

**(1993) 04 GUJ CK 0013**  
**In the Gujarat High Court**

**Case No :** Criminal Appeal No's. 747 and 748 of 1991

State of Gujarat

APPELLANT

Vs

Ramesh Dayabhai etc.

RESPONDENT

**Date of Decision :** 15-04-1993

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 98  
Forward Contracts (Regulation) Act, 1952 — Section 17, 20, 21, 22, 22A

**Citation :** (1994) CriLJ 1437

**Hon'ble Judges :** K.J. Vaidya, J

**Bench :** Single Bench

**Advocate :** K.P. Raval, Addl. P.P, for the Appellant; Y.S. Soni, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

K.J. Vaidya, J.—These two appeals by the State of Gujarat are directed against the impugned judgment and order dated 9-7-1991, rendered in two Criminal Cases Nos. 1149/82 and 1150/82, by the learned Chief Judicial Magistrate, Rajkot, wherein in one case the respondent-Ramesh Dahyabhai and in another case Ramesh Dahyabhai and three others, who came to be tried for the alleged offences punishable under Sections 17, 20(e) and 21(f) of the Forward Contracts (Regulation) Act, 1952 (for short-the Act) were at the end of the trial ordered to be acquitted.

2. It may be stated that since both these appeals arise out of the common facts constituting two separate offences, the common reasons for acquittal and identical questions of law arising therefrom, at the joint request and consent of the learned advocates for the parties, they are heard and decided together by this common judgment.

3. According to Mr. G.S. Raghuvanshi, PI, CID Crimes, when he was on duty on Forward Market Cell at Rajkot on 1-9-1981, he received an information that in Soni Bazar, Mandvi Chowk, one Patel Bhanu Parbat and others were illegally

doing business of the Forward Contracts in gold and silver. On verifying the said information, the same was found to be correct and accordingly he alongwith other police personnel proceeded to the place where the alleged illegal business of Forward contract was going on. On reaching the spot and finding the respondents doing the alleged illegal business, they were immediately rounded up and thereafter in presence of Panchas on searching respondents, one note book and some slips as mentioned in the Panchnama were recovered and seized. Thereafter the Muddamal slips in question were forwarded in a sealed condition to the Forward Market Commission at Bombay for examination and its expert report. Ultimately, on receipt of the same, the respondents came to be prosecuted for the alleged offences under Sections 17, 20(e) and 21(f) of the Act by filing two separate cases as stated above in para 1 of this judgment.

4. At trial, the respondents pleaded not guilty and claimed to be tried. Thereafter, the trial court after duly appreciating the prosecution evidence brought on the record, acquitted the respondents mainly on two grounds, viz. (1) that the prosecution has not examined the Panch witnesses and thereby it has failed to establish the recovery of Muddamal slips in question from the possession of the respondents; and (2) that the Panchnama in question was not produced and therefore there was no reliable evidence as regards the complicity of the accused qua the offences alleged against them.

5. Mr. K. P. Raval, the learned APP for the appellant-State while challenging the impugned judgment and order of acquittal has taken this court through the evidence of the prosecution witnesses as well as reasons for acquittal given by the trial court. Mr. Raval submitted that the trial court ought to have accepted and relied upon the evidence of the PI Raghuvanshi (PW-4, Ex-25) which was duly corroborated by other members of the raiding party. Mr. Raval further submitted that merely because Panch witnesses were not examined by the prosecution, that by itself was hardly a ground to discard the evidence of the PI merely because he happened to be the police witness. Mr. Raval further submitted that having regard to the provisions contained in Section 22B of the said Act, which pertains to the presumption to be drawn in certain cases by the trial court even though Panch was not examined, the same should not have come in the way of the court for accepting the evidence of the PI for passing the necessary order of conviction and sentence against the respondents. Mr. Raval further submitted that the trial court has committed an obvious error in attaching undue importance to the trivial inconsistencies appearing in the evidence of the prosecution witnesses. On the basis of the above submissions, Mr. Raval finally urged that since the trial Court has clearly misappreciated the prosecution evidence on the record, the impugned order of acquittal deserves to be quashed and set aside by convicting and sentencing the respondents for the offences with which they are charged.

