

(2011) 01 GUJ CK 0082
In the Gujarat High Court
Case No : Criminal Appeal No. 1092 of 2010

State of Gujarat

APPELLANT

Vs

Nareshkumar Gordhandas Hotwani

RESPONDENT

Date of Decision : 13-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 377
Prevention of Food Adulteration Act, 1954 — Section 7(1)

Citation : (2012) 1 Crimes 570

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : H.L. Jani, app, for the Appellant; D.K. Modi, Advocate, M.D. Modi Advocate For the Respondent No. 2, for the Respondent

Judgement

Z.K. Saiyed, J.—The present appeal, u/s 377 of Code of Criminal Procedure, 1973, is directed against the judgment and order dated 20.3.2010 passed by the learned Chief Judicial Magistrate. Sabarkantha at Himmatnagar in Criminal Case No. 2783 of 2006, whereby the learned trial Judge was pleased to convict both the accused -respondents for the offence punishable u/s 7(1) of the Prevention of Food Adulteration Act and imposed punishment to remain present in the Court till rising of the Court and also imposed fine of Rs.1,000 each, in default, to undergo 7 days S.I. As per the case of the prosecution, the complainant Food Inspector visited the firm of the accused No. 1 on 4.2.2006 and found that accused was running business of selling mints biscuits etc. The complainant purchased three packets of Jesco Glucose biscuits each of 250 gms for analysis purpose. The said sample was sent to Public Analyst, Vadodara and as per the report, the same sample does not fall within the prescribed Rules of Prevention of Food Adulteration Act. Therefore, the complaint was lodged against the accused for the offence punishable u/s 7(1) of the Prevention of Food Adulteration Act and in the result, Criminal Case No. 2783 of 2006 was registered before the learned Chief Judicial Magistrate, Himmatnagar.

2. After considering the documentary evidence as well as oral evidence led before him, the learned trial Judge has held guilty and convicted the accused as stated above by passing the order dated 20.3.2010.

3. Therefore, the appellant -State has preferred present Appeal through Food Inspector Mr. S.A. Patel for enhancing the sentence imposed upon the accused by the learned trial Judge.

4. Mr. H.L. Jani learned APP for the appellant State submitted that the sentence which is imposed upon the accused is not adequate in view of the evidence laid down by the prosecution and has imposed minimum sentence than prescribed under the Act. So far as offence u/s 7(1) of Act is concerned, the order passed by the learned trial Judge is unduly lenient and grossly inadequate. The affidavits at Exhibit 72 and 73 are very well on record and still, however, the learned trial Judge has awarded minimum sentence. Therefore, learned trial Judge has committed grave error and he has prayed to quash and set aside the order by allowing the appeal.

5. Mr. Modi, learned advocate for respondent No. 2 submitted that the order passed by the learned trial Judge is just and proper and therefore, no interference is called for. He also submitted that the complainant was examined by the prosecution and documents were also exhibited and then later on, on 15.10.2009, the affidavits were produced by the respondent accused and then after appreciating the material on record, the learned trial Judge has passed the order.

6. I have perused the documents on record and also considered the submissions made by the learned advocates for the parties. I have perused the judgment and order passed by the learned trial Judge. It appears from the order passed by the learned Magistrate that the learned Magistrate has committed an error in imposing minimum sentence upon the respondent-accused. Learned trial Judge while imposing minimum the sentence, has ignored the provisions of Act. After appreciating the documents from Exhibit 37 to 68 and accused filed pursis for confession of the offence, and even the sample, which was collected for analysis, was found misbranded and also in the judgment and order, it is also observed by the learned trial Judge that the accused have committed the offence punishable u/s 7(1) and even then, the sentence, which is imposed, is minimum i.e. till the rising of the Court with fine of Rs. 1,000 for both the accused. No doubt, the learned trial Judge had considered the decision in case of State of Gujarat v. Natvar Harchandji Thakore. GLH 2005 p. 2122. I have perused the said decision but in the said decision relates to the offence committed under the Bombay Prohibition Act and it is held that the Court is competent to impose less than the minimum sentence for first offence "for special and adequate reasons" that are peculiar to each accused. The reasons must be "special and adequate" to the circumstances in a given case that are "peculiar to the accused in each case". Here in the present case, the accused admitted guilt and Exhibit is reflected blank and there is no Exhibit No. Therefore, it is established that the learned trial

Judge has not taken into consideration the provisions of the Act prescribed under the said Section and thereby has not properly followed the provisions of the law. There is sum and substance in the arguments of Mr. HL Jani learned APP and matter requires to be remanded back for a fresh trial. In the result, this Appeal is partly allowed. The impugned judgment and order dated 20.3.2010 passed by the learned Chief Judicial Magistrate, Sabarkantha at Himmatnagar in Criminal Case No. 2783 of 2006 is hereby quashed and set-aside. The case is remanded to the trial Court with a direction to decide the same on merits and in accordance with law. The learned Principal District Judge, Sabarkantha at Himmatnagar is directed to notify the said Criminal Case before the concerned Judicial Magistrate First Class, Himmatnagar with a direction to decide the said case within a period of six months from the date of receipt of the writ of this order. R & P, if received, be sent back to the trial Court, forthwith.