

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 503 of 2013

FOR APPROVAL AND SIGNATURE:

HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

STATE OF GUJARAT - THRO' B.M PATEL, FOOD INSPECTOR
Versus

NAUSHADALI NAJARALI DHANANI C/O DIDAR TRADERS & 1 other(s)

Appearance:

MS JIRGA JHAVERI, APP for the Appellant(s) No. 1

MR RAHUL DAVE, ADVOCATE for

MR KIRTIDEV R DAVE(3267) for the Opponent(s)/Respondent(s) No. 1,2

CORAM: HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

Date : 22/06/2022

ORAL JUDGMENT

1. Being aggrieved and dissatisfied by the judgment and order passed by the learned Judicial Magistrate, Ist Class, Mangrol dated 25.07.2012 in Criminal Case No. 612 of 1998. The State has moved before this Court by filing this appeal, wherein the facts of the present case are as under.

2. That accused no.1 herein was the vendor and accused no.2 herein was the owner of Didar Traders (Firm). On 05.02.1996, the complainant visited the shop of accused for inspection namely Didar Traders, where the accused no.1 was present. It is further contended that the complainant shown his identity as a Food Inspector to the accused no.1 & 2 and took 450 gms. sample of "Marshal Agmark Chili Powder" for the purpose of analysis. After following necessary procedure, sealed the same in three clean Jars and sent it to the Public analyst, Vadodara, for analysis. In the said report, it was found that the artificial color and wheat starch was added in the said "Chili Powder" and it was adulterated. The complainant obtained necessary sanction from Local Health Authority as per law to lodge complaint against the said accused and lodged the complaint against them before the Judicial Magistrate, First Class, Mangrol.

3. After obtaining the consent of the Local Health Authority as required under Section 20 of the Act, the complaint was filed. The learned Judicial Magistrate First Class, Mangrol, concerned has framed the charge and after adducing the evidence, the learned Judicial Magistrate acquitted the accused. Upon which the State has filed the present appeal on various grounds. One of the main ground is that the Food Inspector has carried out every procedure aspect in accordance with law and therefore the judgment and order passed by the learned Magistrate is improper, perverse and bad in law.

4. This Court has heard the argument advanced by the learned Additional Public Prosecutor Ms. Jirga Jhaveri for the

appellant-State and learned advocate Mr. Rahul Dave for the respondents accused No. 1 & 2.

5. Learned Additional Public Prosecutor Ms. Jirga Jhaveri has drawn the attention of this Court about the deposition of the complainant and also cross examination of the complainant and urged that the learned Judicial Magistrate, First Class has committed error in arriving acquittal of the accused person.

6. Per contra, learned advocate Mr. Rahul Dave for the respondents - accused no.1 & 2 has drawn the attention of this Court that the learned Judicial Magistrate has deleted the manufacturer while proceeding the trial due to non service of summons to the accused No.3. Further, learned advocate for the respondent has drawn the attention that as per the mandatory provision under Section 19(2), it is the manufacturer, who is responsible and not the retailer or wholeseller. Learned advocate for the respondents has also drawn the attention of this Court at the provisions of Section 20(2) Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act, 1954).

7. Learned advocate Mr. Rahul Dave for the respondents - accused no.1 & 2 has also drawn the attention of this Court to the judgment of this Court in the case of State of Gujarat Vs. Ramesh Chandra Gandlal Shah and others reported in 2015 Law Suit (Guj) 908, wherein this Court has held that so long as the status of the persons is concerned, if the warranties occurred invoices in that case, the manufacturer is responsible and not the others.

8. This Court has completely gone through the depositions and charges framed against the accused.

9. Before we advert to the merits of the case, I would like to refer the land mark decisions of this Court and the Hon'ble Apex Court, so long as the scope of power of this Court is concerned, in the case of **Mallikarjun Kodagali (Dead) represented through Legal Representatives v. State of Karnataka and Others, (2019) 2 SCC 752**, wherein the Apex Court has observed as under:

“The presumption of innocence which is attached to every accused gets fortified and strengthened when the said accused is acquitted by the trial Court. Probably, for this reason, the law makers felt that when the appeal is to be filed in the High Court it should not be filed as a matter of course or as matter of right but leave of the High Court must be obtained before the appeal is entertained. This would not only prevent the High Court from being flooded with appeals but more importantly would ensure that innocent persons who have already faced the tribulation of a long drawn out criminal trial are not again unnecessarily dragged to the High Court”.

