019 (*State of Maharashtra Versus Dilip Uttam Lomate*) initiated pursuant to aforesaid FIR, pending before the learned Judicial Magistrate, First Class, Osmanabad, is ordered to be quashed and set aside. The applicant is exonerated from the charge pitted against him.

3. Rule is made absolute in terms of prayer clause "C and C-1".

4. Criminal Application is disposed of in above terms.

5. No order as to costs.

Result:- Criminal Application allowed.

**ABC 2019 (III) 68 BOM
ACQUITTAL & BAIL CASES
HIGH COURT OF BOMBAY**

(V.K. Jadhav, J.)

Criminal Revision Application No. 74 of 2005

Decided on 3 June, 2019

Aurangabad Bench

ABDUL GAFAR S/o MOHAMMAD IBRAHIM - Applicant(s).

Versus

STATE OF MAHARASHTRA - Respondent(s).

Law Covered:- (A) *Prevention of Food Adulteration Act, 1954 – Section 16 (1)(a) (i) Prevention of Food Adulteration Rules, 1955 – Rule 29 – Conviction under – 12 packets purchased by Food Inspector – divided the total quantity into three parts – had not divided each & every packet into three parts – non compliance of Sec. 11 – submission of report by the public analyst beyond the prescribed period of 40 days – Acquittal. (Para 9 & 11)*

(B) *Prevention of Food Adulteration Rules, 1955 – Rule 7 sub-rule 3 – Requirement under – it is incumbent upon the public analyst to submit the report of analysis in Form No.III within a period of 40 days from the date of receipt of sample. (Para 11)*

(C) *Prevention of Food Adulteration Rules, 1955 – Rule 29 – Application of – "Toast", which is a bakery product, cannot be said to*

be not akin a biscuit or other confectioneries – making the case of the appellant, a border line one – benefit of doubt – Acquittal. (Para 12)

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Facts:- The Food Inspector alongwith one Panch and another Food Inspector visited a bakery. The applicant/original accused no.1 was present in the Bakery and told the Food Inspector that accused no.2 was the owner of the Bakery. Complainant informed accused that he wanted to take samples of the toast which was stored for sale at said Bakery shop. After following due procedure samples were taken and sent to Public Analyst. The report of Public Analyst revealed that food sample of toast contained artificial coal tar colour and contravened Rule 29 of the PFA Rules. After obtaining sanction, prosecution was launched against the accused nos. 1 and 2. Thus, the prosecution was initiated against the two accused persons by filing a private complaint against them for contravention of Section 16 (1) (a) (i) and Section 16 (1) (a) (ii) of the Act. The learned JMFC acquitted accused no.2. However, accused no.1 was found guilty of an offence under Section 16 (1)(a)(i), PFA Act and Rule 29, PFA Rules. Criminal Appeal preferred before the Sessions Court was dismissed. In the present Criminal Revision Application, the accused was acquitted by the honourable Bombay High Court.

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Law of relief:- Not dividing each & every packet into three parts, while collecting sample, is violation of Sec. 11, PFA Act.

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Held:- On perusal of the panchnama (Exhibit 29), it appears that the 12 packets one of 125 gram each came to be purchased. Even assuming the same, the complainant has considered the total quantity of food items as 1500 grams. The complainant has not divided each and every packet into three parts as contemplated under Section 11 of the Act, however divided the total quantity of 1500 grams into three parts. PW-2 Jaiprakash Poul, who happened to be the Assistant Commissioner of Local (Health) Authority has deposed that he has received the report of public analyst on 02.12.1991. However, on perusal of the public analyst report, he finds that the public analyst has received the sample on 21.10.1991, though the report of public analyst is dated 25.11.1991. As per endorsement on (Exhibit-37) itself, it appears that the Local (Health) Authority, Parbhani has received the public analyst report (Exhibit-37) on 04.12.1991. In terms of Rule 7 sub-rule 3, it is incumbent upon the public analyst to submit the report of analysis in Form No.III within a period of 40 days from the date of receipt of sample. In the instant case, the public analyst has submitted the report almost on 45 th day after the receipt of sample for analysis. The Court below has considered the date 04.12.1991 as the date on which the complainant has received the report

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through Local (Health) Authority. I do not find any other document indicating that PW-2 Jaiprakash Poul had received the said report of public analyst on 02.12.1991 instead of 04.12.1991. Even assuming that the Local (Health) Authority had received the report on 02.12.1991. The same is also beyond the period of 40 days. Thus, it is fatal to the prosecution case. (Para-9)

