

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 128 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

STATE OF GUJARAT

Versus

RAJESHKUMAR S THAKKAR

Appearance:

Shri M.A. Bukhari, Addl. Public Prosecutor, for
the Appellant-State

Shri M.M. Tirmizhi, Advocate, for Shri P.M.
Thakkar, Advocate, for respondent-accused No. 1

Shri B.S. Oza, Advocate, for respondents-accused
Nos. 2 to 5

Shri Prafull J. Bhatt, Advocate, for
respondent-accused No. 6

Smt. Sadhana Sagar, Advocate, for
respondents-accused Nos. 7 to 10 (appointed)

Shri J.G. Shah, Senior Advocate, with Shri H.J.

Shah, Advocate, for respondents-accused Nos. 11
and 12

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 30/10/96

ORAL JUDGEMENT

The judgment and order of acquittal passed by the learned Judicial Magistrate (First Class) at Dhanera on 29th November 1990 in Criminal Case No. 1246 of 1988 is under challenge in this appeal by leave of this Court under sec. 378 of the Code of Criminal Procedure, 1973 (the Code for brief). Thereby the learned trial Magistrate acquitted the respondents-accused of the offence punishable under sec. 16 read with sec. 7 of the Prevention of Food Adulteration Act, 1954 (the Act for brief).

2. The facts giving rise to this appeal move in a narrow compass. The complainant in the instant case was at the relevant time working as the Food Inspector in the Office of the Drugs Controller at Palanpur. Village Dhanera was within his jurisdiction. At about 1 p.m. On 22nd December 1987 he visited the grocery shop in the name and style of Messrs. Khemchand Sevakram. Respondent No. 1 was present thereat. From him were purchased 9 packets weighing 50 gms. each of compounded asafoetida. He divided these packets into three parts of three packets each. Each part was separately packed and sealed in the presence of two panch witnesses. One sample packet was sent to the Public Analyst at Vadodara for its analysis and report. The other two sample packets were sent to the public health authority for proper custody. The Public Analyst on analysis of the sample found it to be adulterated. In the meantime, the complainant came to know that respondent No.1 herein had purchased the article of food from the firm of respondent No.2 herein. Respondents Nos. 3 to 5 were its partners at the relevant time. In the course of further inquiry, the complainant came to know that respondent No.2 purchased the article of food in question from the firm of respondent No. 6. Respondents Nos. 7 to 10 were its partners. It was gathered from respondent No.6 herein that it purchased the article of food from its manufacturer respondent No. 11 herein. Respondent No.12 was its owner. On receipt of the aforesaid report from the Public Analyst, the necessary papers were placed before the Assistant Commissioner and local health authority for grant of consent. By his order passed on 20th June 1988, the necessary consent under sec. 20 of

the Act was granted for launching prosecution against the respondents herein for the offence punishable under sec. 16 of the Act. Thereupon the complainant filed his complaint in the Court of the Judicial Magistrate (First Class) at Dhanera on 4th August 1988. It came to be registered as Criminal Case No. 1246 of 1988. Thereupon the local authority sent the report of the Public Analyst to all the respondents herein on 18th August 1988. The plea of the respondents as the accused was recorded on 18th March 1989. No respondent-accused pleaded guilty to the offence with which each one was charged. Thereupon they were tried. After recording the prosecution evidence and after recording the further statement of each accused under sec. 313 of the Code and after hearing arguments, by his judgment and order passed on 29th November 1990 in Criminal Case No. 1246 of 1988, the learned Judicial Magistrate (First Class) at Dhanera acquitted all the accused of the offence with which they were charged. The aggrieved prosecution agency has thereupon by leave of this Court invoked its appellate jurisdiction under sec. 378 of the Code for questioning its correctness.

3. When this matter was taken up for its final hearing a couple of weeks ago, it was found that respondents Nos. 7 to 10 had remained ex parte. Thereupon this Court thought it fit to appoint learned Advocate Smt. Sadhana Sagar to represent respondents Nos. 7 to 10 for the purpose of this appeal.

