

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL APPEAL NO. 1316 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE UMESH A. TRIVEDI**

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Approved for Reporting	Yes	No
		No

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S.C.DESAI

Versus

PARSHOTAMBHAI JADAVBHAI MONPARA &amp; ANR.

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Appearance:

MR KAUSHAL D PANDYA(2905) for the Appellant(s) No. 1

NOTICE SERVED for the Opponent(s)/Respondent(s) No. 1

MS MEGHA CHITALIA, ADDITIONAL PUBLIC PROSECUTOR for  
the Opponent(s)/Respondent(s) No. 2

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**CORAM:HONOURABLE MR. JUSTICE UMESH A. TRIVEDI****Date : 25/06/2025****ORAL JUDGMENT**

[1.0] This Appeal is filed by the appellant, who is Food Inspector of Surat Municipal Corporation, under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment and order of acquittal recorded by the learned Judicial Magistrate First Class, Municipal Court, Surat dated 31.07.2006 in PFA Case No.5 of 2005 whereby the respondent - accused came to be acquitted of the charge punishable

under Section 7(3) and (16) of the Prevention of Food Adulteration Act, 1954 (*hereinafter referred to as 'the Act, 1954'*) for breach of Rule 50 of the Prevention of Food Adulteration Rules, 1955 (*hereinafter referred to as 'the Rules, 1955'*) and Rule 5 of the Gujarat Prevention of Food Adulteration Rules, 1961 (*hereinafter referred to as 'the Rules, 1961'*), giving benefit of doubt to the respondent - accused.

[2.0] According to the case of the complainant before the Court, the complainant is appointed as Food Inspector as per the provisions made in '*the Act, 1954*' and is authorized to inquire into /investigate within the limit of Corporation of the premises dealing with food articles and take sample or see that provisions of '*the Act, 1954*', and Rules are being followed or not. He is also authorized to take sample of food article, send it to the Public Analyst, Surat Municipal Corporation and perform other duties as assigned to him by the Local Health Authority.

[2.1] The complainant Food Inspector on 28.12.2004 at about 5:00 p.m. visited, during the course of his duty, premises situated at the address shown in the cause title of the complaint where he found the respondent - accused, who is running business in the name of Swagat Water, storing packed carboys of 'packaged drinking water' for the purpose of sale to the consumers and selling the same. According to him, 'packaged drinking water' is a 'food' as defined under Section 2(v) of '*the Act, 1954*' and if it is stored for the purpose of sale to the consumer and it is sold, it is required to have license as provided under Rule 50 of '*the Rules, 1955*' as also under Rule

5 of '*the Rules, 1961*'.

[2.2] He was asked for license duly issued for the year 2004-05 for dealing in 'food' as provided under Rule 50 of '*the Rules, 1955*' for verification. He was also asked if he does not have that license, if any prescribed fees is deposited for the purpose of the same, even he was asked to produce the receipt thereof. However, respondent - accused was unable to show any such license or receipt of fees, and therefore, respondent - accused was informed that within 7 days to show receipt of payment towards license fees and it was given to him by way of written notice. Since respondent - accused refused to sign the said notice, in token of having received it, the said notice was pasted on the open door of the premises in presence of Peon - Chetan Sharma.

[2.3] Despite expiry of seven days, accused failed to show any receipt or even a license. It was verified from his office but he did not obtain any license from the office. Thus, respondent - accused committed an offence for breach of Rule 5 of '*the Rule, 1961*', Rule 50 of '*the Rule, 1955*' and in breach thereof when article of 'food' was stored for the purpose of sale to the consumer and selling it, doing business in respect thereof, he committed an offence under Section 7(3), which is punishable under Section 16 of '*the Act, 1954*'. Therefore, on 03.03.2005 complaint in respect thereof before the competent Court came to be filed. Needless to say that prior to filing of the complaint under Section 20 of '*the Act, 1954*', complainant obtained written consent from Deputy Commissioner of Health and Hospital, being a Local Health Authority, which was

produced alongwith the complaint for the purpose of taking cognizance by the Court.

[2.4] During the course of trial, depositions of two witnesses, appellant - original complainant - Food Inspector as also Chetan Kantilal Sharma was recorded. Over and above that, seven documents were produced and proved. On conclusion of evidence and recording further statement under Section 313 of the Code of Criminal Procedure, 1973, arguments of both the sides were heard in detail. Considering the submissions made, when the documents were proved before the Court and applying the law applicable to the facts of the present case, learned Magistrate has passed the judgment and order of acquittal, which is challenged before this Court, as aforesaid.

