

(2003) 01 GUJ CK 0008
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 5616 in Criminal Appeal No. 605 of 2005

State of Gujarat

APPELLANT

Vs

Tharkarsibhai Prabhudasbhai Bhatti

RESPONDENT

Date of Decision : 11-01-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Limitation Act, 1963 — Section 5
Prevention of Food Adulteration Act, 1954 — Section 16, 7

Citation : (2003) 24 CriminalCC 47

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : M.A. Patel, app, No. 1, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—The State of Gujarat has preferred this application u/s 5 of the Limitation Act praying condonation of 43 days delay in preferring Criminal Appeal No.605 of 2003 challenging the order of acquittal dated 31.12.2002 passed by the learned JMFC, Kodinar in Criminal Case No.519 of 1994 acquitting the opponent original accused of charge of commission of offences under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act" for short.)

2. Shri Patel, learned Addl.P.P. was heard at length and he was permitted to address this Court on the merits of the appeal also. Shri Patel has produced copies of the relevant papers pertaining to Criminal Case No.519 of 1994 and addressed this Court on merit at length in support of his submission for condoning the. delay.

3. The delay appears to have occurred mainly on account of belated application for certified copy. It is set out in para-2 of the application that the order of acquittal was passed on 31.12.2002 and the certified copy itself was applied for

only on 28.02.2003. It was ready for delivery on 28.02.2003 itself and it was obtained on that very day. Thereafter, the papers were processed at various stages and ultimately, after obtaining appropriate approval for filing appeal from the competent authority, the appeal was filed challenging the order of acquittal dated 31.12.2002 made by the learned JMFC, Kodinar in Criminal Case No.519 of 1994. Ordinarily, in such circumstances, the delay could have been condoned. However, looking to the order of acquittal impugned in this appeal and the clear violation of mandatory provisions of Rule 14 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as "the Rules" for short), this Court is not inclined to condone the delay. It may be noted delay is not condoned only on account of the fact that appeal is bereft of any merits so as to call for any interference from this Court u/s 378 of the Code of Criminal Procedure.

4. Brief facts leading to filing this appeal and application for condonation of delay deserves to be set out as under.

5. The complainant-Food Inspector on 18.12.1993 at 9.30 A.M. in the morning visited the accused dairy run in the style and title of Shanti Dairy farm, at Kodinar. The vendor-owner-accused was present in the dairy. The original complainant after introducing himself as Food Inspector, in presence of panch witness, he purchased 750 ml. grams of cow milk on payment of Rs.2.25 ps. And obtained receipt thereof. The milk purchased was thereafter, transferred into three odourless, dry and cleaned glass bottles in equal proportion and the bottles were fastened with air tide cork. The bottles were sealed in accordance with law. The labels required containing details were also pasted on the sample bottles and one part of the sample was sent to the Public Analyst and remaining two parts were sent to the Local Health Authority. The report of the Public Analyst indicated that the sample food article of Cow Milk was adulterated and therefore, after obtaining necessary sanction for lodging prosecution, complaint being Criminal Case No.519 of 1994 came to be filed. The Food Inspector in his testimony before the trial Court, unequivocally admitted that bottles employed for collecting the sample milk had not been cleaned by him nor had he any knowledge about cleaning the same by staff. He had also pleaded ignorance as to when and where the bottles were cleaned or by whom the bottles were cleaned. This was clear admission on the part of the Food Inspector indicating that the mandatory provisions of Rule 14 of Rules had not been complied with. The trial Court after completion of the trial, came to the conclusion that the prosecution has failed in establishing the guilt on the part of the accused and therefore, the order of acquittal was recorded acquitting the accused of the charges on 31.12.2002. This order is impugned in the present appeal by the appellant State of Gujarat.

6. The trial Court has also discussed at length the infirmities in the case of the prosecution. This appeal and delay condonation application deserves to be dismissed only on count that no useful purpose is likely to be served by calling upon the respondent to answer the delay condonation application and admitting the appeal by granting leave, when on the record, it has come out

unequivocally and the testimony of the Food Inspector that there was a clear breach and violation of mandatory provisions of Rule 14 of the Rules. The order of acquittal, therefore, cannot be said to be in any way perverse or unreasonable or unjustified. It also deserves to be borne in mind that sample food article was collected way back on 18.12.1993, the order of acquittal impugned in this appeal came to be passed on 31.12.2002 and appeal was filed in 2003, which has come up for hearing as to admission with delay condonation application for the first time in the year 2007. Bearing this aspect in mind, it would all the more not proper and interest of justice to call upon the respondent to answer delay condonation application as the appeal is bereft of any merits.

7. This court has time and again held that wherever there is breach of Rule 14 of PFA Rules, the acquittal order based thereon, need not be disturbed u/s 378 of the Code of Criminal Procedure. This Court in case of State of Gujarat Vs. Bhupendra M. Mehta, 1999(1) GLH 227 observed as under:

Para 9: Mr. Vora submitted that a specific question was put about the cleaning of the bottles, but there is no answer by the witness and what is stated is that the bottles were lying in his custody for eight days. Therefore, the bottles were cleaned or not, is not established by the prosecution. He further submitted that the Food Inspector has not stated that he himself has cleaned it or under his supervision, the bottles were cleaned and thereafter, the bottles were properly kept. It is required to be noted that the duty is cast upon the prosecution not only to comply with the mandatory provision of law by using clean and dry bottles for storing the sample but also to satisfy the Court by leading evidence at the Trial Court that the bottles used were clean and dry. In case of M.B. Risaldar Vs. Radheshyam 21(2) GLR 136, this Court has observed as under:

Even I feel that when a witness testified to the effect that the glass bottles were cleaned and dried, a mere visual appearance to the naked eye may not be sufficient sometimes. If no question might have been put to him as to how he can say that the glass bottles were cleaned and dried, probably the matter would have ended there. But he has given out that the peon had cleaned and dried the bottles and put them into the cupboard. In this state of the evidence, it was the duty of the prosecution to examine that peon to show that bottles were properly cleaned and dried and they were put into the cupboard and properly closed.

9.1 In that instant case, if in the evidence the words would have been to the effect that the bottles were cleaned before eight days, and were kept in the cupboard, the Court would not have any hesitation in accepting the same, but as the sentence is not correctly written, it is difficult to say whether it refers to "purchasing" or "cleaning" of the bottles. Therefore also, the benefit should go to the accused.

In the result, the appeal is dismissed.

Thus, it is incumbent upon the prosecution to prove by leading cogent evidence that Rule 14 was absolutely complied with;

8. In this case, in light of the admission of the Food Inspector before the trial Court in his testimony, it can well be said that bottles were not cleaned and he had no knowledge as to when it was cleaned and it can well be said that the trial Court has rightly given the benefit of doubt to the accused and the impugned order cannot be said to deserve to be interfered with u/s 378 of the Code.

9. In the result, this Court is not inclined to condone the delay. The application, therefore, fails. It deserves to be dismissed and is accordingly dismissed.

10. As the application for condonation of delay is dismissed, the leave is refused. Accordingly, the Criminal Appeal stands dismissed.