

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION NO. 539 of 2009****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE S.V. PINTO Sd/-**

=====		
Approved for Reporting	Yes	No
		√

=====

MAHESH KASHIRAM PATEL
Versus
STATE OF GUJARAT & ANR.

=====

Appearance:

MS TORAL N DESAI(5610) for the Applicant(s) No. 1

MRS KALPANA K RAVAL(1046) for the Respondent(s) No. 2

MS.C.M.SHAH, APP for the Respondent(s) No. 1

=====

CORAM:HONOURABLE MS. JUSTICE S.V. PINTO**Date : 19/08/2026****ORAL JUDGMENT**

1. The present Criminal Revision Application has been preferred by the applicant under Sections 397 read with 401 of the Code of Criminal Procedure ("Cr.P.C." for short), challenging the judgment and order passed by the learned Additional Sessions Judge, Court No.15, Ahmedabad in Criminal Appeal No.117 of 2006, dated 24.08.2009, whereby, the learned Sessions Judge dismissed the criminal appeal preferred by the

applicant – original accused confirming the judgment and order passed by the learned Metropolitan Magistrate, Court No.6, Ahmedabad passed in Criminal Case No. 26 of 1995 dated 26.12.2006, whereby, the present applicant was convicted for the offence under Section 7 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act' for short) and sentenced to undergo simple imprisonment for a period of six months and fine of Rs.1000/- and in default, simple imprisonment of 30 days.

2. The brief facts leading to filing the present revision application are as under :

2.1. The respondent No.2, on 25.05.1995, collected three samples of cow milk in separate bottles from the milk shop run by the present applicant. Out of the said three samples, one sample was forwarded to the Public Analyst for analysis. As per the report dated 12.06.1995, the sample contained 2.8% milk fat as against the prescribed minimum of 3.5%, whereas the SNF was found to be 8.5%. Thereafter, sanction under Section 20 of the Prevention of Food Adulteration Act, 1954 was obtained from

the Deputy Commissioner on 06.10.1995. It is the case of the applicant that the said sanction was accorded mechanically and without due application of mind.

2.2. Pursuant to the sanction, respondent No.1 filed a complaint against the applicant, which culminated in Criminal Case No.26 of 1995. Upon receipt of the warrant, the applicant requested the learned Trial Court to forward one of the remaining samples to the Central Food Laboratory, Ghaziabad. Accordingly, the sample was sent on 01.02.1996 and was received by the Central Food Laboratory on 15.04.1996. As per the report dated 04.06.1996, the sample contained 3.3% milk fat and 7.64% SNF.

2.3. The learned Trial Court, after considering the documentary as well as oral evidence on record, including the Central Food Laboratory report, the Public Analyst's report and the depositions of the concerned witnesses, convicted and sentenced the applicant for the offences punishable under Sections 7 and 16(1)(A) of the Act.

2.4. Being aggrieved by the said judgment and order

passed by the learned Trial Court, the applicant preferred Criminal Appeal No.117 of 2006 before the learned City Sessions Court, Ahmedabad. The learned Additional City Sessions Judge, Ahmedabad, after considering the matter, dismissed the appeal and confirmed the judgment and order of conviction and sentence passed by the learned Trial Court.

2.5. Being aggrieved and dissatisfied with the judgment and order passed by the learned Additional City Sessions Judge, Ahmedabad, the applicant preferred the present revision application.

3. Heard learned advocate Ms.Toral Desai for the applicant, learned APP Ms.C.M.Shah for the respondent no.1 – State and learned advocate Ms. Kalpana Rawal for the respondent no.2. Perused the impugned judgment and order passed by the Appellate Court as well as judgment and order passed by the learned Trial Court and have re-appreciated the entire evidence of the prosecution on record of the case.

3.1. Learned advocate Ms. Toral N. Desai for the applicant submits that the impugned judgments and orders passed by the Courts below are ex-facie illegal, erroneous and

contrary to the provisions of the Act and the Rules framed thereunder. The learned Trial Court and the learned Appellate Court have failed to properly appreciate the Central Food Laboratory Report, particularly, the delay in forwarding the sample to the Central Food Laboratory and the consequent prejudice caused to the applicant in exercising his valuable right under Section 13 of the Act. Learned advocate further submits that the CFL Report was not obtained within the prescribed period and the delay had adversely affected the condition and quality of the sample. Moreover, the sanction under Section 20 of the Act was granted mechanically and without due application of mind and mandatory Rule 14 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as 'the Rules') was not duly complied with and the learned Trial Court has erroneously relied upon the bare statement of the Food Inspector regarding such compliance. The learned Trial Court and the learned Appellate Court have also failed to properly appreciate the scope and ambit of Rule 9-B of the Rules. The Food Inspector had admitted that formalin was added separately to each sample after collection, and therefore,

the proper procedure for preservation of the sample was not duly followed, causing serious prejudice to the applicant. Learned advocate submits that on these grounds, the findings recorded by the Courts below have resulted in gross miscarriage of justice and, therefore, the impugned judgments and orders deserve to be quashed and set aside and the applicant deserves to be acquitted.