In terms of the provisions of Rule 29, use of permitted synthetic food colour in or upon any food is prohibited except in the food items mentioned in clause (a) to (h) of Rule 29. In Rule 29 clause (b), the biscuits and other bakery items are specifically referred. (Para-11)

By judgment and order dated 26.07.2017 has taken a view that the "Toast", which is a bakery product, cannot be said to be not akin a biscuit or other confectioneries, making the case of the appellant, a border line one. Though the item "Toast" has not been specifically mentioned in any of the clause of Rule 29, however in clause (b) as referred above, the bakery product has been specifically referred. (Para-12)

Counsel:- For Applicant(s): Smt Ashwini Sahastrabudhe h/f Mr. R. S. Deshmukh, Advs.

For Respondent(s): Mr. A. P. Basarkar, Adv.

Cases Referred:-

State at the instance of Shri. R.P. Sawant, Food Inspector, FDA, Pen, District Raigad Vs. Gaus Mohammad Mustafat Pathan. (Para-12)

JUDGMENT

V.K. JADHAV, J.: - 1. By way of this Criminal Revision Application, the applicant/original accused no.1 is challenging the judgment and order dated 4.5.2001 in Regular Criminal Case No.33 of 1992 passed by the Judicial Magistrate, First Class, Pathri thereby convicting the applicant herein/accused no.1 Abdul Gafar s/o Mohd Ibrahim under the provisions of Section 248 (2) of Cr.P.C. for the offences punishable under Section 16 (1)(a) (ii) of the Prevention of Food Adulteration Act, 1954 and he is sentenced to suffer R.I. for six months and to pay a fine of Rs.1,500/-, in default to pay fine amount, to suffer R.I. for one month in addition to substantive sentence and said judgment and order confirmed by the learned Sessions Judge, Parbhani by judgment and order dated 25.2.2005 in Criminal appeal No.34 of 2001.

2. Brief facts, of the prosecution case, are as follows :-

a] Complainant Gopal Digambar Pathak (PW-1) was appointed to act as Food Inspector at Parbhani District. On 16.10.1991

- a at about 03.10 p.m. alongwith one Panch Mohd Younus s/o Mohd Ibrahim and another Food Inspector Shri. Anil Ram Rathod visited M/s Pakija Bakery, Peth-Mohalla, Manwat. The applicant/original accused no.1 Abdul Gaffar s/o Mohd Ismail was present in the Bakery and told the Food Inspector that accused no.2 Mohd Ismail s/o Mohd Ibrahim was the owner of the Bakery. Complainant Pathak
- b (PW-1) informed accused no.1 that he wanted to take samples of the toast which was stored for sale at said Bakery shop. Shri Pathak (PW-1) purchased 12 packets of 125 grams each of toast weighing 1500 grams for Rs.18/- from accused no.1 and obtained a receipt. Each packet was in packed condition of polythene cover. Thereafter, Shri
- c Pathak issued a notice in Form No.6 as per the provisions of Section 14 (a) of the Act. The 12 packets were divided into three parts each containing four packs. Thereupon each of the three packs were tied over and across by twine and affixed with paper label on it and
- d obtained signatures of accused no.1, panchas and complainant (PW-1) himself. Each of the three parts was then wrapped in brown paper and sealed it in a manner prescribed under Rule and affixed paper slips containing code No.ABD/14/P at Sr. No.635 which also bore signature of Local (Health) Authority. Each of the three packs was
- e then put with seal impression by means of wax; one on knot of the thread, second was at the opposite side of the knot and the other two seals on each was made at the top and bottom of the packet. A detailed panchnama about that was recorded and signatures of accused no.1, panch witnesses and complainant Pathak (PW-1) were
- f obtained on the same. He then issued carbon copy of said panchnama to accused no.1 and obtained a receipt to that effect. Thereafter, the complainant sent one packet of the sealed sample alongwith Form No.7 to Public Analyst, Aurangabad. He also sent separately specimen impression of his seal alongwith Form No.7 to the Public
- g Analyst. On the same day i.e. on 18.10.1991, he sent remaining two parts of sealed sample alongwith two copies of Form No.7 to Local (Health) Authority, Parbhani and also sent specimen impression of his seal with two copies to Local Health Authorities, separately.
- h b) The Public Analyst on analysis of the sample, gave his report to the Local (Health) Authority which was forwarded to the complainant. The report showed that the sample of toast contained coal tar colour in it and contravened Rule 29 of the Prevention of Food Adulteration Rules, 1955. On test of colour Sun Set Yellow FCF and tartrazine coal tar colours were also detected and they were confirmed

