

(2009) 11 GUJ CK 0099
In the Gujarat High Court

Case No : Criminal Revision Application No. 215 of 2002

Milankumar Gordhanbhai Bhimani

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 19-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374, 397, 401
Prevention of Food Adulteration Act, 1954 — Section 13(2), 16, 7
Prevention of Food Adulteration Rules, 1955 — Rule 17, 18

Citation : (2009) 11 GUJ CK 0099

Hon'ble Judges : J.C. Upadhyaya, J

Bench : Single Bench

Advocate : Hriday Buch, for the Appellant; R.C. Kodekar, Assistant Public Prosecutor for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

J.C. Upadhyaya, J.—The challenge in this Criminal Revision Application preferred u/s 397 read with Section 401 of the Code of Criminal Procedure ("Cr.P.C.", for short) is to the judgment and order rendered by the learned Additional Sessions Judge, Junagadh on 30th April, 2002 in Criminal Appeal No. 20/2001, whereby the learned Additional Sessions Judge dismissed the aforesaid Criminal Appeal preferred by the petitioner herein u/s 374 of the Cr.P.C. and confirmed the judgment and order rendered by the learned Chief Judicial Magistrate, Junagadh on 10th August, 2001 in Criminal Case No. 602/1995, whereby the petitioner, who was original accused in said Criminal Case came to be convicted for the offence punishable u/s 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954 ("Act", for short) and was sentenced to undergo R.I for one year and fine of Rs. 2,000/- in default to payment of fine R.I for four months.

2. The prosecution case in nutshell is that the respondent No. 2-Food Inspector Mr. L.D. Faldu visited the provision store of the petitioner Radhika Provision Stores on 27.7.1994. The Food Inspector collected the sample of cumin (jeera

whole) and after performing due procedure laid down under the Act and when the sample came to be analyzed by public analyst, the sample was not found fit in accordance with the standard laid down under the Act and the Rules. After receiving due sanction for the purpose of lodgment of complaint, criminal complaint came to be filed by the respondent No. 2-Food Inspector against the petitioner-accused in the Court of the learned Chief Judicial Magistrate, Junagadh. At the end of the trial, the learned Chief Judicial Magistrate, Junagadh recorded the conviction of the petitioner-accused and awarded the sentence as hereinabove referred to in this judgment. The petitioner challenged the said judgment before the Sessions Court, Junagadh, but his appeal came to be dismissed. This has given rise to the present Revision Application.

3. I have heard the arguments of the learned Advocate Mr. Buch for the petitioner and the learned Additional Public Prosecutor Mr. Kodekar for the respondent-State.

4. The learned Advocate Mr. Buch for the petitioner-accused has drawn my attention to the report by the public analyst Exh:4 and submitted that the analysis report clearly reveals that the sample was not adulterated, but on the contrary, the sample confirmed to the standards laid down under the Act and the Rules. That despite this, the Trial Court as well as the First Appellate Court misread the report Exh:4 and came to the conclusion that the sample was adulterated.

5. My attention was drawn to the evidence of Food Inspector-Respondent No. 2 Mr. Faldu, who was examined by the Trial Court as PW:1 at Exh:15 and the RPAD Receipt Exh:20, and it is submitted that the petitioner-accused did not receive the correspondence allegedly made by the Food Inspector to the accused regarding the lodgment of complaint before the Trial Court. That the RPAD Receipt Exh:20 admittedly does not bear signature of the petitioner. Thus, the mandatory requirements laid down under Sub-section (2) of Section 13 of the Act is not being duly and fully complied with.

6. My attention was drawn to Exh:38, which is the receipt issued by the public analyst regarding the receipt of the sample. It is submitted by the learned Advocate Mr. Buch for the petitioner that as per report of the public analyst, in the receipt, the container containing the said two samples including the sample in question was unsealed. It is submitted that thereby mandatory requirements laid down under Sub-rule(A) of Rule 17 and Rule 18 of the Rules have been violated. The learned Advocate Mr. Buch relied upon the case of the State of Gujarat Vs. Ramjibhai Fogatbhai Sagar, and the case of the State of Orissa v. Ravindra Sahu reported in 2006 (1) FAC 200 and submitted that the non-compliance of the mandatory requirements laid down under Rule 17 and Rule 18 are fatal to the prosecution case and entail acquittal of accused.

7. Ultimately, it is submitted that the revision petition may be allowed.

8. Per contra, learned Additional Public Prosecutor Mr. Kodekar for the

respondent-State vehemently opposed the Revision Application and submitted that there is a concurrent finding of two Courts that the sample examined by the public analyst was adulterated and did not confirm to the standards laid down under the Act and the Rules. That all the mandatory rules laid down under the Act and Rules have been duly and fully complied with. Therefore, it is submitted that revision petition deserves dismissal.

