

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 241 of 2013****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

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Approved for Reporting	Yes	No
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AHMEDABAD MUNICIPAL CORPORATION

Versus

LALJI ISHWARDAS PATEL & ANR.

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Appearance:

MR DEEP D VYAS(3869) for the Appellant(s) No. 1

MR KV SHELAT(834) for the Opponent(s)/Respondent(s) No. 1

MS JIRGA JHAVERI, ADDL. PUBLIC PROSECUTOR for the

Opponent(s)/Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**Date : 14/09/2026****JUDGMENT**

1. The appellant - Ahmedabad Municipal Corporation has preferred this appeal under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code' for short) against the judgment and order dated 20.07.2012 passed by the learned Metropolitan Magistrate, Court No.8, Ahmedabad (hereinafter be referred to as "the trial Court") in Criminal Case No.9766 of 2010, whereby the trial Court has acquitted the original accused (respondent No.1 herein) from the offences punishable under Sections 7(1) read with Section 16(1)(a)(i) of the Prevention of Food

Adulteration Act, 1954 (hereinafter referred to as 'the Act' for short).

2. Short facts of the prosecution case are that, the appellant and his peon one Jayantibhai G. Solanki, had visited the premises at Ambika Dairy Farm, Ambika Chambers, Opp Uttamnagar, Nikol Road, Ahmedabad, on 06.09.2010 at 11:30 a.m., wherein the respondent No. 1 was present and doing business. That, the appellant, in presence of the Panch witness named Mohammed Chandbhai Mansuri who was called while passing by, gave his identification as the Food Inspector and then inspected the afore-mentioned premises. During inspection of the said premises, the appellant had found that some material was present in an aluminum vessel and on questioning about the nature and price of the food product, it was informed by the accused in presence of the Panch witness that it was 'GHEE' having Price of Rs. 280/- per kg. Then the complainant by paying Rs. 168/- cash in presence of the Panch witness collected the sample of 600 grams. Then the respondent-accused was asked about the ownership of the business for which the respondent-accused replied it to be of his ownership only. The respondent-accused was also asked about the bills of purchase of ghee for which the respondent-accused replied that ghee was prepared by himself and then sold. It was informed in the presence of the Panch to the respondent-accused that the sample collected was to be sent to the Public Analyst, A.M.C. for analysis. A duplicate copy of the written intimation signed by the appellant, respondent-accused and the Panch witness was also given to the respondent-accused. Then the appellant filled the sample Ghee in three empty, dry, clean and labeled glass-bottles which were closed with air tight caps and were seal packed in accordance with the procedure prescribed under the Act, and one part of the sample was sent on the same day through the hands of office peon to the Public

Analyst, A.M.C. for analysis. Rest two samples with forwarding letters were handed over personally to L.H.A and M.O.H. by the appellant.

2.2 According to the report of the Public Analyst, the sample of ghee contained turmeric, which was in violation of the Rules, 1955 and had opined that the sample of the food article which was sold to the appellant was adulterated and hence, after obtaining the sanction to prosecute the respondent-accused from the competent authority Deputy Municipal Commissioner, the appellant had preferred the complaint before the learned Metropolitan Magistrate for the offence under Section 7 and liable to be punishable under section 16 of the Act.

2.3 In order to bring home the charge leveled against the respondent-accused, the complainant has examined 2 witnesses and also produced 19 documentary evidence on record of the case.

3. After closure of the evidence, the statement of the accused under section 313 of the Criminal Procedure Code, 1973 has been recorded wherein he denied of having committed any offence and has stated that he is innocent.

4. After hearing both sides and considering the evidence on records, the trial Court by impugned judgment and order has acquitted the accused from all the charges levelled against him.

5. Being aggrieved by and dissatisfied with the aforesaid judgment and order of acquittal the appellant - Ahmedabad Municipal Corporation has preferred this appeal.

6. Heard Mr. Deep D. Vyas, learned counsel for the appellant – Ahmedabad Municipal Corporation, Mr. K.V. Shelat, learned counsel for the respondent No.1 – original accused and Ms. Jirga Jhaveri, learned Additional Public Prosecutor for the respondent No.2 – State of Gujarat, at length.