by paper Chromatography. The report revealed that food sample of toast contained artificial coal tar colour and contravened Rule 29 of the Rules. Shri Pathak (PW-1) then sent all relevant documents to the sanctioning authority i.e. Joint Commissioner, Food and Drugs Administration, Aurangabad, Local (Health) Authority, Parbhani for obtaining sanction order to prosecute the accused nos. 1 and 2. Upon receipt of the requisite sanction/order to prosecute two accused, Shri Pathak filed a complaint against them in the Court of the Judicial Magistrate, First Class, Pathri. He informed the Local (Health) Authority, Parbhani that prosecution has been initiated against the accused and asked Local (Health) Authority to comply with the provisions of Section 13 of the Act by sending copy of analysis report alongwith a notice that prosecution has been initiated against them and that they had right of getting the food sample re- analyzed. The Local (Health) Authority complied with the provisions of Section 13 (2) of the Act. Thus, the prosecution was initiated against the two accused persons by filing a private complaint against them for contravention of Section 16 (1) (a) (i) and Section 16 (1) (a) (ii) of the Act.

3. The learned Judicial Magistrate, First Class, Pathri issued process against the accused. Accused appeared. Then, Magistrate recorded the evidence before the charge as per Exhibit-26 and framed charge against accused as per Exhibit-52 for having committed an offences under Sections 16 (1) (a)(i) and 16 (1) (a) (ii) of the Act r/w Rule 29 of the Prevention of Food Adulteration Rules, 1955. Both the accused pleaded not guilty to the charge and claimed to be tried. The defence of the accused is of total denial. Accused have not lead any oral evidence.

4. After recording the prosecution evidence, examining both the accused and hearing the prosecution as well as the accused, the learned Judicial Magistrate, First Class, Pathri acquitted accused no.2. However, learned Magistrate found accused no.1 guilty of an offence under Section 16 (1)(a) (i) of the Act and Rule 29 of the Food Adulteration Rules. Consequently, learned Magistrate awarded the sentence as aforesaid. Being aggrieved and dissatisfied by said judgment and order of Magistrate, the accused no.1 preferred Criminal Appeal No.34 of 2001 before the Sessions Judge, Parbhani. The learned Sessions judge, Parbhani vide judgment and order dated 25.2.2005 dismissed the appeal preferred by applicant/original accused no.1 and confirmed the judgment and order passed by the Judicial Magistrate, First Class, Parbhani. Hence, this Criminal Revision Application.

5. Learned counsel for the applicant/original accused no.1
a submits that the impugned judgment and order is against the principles of law, equity, justice and good conscience. Learned counsel submits that both the courts below ought not have convicted the applicant for the offences with which he was charged and tried. Learned counsel submits that the courts below have not properly
b appreciated the evidence and failed to appreciate that the applicant is not the owner and possessor of the shop in question, but was working as a labourer in the said shop and the another accused who was the owner of M/s Pakija Bakery had been acquitted. Learned counsel
c submits that the samples were neither taken properly by following the provisions of the said Act nor panchnama was proved. Learned counsel submits that, trial court has committed error in giving importance to the spot panchnama conducted by the concerned Food Inspector, even though the said panchnama was not proved. Learned
d counsel submits that courts below have not given thought to the fact that polythene bag or paper envelope is not a suitable container but the Food Inspector had used the same for packing the sample, which act and procedure speaks in volumes.

6. Learned counsel for the applicant/original accused no.1
e submits that on perusal of the panchnama (Exhibit-29), the additions in respect of 12 packets of 125 grams each in the bracket is apparent. Learned counsel submits that there is no compliance of the provisions of Section 11(b) of the Act. It is not clear from the evidence of the complainant/Food Inspector and panchnama (Exhibit-29) as to
f whether the complainant/Food Inspector had purchased the sample of food item "Toast" in lump-sum of 1500 grams or 12 packets of 125 grams each. If the same is not in the quantity of 1500 grams, then each and every sample was required to be divided into three parts. Furthermore, the evidence of PW-3 Md. Yunus clearly shows that the
g procedures of sampling and sealing and execution of panchnama were done prior to his reaching. Consequently, there is no compliance of the provisions of Section 10 (7) of the Prevention of Food Adulteration Act, 1954. Learned counsel submits that the report of
h public analyst is not in the prescribe Form No.III. Thus, the report of public analyst (Exhibit 37) is inadmissible.

