

Ghanshyambhai Dahyabhai Patel vs State Of Gujarat on 3 March, 2022

Author: Nikhil S. Kariel

Bench: Nikhil S. Kariel

R/CR.MA/6379/2014

ORDER DATED: 03/03/2022

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 6379 of 2014

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GHANSHYAMBHAI DAHYABHAI PATEL

Versus

STATE OF GUJARAT & 1 other(s)

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Appearance:

MR MA KHARADI(1032) for the Applicant(s) No. 1

MS MD MEHTA, APP for the Respondent(s) No. 1

RULE SERVED BY DS for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 03/03/2022

ORAL ORDER

1. Heard learned Advocate Mr.M. A. Kharadi on behalf of the applicant and learned APP Ms.Mehta for the respondent State.

2. By way of this application, the applicant seeks quashment of FIR being C.R. No.I-30/2014 registered with Kalol Taluka Police Station, District Gandhinagar for offences punishable under Sections 406, 420, 272, 273 and 114 of IPC.

3. Learned Advocate Mr.Kharadi for the applicant would submit that the allegations levelled in the FIR are in context of alleged sub-standard food articles which were being sold by the present applicant. Learned Advocate Mr.Kharadi would draw the attention of this Court to the proceedings initiated against the present applicant under the provisions of the Food Safety and Standards Act, 2006 and whereas according to the learned Advocate Mr.Kharadi, in Food Safety (Adjudicating) Case No.27/2016, for the very incident, the applicant under the provisions of Sections 50, 51 and 54 of the Food Safety and Standards Act 2006 R/CR.MA/6379/2014 ORDER DATED: 03/03/2022

(herein after referred to as "FSS Act" for short) has been imposed with a fine of Rs.1,00,000/- as punishment. The said order being passed by the Resident Additional Collector and Adjudicating Officer, Gandhinagar vide an order dated 22.10.2018. Learned Advocate Mr.Kharadi would submit that for the very selfsame purpose, more particularly for ensuring safety and standard of food articles, there being a separate Act and the said Act namely Food Safety and Standards Act, 2006 providing for a separate mechanism for prosecution as well as for penalizing persons, who have committed offence as punishable under the said Act, an FIR for invoking the offence punishable under IPC would not lie. Learned Advocate Mr.Kharadi would further submit that two separate proceedings for the very selfsame incident, could also be stated to be double-jeopardy, more particularly when the proceedings against applicant having been concluded under the relevant provisions, the applicant having been penalized and, according to the learned Advocate, the fine having been paid by the applicant.

4. Learned APP Ms.Mehta attempted to justify the decision of the respondents of filing an FIR, more particularly submitting that since the applicant was found to be indulging in committing offence, which was punishable under IPC, the respondents were well within their right to file an FIR against the present applicant.

5. Heard learned Advocates for the parties.

6. At this stage it would be required to be mentioned that though the FIR inter alia alleges commission of offences punishable under Sections 406, 420, 272, 273 and 114 of the Indian Penal Code, yet the crux of the issue was alleged manufacture and sale of sub-standard food article namely ghee. In this regard it would be pertinent to mention that initiation of any proceedings regarding manufacture and supply of food to the general public are regulated under the Food Safety and Standards R/CR.MA/6379/2014 ORDER DATED: 03/03/2022 Act, 2006. The FSS Act inter alia specifies the procedure for launching prosecution whereas Section 89 of the FSS Act provides that the FSS Act overrides other laws related to food articles. For better appreciation Section 89 of the FSS Act is reproduced herein below:

"89. Overriding effect of this Act over all other food related laws.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

7. In the considered opinion of this Court, once the Special Act has been promulgated which Act inter alia was brought about for ensuring a uniformity amongst all food related laws and whereas the said Act providing for prosecution and penalizing mechanism, the Act also contains provisions having over riding effect then the FIR alleging offences under Indian Penal Code i.e. the general provisions would not lie. It is by now a well settled position of law that a special law prevails over general laws. In this regard this Court proposes to rely upon observations of Hon'ble Apex Court in case of Sharat Babu Digumarti vs. Government (NCT of Delhi) reported in (2017) 2 SCC 18. The Hon'ble Apex Court has laid down at paragraph nos. 37, 38 and 39 as under:-

"37. The aforesaid passage clearly shows that if legislative intendment is discernible that a latter enactment shall prevail, the same is to be interpreted in accord with the said intention. We have already referred to the scheme of the IT Act and how obscenity pertaining to electronic record falls under the scheme of the Act. We have also referred to Sections 79 and 81 of the IT Act. Once the special provisions having the overriding effect do cover a criminal act and the offender, he gets out of the net of the IPC and in this case, Section 292. It is apt to note here that electronic forms of transmission is covered by the IT Act, which is a special law. It is settled position in law that a special law shall prevail over the general and prior laws. When the Act in various provisions deals with obscenity in electronic form, it covers the offence under Section 292 IPC.

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38. In *Jeewan Kumar Raut v. CBI*, in the context of Transplantation of Human Organs Act, 1994 (TOHO) treating it as a special law, the Court held:-

"22. TOHO being a special statute, Section 4 of the Code, which ordinarily would be applicable for investigation into a cognizable offence or the other provisions, may not be applicable. Section 4 provides for investigation, inquiry, trial, etc. according to the provisions of the Code. Sub-section (2) of Section 4, however, specifically provides that offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, tried or otherwise dealing with such offences.

23. TOHO being a special Act and the matter relating to dealing with offences thereunder having been regulated by reason of the provisions thereof, there cannot be any manner of doubt whatsoever that the same shall prevail over the provisions of the Code." And again:-

"27. The provisions of the Code, thus, for all intent and purport, would apply only to an extent till conflict arises between the provisions of the Code and TOHO and as soon as the area of conflict reaches, TOHO shall prevail over the Code. Ordinarily, thus, although in terms of the Code, the respondent upon completion of investigation and upon obtaining remand of the accused from time to time, was required to file a police report, it was precluded from doing so by reason of the provisions contained in Section 22 of TOHO."

39. In view of the aforesaid analysis and the authorities referred to hereinabove, we are of the considered opinion that the High Court has fallen into error that though charge has not been made out under Section 67 of the IT Act, yet the appellant could be proceeded under Section 292 IPC."

8. Having regard to the observation of the Hon'ble Apex Court, the proposition that could be culled out, being that insofar as offences which would stand covered by the said Act, more particularly, the said Act being a special law shall prevail over general and prior laws.

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9. This aspect also has to be considered in context of the fact that the present applicant has been prosecuted under the FSS Act and a fine is also imposed upon the applicant.

10. In conclusion in the considered opinion of this Court, if there is infringement of provisions of a Special Act, then only the provisions of that particular Act could be invoked. In the instant case, as noticed herein above, only allegation is with regard to sub-standard food articles which, in the considered opinion of this Court, is falling within the purview of the provisions of Food Safety and Standard Act, 2006. The proceedings under the said Act having been concluded and the applicant having been penalized for the same, in the considered opinion of this Court, would act as a bar for any further proceedings against the present applicant for the selfsame incident under IPC.

11. In view of the above discussion, the impugned FIR being C.R. No.I-30/2014 registered with Kalol Taluka Police Station, District Gandhinagar and any further proceedings arising therefrom are quashed and set aside. The application is allowed. Rule is made absolute accordingly. Direct service is permitted.

(NIKHIL S. KARIEL,J) V.V.P. PODUVAL