

State Of Gujarat Through P.K.Patel vs Diparam Homaram Jakhad on 20 December, 2022

Author: Umesh A. Trivedi

Bench: Umesh A. Trivedi

R/CR.RA/973/2018

ORDER DATED: 20/12/2022

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION NO. 973 of 2018

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STATE OF GUJARAT THROUGH P.K.PATEL
Versus
DIPARAM HOMARAM JAKHAD

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Appearance:

MR UTKARSH SHARMA APP for the Applicant(s) No. 1

MR PRAKASH G PANDYA(3041) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE UMESH A. TRIVEDI

Date : 20/12/2022

ORAL ORDER

1. This Revision Application is filed challenging order passed by Judicial Magistrate First Class, Patdi, dated 19.03.2018 below Exh.19 whereby application given by the respondent-accused for discharge from the case came to be allowed.

2. Petitioner herein is a Food Safety Officer under the Food Safety and Standards Act 2006 (for short, 'the Act'), who visited the restaurant owned by the respondent - accused at the address mentioned in the complaint on 21.11.2013 and after following the procedure prescribed under 'the Act' and the relevant rules purchased mix pulses ready to eat food item, which appeared to contain prohibited colours in it. Therefore, after the said purchase, following procedures prescribed, he drawn sample therefrom and sent one of the sample for analysis to Food Analyst, Rajkot. On analysis by the Food Analyst R/CR.RA/973/2018 ORDER DATED: 20/12/2022 of a sample sent to it, it being a proprietary food as per Regulation 2.12 under the Food Safety and Standards (Food Products Standards and Food Additives) Regulations 2011 and since it does not conform to the standards and it contained adulteration of orange and pink colour, Oil Soluble coal tar colour, it came to be declared unsafe and therefore, complaint of breach of Section 26(1), 26(2)(i) and (v)

which is made punishable under Section 59(1) of 'the Act', the said complaint came to be filed against the present respondent-accused. However, after filing the complaint, it was registered as Criminal Case No.780 of 2014 in the Court of Judicial Magistrate First Class, Patdi.

3. However, vide an application Exh.19, dated 21.2.2018, the respondent-accused gave application praying for discharge from the offence as according to him, despite several notices issued to the complainant on several occasions, he did not remain present nor he apply for an adjournment and when case is posted for recording pre charge evidence, it is not being proceeded for negligence on the part of complainant and therefore, he requested to discharge the accused.

4. The learned Judge after hearing the learned advocate for the accused i.e. respondent herein as also learned APP by the impugned order dated 19.3.2018 passed an order discharging the accused under Section 245 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), which is under challenge before this Court by R/CR.RA/973/2018 ORDER DATED: 20/12/2022 way of the present revision application.

5. Mr.Utakarsh Sharma, learned APP submitted that after filing of the complaint since the complainant was transferred prior to filing the same, he could not remain present on certain occasions because of other duties assigned to him. He has further submitted that he being a public servant and having transferable job after filing a private complaint under 'the Act', at times, it may be impossible for him to report to each Court where he has filed a complaint as a complainant being public servant. He has further submitted that since no pre charge evidence was recorded, there is no question of passing an order of discharge of the accused, that too, under Section 245 of 'the Code' as the said provision is for a discharge of an accused in a trial of warrant cases by Magistrate instituted otherwise than on police report. He has further submitted that no dobut after filing of the complaint, he has to remain present before the Court and furnish the pre charge evidence for the purpose of trial but at times, they are being entrusted with so many Government duties over and above their duties as Food Safety Inspector at several places, they may not be present and therefore, learned APP should take care of the case and pray for an adjournment, in case, complainant is unable to report to the Court and give evidence before it. He has further submitted that at any rate, the offence committed by the respondent-accused is very serious offence, that too, offence where it is made punishable with imprisonment with fine, the learned Judge could not have discharged R/CR.RA/973/2018 ORDER DATED: 20/12/2022 the accused, that too, under Section 245 of 'the Code' for an absence of complainant. Therefore, he has requested that prosecution be given an opportunity to lead evidence before the Court at pre charge stage and if there appears no ground to proceed against accused, after complainant gives evidence before the Court, the said power may be exercised by the Court. Therefore, he has prayed that this Revision Application be admitted and allowed.

6. Mr.Prakash G. Pandya, learned advocate for the respondent-accused submitted that this Revision Application is filed beyond the period of limitation as impugned order came to be passed on 19.3.2018 and the revision application is affirmed on 3.8.2018 to be taken as even filing date, it should not be entertained by the Court. He has, drawing attention of the Court to the discharge application tendered by the respondent-accused, submitted that on several adjourned dates, several

notices were issued and served, the complainant did not remain present and therefore, case had not proceeded further despite it being posted for recording pre charge evidence of the complainant. The respondent-accused has to unnecessarily attend the Court on all the dates without any further progress in it, therefore, order impugned passed by the Court is legal and valid and therefore, it should not be interfered with. In short, his submission is that accused is discharged because of absence of complainant to lead evidence in the case filed by him and therefore, when it is filed in delay, without separate application, it should not be entertained and revision R/CR.RA/973/2018 ORDER DATED: 20/12/2022 application is required to be rejected.