7. Learned counsel for the applicant further submits that though PW-3 Jaiprakash Poul has deposed that he has received the report of public analyst on 02.12.1991, as per the endorsement made by the Assistant Commissioner, Local (Health) Authority on public

analyst report (Exhibit 37), the same was received on 04.12.1991. In terms of Rule 7 of the Rules 1955, it is incumbent upon the public analyst to submit the report of result of such analysis in Form No.III to the Local (Health) Authority within a period of 40 days from the date of receipt of sample. In the instant case, as per the public analyst report (Exhibit 37), the samples were received on 21.10.1991 and the report has been sent to the Assistant Commissioner Local (Health) Authority on 25.11.1991, received by the Local (Health) Authority on 04.12.1991. Thus, the same is not within 40 days as per Rule 7 sub-rule 3 of the Rules, 1955. He submits that in terms of the provisions of Rule 29, use of permitted synthetic food colour is prohibited except those foods articles, which are stated under the Rule. Learned counsel submits that Rule 29(b) deals with biscuits including biscuit wafer, pastries, cakes, confectionery etc. Learned counsel submits that the food articles in this case known as "Toast" is in fact a variety of biscuits. Learned counsel submits that the conviction of the applicant is thus not sustainable in the eyes of law. The Criminal Revision Application is thus deserves to be allowed.

8. Learned APP submits that there is a compliance of the provisions of the Act of 1954 and the Rules thereunder. Learned APP has supported the judgment and order of conviction passed by the Courts below. Learned APP further submits that the item "Toast" is not referred in Rule 29(b) specifically and as such, the food item "Toast" cannot be referred as a type of biscuits to get rid of the provisions of Rule 23 read with Rule 29 of the Rules, 1955. There is no substance in this Criminal Revision Application. Hence, this Criminal Revision Application is liable to be dismissed.

9. On careful perusal of the judgment and orders passed by the Court below and on perusal of the entire record and proceedings, I find much substance in the submissions made on behalf of the applicant/accused on certain points. I do not think that there is a compliance of the provisions of Section 11 of the Act of 1954. On perusal of the panchnama (Exhibit 29), it appears that the 12 packets one of 125 gram each came to be purchased. Even assuming the same, the complainant has considered the total quantity of food items as 1500 grams. The complainant has not divided each and every packet into three parts as contemplated under Section 11 of the Act, however divided the total quantity of 1500 grams into three parts. PW-2 Jaiprakash Poul, who happened to be the Assistant Commissioner of Local (Health) Authority has deposed that he has received the report of public analyst

a on 02.12.1991. However, on perusal of the public analyst report, he finds that the public analyst has received the sample on 21.10.1991, though the report of public analyst is dated 25.11.1991. As per endorsement on (Exhibit-37) itself, it appears that the Local (Health) Authority, Parbhani has received the public analyst report (Exhibit-37) on 04.12.1991. In terms of Rule 7 sub-rule 3, it is incumbent upon the public analyst to submit the report of analysis in Form No.III within a period of 40 days from the date of receipt of sample. In the instant case, the public analyst has submitted the report almost on 45 th day after the receipt of sample for analysis. The Court below has considered the date 04.12.1991 as the date on which the complainant has received the report through Local (Health) Authority. I do not find any other document indicating that PW-2 Jaiprakash Poul had received the said report of public analyst on 02.12.1991 instead of 04.12.1991. Even assuming that the Local (Health) Authority had received the report on 02.12.1991. The same is also beyond the period of 40 days. Thus, it is fatal to the prosecution case.

