

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 325 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
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?
5. Whether it is to be circulated to the Civil Judge?

CHHELABHAI UKKADBHAI BHARWAD

Versus

STATE OF GUJARAT

Appearance:

MR RM CHHAYA for Petitioner

Mr. S.A.Pandya, Addl. PUBLIC PROSECUTOR for
the respondent.

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 31/07/97

ORAL JUDGEMENT

Rule. Learned A.P.P. Mr. Pandya waives service of Rule on behalf of the respondent State. The Revision Application is filed against the order of the learned Additional Sessions Judge, Kheda at Nadiad in Criminal Appeal No. 34 of 1987 on 7th July, 1997. The

said appeal came to be filed against the order of conviction recorded by the learned Chief Judicial Magistrate, Nadiad on 7.8.1997 in respect of Food case no.13 of 1987.

2. Strictly speaking, this Court would not have interfered with the concurrent findings of fact recorded by the Courts below, more so when as recorded by the learned trial Magistrate, the petitioner-accused has admitted the guilt.

3. However, on going through the record, there is an indication that under an impression of being awarded only sentence of fine, if he admits the guilt, the petitioner so admitted and as he did not have enough money to pay fine, that might be awarded and that is why the application exh. 3 was given.

4. In this background, it is the complainant Food Inspector who has been examined, soon followed by the plea of guilt and sentence. All this has happened within a period of less than one week.

5. The deposition recorded of the Food Inspector exh. 4 when closely scrutinised, indicates that sample of the food article, namely milk is not taken after taking care to homogenize the contents of the can having 20 litres of milk.

6. Thereafter, the sealing process that has been done and the sending of muddamal article to the Laboratory and the specimen of the seal required to be sent to the Laboratory to establish the identity of the article. All these steps are missing.

7. Even if it is taken to be the situation on account of the intention of the accused expressed in the said application exh. 3, of admitting the guilt, so far as responsibility of the prosecution to establish the identity of the sample taken, can be, sent delivered and received by the Laboratory is concerned, there has to be cogent evidence.

8. In absence of it, the very identity of the sample would be in doubt. The Laboratory, no doubt, says in its report exh. 16 that the seals were intact, but in absence of fescimal of the seal on record, it is not possible to consider which seal was applied and what was compared.

9. In this background, it is not a case

where even on plea of guilt, the finding of conviction can be recorded. It is for the prosecution to establish that before charge under Prevention of Food Adulteration Act can be brought at home.

10. Both the Courts below have not paid any attention to this and instead, have gone by subsequent plea of guilt entered by the petitioner-accused. It is not left to the accused to accept the guilt where the case is before the Court and even if he rushes in to admit the guilt it is for the Court to find out whether in fact, offence is made out from the record or not.

11. In this view of the matter, the petition is required to be allowed and the orders of the Courts below are required to be quashed and set aside and are accordingly quashed and set aside. The petition is allowed. The conviction is set aside. The petitioner-accused is acquitted and his bail bonds shall stand cancelled. Rule is made absolute accordingly.

(N.J.Pandya,J)

***darji