7. Having heard learned APP as also Mr. Prakash Pandya, learned advocate for the respondent-accused, it appears that respondent-accused is prosecuted for an offence under 'the Act' offering for sale unsafe food and therefore, he has committed a serious offence under 'the Act' though as revealed from the order impugned passed by the learned Magistrate on several dates, case posted for recording pre charge evidence, it could not be recorded for the absence of the complainant. However, for an adjournment dated 15.11.2017, a notice came to be issued by the Court and it is served to the complainant despite that the complainant did not remain present before the Court and therefore, waiting for him for subsequent three adjourned dates, on 4th occasion i.e. 19.3.2018, the order impugned is passed.

8. Though submission made by the learned advocate for the respondent-accused appears to be correct that the revision application is barred by delay despite that, without any application, the said revision application is filed and it is entertained wherein notice came to be issued. From the record, it is found that Registry had raised an objection that the Revision Application is barred by 42 days delay. An endorsement of learned Public Prosecutor appears that limitation is 180 days, and the said objection appears to be waived by the Registry and therefore, Revision Application placed for hearing. At the same time, the provision under which the respondent-

R/CR.RA/973/2018 ORDER DATED: 20/12/2022 accused prayed for discharge on the ground and Court allowed the same being Section 245 is out of place. The provisions of Section 245 is to be invoked in a warrant triable case, that too, instituted otherwise on police report and pre-charge evidence the case led in a private complaint. Be that as it may, for absence of the complainant, there is a provision made under 'the Code' which should have been invoked either by the respondent-accused or even by the Court putting an end to the prosecution instituted on a complaint, which can be found under Section 256 of 'the Code'. Though, it is provided under Chapter XX titled as 'Trial of Summons Cases by the Magistrate', keeping in mind, the nature of case being faced by the present respondent-accused being a warrant triable even Section 256 could not have been invoked. Warrant triable cases instituted otherwise than on police report, respondent-accused could have been discharged under Section 245 after upon taking all the evidence for and on behalf of the prosecution produced in support of it. Since no evidence was led even at a pre charge stage, learned Judge could not have resorted to Section 245 of 'the Code' to discharge the accused. However, as referred to in Section 256 of 'the Code', presuming it to be a summons case and for absence of complainant, Court is empowered to acquit the accused as mentioned in it, it would become an order of acquittal rendered in a complaint filed by the public servant, which requires filing of an appeal where limitation is 180 days and therefore, the objection raised by the learned advocate for the respondent

- accused that R/CR.RA/973/2018 ORDER DATED: 20/12/2022 revision application is barred by delay which would be at best 42 days delay and in view of limitation prescribed is 180 days it can be treated to be within the time, apart from nomenclature of revision or an appeal. At any rate, on such technicalities a valid case filed for a prosecution under 'the Act' against accused should not be thrown over board. As such, the complainant being public servant and his job is transferable through out the State of Gujarat, over and above his duties as Food Safety Inspector as prescribed under 'the Act' and relevant Rules, he has also to perform other duties as well assigned by the State on all occasions in all different Courts where prosecution is filed at his instance, at times it is impossible to remain present before it on each occasions. However, by that it is not to be stated that he should not remain present. As such, he is supposed to remain present before the Court and when prosecution is manned by the public prosecutor of the Court concerned, he should also assist the cause by taking interest in the said prosecution at the instance of the Food Safety Inspector. Considering overall view of the matter, a genuine and valid prosecution, that too, for an offence under 'the Act' where a restaurant run by the respondent- accused serves unsafe food as prescribed under 'the Act', it should not be throttled at the threshold and complainant be given an opportunity to lead evidence before the Court against such accused. Therefore, in my view, if complainant is permitted to lead evidence, may be at pre charge stage, accused is not going to be prejudice, if no evidence comes on record at pre charge stage, he R/CR.RA/973/2018 ORDER DATED: 20/12/2022 can very well be discharged by the Court. However, with a note of caution to the complainant, he may just ascertain the date in which Court he has filed a case to see that he remains present before the Court diligently and proceed with the prosecution filed at his instance. I deem it fit to allow this Revision Application by quashing and setting aside the order impugned dated 19.3.2018 passed by Judicial Magistrate First Class, Patdi, below Exh.19.

9. Hence, order dated 19.3.2018 passed by Judicial Magistrate First Class, Patdi, dated 19.3.2018 below Exh.19 in Criminal Case No.780 of 2014 is hereby quashed and set aside and the trial Court is directed to proceed further in the case. Trial Court is further directed to see that notice / summons is served to the complainant as also the accused, both have agreed to remain present before the Court on 30.1.2023. Learned Magistrate is further directed to proceed in the case keeping in mind the prosecution is filed in the year 2014, that too, for an offence under 'the Act' though accommodating both the sides reasonably, he may try to conclude the case within reasonable time.

10. In view thereof, this revision appreciation stands allowed to the aforesaid extent.

(UMESH A. TRIVEDI, J) ASHISH M. GADHIYA