3.2. Learned APP Ms.C.M.Shah for the respondent no. 1 – State and learned advocate Ms. Kalpana Rawal for the respondent no.2 have jointly submitted that the learned Trial Court and the learned Appellate Court have have appreciated all the evidence in true perspective and have not committed any error in convicting the accused. Therefore, no interference of this Court is required in the impugned judgments and the orders passed by the learned Courts below and has urged this Court to reject the application.

4. The Hon'ble Supreme Court, in the case of **Nemi Chand Vs. State of Rajasthan** reported in **AIROnline 2016 SC 7**, has observed as under :

"2. It is not in dispute that the charge against the appellant was only of sub-standardization of goods. Mr. Sushil Kumar Jain, learned senior counsel appearing for the appellant, submits that though the appellant has some prima facie case even on merits, he would be giving up the plea on merits and his only submission is about the sentence which has been imposed by the courts below. He has, in this behalf, argued that there has been an amendment in the Act by the Central Amendment Act 34 of 1976 whereby Section 16A was added and under the said section, only a fine is leviable. He has drawn our attention to the judgment of this Court in "T. Barai V. Henry Ah Hoe and Another" [1983 (1) SCC 177] wherein this Court held that since the amendment was beneficial to the accused persons, it can be applied even with respect to earlier cases as well which are pending in the Court. In the said judgment, the Court held as under :-

"22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear 4 that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense. This finds support in the following passage from Craies on Statute Law, 7th Edn., at pp. 388-89:

A retrospective statute is different from an expost facto statute. "Every ex post facto law...." said Chase, J., in the American case of *Calder v. Bull* "must necessarily be retrospective, but every retrospective law

is not an ex post facto law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement: as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction.... There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime."

From the facts of the present case, we have no doubt in mind that the aforesaid judgment squarely applies thereon. This appeal is, therefore, partly allowed and the sentence imposed upon the appellant is modified by imposing fine of Rs. 50,000/- which shall be deposited within two months with the trial court. On deposit of the aforesaid amount, the bail bonds furnished by the appellant shall be discharged."

5. Considering the submissions advanced by the learned advocates for the respective parties, the material available on record and the findings recorded by the learned Courts below, this Court is of the view that the applicant has been facing criminal proceedings since the year 1995. The sample in question was collected on 25.05.1995, whereas the same was received by the Central Food Laboratory, Ghaziabad only on 15.04.1996. The Central Food Laboratory, in its report

dated 04.06.1996, found the milk fat to be 3.3% and SNF to be 7.64%. Thus, there was considerable delay in forwarding the sample to and its receipt by the Central Food Laboratory, which has to be considered in the context of the valuable right available to the applicant under Section 13 of the Prevention of Food Adulteration Act, 1954.

6. At the same time, having regard to the overall facts and circumstances of the case, the nature of the alleged adulteration, the fact that the incident pertains to the year 1995 and the prolonged passage of time during which the applicant has faced the criminal proceedings, this Court is of the considered view that the ends of justice would be met by modifying the sentence imposed upon the applicant, while maintaining the conviction recorded by the learned Courts below.

7. The Hon'ble Supreme Court, in the case of **Nemi Chand (Supra)**, while considering the beneficial amendment reducing the punishment under the Act, has held that where an amendment is beneficial to the accused by reducing the rigour

of the punishment, the benefit thereof can be extended to the accused. Accordingly, the Hon'ble Supreme Court has modified the sentence imposed upon the applicant by substituting the substantive sentence with a fine.

8. Considering the aforesaid principle laid down by the Hon'ble Supreme Court and having regard to the peculiar facts and circumstances of the present case, particularly the fact that the case pertains to the year 1995, the nature of the offence and the prolonged pendency of the proceedings, this Court is of the opinion that no useful purpose would be served by directing the applicant to undergo the substantive sentence at this stage. The sentence, therefore, deserves to be modified by imposing an appropriate fine.

9. Accordingly, the present Criminal Revision Application is partly allowed. The conviction of the applicant recorded by the learned Trial Court for the offences punishable under Sections 7 and 16(1)(A) of the Act and confirmed by the learned Sessions Court is hereby maintained. However, the substantive sentence imposed upon the applicant is modified to

the extent that the applicant to pay an additional fine of Rs.25,000/- (Rupees Twenty Five Thousand only).

10. The aforesaid amount of fine shall be deposited by the applicant before the learned Trial Court within a period of four weeks from the date of receipt of this order. In case of failure to deposit the said amount within the stipulated period, the original sentence imposed by the learned Trial Court and confirmed by the learned Appellate Court shall revive and the applicant shall be liable to undergo the same in accordance with law.

11. Upon deposit of the aforesaid amount of fine, the bail bonds, if any, furnished by the applicant shall stand discharged. The applicant shall be entitled to the benefit of the period of sentence, if any, already undergone, in accordance with law.

12. Rule is made absolute to the aforesaid extent. Direct service is permitted.

F.S. KAZI

**Sd/-
(S. V. PINTO,J)**

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: KAZI FARUKHUSEN(HC01075), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 01/09/2026 18:40:32