

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
(MUNICIPAL) RAJKOT

Order below Ex.1

Case no.100113/1999

1. The gist of the case is that **Kishorbhai Narshibhai Jadav**, Food Inspector on dated **11/06/1997** visited **shop** of the accused where the accused was selling **Orange Soft drinks** for human consumption. On suspicion, Food Inspector i.e. complainant of the present case had decided to purchase the **Orange Soft drinks** as a sample for analysis and thus purchased 6 **bottles** of **Orange Soft drinks** after paying of **Rs.21/-** in cash to accused. It was found in report of public analysis, the sample was **misbranded** and private complaint under the prevention of Food Adulteration Act, 1954 was registered against accused.
2. Heard the Ld. Advocate **Mr. A.Y.Shah** for prosecution side i.e. Rajkot Municipal Corporation (RMC), the present case is more than 20 **yrs old** and the case is being a private complaint and warrant triable pending on the stage of serving of warrant to accused since long. Further the complainant, Food Inspector is expired on dated **14/10/2018** and the pursis was passed by the Ld. Advocate for RMC at **Exh.86** on record and the copy of the death certificate of complainant at **Exh. 87** on record.

3. At this juncture, let me discuss the law laid down in section 245 (2), Cr.P.C which says that "Nothing in the section shall be deemed to prevent a magistrate from discharging the accused at any previous stage of the case, if for the reasons to be recorded by such magistrate, he considers the charge to be groundless".

Thus, if there is no more ground to proceed the case against accused, the magistrate has a power to discharge the accused.

4. In the present case, sample was taken by the Food Inspector who has been expired and in the case filed against the accused for offence punishable under the provisions of Food Adulteration Act, the evidence given by the Food Inspector is of utmost important. Food Adulteration cases revolve mainly around technical points. In such cases the Food Inspector who collects the samples and sends it to the office of the Public Analyst is required to follow certain procedure for the purpose of collecting the sample, sealing it and sending it to the office of Public Analyst. Thereafter, he has to give a notice to the accused after receipt of the report of the Public Analyst and after filing of complaint against the accused within the prescribed time enabling such an accused to get his sample analysed from Central Laboratory.

Thus, in such case, examination of the Food Inspector is immense importance in respect of technical points and rules framed under the Food Adulteration Act. But as the

complainant has died, examination of complainant, F.I. cannot be taken on record.

5. The present case against accused is more than 20 years old. Also the said case cannot be proved in absence of deposition of star witness that is complainant and therefore in view of the above discussion, the present accused deserves to be discharged. Hence the following order is passed.

FINAL ORDER

1. The accused is hereby discharged as per section 245(2) Cr.P.C for the alleged offence punishable under section 7 read with section 16 of Food Adulteration Act.

The Final Order signed, pronounced and declared in the open court at Rajkot today i.e. on dated 09/09/2023.

Place:Rajkot

Dated:- 09/09/2023

N.T.KARIA

J.M.F.C(Municipal)

Rajkot

GJ 01333