

(1995) 04 GUJ CK 0047

Gujarat High Court

Case No: None

Laxmichand Bhailal Thakker

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision: April 27, 1995

Acts Referred:

- Prevention of Food Adulteration Act, 1954 - Section 16(l)(a)(i), 16(l)(a)(i), 7, 7

Citation: (1995) 2 GLR 1528

Hon'ble Judges: D.G. Karia, J

Bench: Single Bench

Judgement

D.G. Karia, J.

This Revision Application is directed against the judgment and order dated May 29, 1985 of the learned Sessions Judge, Ahmedabad in Criminal Appeal No. 159 of 1984 confirming the judgment and order of conviction dated July 25, 1985 passed by the learned Metropolitan Magistrate, Court No. 8, Ahmedabad convicting the petitioner-accused for the offence under Sections 7 and 16(l)(a)(i) of the Prevention of Food Adulteration Act, 1954 and sentencing him to undergo six months" S.I. and fine of Rs. 1,000/- in default to undergo one month S.I. The case of the prosecution is that on June 16, 1983 at about 9-00 a.m. Food Inspector Abdul Razak Shaikh of Ahmedabad Municipal Corporation (which came to be added as a party-respondent pursuant to the order dated March 29, 1995) visited shop of the petitioner. The complainant Food Inspector purchased the ghee from the shop of the petitioner in presence of the panchas. The complainant thereafter divided said quantity of purchased ghee into three parts and packed and sealed in different bottles. One part thereof was sent to the Public Analyst. Report of the Public Analyst was received certifying that the sample analysed by him was found to be adulterated. The complainant having obtained necessary sanction, lodged the complaint against the petitioner-accused in the Court of the learned Metropolitan Magistrate, Court No. 8, Ahmedabad. A summary Case No. 38 of 1983 for the aforesaid offences under the

said Act came to be registered against the petitioner-accused.

3. The petitioner-accused appeared in response to the process issued in the matter. He pleaded not guilty. The learned Magistrate having gone through the record and the evidence on record, held the petitioner to be guilty for the offences and convicted and sentenced him as aforesaid.

4. Being aggrieved and dissatisfied by the said judgment and order of conviction referred to above, the petitioner preferred appeal before the Sessions Court being Criminal Appeal No. 159 of 1984. The learned Additional Sessions Judge, Ahmedabad, by the impugned judgment and order confirmed the order of conviction passed by the trial Court as noted above. It is against this judgment and order of conviction that the petitioner has approached this Court by way of this petition.

5. Mr. Shethna, learned Counsel for the petitioner has taken me through the evidence and the judgments of both the Courts below. Mr. Shethna challenged the manner in which the sample of ghee was collected by the complainant Food Inspector. He submitted that before taking the sample of ghee, the complainant ought to have stirred it so as to make it homogeneous content. In the complaint Exh. 1 as well as in the evidence of the Food Inspector at Exh. 4, there is no mention that before taking the sample, it was stirred so as to make it homogeneous. Mr. Shethna, learned Counsel for the petitioner has mainly raised two points as under:

1. That the complainant Food Inspector did not stirred the ghee and thus sample quantity so collected was not made homogeneous content and, therefore, conviction under Sections 6, 7 and 16 of the Prevention of Food Adulteration Act is vitiated.

2. Report of the Public Analyst does not show that he compared with the specimen impression sent separately and as such, there is a breach of Rule 4 of the Act.

6. On considering the report of the Public Analyst, at Exh. 2, there is nothing to mention in the report that the seal on the sample bottle of ghee was compared by the Director or any other officer authorised by him in that behalf. It is true that the Central Food Laboratory, Poona had recorded in the report Exh. 2 that the seals were intact. However, there is no whisper about the comparison of the seal. Rule 4 of the Rules, 1955 provides with regard to analysis of food samples. Sub-rule (4) of the said Rules contemplates that on receipt of the package containing sample for analysis, the Director or officer authorised by him shall compare the seals on the container and outer cover with specimen impression received separately. There is no material on record that such comparison as contemplated by Rule 4 of the said Rules, 1955 was complied with. In decision of [Clement Chhotalal Cristian Vs. Parshottam Savjibhai Parmar and Another](#), , Rule 4(4) of the said Rules came to be interpreted and it was held that in absence of such compliance, the sanctity and the value attached to the report of the Central Food Laboratory u/s 13 of the Act would

be vitiated and such report cannot be used as evidence against the accused nor could be the basis of his conviction. There being breach of mandatory provisions of the said Rule 4(4) of the Rules, the trial against the accused is vitiated and, therefore, I find much substance in the contentions of Mr. Shethna, learned Advocate for the petitioner. The complainant has deposed at Exh. 4 that he had purchased 450 grams of ghee in an empty clean vessel. Said quantity of 450 grams ghee was taken from the entire quantity of about 9 kilograms ghee. Said sample was collected in panchas" presence and was divided into three parts. There is no whisper as to the entire quantity of Ghee of nine kg. had been stirred before taking the sample therefrom so as to make it homogeneous. Mr. Shethna pointed out that the sample was so collected on February 16, 1983 and as such it would be a day of winter.

7. In view of the facts of the case, I am of the opinion that the entire quantity of ghee should have been heated or boiled and that the contents of the tumbler wherefrom the sample of ghee was collected should have been thoroughly stirred. This becomes all the more necessary as there is prescribed limit for melting and if is above the maximum prescribed, the sample would likely be adulterated. It would, therefore, be necessary to have quantity of ghee homogeneous in character by melting and stirred as well.

For the aforesaid reasons, conviction of the petitioner-accused cannot sustain. This Revision Application is, therefore, allowed. Impugned judgment and order of conviction passed by both the Courts below are quashed and set aside. The petitioner-accused is acquitted. Fine, if paid, be refunded. Bail-bonds stand cancelled. Rule is made absolute in terms indicated above.