[3.0] Heard Mr. Kaushal Pandya, learned advocate for the appellant. According to his submission, not only the Food Inspector's duty is to draw a sample but he can verify and ascertain whether any license, if required for a person, who is dealing in food article is there or not. He has further submitted that it is not necessary that while examining there is any license possessed by a person as required under the Act and Rules, to draw the sample of any food article and /or to conduct both the things together, if, Food Inspector, at the the time of visit, finds that a person is dealing with manufacture, sale, etc. of food articles without any license, as required under '*the Act, 1954*' and the Rules, he can straightaway examine that and verify the same. There is a prohibition to manufacture, sale or store for sale etc. of food article without

license as required under the provisions of applicable law, and therefore, it is also as a part of duty of the Food Inspector to ask for the same. It is not necessary for him, always, to draw the sample of food article to lend assurance to his official duty.

[3.1] Drawing attention of the Court to the depositions recorded, he submitted that not only the Food Inspector but witness Chetan Sharma - Peon, who accompanied him at the premises of respondent - accused, saw the plant was running and carboys were filled with 'packaged drinking water' for the purpose of sale. They were stored not only in the premises but in Tempo as well. He has further submitted that though 'water' simplicitor is excluded from the provisions of the Act and the Rules, 'packaged drinking water' and 'mineral water' are not excluded from the provisions of the Act and the Rules. As provided under the Rules, not only both requires BIS certification mark on the package, they are also supposed to meet with the standards prescribed in Appendix 'B' of '*the Rules, 1955*'. Therefore, if 'water' may not be covered under the provisions of '*the Act, 1954*' and Rules, 'packaged drinking water' and 'mineral water' are surely articles of food and they are covered under the provisions of '*the Act, 1954*' and Rules, and therefore, the person manufacturing, storing for sale or selling 'packaged drinking water' or 'mineral water' is required to have license as provided under '*the Rules, 1955*' and '*the Rules, 1961*'.

[3.2] He has further submitted that the signboard of Swagat Water displaying 'packaged drinking water' is also deposed to by him before the Court. According to him as also

witness - Chetan Sharma, the respondent - accused was dealing in 'packaged drinking water', and therefore, he was supposed to have license issued by the competent authority as provided under the Rules. Therefore, the same was demanded but the respondent - accused was unable to produce the same despite sufficient time was given to produce even receipt evidencing and applying for license or for renewal of the same for the year 2004-05. Having failed to satisfy the same, the aforesaid prosecution was launched against the respondent - accused before the competent Court, which ended in the acquittal of the respondent - accused, and therefore, the present Appeal is filed challenging the same on the aforesaid submissions.

[3.3] Though notice is served, respondent no.1 is neither present in person nor through an advocate.

[3.4] Ms. Megha Chitalia, learned Additional Public Prosecutor, appears for respondent no.2 herein.

[3.5] Since the respondent - accused has chosen not to appear either in person or through an advocate and Appeal being of the year 2008, it is thought fit to proceed with the same.

[4.0] Having heard the learned advocate for the appellant as also learned Additional Public Prosecutor and going through the judgment and order of acquittal as also depositions of witnesses and the documents produced and proved, let it be examined whether this Appeal has any substance in it or not.

[4.1] Before dealing with the evidence, documents produced and proved, it would be worthwhile to refer the case of defence put forth not only during the trial but even prior thereto. In this case, the date of visit of the Food Inspector to the premises of the respondent - accused is 28.12.2004 whereas respondent - accused alongwith one another even prior thereto vide communication dated 19.02.2004 addressed to the Deputy Commissioner (Health and Hospital) Local Health Authority, Surat Municipal Corporation and dated 16.08.2004 informed them that they are supplying natural drinking non packaged water to the consumer after chilling it in its pure and natural conditions, without any process and adding anything to it. Their consistent case by way of those two letters, which is admitted to have been received by the competent authority of Surat Municipal Corporation and duly exhibited before the Court at Exhs.41 and 27 respectively that they are neither dealing with 'packaged drinking water' nor 'mineral water', and therefore, even their 'water' should not meet with any of the standards as prescribed in Appendix 'B' of *'the Rule, 1955'*. Their consistent case is that 'water' simplicitor is not a 'food' as defined under Section 2(v) of *'the Act, 1954'*, which is being specifically excluded from the provisions of the Act and the Rules, and therefore, they are also not required to have any license as defined under the Act and the Rules for the same. Since Food Inspectors of the Corporation were harassing the accused and one another, they jointly represented to the competent authority of Surat Municipal Corporation drawing attention to the aforesaid aspects. Be that as it may, it will be examined and dealt with in detail while discussing that aspect