7. Mr. Vyas, learned counsel appearing for the appellant – Corporation has submitted the same facts which are narrated in the memo of appeal and has also submitted that the prosecution has examined witnesses and produced documentary evidence, despite this fact, the trial Court has not considered the same in its true and proper perspective in passing the judgment and order of acquittal. Mr. Vyas, learned counsel, while referring to the entire oral as well as documentary evidence, has assailed the impugned judgment and order and submitted that the trial Court has not taken into consideration the evidence connecting the accused to the alleged offence in its proper perspective and even the prosecution has been able to prove the charges levelled against the accused. While referring to the evidence of the witnesses and the material collected against the accused, Mr. Vyas, learned counsel has submitted that the prosecution has established the case against the accused by examining the witnesses, who have supported the case of the prosecution, however, the trial Court has discarded and disbelieved the evidence of these witnesses. He has submitted that the witnesses have fully supported the case of the prosecution, however, the trial Court has not appreciated the same and passed the judgment and order of acquittal which is illegal and unjust. He has submitted that it is settled legal position that the evidence of a single witness is sufficient for conviction if the same is reliable and trustworthy and in the present case, though the evidence of all the witnesses are reliable

and trustworthy, without any cogent reason, the trial Court has disbelieved and discarded the evidence of the witnesses.

7.1 Mr. Vyas, learned counsel has submitted that the trial Court has failed to appreciate the fact from the Public Analyst's Report at Exh.-2 and the Report of Central Food Laboratory, Mysore at Exh.-16 that the samples of the food article sent for examination were specifically found to be adulterated, however, the trial court has not considered this aspect while passing the impugned judgment and order of acquittal. According to Mr. Vyas, learned counsel, the trial Court ought to have convicted the accused and ought to have imposed necessary sentence. He has therefore, prayed to allow the present appeal and to quash and set aside the impugned judgment and order of acquittal.

8. Per contra, Mr. Shelat, learned counsel for the respondent - accused has supported the impugned judgment and order and has submitted that the trial Court has not committed any error of law and fact in acquitting the accused from the charges levelled against him. He has submitted that the ingredients of the offence alleged against the accused are not proved beyond reasonable doubt and, therefore, the trial Court has rightly acquitted the accused as the complainant has failed to prove the charge levelled against the accused. He has also submitted that there is not an iota of evidence connecting the accused with the alleged crime in question. He has, therefore, prayed to confirm the impugned judgment and dismiss the present appeal.

9. On perusal of the impugned judgment and order of acquittal passed by the trial Court, the questions arise for determination are as under:-

- (1) whether the trial Court is justified in passing the judgment and order of acquittal.
- (2) whether the trial Court has rightly appreciated the evidence led by the prosecution in recording the reasons.
- (3) whether there is any illegality, irregularity or any perversity in the impugned judgment and order of acquittal.

10. I have heard the learned counsel appearing for the respective parties and perused the material placed on record. I have also gone through the impugned judgment and order passed by the trial Court. It is the case of the prosecution that on 06.09.2010, at about 11:30 a.m., the complainant, namely, Girish Bhogilal Vora, who was serving as a Food Inspector with the Ahmedabad Municipal Corporation, was on duty and, in the course of his official duties, visited the premises of the respondent-accused situated at Ambika Dairy Farm, Ambika Chambers, Nikol Road, Ahmedabad. At the said premises, with the intention of examining and analyzing the food article, namely, 'Pure Ghee,' the complainant informed the respondent-accused of his intention to obtain a sample for analysis. Accordingly, he purchased 600 grams of Pure Ghee from the container available at the premises. Thereafter, following the prescribed procedure, the complainant drew the requisite samples and completed the necessary formalities relating to seizure and sampling. The said sample was thereafter forwarded to the Local Health Authority for analysis. Upon analysis, the sample was found to be adulterated, as it did not conform to the parameters prescribed under the applicable provisions of the Prevention of Food Adulteration Act and the standards specified in Appendix 'B' thereto. Consequently, a complaint was lodged against the respondent-accused alleging commission of the offence

punishable under the relevant provisions of the Prevention of Food Adulteration Act.

11. After completing the formalities for obtaining sanction from the competent authority, the complainant instituted the prosecution against the respondent-accused and also complied with the mandatory provisions prescribed under the Rules framed thereunder. The report of the Central Food Laboratory, Mysore, was thereafter received and produced at Exh.-16, which is reproduced hereunder :

Certificate of analysis by the Central Food Laboratory, Mysore

Analysis Report:

Sl. No.	Quality Characteristics	Result	PFA Standards as per Item 'A.11.02.15'	Method of Test used
1.	Moisture %	0.33	Not more than 0.5	AOAC 18 th EDN. 2005, 925.10
2.	BRR AT 40 degree C	41.9	40 – 43.5	AOAC 18 th EDN. 2005, 921.08
3.	R.M. Value	27.3	Not less than 24.0	AOAC 18 th EDN. 2005, 925.41
4.	Free fatty acid % (as oleic acid)	0.64	Not more than 3.0	AOAC 18 th EDN. 2005, 940.28
5.	Baudouin test for sesame oil	Negative	Shall be negative	IS: 548, 1976, Part-II
6.	Test for mineral oil (TLC)	Negative	Shall be negative	IS: 548, 1976, Part-II
7.	Test for argemone oil (TLC)	Negative	Shall be negative	IS: 548, 1976, Part-II
8.	Antioxidants	Negative	Shall be negative	FCC, EDN. IV 1996, P-45

