

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 200 of 1996

with

SPECIAL CRIMINAL APPLICATION NO. 201 OF 1996

with

SPECIAL CRIMINAL APPLICATION NO. 202 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-No
  2. To be referred to the Reporter or not?-No
  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

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JASUBHAI NAROTTAMDAS PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR SAURIN A SHAH for Petitioner

MR KC SHAH, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

SERVED BY DS for Respondent No. 2, 3, 4, 5

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 29/03/96

COMMON ORAL JUDGEMENT

Rule. Learned Government Counsel Mr.K.C.Shah, waives the service of Rule on behalf of respondent no.1-the State.

The present orders shall govern the disposal of these three petitions.

These petitions arise in the facts and circumstances, which appear to be rather difficult to be appreciated. On September 4, 1995, at about 14.00 hrs. the first information came to be lodged at Visnagar Police Station by the Food Inspector, Shri Patel, against the present petitioner, Shri Jasubhai Patel. The gist of the FIR is that, the petitioner, through a Matador Van being driven by the driver, whose particulars were not available, was transferring or transporting about 50 tins of Ghee. The Food Inspector had tried to obtain the necessary information from the petitioner, but that, he was not able to get the full particulars and later on, he had taken the sample from the Ghee tin. According to him, the sample appears to be adulterated and, therefore, he was required to file the FIR before the police. It appears that, on the basis of this FIR, the petitioner was arrested. Later on, he was produced before the competent Magistrate. Anyhow, subsequently, after a month, two complaints came to be filed by the Food Inspector. It is in this set of circumstances that, the present three petitions have been presented by the petitioner.

It appears that, the Special Criminal Application No.201 of 1996 requires to be granted, in the facts and circumstances of the case, while other two petitions require to be dismissed, but with certain observations.

It is not in dispute that, the Food Inspector had intercepted the motor vehicle through which the Ghee tins were allegedly being transported and he had taken a sample, without following the procedure, which would be necessary under the provisions of the Prevention of Food Adulteration Act, 1954. It is also not in dispute and cannot be disputed that, though the offence is a non-cognizable one and a bailable one, the FIR came to be registered at the concerned police station. The result is that, on the basis of the FIR, the investigation has started. On the other hand, for the very same offence, two complaints have been presented by the complainant-Food Inspector, before the appropriate Court. It appears that, regard being had to the clear provisions of law, in this respect, this could not have been done.

It is not in dispute that the offence under the Prevention of Food Adulteration Act, 1954 would be non-cognizable and bailable. The question would be as to whether the police complaint could have been filed, the offence could have been registered and the police could have started the investigation. All these three questions require to be answered in negative, regard being had to the say of the Supreme Court in STATE OF HARYANA AND ORS., APPELLANTS vs. CH.BHAJAN LAL AND ORS., RESPONDENTS., AIR 1992 S.C. 604. Laying down a principle, the Supreme Court pronouncement says that, where the allegations in the FIR do not constitute a cognizable offence, but constitute only a non-cognizable offence, no investigation is permitted by the police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code of Criminal Procedure, 1973. Admittedly, no such order of the Magistrate has been obtained. Thus, it is clear that, when the allegations in the FIR do not constitute a cognizable offence, but constitute only a non-cognizable offence, all what has been done, could not have been done. In view of this, the petition, namely, Special Criminal Application No.201 of 1996 requires to be allowed. The same is hereby accordingly allowed and the FIR, the registration of the same, the investigation in respect of the same and all actions taken thereunder are hereby quashed and set aside.

So far as the other two petitions are concerned, the grievance made by learned Counsel Mr. Shah, who appears on behalf of the petitioner, appears, largely, to be based upon the facts of the case. This could be determined by the competent Court, at the time of the trial. In view of this, these two petitions require a rejection. They are hereby accordingly rejected. Anyhow, certain observations appear to be necessary, in view of the contention coming from learned Counsel Mr. Shah, for the petitioner.

Learned Counsel Mr. Shah urges that, both the cases should be consolidated and should be decided and disposed of, by the common orders. Mr. Shah also further urges that, these are the cases in which his client has got a better case for discharge. I do not express any opinion in respect of the merits of the above said two contentions being sought to be canvassed by the learned Counsel. Nonetheless, it shall be open for the petitioner to move the Court before which the said two complaints are pending, for the consolidation of the same. In the same way, the petitioner can move the said

Court for the discharge. If this is done, the competent Court shall decide both these say of the petitioner, after having afforded a reasonable opportunity of being heard to the parties. It should be clarified that, I do not express any opinion in respect of the merits, otherwise of these contentions. With these observations, Special Criminal Applications Nos. 200 of 1996 and 202 of 1996 are rejected. Rule is made absolute in Special Criminal Application No.201 of 1996, while the same is discharged in the rest of the two petitions.

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