in this judgment at an appropriate stage but fact remains that even prior to the case is filed or premises is examined what they deal in and whether fulfillment of any criterias or requirements under the Act and the Rules is required to be followed or not was already made it clear by them. Over and above that, they have named certain other persons /entities in different areas of Surat city covered under the Corporation limit dealing with the same water or the activities, which accused is carrying on, according to him, no one is ever asked for any license so far.

[4.2] If the complaint filed by the appellant- Food Inspector is seen, though name of the accused is shown as Parshotambhai Jadavbhai Monpara, a person doing business in the name of Swagat Water but complaint, paragraph 2, reflects that respondent – accused, at the address shown in the cause title, is preparing ‘packaged drinking water’ and selling the same in the name of Amrut Water. Whatever relevance of the same may be dealt with in the later part of the judgment but fact remains that the appellant - Food Inspector is with a closed mind appears to have visited the premises of the respondent – accused. Though in his deposition he has stated that on the date of his visit to the premises of the respondent – accused where accused was personally present was manufacturing ‘packaged drinking water’ and sale thereof. On the date of even his visit, manufacturing process was continued and the treatment plant was on. Therefore, he asked for license under the Act issued by the competent authority. However, neither his complaint nor his forwarding letter seeking written consent for filing prosecution nor written



consent of LHA contains such facts in those documents prior to giving deposition before the Court.

[4.3] As such, complaint may not disclose the whole case. If the appellant – complainant asserts that respondent – accused was manufacturing ‘packaged drinking water’ at the place of inspection done by him, that too, for the purpose of sale, he would have so reflected in the complaint, even if he has decided not to take sample of any ‘packaged drinking water’. As such, in the entire career as an advocate as also Judge, I have never seen any prosecution only based on requirement of license where premises of manufacturing of food article is visited without any sample thereof drawn. As such, everywhere sample of food is drawn for the purpose of examining whether it confirms to the standards prescribed under the Act or Rules or not.

[4.4] Not only the appellant – Food Inspector has failed to support his assertion, that too, for the first time made before the Court by way of deposition, he has neither collected any contemporaneous record nor produced and proved the same before the Court. Not only that, he has improved upon even the sign board he saw at the place reflecting Swagat Water and (packaged drinking water), which is nowhere stated by him in the complaint. His request for the written consent and in the consent itself, if what he asserts appears to be correct, somewhere at some point of time, even prior to his filing complaint, it should reflect. Though he is not expected to raid every premises named by the accused in their earlier communications, nonetheless, it does not absolve Food

Inspector, when he claims that activity of manufacturing 'packaged drinking water' was going on.

[4.5] Not only that, no independent person is involved or associated at the time of visit of the premises of respondent - accused to show that any activity of manufacturing process of food article like 'packaged drinking water' is going on. Though by ascertaining the requirement of license and checking the same, associating an independent person may not be required but when he is sure, before proceeding with the premises of the accused, manufacturing 'packaged drinking water', he could have taken with him independent person or after witnessing that manufacturing process of 'packaged drinking water' is going, he would have requisitioned services of independent person in support of his such association. That fact is missing so far as present case is concerned. Looking at his deposition before the Court, during the course of examination-in-chief, he has improved upon his own version, which is not there in the complaint. He asserted in the deposition that the accused is manufacturing 'packaged drinking water' and sale thereof. He has given address of the place of business of the respondent - accused. He has further asserted that the respondent - accused is dealing in this business in the name of Swagat Water. He is able to say so, as on the date of his visit there was a signboard outside the premises of the accused. He has further asserted that the signboard Swagat Water and (packaged drinking water) was written and as owner of the premises, name of the accused was mentioned. Such factum of Swagat Water (packaged drinking water) is nowhere reflected in the complaint or even