10. The learned Magistrate, has convicted the applicant/accused under the provisions of Section 16(1)(a)(ii) of the Act of 1954 for contravention of Rule 23 read with Rule 29 of the Rules, 1955. The Rules of 23 and 29 are reproduced here-in-below:

- e "23. Unauthorised addition of colouring matter prohibited
- The addition of a colouring matter to any article of food except as specifically permitted by these rules is prohibited.
- f 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.
- g (a) Ice-cream, milk lollies, frozen dessert, flavoured milk, yoghurt, ice-cream mix-powder;
- (b) Biscuits including biscuit wafer, pastries, cakes confectionery, thread candies, sweets, savouries (dalmoth, mongia, phululab, sago papad, dal biji only);
- h (c) Peas, strawberries and cherries in hermitically sealed containers, preserved or processed papaya, canned tomato juice, fruit syrup, fruit squash, fruit cordial, jellies, jam, marmalade, candied crystallised, or glazed fruits.
- (d) Non-alcoholic carbonated and non-carbonated already to serve synthetic beverages including synthetic syrups, sherbets,

fruit bar, fruit beverages, fruit drinks, synthetic soft-drink concentrates;

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(e) *Custard powder;*

(f) *Jelly crystal and ice-candy;*

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(h) *Flavour emulsion and flavour paster for use in carbonated or non-carbonated beverages only under label declaration as provided in Cl.(13) of sub-rule (ZZZ) of Rule 42 of the Prevention of Food Adulteration Rules, 1955."*

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11. In terms of the provisions of Rule 29, use of permitted synthetic food colour in or upon any food is prohibited except in the food items mentioned in clause (a) to (h) of Rule 29. In Rule 29 clause (b), the biscuits and other bakery items are specifically referred.

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12. In a case of *State at the instance of Shri. R.P. Sawant, Food Inspector, FDA, Pen, District Raigad Vs. Gaus Mohammad Mustafat Pathan* vide Criminal Appeal No.1011 of 2002, this Court (Coram: N.M. Jamdar, J.) by judgment and order dated 26.07.2017 has taken a view that the "Toast", which is a bakery product, cannot be said to be not akin a biscuit or other confectioneries, making the case of the appellants, a border line one. Though the item "Toast" has not been specifically mentioned in any of the clause of Rule 29, however in clause (b) as referred above, the bakery product has been specifically referred.

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13. It is almost well known that a rusk is a hard, dry biscuit or a twice-baked bread. I am also of the same view that the case of the applicant stand on a border line. In view of the discussion above, the applicant/accused is entitled for the benefit of doubt. Consequently, the judgment and order of conviction passed by the Courts below are liable to be quashed and set aside. Hence, the following order:

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ORDER

(I) The Criminal Revision Application is hereby allowed.

(II) The judgment and order of conviction passed by the Judicial Magistrate, First Class, Court No.2, Pathri dated 04.05.2001 in Regular Criminal Case No. 33 of 1992 sentencing thereby the applicant to suffer R.I. for six months and to pay a fine of Rs.1,500/- in default to suffer R.I. for one month and the said judgment and order of conviction confirmed by the Sessions Judge, Parbhani vide

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judgment and order dated 25.02.2005 in Criminal Appeal No.34 of 2001 are hereby quashed and set aside.

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(III) The applicant/accused i.e. Abdul Gafar s/o Mohammad Ibrahim, is hereby acquitted of the offence punishable under Section 16(1) (a) (ii) of the Prevention of Food Adulteration Act, 1954 vide Regular Criminal Case No.33 of 1992.

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(IV) The Criminal Revision Application is accordingly disposed of.

Result:- Criminal Revision Application allowed.

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ABC 2019 (III) 77 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(A. P. Thaker, J.)

R/Criminal Appeal No 334 of 2019

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Decided on 10 June 2019

RANGOONI ZAKIUDDIN AHMEDALI @ ZAKYBHAI- Appellant(s).

Versus

STATE OF GUJARAT

- Respondent(s).

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Law Covered:- (A) Code of Criminal Procedure, 1973— Section 438— Indian Penal Code, 1860— Sections 114, 306, 506 & 506(2) — Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015— Sections 3(2)(v), 3(2)(va), 14(a)(2), 18(a), 18(a) (2) — Civil dispute between the parties — Dispute settled— first offence — no criminal antecedents— doubt as to the ingredients of the offence under the Atrocity Act— no prima facie case under the Atrocity Act — power u/s 438 is available — appeal allowed— Bail granted. (Para 10)

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(B) Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015— Section 18-A — Amendment in Atrocity Act — Intention of Legislation — Statement of objects & reasons— Section 18(A) inserted only with a view counter to the directions issued by the Supreme Court in Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra — there is no object & reason given for nullifying those observations that — i) Proceedings in the present case are clear abuse of process of court & ii) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide — no

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