

(2010) 05 GUJ CK 0059
In the Gujarat High Court
Case No : Criminal Appeal No. 2376 of 2009

Amit Ravjibhai Patel

APPELLANT

Vs

Vijaybhai Motilal Sonkar and Another

RESPONDENT

Date of Decision : 03-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Prevention of Food Adulteration Act, 1954 — Section 13(2), 16, 7

Citation : (2010) 05 GUJ CK 0059

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Shaili A. Kapadia, for the Appellant; M.G. Nanavaty, Assistant Public Prosecutor for Opponent 2, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—The appellant, Municipal Corporation, through its Food Inspector, has approached this Court u/s 378 of the Code of Criminal Procedure, 1973 challenging the order of acquittal passed by the Metropolitan Magistrate, Court No. 6, Ahmedabad dated 30.6.2009 in Criminal Case No. 10 of 2009, whereunder the accused respondent hereinabove is acquitted of the charge of committing the offence punishable u/s 7 and Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the PFA Act" for the sake of brevity). The original complainant, Food Inspector in discharge of his duties on 13.5.2008 at around 10:00 a.m. in the morning along with his helper peon visited the premises where the accused was present and he was dealing in selling of Mango Juice. Panch witness was called and in presence of panch witness after introducing himself as such, the premises were examined wherein it was found that in the ice box in steel vessel mango juice was lying. After notifying his intention of collecting the sample of Mango Juice for examination, he purchased 900 grams of Mango Juice on payment of Rs. 18. The accused gave him mango juice from the vessel into the bowl and after completion of all procedures, the sample food article was sent for public analysis to the Public Analyst. The said

sample food article was found adulterated on account of presence of Sunset yellow and Tartrazine yellow synthetic food colours and hence the prosecution was required to be lodged which came to be lodged after obtaining proper sanction. The Court, after appreciating the evidence on record, came to the conclusion that there was serious lacuna on the part of the prosecution in establishing its case beyond doubt and hence acquitted the accused of the charge of committing the offence punishable u/s 7 and Section 16 of the PFA Act vide order dated 30.6.2009, which is impugned in this appeal filed u/s 378 of the Code of Criminal Procedure, 1973.

2. Ms. Kapadia, learned advocate appearing for the appellant could not controvert the facts as recorded by the Court nor could she point out any error apparent on the face of the record indicating that the order of acquittal is a result of any erroneous finding of the Court.

3. Shri Modi, learned advocate appearing for the respondent submitted that the order of acquittal deserves to be confirmed by this Court as there is serious lacuna noticed by the Court in respect of the breach of provisions of Section 13(2) of the PFA Act in as much as the intimation of lodging the complaint along with the Public Analyst Report as required u/s 13(2) had never reached the accused as the envelope, wherein the said notice is said to have been issued, has been received with endorsement of the Postal Department that the addressee has "left". The said document is produced at Exh.14, meaning thereby, the accused never received notice u/s 13(2) and thus he was deprived of his right to avail the opportunity of sending the remaining sample article to the Central Food Laboratory within time. Shri Modi has further submitted that the Court has elaborately discussed this aspect in the order impugned and Shri Modi from the testimony of the Food Inspector also pointed out that even he has admitted that the notice and envelope containing notice u/s 13(2) had been received unserved with the endorsement of "left". In view of this, the order impugned may not be interfered with u/s 378 of the Code of Criminal Procedure Code, 1973.

4. This Court has heard learned advocates for the parties and perused the record and proceedings.

5. The contention of Shri Modi with regard to non-compliance of mandatory provisions of Section 13(2) appears to be correct and justified as could be seen from the record and proceedings and especially envelope at Exh.14 which contains endorsement of "left". The testimony of the Food Inspector is perused wherefrom it can be said that if the Food Inspector has also admitted during his cross-examination that it is correct that the notice or Public Analyst report is not served upon the accused, after returning of the envelope, Local (Health) Authority did not make any attempt to serve the same upon the accused. Apart from the aforesaid serious lacuna, there appears to be one more lacuna in respect of collecting sample and of formalin also as the Inspector himself has recorded that after dividing the mango juice, in question, into three parts and pouring them in three glass bottles formalin was added. Now, it is established

position of law that formalin is to be added in the entire quantity of the sample at a time and thereafter the sample is to be stirred and divided into three parts. This lacuna along with one more lacuna which is noticeable from the judgment is that the quantity of the mango juice does not seem to have been stirred with any instrument, which would go to show that the order of acquittal needs no interference as the same cannot be said to have been resulted into miscarriage of justice.

6. The appeal, therefore, fails and the same is required to be dismissed. Bail bond, if any, stands cancelled.