

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 39 of 1990****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARSHADRAI M BHATT - Appellant(s)**Versus****DHIRAJLAL K PRAJAPATI & 4 - Opponent(s)**

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Appearance :

MR PRANAV G DESAI for Appellant(s) : 1,

MR HM CHINYOY for Opponent(s) : 1 - 3.

(MR MEHUL CHINYOY) for Opponent(s) : 1 - 3.

MR NK MAJMUDAR for Opponent(s) : 4,

MR HL JANI APP for Opponent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 28/09/2007****ORAL JUDGMENT**

1.0 This appeal is directed against the judgment and order dated 30.01.1989 passed by the learned Judicial Magistrate, First Class (Municipal), Vadodara in Criminal Case No.15882 of 2004 whereby, the respondents – accused persons were acquitted from

the offences alleged against them.

2.0 The brief facts of the prosecution case are as under ;

2.1 On 04.12.1984 at around 1000 hrs., the appellant – complainant herein, visited a shop and purchased 750 gms. of Gram by paying the requisite amount to respondent no. 3 herein in the presence of 'panchas'. Receipt to that effect was also obtained by the appellant. While doing so, the appellant had informed respondent no. 3 that the said product was purchased for the purpose of sending the same to the Public Analyst for examination. Copies of the letter stating about the sample so collected and the receipt as stated herein above and both signed by the 'panchas' were given to respondent no. 3. Thereafter, the sample was sent to the Public Analyst for examination.

2.2 On examination, the said sample was found to be adulterated and, therefore, after following the necessary procedure, a criminal case was registered against the respondents. At the end of trial, the learned J.M.F.C. (Municipal), Vadodara acquitted the respondents from the offences alleged against them. Being aggrieved by the impugned judgment and order, the appellant has approached this Court by way of this appeal.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been

very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse. Even in a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated similar principle. In Para-16 of the said decision, the Court has observed as under ;

“16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with”.

[*Emphasis supplied*]

4.0 In the impugned judgment, the trial Court has arrived at the conclusion that the complainant has failed to establish that the shop in question was of the joint ownership of respondents no. 1 & 2 and that respondent no. 4 was the Guarantor. The trial Court has arrived at the said conclusion, after duly considering the entire evidence on record. In his cross-examination, the appellant – complainant has categorically stated that prior to carrying out the inspection in question, he had not made any enquiries from the municipal records as to who was the owner/s of the shop in question. He has also admitted in his cross-examination that at the time when the said inspection was carried out, respondents no. 1 & 2 were not present at the said place. He has also admitted that he was unaware as to on what basis the name of respondent no. 4 was reflected in the said complaint, as he had not even sought permission from the competent authority under the relevant Act for initiating any action against respondent no. 4. Apart from that it is also not stated in the sanction letter at Exhibit – 41 as well as in the Inspector Report at Exhibit – 38, as to under which provisions of the relevant Act, each of the respondents are alleged to have committed the offences in question. Thus, from the record, it is evident that the appellant – complainant has committed an apparent error by involving the respondents in the alleged offence in question without any basis and any without applying his mind.

5.0 Considering the facts and circumstances of the case and the evidence discussed hereinabove, I am of the opinion that the trial Court was completely justified in acquitting the respondent

of the offences alleged against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same. I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

“... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudhary* (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.”

6.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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