

CRIMINAL MISCELLANEOUS APPLICATION NO. 162 OF 2003.

State of Goa through
Smt. Iva Fernandes, Food
Inspector, Directorate of
Food and Drugs Administration,
Campal, Panaji.

... Applicant.

Versus

1. M/s. Ocean Milk Foods Pvt.
Ltd., Plot No. 130/11,
Shivholi (B.K.) Tal
Chandigad, Dist. Kolhapur.
2. Shri Subhash Venkatesh
Katarki, 2149 "Krishna"
Sector No. 9, M.M. Extension,
Belgaum-16, Karnataka.
3. Smt. Sharada Subhash Katarki,
2149 "krishna" Sector No. 9,
M.M. Extension, Belgaum-16,
Karnataka.
4. Shri Abdul Gaffar Shaikh,
c/o Rupa General Store,
Opp. Pharmacy College,
St. Inez, Panaji.

... Respondents.

Mr. S.N. Sardessai, Public Prosecutor for the
Applicant/State.

Mr. M. Amonkar, Advocate for the Respondents 1 to 3.

Mr. J.P. Mulgaonkar, Advocate for the Respondent No. 4.

Coram : P.V. HARDAS, J.

Date : 31st July 2003.

ORAL ORDER.

The State, being aggrieved by the acquittal of the respondents for the offences under Sections 7(i) read with Section 2(ia)(m), Section 7(ii) read with Sections 2(ix)(e) and 2(ix)(g) and Section 7(v) of the Prevention of Food Adulteration Act, 1954 read with Rules 44(1) and 38 of the Prevention of Food

Adulteration Rules, 1955, passed by the Judicial Magistrate, First Class, Panaji, by Judgment, dated 27th November 2002, in Criminal Case No. 19/CA/97/C, has filed this application seeking special leave to file an appeal against acquittal. On notices being issued to the respondents/accused, they are represented by Mr. Amonkar and Mr. Mulgaonkar.

2. The facts in brief are that the complainant Food Inspector visited the premises of the accused no. 4 on 26th August 1996 and in the presence of panch P.W.3 Sayoda Asma purchased two sealed packets of Vitaminised Pasteurised Milk of AALVIT brand each packet containing about 500 ml. of milk. The said packet carried a label denoting the name of the manufacturer as well as stating therein that the total solids of the milk content was 12.5%, according to the PFA Rules. It was also stated that the milk was fortified with 2000 I.V. of Vitamin A as per International Standards. P.W.1 Smt. Iva Fernandes, Food Inspector, paid Rs. 10/- as the cost of the samples and obtained a receipt. The accused no. 4 was served with a notice in Form No. VI and a sample of the milk which was kept for sale was drawn. The contents of both the packets were then mixed and filled in three clean and dry empty glass bottles and 24 drops of preservative were added to each part of the sample of 300 ml.. The complainant, Food Inspector, sent one

sealed part to the Public Analyst and the remaining two parts were deposited with the Local Health Authority. The Public Analyst, by the report, at Exhibit P.W.1/J, has stated that the milk analysed did not conform to the standards prescribed for buffalo milk under the Prevention of Food Adulteration Rules and contained added cane sugar and as such was adulterated. The accused no. 4 had disclosed that the milk was manufactured by accused no. 1 and accused nos 2 and 3 were Directors of accused no. 1.

3. The substance of accusation was explained to the accused. The accused denied their guilt and claimed to be tried. The prosecution has examined four witnesses in support of its case. The learned trial Court, after examining the evidence of the prosecution witnesses, observed that there was no mention in the panchanama Exhibit P.W.1/D that the sample of the milk was stirred, since it was taken from the deep freezer. Therefore, according to the learned trial Court, the entire process of drawing of the sample of Vitaminised Pasteurised Milk and its subsequent division in three empty clean dried bottles and the subsequent analysis was rendered ineffective. According to the learned trial Court, the label attached and produced at Exhibit P.W.1/E does not disclose that the pasteurised milk is buffalo milk and, therefore, the standard applicable to

buffalo milk could not be applied to Vitaminised Pasteurised Milk. Moreover, the Analyst had only found that the said milk contained added cane sugar. According to the learned trial Court, it was not the case of the prosecution that the Vitaminised Pasteurised Milk was buffalo milk and, therefore, on the basis of the report of the Analyst, it cannot be contended that the sample of the milk was adulterated. The learned Judge also found that no evidence was tendered on behalf of the prosecution that the Vitaminised Pasteurised Milk was buffalo milk and, therefore, the learned trial Court came to the conclusion that the prosecution had not established that the sample of the milk drawn was of buffalo milk and was therefore adulterated.

4. In respect of the charge for mis-branding, the learned trial Court found that the panch witness P.W.3 Sayoda Asma had not stated that any label had been attached at the time of drawing of the panchanama. The learned trial Court also found that the panch witness P.W.3 Smt. Sayoda Asma had made no reference to the three empty bottles in which the sample was filled. The panchanama at Exhibit P.W.1/D also does not refer to the label at Exhibit P.W.1/E being attached under the panchanama. Thus, according to the learned trial Court, the prosecution had failed to prove the contravention of Rule 38 of the Prevention of Food Adulteration Rules,

1955. The trial Court, therefore, acquitted the respondents/accused.

5. I have heard the learned Public Prosecutor on behalf of the State and the learned counsel for the respondents. The necessary copies of the evidence and the record have been made available for my perusal. The view taken by the learned trial Court is a possible view, which can be taken on the basis of the evidence on record and there is no perversity in the appreciation of evidence warranting any interference in an appeal against acquittal.

6. In view of this, Criminal Miscellaneous Application is dismissed. Leave is refused.

(P.V. HARDAS)
JUDGE.

ed's.