

(2016) 07 GUJ CK 0092
In the Gujarat High Court
Case No : Criminal Appeal No. 1612 of 2005

S.G. Majmudar

APPELLANT

Vs

Ajitkumar and Co.

RESPONDENT

Date of Decision : 29-07-2016

Acts Referred:

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

Citation : (2017) 171 AIC 281 : (2016) 4 GLR 3286 : (2017) 2 RCRCriminal 188

Hon'ble Judges : R.P. Dholaria, J.

Bench : Single Bench

Advocate : K.I. Shah, Advocate, for the Appellant No. 1; D.K. Modi, Advocate, for the Opponents/Respondent Nos. 1 to 7; L.R. Pujari, APP, for the Opponents/Respondent No. 9

Final Decision : Dismissed

Judgement

R.P. Dholaria, J. (Oral) - The appellant - original complainant Food Inspector has preferred the present appeal under section 378(4) of the Code of Criminal Procedure, 1973 against the judgment and order of acquittal dated 9.8.2001 rendered by learned Judicial Magistrate, First Class (Municipal Court), Surat in P.F.A.No.24 of 1996.

2. The short facts giving rise to the present appeal are that accused No.1 is partnership firm, accused Nos.2 to 7 are partners and accused No.8 is the manufacturer. It is alleged that on 13.7.1995 the complainant purchased 600 gms Sajan brand groundnut oil from packed groundnut oil produced by accused No.8 for the purpose of analysis. It is alleged that after following due procedure for analysis, one sample was forwarded for analysis. It is alleged that after receiving the report of the Public Analyst, Surat, the sample was sent to the Foods and Drugs Laboratory, Vadodara for re-analysis under section 13(2E) of the Prevention of Food Adulteration Act 1954 ("the Act" for short). It is alleged that in the said analysis report, castor oil was found and hence, after obtaining necessary sanction, the complaint was filed by the complainant against the

accused persons on 2.7.1996.

3. In pursuance of the complaint, learned trial Court issued the process. In pursuance of the said process, the accused remained present before learned trial Court. The charge was framed against the accused at Exh.153. The accused pleaded not guilty to the charge and claimed to be tried.

3.1. In order to bring home the guilt, the prosecution has examined 2 witnesses and also produced several documentary evidences.

3.2. At the end of the trial, after recording the statements of the accused under section 313 of the CrPC and hearing the arguments on behalf of the prosecution and the defence, learned trial Court delivered the judgment and order, as stated above.

4. Being aggrieved by the same, the complainant has preferred the aforesaid Criminal Appeal before this Court.

5. By way of preferring the present appeal, the appellant has mainly contended that learned trial Court has failed to appreciate the evidence on record and wrongly recorded the order of acquittal. It is further contended that learned trial Judge has not appreciated the evidence on record in its proper perspective and in fact, there was no appreciation of evidence so far and hence, the impugned judgment and order of acquittal is required to be reversed, as such.

5.1. Mr. Shah, learned advocate appearing for the appellant has reiterated and urged the grounds mentioned in the memo of appeal. Mr. Shah has taken this Court through the paper-book and evidence on record and argued that learned trial Court has assigned flimsy grounds and wrongfully acquitted the respondents though sufficient evidence in the nature of analysis report of the Central Food Laboratory, Calcutta is available. He submitted that impugned judgment of learned trial Court is based upon the presumptions and conjectures which have no place in the eyes of law. In his submission, therefore, learned trial Court ought to have convicted the accused and hence, learned trial Court has failed to appreciate the evidence on record and wrongly recorded the judgment of acquittal which is required to be reversed and the respondents are required to be convicted, as such.

6. On the other-hand, Mr. D.K. Modi, learned Advocate for the respondents accused has taken this Court through the entire evidence on record and submitted that the impugned judgment and order passed by the learned trial Judge is just and proper. Mr. Modi further submitted that there is no iota of evidence to link the accused with the crime. He submitted that indisputably the first report of Public Analyst, Surat was confirming the standards and the sample was within the standards prescribed and no adulteration was found. He, therefore, submitted that the authority was required to follow the procedure as prescribed under the provisions of section 13 (2E) of the Act and since that procedure has not been followed by the prosecution agency, the entire

proceedings is vitiated. In his submission, therefore, in view of the evidence on record, it cannot be said that the learned trial Judge has committed any error in passing the impugned order acquitting the accused, and therefore, the present appeal deserves to be dismissed.

7. This Court has heard Mr. Shah, learned advocate for the appellant, Mr. D.K. Modi, learned advocate for the respondents accused and Mr. L.R. Pujari, learned APP for the respondent State.