9.	Test for added colour	Negative	Shall be negative	IS: 548, 1976, Part-II
10.	Annato colour	Negative	Shall be negative	IS: 548, 1976, Part-II
11.	Test for rancidity	<u>Positive</u>	Shall be negative	C.A.F. by PEARSON 7TH EDN. 1976, Pg. 495-496
12.	Fatty Acid composition by GC	<u>Not similar to ghee profile</u>	-	AOCS Ce-1-62, Ce-2-66

12. The opinion of the Authorized Officer was that the sample did not conform to the standards laid down for 'Ghee' under the provisions of the P.F.A. Act, 1954 and the Rules framed thereunder, as the test for rancidity was positive and the fatty acid profile not similar to ghee profile. Therefore, after considering the report and the relevant documents, the Authorized Officer accorded sanction for lodging the prosecution against the respondent-accused.

13. Now, for considering the charge against the respondent-accused, PW-1, the complainant, deposed before the Trial Court and admitted that he had not followed the mandatory requirements prescribed under the Rules for drawing the sample of 'Pure Ghee' as provided under the Act and the Rules framed thereunder. PW-2, Jayantibhai Gandabhai Solanki, also deposed before the Trial Court and admitted that he was present at the time of drawing the sample; however, he admitted that the procedure prescribed for drawing the sample of 'Pure Ghee' under the Act and the Rules framed thereunder had not been followed. He further admitted that they had collected the sample of 'Pure Ghee' and poured the same into three bottles. Furthermore, with regard to the procedure prescribed for drawing the sample of 'Pure Ghee', the witness has neither referred to nor stated

whether the mandatory provisions of the Act and the Rules framed thereunder had been duly complied with. After evaluating the depositions of the prosecution witnesses and the facts and circumstances of the case, and the settled legal principles enunciated by the Hon'ble Apex Court as well as by this Court, as referred to by the Trial Court in its findings, the Trial Court passed the impugned judgment and order, recording an acquittal in favour of the respondent-accused.

14. Even this Court, while considering a similar set of facts, has held that, in view of the provisions of Rule 14 read with Rule 4(4) of the Rules, 1955, the prosecution had failed to establish the charge against the respondent-accused and had committed a breach of the mandatory provisions of Rules 14 and 4(4) of the Rules, 1955. After referring to and relying upon various authorities, this Court, in a similar set of facts, dismissed the appeal preferred by the very Corporation in the case of **Ahmedabad Municipal Corporation v. Nareshbhai Dahyabhai Patel**, reported in **2026 (0) JX(Guj) 905** while referring to and relying upon the decisions of the Hon'ble Apex Court as well as this Court.

15. At this stage, it would be appropriate to refer to the decisions of this Court, wherein in similar set of facts, this Court has dismissed the appeal preferred by the original complainant / State of Gujarat under the provisions of the Prevention of Food Adulteration Act, 1954 which are as under :

[I] State of Gujarat - Thro C.P. Gohil, Food Inspector Vs. Kishorkumar Ratilal Nathvani, reported in 2022 LawSuit(Guj) 6463;

- [II] State of Gujarat Vs. Lavjibhai Bachubhai Dobariya, reported in 2009 LawSuit(Guj) 681;**
- [III] State of Gujarat Vs. Rameshbhai Maganlal Vaderiya, reported in 2008 LawSuit(Guj) 11;**
- [IV] State of Gujarat - For and on Behalf of J.H. Shah, Food Inspector Vs. Kiritkumar Gopaldas Kakkad Vendor and Owner and Anr., reported in 2010 LawSuit(Guj) 237;**
- [V] State of Gujarat Vs. Harkhchand Dahyabhai, reported in 2000 LawSuit(Guj) 1090;**
- [VI] State of Gujarat Vs. Karsanbhai Melabhai Desai, reported in 2003 LawSuit(Guj) 443; and**
- [VII] Ashokbhai Kanubhai Ravani & 1 Vs. State of Gujarat & 1, reported in 2017 LawSuit(Guj) 554.**