6. As against the above, Mr. Y. S. Soni, the learned advocate for the respondents submitted that the trial Court has given cogent and convincing reasons for

acquitting the respondents and in fact no ground was made out for interfering with the impugned order of acquittal. Mr. Soni further submitted that even on the same facts if this court was inclined to take a different view of the matter, then even, in the light of several decisions of the Supreme Court, it was not open to this Court to lightly interfere with the order of acquittal. In support of this contention, Mr. Soni has relied upon a decision of the Supreme Court, rendered in the case of *Awadhesh and Anr Vs. State of Madhya Pradesh*, wherein it has been held as under:

"Although the powers of the High Court reassess the evidence and reach its own conclusion are as extensive as in an appeal against the order of conviction, yet, as a rule of prudence, the High Court should always give proper weight and consideration to matters e.g. (1) the view of the trial judge as to the credibility of the witnesses; (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (iii) the right of the accused to the benefit of any doubt, and (iv) the allowance of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. If on appraisal of the evidence and on considering relevant attending circumstances it is found that two views are possible, one as held by the trial court for acquitting the accused, and the other for convicting the accused in such a situation the rule of prudence should guide the High Court not to disturb the order of acquittal made by the trial court. Unless the conclusions of the trial court drawn on the evidence on record are found to be unreasonable, perverse or unsustainable, the High Court should not interfere with the order of acquittal. In the instant case, the High Court did not hold that the view taken by the trial court was not a possible view but reappraised the evidence and took a different view and it explained the infirmities of the prosecution pointed out by the Sessions Judge. The High Court could be said to have disregarded the rule of judicial prudence in converting the order of acquittal to conviction".

7. Mr. Soni further submitted that in the fact and circumstances of the case, the provisions contained in Section 22B of the Act pertaining to presumption was not applicable as the search in question by the PI was not carried out as per the legal requirements warranted u/s 22A of the Act. The said Section 22A and 22B of the Act reads as under:

" SECTION 22-A:- Power to search and seize books of account or other documents:

(1) Any Presidency Magistrate or a Magistrate of the First Class may, by warrant, authorise any police officer not below the rank of Sub-Inspector to enter upon and search any place where books of account or other documents relating to forward contracts or options in good entered into a contravention of the provisions of this Act, may be reasonably suspected to be, and such police officer may seize any such book or document, if in his opinion, it relates to any such forward contract or option in goods.

(2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898) shall so far as may be, apply to any search or seizure made under Sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued u/s 98 of the said Code.

SECTION 22-B:- Presumptions to be drawn in certain cases- (1) where any books of account or documents are seized from any place and there are entries therein making reference to quantity, quotations, rates, months of delivery, receipt or payment of differences or sale or purchase of goods or option in goods, such books of account or other documents shall be admitted in evidence without witnesses having to appear to prove the same; and such entries shall be prima facie evidence of the matters, transactions and accounts purported to be therein recorded. (2) In any trial for an offence punishable u/s 21, it shall be presumed, until the contrary is proved that the place in which the books of account or other documents referred to in Sub-section (1) are seized, was used, and that the persons found therein were present, the purpose of committing the said offence."

8. Mr. Soni further submitted that in the instant case also undisputedly, it is very clear that the PI has not carried out the search of the premises after obtaining warrant from the learned Magistrate authorising him to search the place in question and seize the documents alleged to be pertaining to the Forward Contract etc. When such is the factual and legal position, according to Mr. Soni, Section 22-B of the Act will not come into operation. In support of this contention, Mr. Soni has relied upon a decision of Division Bench of Punjab & Haryana High Court, rendered in the case of State of Haryana Vs. Roshan Lal, , wherein it has been held that while conducting search and seizure if the raid was not conducted under the order of the Magistrate, the presumption u/s 22(b) of the Act cannot be drawn in respect of the documents seized. According to Mr. Soni, if the raid was not conducted under the orders of the learned Magistrate, then a duty was cast upon the prosecution to prove such documents independently and no presumption can be drawn as contemplated u/s 22(b) of the Act. This is also the view taken by the Full Bench of the Bombay High Court in the case of State of Maharashtra Vs. Jayantilal Popatlal Chandrani, etc. etc., .

9. There is a considerable force in the submissions made by Mr. Soni. In the instant case, there is nothing on the record to show that the raid in question was conducted under the orders of the learned Magistrate. If that is the factual legal position, the question of raising presumption u/s 22(B) of the Act will not arise as asserted by the learned APP. Apart from this, examining the case on merits also, the evidence of the prosecution witnesses do not appear to be clear, cogent and convincing enough to connect the accused with the documents recovered and thereby crime alleged against them. On this count, the evidence of the police witnesses is found to be little short and if on the said count the learned Magistrate had thought it fit not to place implicit reliance, it cannot be said that the view taken by him was in any way perverse warranting any interference by this court. Except the aforesaid arguments, nothing further was pointed out by

the learned APP to salvage the situation in favour of the prosecution for taking exception to the order of acquittal. When such is the unassailable position, there is no option left for this court but to confirm the order of acquittal passed by the trial court and is confirmed accordingly.

10. In the result, both these appeals fail and are dismissed.