

(2008) 02 GUJ CK 0016
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 1611 of 2008

Kishore Laxminarayan Biyani

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 13(2), 13(2)

Citation : (2008) 27 CriminalCC 187

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : Dhaval M. Barot and Mr. Tejas and Mr. M. Barot, for the Appellant;
PP, for the Respondent No. 1 and None, for the Respondent 2, for the Respondent

Judgement

H.N. Devani, J.—Heard Mr.P.M.Thakkar, learned senior advocate with Mr.P.M.Barot, learned advocate for the petitioner.

2. Attention is drawn to Annexure-B to the petition, which shows that the sample was taken on 25th November, 2002 and the "best before" date of the said sample is 4th June, 2003. It is submitted that the report of the Public Analyst is dated 26th December, whereas the complaint was filed before the learned Metropolitan Magistrate on 18th June, 2003 and the intimation in respect of the same was sent to the petitioners on 18th June, 2003 which is after the date of expiry of the sample in question, it is submitted that accordingly, the valuable right of the petitioner to get the sample analyzed by the Central Food Laboratory as envisaged under the provisions of section 13(2) of the Prevention of Food Adulteration Act, 1954, is seriously affected.

3. It is also submitted that a perusal of the allegations made in the complaint show that there are no specific averments to the effect that the offence was committed with the consent connivance/negligence of the accused. It is contended that in the circumstances, the complaint is not maintainable. In support of the said contention, reliance is placed upon a decision of this Court in the case of Yogesh Babubhai Trivedi and others v. K.B.Dabhi, Food Inspector,

2006(1) GLH 83 as well as an unreported decision of this Court in the case of Rasikbhai Manilal Patel v. State of Gujarat, Criminal Miscellaneous Application No.8885 of 2002 and other matters rendered on 9th May, 2003.

4. Having considered the submissions advanced by the learned senior advocate as well as having perused the decisions relied upon, Rule returnable on 10th March, 2008. Interim relief is granted in terms of paragraph 12(B).

Mr.L.B.Dabhi, learned Additional Public Prosecutor waives service of notice on behalf of respondent No. 1, State of Gujarat.

Direct service is permitted qua respondent No.2.

Interim relief granted.