16. While dealing with the quashing petition, this Court has observed that, insofar as the non-compliance with the mandatory provisions of Rules 14 and 4(4) of the Rules, 1955 is concerned, the prosecution itself is vitiated, and this Court has accordingly quashed the prosecution against the accused. In view of the observations made by this Court, while taking a sample of 'Pure Ghee', the procedure prescribed under the Rules is required to be strictly complied with. In the present case, there is no evidence to establish whether the container containing the Ghee was properly heated, as prescribed under the Rules, before the sealing and sampling procedure was undertaken. Thus, in the absence of any evidence regarding compliance with the mandatory provisions of Rules 14 and 4(4) of the Rules, 1955, the order of acquittal recorded by the Trial Court is in consonance with the settled legal principles enunciated and followed in the aforesaid decisions. In view of the above, I am of the opinion that the trial Court has not committed any error of facts

and law in passing the impugned judgment and order and I do not find any illegality, perversity, or infirmity in the impugned judgment and order warranting interference by this Court.

17. It is well settled by catena of decisions that an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. However, Appellate Court must bear in mind that in case of acquittal there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial Court.

18. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court. Further, while exercising the powers in appeal against the order of acquittal, the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the Appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence

on record. A duty is cast upon the Appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether the accused are connected with the commission of the crime with which they are charged.

19. The scope and principles are enunciated by the Hon'ble Apex Court in case of **Chandrappa and others Vs. State of Karnataka** reported in **(2007) 4 SCC 415**, more particularly **paragraph Nos. 42 and 43**, which was subsequently re-affirmed by the Hon'ble Apex Court **Rajesh Prasad Vs. State of Bihar and another**, reported in **[2022] 3 SCC 471**, wherein, the Hon'ble Apex Court has enunciated the general principles in case of acquittal, more particularly in **paragraph No. 26** the general principles are set out by the Hon'ble Apex Court based upon various decisions of the Hon'ble Apex Court. Then in case of **Babu Sahebagouda Rudragoudar Vs. State of Karnataka, reported in AIR 2024 SC 2252 = (2024) 8 SCC 149**, the Hon'ble Apex Court has dealt with the similar issue, more particularly, in **paragraph Nos. 37 to 40**. Hence, I am in complete agreement with the findings recorded by the trial Court.

20. It is also worthwhile to refer to the recent decision of the Hon'ble Supreme Court in the case of **Ramesh vs. State of Karnataka, reported in [2024] 9 SCC 169**, wherein the Hon'ble Supreme Court has held and observed in paras-20 and 21 as under:-

"20. At this stage, it would be relevant to refer to the general principles culled out by this Court in Chandrappa and others vs. State of Karnataka , regarding the power of the appellate Court while dealing with an appeal against a judgment of acquittal. The principles read thus:

"42. (1) An appellate court has full power to review,

reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

21. In Rajendra Prasad v. State of Bihar, a three-Judge Bench of this Court pointed out that it would be essential for the High Court, in an appeal against acquittal, to clearly indicate firm and weighty grounds from the record for discarding the reasons of the Trial Court in order to be able to reach a contrary conclusion of guilt of the accused. It was further observed that, in an appeal against acquittal, it would not be legally sufficient for the High Court to take a contrary view about the credibility of witnesses and it is absolutely imperative that the High Court convincingly finds it well-nigh impossible for the Trial Court to reject their testimony. This was identified as the quintessence of the jurisprudential aspect of criminal justice. Viewed in this light, the brusque approach of the High Court in dealing with the appeal, resulting in the conviction of Appellant Nos. 1 and 2, reversing the cogent and well-considered judgment of acquittal by the Trial Court giving them the benefit of doubt, cannot be sustained."

21. Considering the entire evidence on record, it clearly appears that there is no credible evidence to connect the present accused with the alleged crime and the evidence on record is not so convincing to prove beyond reasonable doubt that the accused has committed the alleged crime. Therefore, the accused cannot be convicted on the evidence on record.

22. On perusal of the impugned judgment and order, it clearly transpires that the trial Court has not committed any error of fact and law in appreciating the evidence on record and in acquitting the accused from the charges levelled against him. Even on re-appreciation of the evidence, it clearly transpires that the prosecution has miserably failed to prove the charge levelled against the accused beyond reasonable doubt. Therefore, the impugned judgment and order of the trial Court is sustainable and the present appeal is liable to be dismissed.

23. In view of the above, the present appeal is devoid of merits and it deserves to be dismissed. Resultantly, it is dismissed. The impugned judgment and order of acquittal passed by the trial Court is hereby confirmed. Bail bond stands cancelled. Record and proceedings be sent back to the concerned Trial Court forthwith.

(HEMANT M. PRACHCHHAK,J)

Dolly