9. I have examined the record and proceedings in context with the submission made by the rival sides.

10. Needles to say that in a matter arising under the Act, the report of the public analyst plays vital role. In the instant case, the report of the public analyst regarding the examination of the sample is produced at Exh:4. In the report, the nature of examination conducted by the public analyst regarding the characteristic examined, results of analysis together with PFA Limit, runs as under:

Sr.Nos. Characteristic Results of P.F.A. examined analysis Limits

Description:- Straw coloured Jiru (whole)

1. Extraneous matter. Absent Max.7.0%
2. Edible seeds other Absent Max.5.0% than cumin seeds.
3. Insect damaged matter Absent Max.5.0%
4. Added coloring matter. Absent Absent
5. Pesticides residue Organochorin Absent analysis by LTC method. BHC

No pesticide Detected

11. Now the above findings arrived at by public analyst is considered in light of the standards laid down regarding cumin (jeera whole) contained at A.05.09 in Appendix-B attached to the Prevention of Food Adulteration Rules, 1955, it clearly transpires that the test undertaken by the public analyst and all the findings arrived at by him as discussed above, nowhere suggest that there was any adulterated material found by the PA in the sample.

12. However, both Trial Court as well as the First Appellate Court examined this aspect of the matter, and if the judgment rendered by the learned Additional Sessions Judge in the appeal is considered, in para-9, this aspect appears to have been dealt with and ultimately learned Additional Sessions Judge examining the PA Report Exh:4 along with the standard laid down under the Rules, observed that there shall not be any coloring matter in the cumin, but in the instant case, as per the report Exh:4, the remains of coloring pesticide came to be found by the analyst. Again considering the report Exh:4 from this view point as observed by the Appellate Court, and in that respect, at Sr.No.4 in the report regarding added coloring matter, the result of analysis is 'absent', and at Item No. 5 regarding pesticide analysis reveals-organochorin absent and no pesticide

BHC detected?. Thus, the bare reading of the report Exh:4 dose not tally with the observation made by the learned Additional Sessions Judge in his judgment while coming to the conclusion that the the sample analyzed by the analyst did not confirm to the standard laid down under the Rules.

13. My attention was drawn to the evidence of Food Inspector-Mr. Faldu PW:1 examined at Exh:15. In his examination in chief, he stated that notice as contemplated under sub-section (2) of Section 13 of the Act was issued by him to the petitioner-accused by RPAD and the accused received said notice and produced the RPAD Slip at Exh:20. If the RPAD Slip Exh:20 is considered some third person appears to have received the notice on behalf of the petitioner. The Food Inspector Mr. Faldu does not clarify in his entire evidence as to who exactly received the notice on behalf of the petitioner and whose signature the RPAD Slip Exh:20 in fact bears. There is no dispute that sub-section (2) of Section 13 of the Act confers an important right to the accused regarding re-examination of the sample by Central Food Laboratory. The accused can exercise this right within 10 days from the date of receipt of the copy of the report required to be forwarded by the Food Inspector to him. In the instant case, the evidence as to whether the petitioner-accused in fact received the notice contemplated under sub-section (2) of Section 13 of the Act or not is shaky. Under such circumstances, the submission made by the learned Advocate Mr. Buch for the petitioner-accused regarding violation of mandatory requirements laid down under sub-section (2) of Section 13 of the Act requires due consideration.

14. Exh:38 is the receipt issued by the public analyst regarding the receipt of the sample for the purpose of analysis. It appears that the Food Inspector forwarded two samples of two different cases including the case on hand in one container. The receipt Exh:38 suggests that the container containing the sample was not sealed. Rule 17 of the Rules prescribes manner of dispatching container of sample. It is clearly provided that the sample shall be dispatched in a sealed container. Rule 18 of the Rules prescribes regarding memorandum and impression of seal to be sent separately. Considering Ravindra Sahu's case (Supra), Hon"ble the Apex Court has held that the provisions contained under Rule 18 are mandatory in character. In Ramji Sabar's case (Supra), this Court has held that both the Rules viz. Rule 17 and Rule 18 are mandatory in nature and in case of non-compliance of the same, benefit of doubt could be given to the accused.

15. In light of the above discussions, I am of the opinion that the Trial Court erred in recording the conviction of the petitioner-accused for the offence charged against him, and in turn learned Additional Sessions Judge erred in confirming the judgment and order rendered by the Trial Court. The Criminal Revision Application deserves acceptance.

16. For the foregoing reasons, the Criminal Revision Application is allowed. The judgment and order rendered by the learned Additional Sessions Judge, Junagadh on 30th April, 2002 in Criminal Appeal No. 20/2001, whereby the

judgment and order rendered by the learned Chief Judicial Magistrate, Junagadh on 10th August, 2001 in Criminal Case No. 602/1995 recording the conviction of the petitioner-accused for the offence punishable u/s 16 read with Section 7 of the Prevention of Food Adulteration Act, 1954 and the sentence awarded thereunder are hereby set aside. The petitioner-accused is ordered to be acquitted of all the charges leveled against him. Fine, if paid, be refunded to him. His bail bond shall stand cancelled. Rule is made absolute accordingly.