

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1457-1463 OF 2004

State of Gujarat and Anr.

..Appellants

Versus

Rameshchandra Shivratan Kosar and Anr. etc.

..Respondents

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Challenge in these appeals is to the judgment of a learned Single Judge of the Gujarat High Court allowing seven applications filed in terms of Section 482 of the Code of Criminal Procedure, 1973 (in short the ‘Code’). In the applications prayer was made to quash the proceedings pending before four Judicial Magistrates and one Chief Judicial Magistrate before whom three proceedings were pending. The cases were instituted on

the basis of complaints filed for alleged commission of offences punishable under Section 16 read with Section 7(1) and 7 (5) of the Prevention of Food Adulteration Act, 1954 (in short the 'Act'). It was indicated in the complaints that the Food Inspector had gone to the shop of the respondents and had obtained sample in accordance with the Prevention of Food Adulteration Rules, 1955 (in short the 'Rules'). The samples were sent to the public analyst and the report was received showing that the food product of samples which were collected contained 'Saccharin'. The use of Saccharin or addition thereof in a food product was impermissible and food articles containing Saccharin which was not permitted to be used made the food article adulterated. The present respondents had stored the food articles in the business premises with the intention to sell them and had actually sold the articles to the Food Inspector. On receiving the complaints the concerned Magistrates registered the complaints and issued process. The High Court was moved for quashing the complaints. It was the stand of the applicants that the sample did not contain any prohibited substance and the food article was not adulterated. The stand was that the food product in respect of which the samples were collected was really a Pan Masala and, therefore, has to be construed as such. It was therefore submitted that if it is treated as Pan Masala it fulfills the requisite standard.

2. Stand of the present appellants was that the quantum of artificial sweetener exceeded the maximum limit of artificial sweetener.

3. The High Court accepted the prayer on the ground that the complaint did not disclose any offence. Accordingly, the proceedings were quashed.

4. In support of the appeals, learned counsel for the appellants submitted that it is not a case where Section 482 of Code has any application. The exercise of jurisdiction under Section 482 of Code should not have been made. Reference is made to the Food Analyst report on the basis of which the proceedings were initiated.

5. Learned counsel for the respondents on the other hand submitted that the analysis by the public analyst was not done keeping in view the requisite parameters. It is submitted that the norms which were applicable when the analysis were made had not been kept in view.

6. The parameters for exercise of jurisdiction under Section 482 of the Code has been highlighted by this court in large number of cases. To a

pointed query as to whether in the petition filed before the High Court there was any challenge or any specific stand taken about the requisite norms having not been followed by the public analyst, it was submitted that though that was not specifically done yet the specific stand was that there was no violation and the ingredients were within the permissible limit. The High Court does not appear to have considered this aspect at all and factual controversies were involved which could not have been adjudicated in the proceedings under Section 482 of the Code.

7. That being so, the exercise of power under Section 482 of the Code is clearly indefensible. The impugned order of the High Court is set aside. The appeals are allowed. We make it clear that we have interfered in the matter because the scope and ambit of Section 482 of the Code had not been kept in view and not on merits.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
April 28, 2009