

(2012) 02 GUJ CK 0008
In the Gujarat High Court

Case No : Criminal Revision Application No. 569 of 2003

Aarif A. Gani Memon

APPELLANT

Vs

Food Inspector and 1

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374, 397, 401
Prevention of Food Adulteration Act, 1954 — Section 16, 2, 7, 7(1)

Citation : (2012) 02 GUJ CK 0008

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : Hashim Qureshi s 1, for the Appellant; Y.V. Shah for Respondent(s) 1 and Mr. H.L. Jani, L.D. Addl. Public Prosecutor for Respondent(s) 2, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Z.K. Saiyed

1. By way of present revision application, filed u/s 397 read with Section 401 of the Code of Criminal Procedure, the applicant has prayed to quash and set aside the judgment and order dated 12th November, 2003 passed by the learned Additional Sessions Judge, Veralval in Criminal Appeal No. 43 of 2001 by which he has confirmed the judgment and order dated 31st March, 1995 passed by the learned Judicial Magistrate First Class, Kodinar in Criminal Case No. 120 of 1989 whereby the learned Judicial Magistrate First Class convicted the present applicant for the offences punishable under Sections 2 and 7 read with Section 16 of the Prevention of Adulteration Act and ordered to undergo rigorous imprisonment for a period of six months and also imposed fine of Rs. 1,000/-, and in default of payment of fine, ordered to undergo rigorous imprisonment for a further period of two months.

2. The short facts of the case is that the respondent No. 1-original complainant serving as Food Inspector in the Kodinar Nagarpanchayat. It is the case of the

Food Inspector that on 18th September, 1991 he visited the shop of the applicant and purchased three bottles of chilly powder by paying consideration. It is also the case of the prosecution that after following due procedure of sealing, the sample was sent to the Public Health Laboratory for analysis. On examination, the Public Analyst found that the said sample was adulterated. Therefore, after following the due procedure, complaint was filed against the present applicant on 27th February, 1989 in the Court of the learned Judicial Magistrate First Class, Kodinar and the learned Judicial Magistrate First Class framed charge under Sections 7(1) and 16 of the Prevention of Food Adulteration Act and the case was registered as Criminal Case No. 120 of 1989.

3. Thereafter the trial was conducted before the learned Magistrate. To prove the case of the prosecution, prosecution has produced oral as well as documentary evidence. After considering the oral as well as documentary evidence, the learned Magistrate has convicted the present applicant as stated above vide his judgment and order of conviction dated 31st March, 1995 for the offence punishable under Sections 2, 7 and 16 of the Prevention of Food Adulteration Act.

4. Being aggrieved and dissatisfied with the said Judgment and Order of conviction dated 31st March, 1995 passed by the learned Judicial Magistrate First Class, Kodinar, the applicant had preferred criminal appeal u/s 374 of the Code of Criminal Procedure before the Sessions Court.

5. After hearing both the sides the learned Additional Sessions Judge at Veraval by his impugned judgment and order dated 12th November, 2003 dismissed the Criminal Appeal No. 43 of 2001 preferred by the present applicant and confirmed the judgment and order of conviction dated 31st March, 1995 passed by the learned Judicial Magistrate First Class, Kodinar.

6. Being aggrieved by the said judgment and orders of conviction, the applicant has preferred the present Criminal Revision Application before this Court.

7. Heard Mr. Hashim Qureshi, Learned Counsel appearing on behalf of the applicant, Mr. Y.V. Shah, Learned Counsel for respondent No. 1 and Mr. H.L. Jani, learned Additional Public Prosecutor for the respondent No. 2-State.

8. Mr. Qureshi, Learned Counsel for the applicant, submitted that both the Courts below have passed the orders without appreciating the facts of the case and evidence produced on record. He has contended that both the Courts below have failed to consider that the present applicant is only a retailer and not the producer of the chilly powder and therefore, the applicant cannot be convicted for the offence alleged against him. He has further contended that the public analyst was not examined. Without examining the public analyst, his report is believed, which is contrary to law. Non-examining the public analyst is fatal to the case of the prosecution. He has further contended that in the report of public analyst, it is stated that there was a mix of red and yellow colours, but the report did not mention anything as to whether the said edible colour is in the permissible limit or as to whether it is injurious to the public health. In absence

of any such specific finding in the report by the public analyst, the report of public analyst cannot be believed and the applicant cannot be convicted believing such report. He has further contended that microscopic test was carried out to examine the sample, which is not permissible. Both the Courts below have overlooked the said main important aspect. He, therefore, contended that the order of conviction passed by both the Courts below is without appreciating the facts and evidence on record and is required to be quashed and set aside by this Hon"ble Court.

9. As against this, Mr. Y.V. Shah, Learned Counsel for the respondent No. 1-original complainant has supported the judgment and orders of conviction passed by both the Courts below and contended that the Food Inspector has followed all the mandatory provisions while collecting the sample. He has further contended that the report of the public analyst is just and proper. He has further contended that non-examining the public analyst is not fatal to the case of the prosecution. He has contended that from the report prima-facie it is established that the chilly powder was adulterated and therefore, the judgment and orders passed by both the Courts below is just and proper and is required to be confirmed by this Court.

10. I have gone through the judgment and orders of conviction passed by both the Courts below. I have also perused the oral as well as documentary evidence led before the Courts below and also considered the submissions made by Learned Counsel for the parties.

11. It appears from the papers that the applicant is retailer and not the producer of the chilly powder. It also appears from the papers that sample was not taken in presence of panchas. It also appears from the papers that without examining the public analyst, report of public analyst is believed. The report of the public analyst shows that there red and yellow colour was mixed, but the report is silent on as to whether the colour was injurious to public health or not and as to whether the said colour was used in permissible limit or not. Thus, when the report of the public analyst is not specific, I am of the opinion that the said report cannot be believed without examining the public analyst. It is also revealed that microscopic test was conducted for examining the sample, which is not permissible in eye of law. The Apex Court has observed in the judgment reported at State of Gujarat Vs. Prajapati Amratlal Natvarlal, that microscopic test is not permissible.

12. The prosecution has miserably failed to prove the case against the applicant. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt. I find that the findings recorded by the Courts below are not just and proper.

13. I am, therefore, not agreed with the findings, ultimate conclusion and the resultant orders of conviction recorded by the Courts below. Hence the present revision application is allowed. The judgment and order dated 12th November, 2003 passed by the learned Additional Sessions Judge, Veraval in Criminal

Appeal No. 43 of 2001 as well as the judgment and order dated 31st March, 1995 passed by the learned Judicial Magistrate First Class, Kodinar in Criminal Case No. 120 of 1989 are quashed and set aside. Record and Proceedings to be sent back to the trial Court, forthwith. Bail bond, if any, shall stand discharged. Rule is made absolute.