

# State Of Gujarat vs Pankajkumar P. Vala on 14 February, 2024

NEUTRAL CI

R/CR.MA/20983/2023

ORDER DATED: 14/02/2024

undefined

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 20983  
of 2023

In R/CRIMINAL APPEAL NO. 370 of 2024

With

R/CRIMINAL APPEAL NO. 370 of 2024

STATE OF GUJARAT

Versus

PANKAJKUMAR P. VALA

Appearance:

MS MONALI BHATT, ADDL.PUBLIC PROSECUTOR for the Applicant(s) No.

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for the Respondent(s) No. 1,2

CORAM:HONOURABLE MRS. JUSTICE M. K. THAKKER

Date : 14/02/2024

ORAL ORDER

ORDER IN R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 20983 of 2023

1. Learned APP Ms.Monali Bhatt submits that the judgment and order of acquittal was passed by the learned trial Court acquitting the respondent-accused from the charges under Section 3(1) (ZZ) A read with Sections 26(2), 26(2)(1,2,5), 27(1), 51, 59(1) of Food Safety and Standards Act, 2006 ('the Act' referred hereinafter) .

Learned APP Ms.Monali Bhatt submits that the judgment and order of acquittal was passed by the learned trial Court mainly on the ground that after shelf life of the product was over, the sample was sent to the Referral Laboratory, Gaziabad. Therefore, the accused have been NEUTRAL CITATION R/CR.MA/20983/2023 ORDER DATED: 14/02/2024 undefined deprived from their valuable right under Section 13(2) of the Act and therefore entire proceeding was declared as vitiated.

2. Learned APP Ms.Monali Bhatt has drawn the attention of this Court with regard to the report submitted by the Food and Drugs Laboratory, Vadodara dated 16.09.2013 wherein the sample

which was sent was declared unsafe.

The notice under Section 46(4) of the Act was issued to the respondent-accused intimating that, if the accused want to send the sample to the Referral Laboratory then they may inform to the Food Safety Officer, which was sent on 04.10.2013. In turn, the respondent-accused had intimated vide communication dated 31.10.2013 to the designated officer of Food Safety Board to send the sample at the Referral Laboratory.

3. Learned APP Ms.Monali Bhatt submits that the manufacturing date of the sample was of July 2013 and the shelf life was stated to have been completed within a four months that would be in the month of October 2013.

Learned APP Ms.Monali Bhatt submits that though on 04.10.2013 the intimation was sent to the accused NEUTRAL CITATION R/CR.MA/20983/2023 ORDER DATED: 14/02/2024 undefined persons to avail the remedy under Section 46(4) of the Act, however, the same was informed after 25 days by the respondent-accused and therefore, the prosecution cannot be faulted for the same. Learned APP Ms.Monali Bhatt submits that object and the purpose of the Act are to eliminate the dangers to human life from the sale of unwholesome articles of the food. It is enacted to curb the wide spread evil of food adulteration and is a legislative measure for social- defence.

4. Learned APP Ms.Monali Bhatt relies on the decision rendered by the Apex Court in case of Dineshchandra Jamnadas Gandhi vs State Of Gujarat And Anr, reported in AIR (1989) SC 1011 wherein the Apex Court in paragraphs 7 and 8 held as under:

"7. The argument, no doubt, is somewhat attractively presented; but we are afraid, it is more attractive than sound. The fact that a particular article of food, as indeed most of the articles of food of vegetative origin are, was of plant origin did not render that article necessarily a "Fruit-Product". Even products derived from, or associated in their origin with fruits need not ipso facto be "Fruit- Products" for purposes and within the meaning of rule 29(f). What were envisaged as NEUTRAL CITATION R/CR.MA/20983/2023 ORDER DATED: 14/02/2024 undefined "Fruit-Products" in rule 29(f), will be indicated by the array of items dealt with in Appendix 'B' under item 16-"Fruit- Products"--though the list was in the nature of an exception of R.29. Under the relevant head in Appendix 'B' items referred are: "Fruit Juice"; "Tomato Juice"; "Fruit Syrup"; "Fruit Squash"; "Fruit Beverage"

or "Fruit Drinks"; "Tomato Sauce"; "Tomato Ketchup";

"Tomato Relish"; "Marmalade"; Fruit Chatni" and "Sauce"

etc. The object and the purpose of the Act are to eliminate the danger to human life from the sale of unwholesome articles of food. The legislation is on the Topic 'Adulteration of Food Stuffs and other Goods' [Entry 18 list III Seventh Schedule]. It is enacted to curb the wide spread evil of food adulteration and is a legislative measure for social- defence. It is intended to suppress a social and

economic mischief--an evil which attempts to poison, for monetary gains, the very sources of sustenance of life and the well-being of the community. The evil of adulteration of food and its effects on the health of the community are assuming alarming proportions. The offence of adulteration is a socio-economic offence. In *Municipal Corpn. v. Kacheroo Mal*, [1976] 2 SCR 1(4) Sarkaria, J. Said:

"The Act has been enacted to curb and remedy the widespread evil of food-adulteration, and to ensure NEUTRAL CITATION R/CR.MA/20983/2023 ORDER DATED: 14/02/2024 undefined the sale of wholesome food to the people. It is well-settled that wherever possible, without unreasonable stretching or straining the language of such a statute, should be construed in a manner which would suppress the mischief, advance the remedy, promote its object, prevent its subtle evasion and foil its artful circumvention .....

