

Rajkot Municipal Corporation Thro ... vs State Of Gujarat on 15 April, 2024

NEUTRAL

R/CR.MA/1517/2024

ORDER DATED: 15/04/2024

undefi

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 1517 of
2024

In R/CRIMINAL APPEAL NO. 860 of 2024

With

R/CRIMINAL APPEAL NO. 860 of 2024

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RAJKOT MUNICIPAL CORPORATION THRO CHANDRAKANT DESAIBHAI
VAGHELA

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR HRIDAY BUCH(2372) for the Applicant(s) No. 1

for the Respondent(s) No. 2

MS.VRUNDA SHAH ADDL. PUBLIC PROSECUTOR for the Respondent(s)

No. 1

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CORAM:HONOURABLE MRS. JUSTICE M. K. THAKKER

Date : 15/04/2024

ORAL ORDER

ORDER IN R/CRIMINAL MISC. APPLICATION NO.1517 of

1. Learned advocate Mr.Monarch Pandya submits that , the judgment and order of the acquittal was passed by the learned trial court only on the ground that the accused was seller and therefore sanction was provided under section 27(1) of the Food Safety and Standards Act, 2006 (hereinafter referred to as the FSS Act).

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2. Learned advocate Mr.Pandya submits that, 27 is the section where it would cover manufacturer, packers, wholesalers, distributors and sellers. Merely instead of 27 (3) sanction was given under section 27(1) of the FSS Act, 2006 would not amount to non-application of amount by the sanctioning authority.

3. Learned advocate Mr.Pandya has relied on the decision rendered by this Court in the case of "Ashwinbhai H.Acharya Versus Jayeshbhai Madhubhal Madhubhai Chevda and Another", this court in the aforesaid decision observed as under :

"The appellant - Food Inspector of Rajkot Municipal Corporation has challenged the judgment and order dated 18.11.2008 of learned JMFC, Rajkot in Food Criminal Case No.179 of 1999, whereby the respondent was acquitted of the charge of offences punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954 (for short "the Act"), only on the ground that the consent or sanction granted for initiating the prosecution was without application of mind. The only thing against the consent under Section 20 of the Act was that incorrect rule was mentioned in the order and that issue was admittedly directly covered by judgment of this Court in State of Gujarat v. Imtiyaz Haji Abdul Sattar [1997 Criminal Law Journal 4242], wherein it is categorically held that the consent NEUTRAL CITATION R/CR.MA/1517/2024 ORDER DATED: 15/04/2024 undefined order under Section 20 of the Act need not record any reason for granting consent for prosecution. The consent envisaged in the provisions of Section 20 of the Act as condition precedent to prosecution is a written consent for instituting the prosecution under the Act and not a consent for prosecuting the accused for a specific offence. However, in the facts of the present case, the order granting consent (Ex.50) clearly mentioned Sections 2(ix)(k) and Rule 32(e) in the last column of the form indicating the alleged offence and also recorded discussion with the complainant to indicate proper application of mind. Apart from that, it may be erroneous to elevate the status of consent to that of sanction and defeat the prosecution, in view of the spirit and purpose of the Act as also the spirit and purpose of the provisions of Section 465 of Cr.P.C., by finding out one or the other error or omission in the letter of consent. Reference in that regard may be had to State of Gujarat Vs. Chandraprakash K. Sindhi [1999 F.A.J 383]. Any lapse, error or omission in mentioning the Section or Rule for the violation of which prosecution was authorized could not be a ground for acquitting the accused person. Therefore, the impugned judgment is illegal and erroneous to that extent."

4. Learned advocate Mr. Pandya submits that, except this ground there were no other grounds for acquitting the respondent-accused from the charges leveled against him. Learned advocate Mr. Pandya submits that even otherwise the communication which was addressed NEUTRAL CITATION R/CR.MA/1517/2024 ORDER DATED: 15/04/2024 undefined below Exh.35, designated officer had stated that accused had stole and sold the ice-cream and therefore liable for the offence punishable under section 27 of the FSS Act, 2006.

5. Learned advocate Mr.Pandya submits that, after considering the letter below Exh.35 by the sanctioning authority that provided the sanction for the prosecution against the respondent-accused. However only because it refers section 27(1) of the FSS Act, 2006, the learned trial court has acquitted the respondent-accused without any cogent reasons.

6. In view of the above submissions, this Court deems it fit to allow this application and grant leave to prefer an appeal.

7. Hence this application for seeking leave to prefer an appeal is allowed. Leave to prefer an appeal is granted. ORDER IN R/CRIMINAL APPEAL NO.860 of 2024

1. The appeal is admitted. Learned APP Ms.Vrunda Shah waives service of notice of admission on behalf of respondent-State.

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2. Issue Bailable Warrant in the sum of Rs.5,000/- (Rupees Five Thousand Only) against the respondent-original accused.

3. Record and Proceedings shall be called for. Matter be listed in seriatim.

(M. K. THAKKER,J) NIVYA A. NAIR