

Chandrakant Manilal Dave vs State Of Gujarat on 28 October, 2021

Author: Nirzar S. Desai

Bench: Nirzar S. Desai

C/FA/3226/2021

ORDER DATED: 28/10/2021

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 3226 of 2021

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/FIRST APPEAL NO. 3226 of 2021

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CHANDRAKANT MANILAL DAVE
Versus
STATE OF GUJARAT

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Appearance:

MR. JAIMIN R DAVE(7022) for the Appellant(s) No. 1
for the Defendant(s) No. 2
MS. ASMITA PATEL, AGP for the Defendant(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE NIRZAR S. DESAI

Date : 28/10/2021

ORAL ORDER

ORDER IN FIRST APPEAL:-

Admit.

ORDER IN CIVIL APPLICATION:-

Heard learned advocate Mr. Jaimin Dave with learned advocate Mr. Priyank Dave for the applicant and learend AGP Ms. Asmita Patel for the respondent - State.

Learned advocate Mr. Jaimin Dave for the applicant submits that the present applicant has already accepted the order by imposing Rs.5000/- as fine upon the present applicant and the imposed amount was also duly deposited with the

authority. However, the respondent had chosen to challenge the aforesaid order dated 04.08.2016 passed by the Adjudicating Officer and Additional District Collector, C/FA/3226/2021 ORDER DATED: 28/10/2021 Banaskantha, Palanpur by way of preferring the Appeal No.263 of 2017 before the Food Safety Appellate Tribunal, State of Gujarat as provided under Section 70 of the Food Safety and Standard Act, 2006. He points out that vide order dated 03.08.2021 fine imposed upon the present appellant has been increased from Rs.5000/- to Rs. 75,000/- taking recourse of Section 49 of the Act. It was submitted that only the provisions of Section 49 are incorporated in the impugned order and no discussions regarding on what count the enhancement is required to be given in the order of Appeal No.263 of 2017 is there and therefore, it was submitted that in absence of there being any discussion about the reasons for enhancement of the impugned order, which being a non speaking order, the same is required to be stayed.

Learned AGP Ms. Asmita Patel for the respondent - State vehemently opposes this present application and submits that the present applicant has accepted the order dated 04.08.2016 passed by the Adjudicating Officer and Additional District Collector, Banskantha, Palanput imposed upon Rs.5000/- upon him. She submits that considering the facts of the case and considering the language of Section 49 of the Act misbranding of the food product is established and therefore, learned Food Safety Appellate Tribunal has rightly enhanced the amount of fine to Rs.75,000/-.

Considering the rival submissions, interest of justice would be served, if the impugned order dated 03.08.2021 passed by the Presiding Officer, Food Safety Appellate Tribunal , Gandhinagar is stayed till final disposal of this appeal.

Considering the fact that present appellant has already paid the amount of Rs.5000/- towards fine imposed upon him vide order C/FA/3226/2021 ORDER DATED: 28/10/2021 dated 04.08.2016 by Adjudicating Officer and Additional District Collector, Banaskantha, Palanpur and also considering the fact that in the impugned order there is no justification as to why the amount of fine to be increased Rs. 5000/- to Rs.75,000/-, the present application is required to be allowed.

Civil Application is allowed in terms of paragraph no.7 (B).

It is clarified that the observations made in this application are tentative and are prima facie in nature.

Civil Application stands disposed of as allowed.

(NIRZAR S. DESAI,J) VARSHA DESAI