4. Learned Additional Public Prosecutor Shri Bukhari has taken me through the entire evidence on record in support of his submission that the learned trial Magistrate was in error in acquitting the respondents of the offence with which they were charged. According to learned Additional Public Prosecutor Shri Bukhari for the appellant-State, the learned trial Magistrate ought to have come to the conclusion that the offence against all the accused was proved beyond reasonable doubt. As against this, all the learned Advocates appearing for the respective respondents led by learned Counsel Shri J.G. Shah for respondents No. 11 and 12 herein have practically in unison clamoured for affirmation of the judgment and order of acquittal passed by the learned trial Magistrate. It has been urged by them in defence that some more grounds for affirming the order of acquittal may also be taken into consideration over and above the grounds which weighed with the learned trial Magistrate for the purpose.

5. It is not necessary to examine all the

contentions urged before me in support of this appeal or in support of the impugned judgment and order of acquittal. The impugned judgment and order of acquittal passed by the learned trial Magistrate deserves to be affirmed on the short ground that it is doubtful whether or not the sample collected from respondent No.1 herein was sent for analysis to the Public Analyst.

6. It transpires from the evidence on record that 9 packets of 50 gms. each of asafoetida were purchased from the shop of respondent No.1 herein. They were divided into three parts of three packets each. It is the case of the complainant in his oral testimony at Ex. 10 on the record of the trial court that packets of asafoetida were of Batch No.12. This Batch No. 12 found on the sample packets has nowhere figured in the panchnama at Ex. 15 on the record of the case. This Batch No.12 has not figured even in the evidence of either of the panch witnesses examined at Exs. 93 and 94 on the record of the trial court. In fact, Batch No. 12 found on the sample packets has figured nowhere in any correspondence undertaken by the complainant with different authorities including the Public Analyst and the local health authority or the bill taken from respondent No.1 or the receipt issued by respondent No.1 towards the amount received for sale of the sample packets. That expression occurs for the first time in the report of the Public Analyst at Ex. 45 on the record of the trial Court. No good reason has been given by or on behalf of the prosecution for this omission in the panchnama. The complainant has also not been able to explain this omission therein. Relying on this factual position, the learned trial Magistrate has raised a doubt whether or not the very sample of the article in question purchased from respondent No. 1 herein was sent for analysis to the Public Analyst.

7. The complainant in his oral testimony at Ex. 10 has stated that he had used the seal impression of Gujarat State Local Health Authority F.I. No. 15 for sealing the sample packets. This seal impression again does not figure in the panchnama. It does not figure in the oral testimony of the panch witnesses at Exhs. 93 and 94 on the record of the trial Court. In fact the panch witness at Ex. 94 has in his cross-examination stated that there was no mark on the seal. He has not been declared hostile by the prosecution. The omission regarding the seal impression in the panchnama would raise a doubt whether or not the seal impression as deposed to by the complainant in his oral testimony at Ex. 10 was in fact used for the purpose of sealing the

sample packets. This doubt would assume importance as both the remaining sample packets were sent to the Public Health authority for custody. The chances of tampering with the seals in the office cannot altogether be ruled out as there is no mention in the panchnama regarding the seal impression used for sealing the sample packets. On the basis of this fact-situation, the learned trial Magistrate has also expressed his doubts about sending to the Public Analyst for analysis the sample which was purchased from respondent No.1 herein.

8. Since this doubt goes to the root of the matter and since the view taken by the learned trial Magistrate on the basis of the aforesaid fact-situation is a possible view, I think it is not necessary to examine the other rival contentions urged before me in support of or in defence of this appeal. In that view of the matter, the impugned judgment and order passed by the learned trial Magistrate calls for no interference by this Court in this acquittal appeal.

9. In the result, this appeal fails. It is hereby dismissed.
