

(2006) 12 GUJ CK 0048
In the Gujarat High Court

Case No : Criminal Revision Application No. 469 of 1998

State of Gujarat

APPELLANT

Vs

Kishorbhai Babubhai Jani and Others

RESPONDENT

Date of Decision : 02-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Prevention of Food Adulteration Act, 1954 — Section 13(1), 13(3), 13(5)

Citation : (2006) 12 GUJ CK 0048

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : S.S. Patel, Addl Public Prosecutor 1, for the Appellant; D.K. Modi and M.D. Modi for Respondents 1 and 3, for the Respondent

Final Decision : Allowed

Judgement

D.H. Waghela, J.—The State has approached this Court u/s 397 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C.") to challenge the order dated 3.6.1998 below Application Exh.21 passed by the learned Chief Judicial Magistrate, Bhavnagar in Criminal Case No. 3325 of 1990 whereby the proceedings for the alleged offences under the Prevention of Food Adulteration Act, 1954 were ordered to be dropped. Admittedly, samples of honey were taken by the Food Inspector on 13.7.1989 from respondents No. 1 and 2, which honey was alleged to have been supplied and manufactured by respondents No. 3 and 4. The samples were sent to the Public Analyst on 15.7.1989 and the analysis report dated 5.8.1989 showed that the sample was adulterated. The second part of the sample was sent to the Central Food Laboratory which also found the sample to be adulterated but the percentage of excess sucrose was different in both the reports.

2. Even after noting that the certificate of the Central Food Laboratory superseded the report of the Public Analyst and even after advertng to the Full Bench decision of this Court in Prahladbhai Ambalal Patel v. State of Gujarat

1984 (2) GLR 1380 , the learned Judge decided to drop the proceeding on the untenable ground that the Central Food Laboratory had analysed the sample after two years. The impugned judgment vaguely referred to the order of the Supreme Court in *Nortan Mal Vs. State of Rajasthan*, and dropped the proceeding in view of the overall situation.

3. It is clearly held by the Full Bench of this Court in *Prahladbhai Ambalal Patel (supra)* that, when Sub-section (3) of Section 13 says that the certificate issued by the Director of Central Food Laboratory shall supersede the report given by the Public Analyst under Sub-section (1), it clearly means that it replaces the Public Analyst's report, meaning thereby that once the Director's certificate is received, the earlier report given by the Public Analyst is rendered obsolete and stands wiped out. The proviso to Sub-section (5) which was inserted with effect from 1.4.1976 made the certificate issued by the Director final and conclusive with regard to the facts stated therein. Therefore, it was not permissible for the court to rely on the report of the Public Analyst once it was superseded by the certificate issued by the Director of Central Food Laboratory. Thus, there was no scope for considering the report of the Public Analyst or the variance between the two reports. Similarly, the order of the Supreme Court in *Nortan Mal (supra)* clearly stated that minimal variable alone could not be a defence and that that order was made in the peculiar facts and circumstances of the case where adulteration was found to be marginal, there was possibility of an error of judgment in analysis and the matter was very old.

4. Thus, in short, the impugned order was wholly unsustainable in law and it expressly defied the law laid down by this Court in the aforesaid Division Bench decision. Therefore, the petition is allowed, the impugned order dated 3.6.1998 is set aside and Rule is made absolute with special costs of Rs. 10,000/- (rupees ten thousand) which shall be equally shared by the respondents and paid to the petitioner. The trial court shall proceed with the trial of the case from the stage the proceedings were dropped and shall conclude it as expeditiously as practicable. A copy of this judgment shall be kept in the personal file of the learned Judge who has passed the impugned order.