

Sunilkumar Ganpatbhai Prajapati vs G B Rathod Food Safety Officer on 21 April, 2023

Author: Nikhil S. Kariel

Bench: Nikhil S. Kariel

C/FA/1589/2023

ORDER DATED: 21/04/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1589 of 2023

With

CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2022

In R/FIRST APPEAL NO. 1589 of 2023

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SUNILKUMAR GANPATBHAI PRAJAPATI

Versus

G B RATHOD FOOD SAFETY OFFICER

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Appearance:

MR HIMANISH J JAPEE(11295) for the Appellant(s) No. 1
for the Defendant(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 21/04/2023

ORAL ORDER

1. Heard learned advocate Mr. Himanish J. Japee for the appellant and learned AGP Ms. Surbhi Bhati on behalf of respondent no.1.
2. Admit. Learned AGP Ms. Surbhi Bhati waives service of notice on behalf of respondent no.1.
3. With the consent of the parties, the present First Appeal is taken up for final hearing, more particularly considering the very limited issue which requires consideration of this Court.
4. By way of this appeal, the appellant challenges an order dated 01.11.2021, passed by the learned presiding officer, Food Safety Appellate Tribunal, under Section 70 of the Food Safety and Standard Act, 2006 (hereinafter be read as 'FSSAI Act').
5. Learned advocate Mr. Japee, would submit that the present appeal is C/FA/1589/2023 ORDER DATED: 21/04/2023 on a very limited issue, inasmuch as the adjudicating authority had imposed a

penalty of Rs.250/-, upon the present appellant interalia, for contravention of the provisions of the FSSAI Act and whereas the appellant had accepted the order and not challenged the same. Learned advocate would submit that as against the same, the Food Safety Officer had challenged the order passed by the adjudicating Officer before the learned Appellate Tribunal and whereas, vide the impugned order, the learned Appellate Tribunal had been pleased to enhance the penalty imposed from Rs. 250/- to Rs.1,50,000/-. Learned advocate would submit that without going into the legality and validity of the order in question, he would not have any objection, if the penalty which is enhanced to Rs.1,50,000/- is reduced to Rs.50,000/-.

6. Learned AGP Ms. Surbhi Bhati has opposed the present appeal, more particularly contending that the present appellant, was held guilty of contrabanded Sections 52, 53 and 58 of the FSSAI Act and whereas, the appellant had chosen not to challenge the order passed by the learned adjudicating Officer and under such circumstances, the appellant could not challenge the order passed by the Appellate Authority. On the substantive part of the order in question, learned AGP, would further submit that considering the nature of misbranding and further considering the fact that the product which was being sold by the present appellant, if consumed could have serious adverse effects on human beings, the enhancement is absolutely reasonable and whereas, it is requested that this Court may not in any manner interfere with the same.

7. Considering the submissions made by learned advocates from the parties and having perused the documents on record, including the paper- book submitted by learned advocate for the appellant as well as the order passed by the appellate authority, this Court is inclined to accept the request C/FA/1589/2023 ORDER DATED: 21/04/2023 made by the learned advocate for the appellant. The reason for the same, being that the impugned order passed by the appellate authority, does not reflect any reasons whatsoever for the enhancement of the penalty 600 times over. A perusal of the order would reveal that while the appellate authority having discussed the facts, had formulated the issue for consideration, that is whether any enhancement of penalty amount of Rs. 250/- was called for and whereas learned appeal authority has reproduced the provisions under Section 49 of the FSSAI Act, and gone further and observed that since the product in question was found to be a prohibited food product and since it appears that the offence in question had been committed by the appellant with full knowledge and the same would have resulted in the appellant earning substantial profit therefore, the amount of penalty is enhanced from Rs. 250/- to Rs.1,50,000/-.

7.1 In the considered opinion of this Court, the same, would not qualify as an appropriate reasons for enhancement. In the considered opinion of this Court, for enhancing penalty the learned Appellate Tribunal was required to come to a conclusion as to the penalty being imposed upon the appellant being on the lower side and whereas the reasons for the same as well as the reasons for enhancement ought to be reflected on record. As noted herein above, the very general observations would not qualify as being the reasons for enhancement.

7.2 Considering the same, and more particularly having regard to the submissions made by learned advocate Mr. Japee on behalf of the appellant, in the considered opinion of this Court, ends of justice would be met, if the amount of enhancement is reduced from Rs. 1,50,000/- to Rs. 50,000/-.

8. With the aforesaid observations, the present First Appeal is disposed C/FA/1589/2023 ORDER DATED: 21/04/2023 of as allowed. Having regard to the above, and as per the submission of learned advocate Mr. Japee, the difference of the amount i.e. Rs.49,750/-, shall be paid by the appellant within a period of four weeks from today.

9. Consequently, the Civil application stands disposed of. Direct service is permitted.

(NIKHIL S. KARIEL,J) BDSONGARA