"(Emphasis Supplied)

8. The offences under the 'Act' are really acts prohibited by the police-powers of the State in the interests of public-health and wellbeing. The prohibition is backed by the sanction of a penalty. The offences are strict statutory offences. Intention or mental-state is irrelevant. In *Good-fellow v. Johnson*, [1965] 1 All E.R. 941 at 944 referring to the nature of offences under the Food and Drugs Act, 1955, it was said:

"As is well known, s. 2 of the Food and Drugs Act, 1955, constitutes an absolute offence. If a person sells to the prejudice of the purchaser any food, and that includes drink, which is not of the nature or not of the substance or not of the quality demanded by the purchaser he shall be guilty of an offence. The forbidden act is the selling to the prejudice of the purchaser .... "

*Smedleys Limited v. Breed*, [1974] All ER 21 is a case, both interesting and illustrative. *Smedleys Ltd.* were NEUTRAL CITATION R/CR.MA/20983/2023 ORDER DATED: 14/02/2024 undefined manufacturers of canned peas of repute. Out of the three and a half million tins of peas the company produced in the year 1971, only 4 complaints were received about the presence of extraneous-matter in the tins. One of them had been purchased by a certain Mrs. Voss from a well known stores. On opening the tin, Mrs. Voss found a small larva of a moth in the tin. The commendable civic zeal of Mrs. Voss who reported the larva infestation of the peas to the local authority had the effect of arraigning *Smedleys Ltd.* before court on charge of violation of the Food and Drugs Act, 1955. Section 3(3) of the Act enabled a defence which the company raised that the extraneous-matter was "an unavoidable consequence of the process of collection or preparation" The company, it would appear from the facts appearing in the report, had installed and elaborate system of spot-checking of the peas by mechanical screening-process before canning which eliminated extraneous-matter of significantly higher or lower specific-gravity than that of the peas. This process was also strengthened and supplemented by visual-inspections by properly trained and experienced employees who worked for short periods to enable sustained concentration along the conveyer-belt carrying the peas to the canning site. To the strange ill luck and embarrassment of

Smedleys the larva which had a specific-gravity and size similar to that of the peas beat NEUTRAL CITATION R/CR.MA/20983/2023 ORDER DATED: 14/02/2024 undefined the screening-machine and also managed, by virtue of its colour and shape, to escape the surveillance of the alert visual-inspectors, who, it is said, were also paid a bonus if they detected and extracted any extraneous- matter. The peas, incidentally, would be pressure- cooked for 20 minutes at 250xF which, would render the larva harmless to human health even if consumed. The company contended that the existence of the larva was despite every possible pre- caution and was "an unavoidable consequence of the process of collection and preparation" within the meaning of Section 3(3) of the Act. The defence did not succeed. Smedleys as well as the seller were convicted. The House of Lords con- firmed the conviction. Lord Hailsham said:

" ..... This innocent insect, thus deprived of its natural destiny, was in fact entirely harmless, since, prior to its entry into tin, it had been subjected to a cooking process of 20 minutes duration of 250xF, and, had she cared to so, Mrs. Voss could have consumed the caterpillar without injury to herself, and even, perhaps, with benefit ....."

"Thereafter, the caterpillar achieved a sort of posthumous apotheosis. From local authority to the Dorchester magistrates, from the Dorchester magistrates to a Divisional Court presided over by NEUTRAL CITATION R/CR.MA/20983/2023 ORDER DATED: 14/02/2024 undefined the Lord Chief Justice of England, from the Lord Chief Justice to the House of Lords, the immolated insect has at length plodded its methodical way to the highest tribunal in the land. It now falls to me to deliver my opinion on its case."

Referring to the nature of the penalties under laws against food adulteration, Lord Chancellor said:

"My Lords, as has been pointed out by my noble and learned friend, Lord Diplock, the expres- sion 'absolute offence' is imprecise. Clearly the offence contemplated in s. 2(1) of the Food and Drugs Act 1955 is an absolute offence if all that is .meant by that is an absence of mens rea. It is one of those offences de- scribed by Wright J in Sherras v. De Rutuzen which 'are not criminal in any real sense, but are acts which in the public interest are prohibited under a penalty'."

Confirming the conviction, Lord Chancellor held:

" ..... sympathise as one may with a manufacturer with a reputation and record as excellent as that of the appellants, to con- strue the Food & Drugs Act 1955 in a sense less strict than that which I have adopted would make a serious in road on the legisla- tion for consumer protection which Parliament has adopted and by successive Acts extended, over a period, now, of more than a century ....."

NEUTRAL CITATION R/CR.MA/20983/2023 ORDER DATED: 14/02/2024 undefined In Pyarali K. Tejani v. Mahadeo Ramchandra Dange, [1974] 2 SCR 154 this court held that what constitutes the

offence under the 'Act' is nothing more than the 'actus reus' and mens-rea need not separately be established.

In Criminal Law by J.C. Smith & Brian Hogan, (5th Edn.), referring to offences in their social-context the authors say:

"The courts are greatly influenced in their construction of the statute by the degree of social danger which they believe to be involved in the offence in question. They take judicial notice of the problems with which the country is confronted. The greater the degree of social danger, the more likely is the offence to be interpreted as one of strict liability. Inflation, drugs, road accidents and pollution are constantly brought to our attention as pressing evils; and in each case the judges have at times invoked strict liability as a protection for society."

5. In view of the same, learned APP Ms.Monali Bhatt prays to allow this application seeking leave to prefer an appeal and to admit this appeal.

6. Considering the submissions, this Court deems it fit to NEUTRAL CITATION R/CR.MA/20983/2023 ORDER DATED: 14/02/2024 undefined allow this application for seeking leave to prefer an appeal. Hence, present application is allowed. Leave to prefer an appeal is granted.

ORDER IN R/CRIMINAL APPEAL NO. 370 of 2024

1. The appeal is admitted.

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) M.M.MIRZA