

(2009) 02 GUJ CK 0071
In the Gujarat High Court
Case No : Criminal Appeal No. 183 of 1996

State of Gujarat

APPELLANT

Vs

Govindbhai Revachand Dulani

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Prevention of Food Adulteration Act, 1954 — Section 13(1), 16, 7

Citation : (2009) 02 GUJ CK 0071

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

Bench : Single Bench

Advocate : M.R. Mengdey, APP 1, for the Appellant;

Final Decision : Allowed

Judgement

J.C. Upadhyaya, J.—The appellant-State of Gujarat preferred this appeal u/s 378 of the Code of Criminal Procedure [Cr. P.C.] challenging

the judgment and order rendered by the Ld. Judicial Magistrate First Class, Gandhidham, [for short "the Ld. Magistrate"] on 30/11/1995 in

Criminal Case No. 727 of 1987 recording acquittal of the respondent-accused for the offence punishable u/s 16 read with Section 7 of the

Prevention of Food Adulteration Act [for short "the Act"].

2. The prosecution case, in short, was that on 9/12/1986 at about 12.10 noon complainant Food Inspector Mr. Sarvaiya visited the grocery shop

of the accused and collected sample of ground-nut oil for the purpose of analysis. The sample was forwarded to Public Analyst and it was opined

that it does not conform to the standards and provisions laid down under the Prevention of Food Adulteration Rules, 1955. Therefore, after

obtaining necessary sanction for the purpose of launching prosecution, Food

Inspector Mr. Sarvaiya filed private complaint against the respondent-accused for the offence punishable u/s 16 read with Section 7 of the Act. Since the accused did not plead guilty and claimed to be tried the prosecution adduced its oral and documentary evidence. After considering the evidence on record and the submissions made on behalf of both the sides, the Ld. Magistrate recorded acquittal of the respondent-accused solely on the ground that the report of the Public Analyst is signed by the Public Analyst later on and not on the date on which the sample was analyzed. It was observed that the analysis was made by the Public Analyst on 20/12/1986, but the report was prepared and signed on 24/12/1986.

3. Ld. APP Mr. Mengdey for the State submitted that the Ld. Magistrate recorded the acquittal of the accused solely on the ground that the Public Analyst did not prepare and sign the report on the date on which the analysis of the sample was made. Ld. APP Mr. Mengdey relied upon a decision rendered in the case of State of Gujarat Vs. Vishramdas Virumal, and submitted that the report of the Public Analyst cannot be ignored without examining the Public Analyst as a witness either by the Court or the accused raising the doubt about the correctness of the report only on the ground that the report is signed by the Public Analyst later on and not on the date on which the sample was analyzed. My attention was also drawn to the decision rendered in the case of Kantibhai Motibhai Limbachiya v. Amratlal Nyalchand Shah decided by this Court on 29/12/2008 in Criminal Appeal No. 259 of 1998. In the result, it was submitted that the impugned judgment and order recording the acquittal of the respondent-accused deserve to be set aside and the matter is required to be remanded to the trial Court to consider this part of the evidence regarding correctness of the report of the Public Analyst. Therefore, it is submitted that the appeal may be allowed and the matter be remanded.

4. The respondent though served, none appeared on behalf of respondent.

5. I have considered the records and proceedings of the trial Court in the context with the submissions made.

6. Considering the impugned judgment and order rendered by the Ld. Magistrate, it transpires that the acquittal came to be recorded solely on the ground that the report of the Public Analyst is signed by the Public Analyst later on and not on the date on which the sample was analyzed. In this

connection, considering the case of Vishramdas Virumal [supra], the judgments and orders of this Court relied upon by the trial Court were

questioned in the reference made to the Division Bench and ultimately the question referred to the Division Bench of this Court was answered in

the following terms:

A report of the Public Analyst delivered u/s 13(1) of the Prevention of Food Adulteration Act, 1954 declaring on analysis of a sample of food to

be ""adulterated"" or ""misbranded"" cannot be ignored without examining the Public Analyst as a witness either by the Court or the accused raising a

doubt about the correctness of the report only on the ground that the report is signed by the Public Analyst later on and not on the date on which

sample was analyzed.

7. In light of the ratio laid down in Vishramdas's case [supra], this Court in the case of K.M. Limbachiya v. A.N. Shah decided on 29/12/2008 in

Criminal Appeal No. 259 of 1998, set aside the orders of acquittal recorded by the trial Court with specific direction to the trial Court to proceed

with the original criminal case in accordance with law and decide it as expeditiously as possible, by remanding the matter.

8. In view of the above discussions, I am of the considered opinion that correctness of the report of Public Analyst cannot be ignored without

examining the Public Analyst as a witness either by the Court or the accused. In this view of the matter, it is apparently clear that the trial Court has

committed serious error while passing the impugned judgment and order.

9. For the foregoing reasons, the appeal is allowed and the impugned judgment and order rendered by the Ld. Magistrate on 30/11/1995 in

Criminal Case No. 727 of 1987 recording the acquittal of the respondent-accused for the offence punishable u/s 16 read with Section 7 of the Act

is hereby set aside and the matter is remanded to the trial Court with the direction that the trial Court shall proceed with the matter in accordance

with law and decide it as expeditiously as possible. Record and proceedings be forthwith forwarded to the trial Court.