8. This Court has minutely gone through the impugned judgment rendered by learned trial Court as well as the evidence on record in the nature of paper book. In order to appreciate the contentions raised by learned advocates for the parties, this Court has gone through the depositions of the witnesses. PW - Sudhakar Govindrao Majmudar Exh.101 who was serving as Food Inspector in Surat Municipal Corporation. In examination-in-chief, the witness has deposed in detail as regards to inspection carried out by him as well as collection of sample. He deposed that thereafter the sample was sent for analysis to the Public Analyst, Vadodara as well as second sample was sent for analysis to the Central Food Laboratory, Calcutta. In the cross examination, the witness has admitted that he has perused the report of the Public Analyst, Surat and the said report was confirming the standards. He further admitted that the second sample was sent by him but he did not send the sample to the Public Analyst, Vadodara.

8.1. In order to appreciate the controversy raised in the present appeal, it is necessary to look at the provisions of section 13(2E) of the Act which read as under.

"Section 13. Report of public analyst.

xxx xxx xxx

(2E)If, after considering the report, if any, of the food inspector or otherwise, the Local (Health) Authority is of the opinion that the report delivered by the public analyst under sub-section (1) is erroneous, the said Authority shall forward one of the parts of the sample kept by it to any other public analyst for analysis and if the report of the result of the analysis of that part of the sample by that other public analyst is to the effect that the article of food is adulterated, the provisions of sub-sections (2) to (2D) shall, so far as may be, apply."

8.2. A bare perusal of the provisions of section 13(2E) of the Act clearly indicates that if the Food Inspector or Local Authority is of the opinion that the report given by the Public Analyst is erroneous, then the said authority shall forward one of the parts of the sample kept by it to any other Public Analyst for analysis and if the report of the result of the analysis of that part of the sample by other Public Analyst is to the effect that article of food is adulterated, in that case, the authority is bound to further act in accordance with the provisions of sub-sections (2) to (2D) of the Act.

8.3. In the present case, indisputably, the report from the Public Analyst, Surat

was obtained. In that case, either the Food Inspector or Local Health Authority was required to arrive at the subjective satisfaction that the report given by the Public Analyst, Surat is erroneous. Admittedly, neither of the authorities named above has recorded its finding as regards to the report obtained from the Public Analyst, Surat was erroneous. In the result, without arriving at the subjective satisfaction as regards to the report of the Public Analyst being erroneous, the law does not provide for sending the second sample either to any other laboratory or central food laboratory.

8.4. On going through the entire Record and Proceedings, it is very surprising that the prosecution has not produced any iota of evidence before learned trial Court as regards to such subjective satisfaction was recorded by either of the authorities and thereafter they proceeded to send for the second sample. Not only that even the report obtained from the Public Analyst, Surat was also not produced before learned trial Court. In order to show fairness on the part of the prosecuting agency, such reasons for arriving at the subjective satisfaction are also required to be produced along with the complaint or during the course of trial.

8.5. In view of the aforesaid factual position in light of the provisions of the Act, when any Food Inspector or Local Health Authority received the report of the Public Analyst and that report is found to be erroneous upon their subjective satisfaction, in that case, the authority named above is obliged to write the reasons for arriving at such subjective satisfaction as regards to the report being erroneous. Without being arriving at such subjective satisfaction, as at the time of inspection as per the procedure provided under the Act, generally, three samples are to be taken. If the authority is not satisfied with the result of the first sample, then authority is cannot send the second sample as per his own whims and wisdom without being arriving at the subjective satisfaction being erroneous on the first report as provided under the provisions of section 13(2E) of the Act and if that may be permitted to do so, the authority would exercise twice the same option as per his own will and wish.

8.6. In view of the aforesaid position, the Food Inspector or the Local Health Authority, as the case may be, has not followed the due procedure as prescribed under the provisions of section 13 of the Act and, therefore, this Court is of the considered opinion that for the breach and contravention of the mandatory provisions of law, no conviction can be recorded against the respondents accused. In this view of the matter even though Mr.Shah learned advocate for the appellant has argued on other points also are not required to be dealt with as the prosecuting agency has failed to comply with the mandatory provisions of section 13 of the Act. Under the circumstances, this Court is of the considered opinion that learned trial Court has rightly not believed the case of the prosecution and rightly given the benefit of doubt which does not call for any interference by this Court.

9. It is also a settled legal position that in acquittal appeals, the appellate Court

is not required to rewrite the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper.

10. In above view of the matter, this Court is of the considered opinion that learned trial court was completely justified in acquitting the respondents of the charges levelled against him. This Court finds that the findings recorded by learned trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. This Court is, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by learned court below and hence finds no reasons to interfere with the same.

11. In the result, this appeal fails and accordingly, it is dismissed. Bail bond, if any, stands cancelled. R & P to be sent back to the trial Court, forthwith.