10. Another decision in **Chaman Lal v. The State of Himachal Pradesh, rendered in Criminal Appeal No. 1229 of 2017 on 03.12.2020, 2020 SCC OnLine SC 988**, wherein the Apex Court has observed as under:

“9.1 In the case of Babu v. State of Kerala, (2010) 9 SCC 189), this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C. In paragraphs 12 to 19, it is observed and held as under:

“12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of

acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide Balak Ram v. State of U.P (1975) 3 SCC 219, Shambhoo Missir v. State of Bihar (1990) 4 SCC 17, Shailendra Pratap v. State of U.P (2003) 1 SCC 761, Narendra Singh v. State of M.P (2004) 10 SCC 699, Budh Singh v. State of U.P (2006) 9 SCC 731, State of U.P. v. Ram Veer Singh (2007) 13 SCC 102, S. Rama Krishna v. S. Rami Reddy (2008) 5 SCC 535, Arulvelu v. State (2009) 10 SCC 206, Perla Somasekhara Reddy v. State of A.P (2009) 16 SCC 98 and Ram Singh v. State of H.P (2010) 2 SCC 445)

13. In Sheo Swarup v. King Emperor AIR 1934 PC 227, the Privy Council observed as under: (IA p. 404) "... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."

14. The aforesaid principle of law has consistently been followed by this Court. (See Tulsiram Kanu v. State AIR 1954 SC 1, Balbir Singh v. State of Punjab AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra AIR 1963 SC 200, Khedu Mohton v. State of Bihar (1970) 2 SCC 450, Sambasivan v. State of Kerala (1998) 5 SCC 412, Bhagwan Singh v. State of M.P(2002) 4 SCC 85 and State of Goa v. Sanjay Thakran (2007) 3 SCC 755)

15. In Chandrappa v. State of Karnataka (2007) 4 SCC 415, this Court reiterated the legal position as under: (SCC p. 432, para 42)

"(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

11. In the aforesaid facts of the decision, perusing the deposition of the Food Inspector, which is at Exh. 16 wherein the procedure aspect is deposed and he was also duly cross examined by the concerned council. Further, it is undisputed fact that in the present case, the manufacturer - accused No.3 is deleted and the case was proceeded only upon accused Nos. 1 & 2, who are not the manufacturer of the so called sample and warranty was also not in issue.

12. Section 19(2) of the Act, 1954 reads as under :

“(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves—

(a) that he purchased the article of food—

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

(ii) in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.”

13. Pursuant to the plain reading of Section 19(2) of Act, 1954, Vendor shall not be deemed to have committed any offence. If he has purchased the article of food in any other status from any manufacturer, distributor or dealer with written warranty in the prescribed form, this Court is of the opinion that the learned Judicial Magistrate has rightly acquitted the accused persons. This Court has also gone through the judgment of this Court in the case of Ramesh Chandra Gandlal Shah (supra), wherein such view is also taken.

14. Thus, on re-appreciation and revaluation of the oral and documentary evidence as referred to, the learned trial Court has rightly observed and also considering the evidence on record that the present respondents are not responsible for charges levelled against them and further the learned Magistrate has not committed any error so long as acquittal is concerned, and learned trial Judge has meticulously considered

the deposition coupled with the provisions of law and therefore in the considering opinion of this Court, the learned Judicial Magistrate has rightly come to a conclusion, which does not call for any interference at the hands of this Court.

15. In view of the aforesaid discussion, *in-fleri*, the prosecution has failed to bring home the charge against accused for want of sufficient material. The findings recorded by the learned trial Judge do not call for any interference. Resultantly, the appeal fails and is dismissed accordingly. The judgment and order passed by the learned Judicial Magistrate, 1st Class, Mangrol dated 25.07.2012 in Criminal Case No. 612 of 1998 recording the acquittal is confirmed. Bail bond, if any, shall stand cancelled. R&P, if received, be transmitted back forthwith.

SALIM/70

(A. C. JOSHI,J)

