

Rajkot Municipal Corporation Thro R. R. ... vs State Of Gujarat on 23 January, 2024

NEUTRAL

R/CR.MA/21134/2023

ORDER DATED: 23/01/2024

undefine

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 21134
of 2023

In R/CRIMINAL APPEAL NO. 198 of 2024

With

R/CRIMINAL APPEAL NO. 198 of 2024

RAJKOT MUNICIPAL CORPORATION THRO R. R. PARMAR

Versus

STATE OF GUJARAT

Appearance:

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

for the Respondent(s) No. 2

MS MONALI BHATT APP for the Respondent(s) No. 1

CORAM:HONOURABLE MRS. JUSTICE M. K. THAKKER

Date : 23/01/2024

ORAL ORDER

ORDER IN CRIMINAL MISC. APPLICATION:

1. This is an application by the applicant - original complainant under Section 378(4) of the Code of Criminal Procedure, 1973, seeking leave of this Court to present an appeal against the judgment and order of acquittal dated 18.11.2022 passed by the learned 4th Additional Sessions Judge, Rajkot in Criminal Appeal No.157 of 2021.

2. Heard, learned advocates appearing for respective parties and perused the impugned judgment and order of the trial Court.

3. Learned advocate Mr.Mrunal Dholaria for learned advocate Mr.Hriday Buch for the applicant submits that the appeal is filed under Section 378 of the Code of Criminal Procedure, challenging the order of acquittal passed by the learned 4 th Additional Sessions Judge, Rajkot acquitting the respondent - accused from the charges NEUTRAL CITATION R/CR.MA/21134/2023 ORDER DATED: 23/01/2024 undefined under Section 58 of the Food, Safety and Standards Act, 2006. The learned advocate submits that before the learned trial Court, the prosecution was held under Section 59 of the Act and the conviction was ordered under Section 58 of the Food, Safety and Standards Act, 2006. The convict was ordered to undergo one month simple imprisonment and penalty of Rs.5000/-. The learned advocate submits that challenging the aforesaid conviction, the appeal was preferred before the learned 4 th Additional Sessions Judge, Rajkot wherein, the learned Sessions Court held that in absence of the particular charge framed against the accused, conviction of the accused under Section 58 is not maintainable. The learned advocate relies on Section 222 of the Code of Criminal Procedure, which is reproduced herein below:-

"222. When offence proved included in offence charged.--(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

Illustrations NEUTRAL CITATION R/CR.MA/21134/2023 ORDER DATED: 23/01/2024 undefined

(a) A is charged, under section 407 of the Indian Penal Code (45 of 1860), with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said section

406.

(b) A is charged, under section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section

335 of that Code."

4. The learned advocate also relies on Section 464 of the Code of Criminal Procedure, which is reproduced herein below:-

464. Effect of omission to frame, or absence of, or error in, charge.--(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby (2) If the Court of appeal, confirmation or revision, is of opinion that a failure of justice has in fact been occasioned, it may,--

(a) in the case of an omission to frame a charge, order that a charge be framed, and that the trial be recommended from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect NEUTRAL CITATION R/CR.MA/21134/2023 ORDER DATED: 23/01/2024 undefined of the facts proved, it shall quash the conviction."

5. The learned advocate has also drawn attention of this Court to the Section for which, the accused was charged i.e. Section 59 and Section 58 for which, the conviction was awarded. The learned advocate submits that Section 58 is the minor offence, as only penalty provisions are there. Therefore, even in absence of the charge, the learned trial Court is having the power to order conviction for the same offence. The learned advocate submits that without considering the above law and the provisions, the learned Appellate Court has passed the judgment and order of conviction which is illegal and, therefore, the same is required to be interfered with.

6. Considering the averments made in the application and submissions made by the learned advocates appearing for the respective parties, this Court finds that there is some arguable case in favour of the applicant, therefore, leave, as prayed for, is granted. This application is allowed.

ORDER IN CRIMINAL APPEAL:

1. The appeal is admitted. Learned APP waives service of notice of admission on behalf of respondent - State.
2. Issue bailable warrant in the sum of Rs.5,000/- (Rupees Five Thousand only) against the respondent - original accused.

3. Record and proceedings be called for from the concerned court. Registry is directed to list the Criminal Appeal in seriatim.

(M. K. THAKKER,J) Hitesh