

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1222 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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 concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SURESH S. RAJPUT

Versus

HARESH TRADING COMPANY

Appearance:

1. Criminal Appeal No. 1222 of 1992
MR PRANAV G DESAI for Appellant
MRS QUEROBINA YAGNIK for Respondent No. 1
MR HABIB K SHAIKH for Respondent No. 2
Mr.I.M.Pandya, learned A.P.P. for Respondent No. 3
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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 30/09/2004

CAV JUDGEMENT

#. This appeal is filed by Shri Suresh Rajput, Food Inspector of Vadodara Municipal Corporation against the judgment and order passed by the learned J.M.F.C. (Municipal), Vadodara in Criminal Case No.4960 of 1986 dated 09.05.1991, whereby both the accused were acquitted for the offences punishable under Section 2(1)(A) Rule 32(B)(1)(C) and Section 7 and 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act" for short).

#. The short facts of the case are that on 04.04.1986, the present appellant went to the shop of accused no.1 and collected nine packets of tea masala weighing 900 gms. in total and sent the same to the Public Analyst for analysis. After following due procedure of packing, sealing labelling etc., as prescribed under the said Act, the Public Analyst sent his report to the Local Health Authority who in turn gave the report to the present appellant who produced the same in this case. As per the report, the ingredients were not mentioned on the label of the packet as prescribed under the said Act. The appellant herein prepared the report and sent the same to Local Health Authority to obtain sanction. As the accused no.1 stated that the said samples were purchased from accused no.2, the criminal case was filed against both of them. As the accused pleaded not guilty, the evidence was recorded and after hearing the learned counsel for the parties, the learned J.M.F.C., Vadodara passed the order as stated above.

#. Learned advocate for the appellant Mr.Desai submitted that in this case, the trial court has given the finding for issue no.1 in the affirmative and issue no.2 in the negative. Mr.Desai has relied upon the decision in case of Suresh H Rajput V/s Bhartiben Pravinbhai Soni and others, reported in (1996) 7 SCC 199 and submitted that in a similar case, the Supreme Court has come to the conclusion that while granting the sanction for prosecution under Section 20(1) of the Prevention of Food Adulteration Act, 1954 the Local Authority, after going through the report of the Public Analyst and other material, has granted the sanction and at this stage sanctioning authority is not required to weigh the pros and cons and then to find whether the case could end in conviction or acquittal. In the present case, the trial court has relied on the judgment in the case of Ramanbhai Shivabhai Prajapati V/s The State of Gujarat and another reported in 1990 Cr.L.R.(Guj.) 496 and has come to the conclusion that though the tea packets were not in accordance with the norms prescribed under Section 32B(1)(C) of the said Act, the sanction under Section 20

is not valid and therefore acquitted the accused. Therefore, Mr.Desai learned advocate for the appellant prays for allowing this appeal.

#. Respondent no.1 is served, however, he has not remained present either through advocate or personally. Learned advocate Mr.Habib Shaikh appeared for respondent no.2, however, he has chosen not to remain present before this Court. Mr.I.M.Pandya, learned A.P.P. for respondent no.3-State has supported the case of the prosecution.

#. I have perused the judgment in case of Ramanbhai Shivabhai Prajapati (supra), wherein the learned Single Judge of this Court has relied on the judgment of the Apex Court in case of State of Bombay (now Gujarat) V/s Parshottam Kanaiyalal, reported in AIR 1961 SC 1 (1961(1) Cri.L.J.170) wherein it was held in para 7 as under :

"To read by implication that before granting a written consent, the authority competent to initiate a prosecution should apply its mind to the facts of the case and satisfy itself that a prima facie case exists for the alleged offender being put up before a Court appears reasonable..."

In a recent ruling in A.K.Roy V/s State of Punjab AIR 1986 SC 2160 : (1986 Cri.L.J.2037), the Supreme Court while dealing with S.20(1) of the Act held :

"... he can only give his consent in writing when he is satisfied that a prima facie case exists in the facts of a particular case and record his reasons for the launching of such prosecution in the public interest."

Therefore, according to the latest law laid down by the Supreme Court what is required of a sanctioning authority is not only to apply its mind to the facts and circumstances of the case to be satisfied that prima facie case existed but also to record reasons as to why launching of prosecution against an offender is necessary in the public interest..."

Section 20(A) of the said Act is also reproduced as under :

"20-A. Power of Court to implead manufacturer etc. - Where at any time during the trial of any offence under this Act alleged to have been committed by any person, not being the

manufacturer, distributor or dealer of any article of food, the Court is satisfied, on the evidence adduced before it, that such manufacturer, distributor or dealer is also concerned with that offence, then the Court may, notwithstanding anything contained in [sub-section (3) of Sec.319 of the Code of Criminal Procedure, 1973 [2 of 1974], or in Sec.20 proceed against him as though a prosecution had been instituted against him under Sec.20]."

#. If we peruse the consent order Exh.23 under Section 20(A) of the said Act, it does not disclose the action for which the respondents are to be prosecuted. Except the names of owner and vendor, the rest of the consent order is cyclostyle. There is no dispute that while issuing the sanction letter exh.23, the Local Health Authority has seen all the papers which are produced before it, however, in view of the judgment referred to above, the same cannot be said to be valid sanction.

#. A reference deserves to be made to the Public Analyst Report produced at exh.21. It merely says that the sample does not conform with the provisions of Prevention of Food Adulteration Act and Rules but it does not show exactly that it is not suitable for human consumption. Under the circumstances, I am of the opinion that the report also does not suggest that the sample is not for human consumption.

#. Lastly, it may be mentioned that the sample was taken on 04.04.1986. The judgment of the trial court is dated 09.05.1991. Today, we are in the month of September, 2004 i.e. almost 18 1/2 years have passed. I am of the opinion that after so long a period, no purpose will be served even if the matter is remitted back to the trial court or punish both the accused. Therefore, this appeal deserves to be dismissed.

#. Accordingly, this appeal is dismissed.

(SHARAD D DAVE, J)

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