in the written consent sought for by the appellant and competent authority. The said assertion on oath is also without any support thereof, not only of independent witness but of any contemporaneous record. Surprisingly, though manufacturing process of 'packaged drinking water' was going on and treatment plant was also on, he had also not drawn any sample to ascertain compliance of the provisions of the Act or Rules. If that attempt would have been done, he is supposed to have presence of associating two independent persons as required under Sub Section (7) of Section 10 of '*the Act, 1954*'. Since the appellant -Food Inspector might have been exposed, he did not think it fit to draw any sample to avoid presence of any other independent person with him and he felt satisfied by asking copy of license under the guise that accused is dealing with 'packaged drinking water', without any material. Even if sample of 'packaged drinking water' is drawn and it confirms to the standard prescribed, he could still prove his case for requirement of license, which is not there with the accused as attempted to be proved by him. As such, not only prior to the prosecution but during the course of even trial also, a specific case of the accused is that he is dealing in simplicitor 'water' and not 'packaged drinking water' or 'mineral water'. 'Water' and 'drug' are specifically excluded from the definition of 'food' as defined under Section 2(v) of '*the Act, 1954*'.

[4.6] The appellant – Food Inspector had to admit in his cross examination that Exh.1 complaint does not contain assertion that signboard outside the premises of the accused displaying 'packaged drinking water' is nowhere mentioned in the complaint. He had to further admit that for the first time

he has deposed to before the Court that there was any signboard outside the premises and there was any writing over the same. Not only he had to admit that the factum of signboard and writing over the same outside the premises of the accused is also missing in the notice Exh.24, which is claimed to have been pasted at the door of the premises. Again he had to admit that for such signboard reflecting 'packaged drinking water' is also not finding place in the written consent granted by the competent authority. Under Rule 9 of '*the Rules, 1955*' certain duties are assigned to Food Inspector. Sub Rule (e) of Rule 9 of '*the Rules, 1955*' prescribe maintaining the record of all inspections made and actions taken by him in the performance of his duties, including the taking of samples and the seizure of stocks, and to submit the copies of such record to the Health Officer or the Food (Health) Authority as directed in this behalf. However, as admitted by him in the cross examination he does not maintain any daily diary as required under Rule 9(e) of '*the Rules, 1955*'. He had to admit that nowhere in the daily diary or any register, he has mentioned about the signboard outside the premises of the accused as deposed to by him before the Court for the first time. As admitted by him, he is knowing that Exh.27 notice which is dated 16.08.2024 by the accused and one another, claims that they are not dealing with 'packaged drinking water' or 'mineral water'. He had to further admit that their Department i.e. Corporation has not even replied or answered said notice Exh.27. Though he claims to be Food Inspector, who is supposed to know all the provisions of the Act and the Rules, he admits that 'food' is defined under '*the Act, 1954*'. However, he had denied the suggestion that 'water' is

exempted from the definition of 'food', which is contrary to the plain definition of 'food' as defined under '*the Act, 1954*'. Therefore, learned advocate for the defence had to show him copy of '*the Act, 1954*', and he was shown Section 2 of '*the Act, 1954*' thereof and thereafter asked question whether 'water' is exempted from the provisions of '*the Act, 1954*' or not. In answer thereof, he had to admit that it is correct. He has further admitted that the provisions for license under Rule 50 of '*the Rules, 1955*' is made under '*the Act, 1954*' for 'packaged drinking water'. He has to further admit that as provided under Rule 50 of '*the Rules, 1955*' requirement of the license is only for the article of 'food'. He has further admitted that for selling water, no license is required from the Corporation. He has further admitted running water, water from the well, water flowing in the river and water of pond are included as a 'water'. He has to further admit that in summer season in so many parts of the Corporation limit, it provides water through tankers. He has further admitted that when water tankers are provided by the Corporation, a bill of Rs.150/- to Rs.250/- is prescribed. He had to admit that water provided on road free of charge or even water provided by Corporation do not require BIS certification mark. He does not know that Radhe Marketing, Nandini Water, Arya Spring Water and Ami Water are chilling potable water and selling the same. He has to admit in his cross examination that when he visited the premises of the accused, he was knowing about the correspondences by the accused and one another with the Corporation vide communication dated 19.02.2004 and 16.08.2004, which are exhibits 41 and 27 respectively, he was aware of the same. He had to admit in his cross examination

that in his presence, he had no occasion to see on the date of visit to the premises the accused was selling 'packaged drinking water' carboys to any customer. However, he volunteered that he saw water carboys were placed in Tempo.

[4.7] A faint attempt was made by the learned advocate for the complainant in the arguments before the learned Magistrate that there is an admission on the part of accused where a suggestion was put to the witness that on the day of visit of the complainant in the premises, there were empty and filled carboys of 'packaged drinking water' stored. The said submission of the learned advocate for the complainant is without any substance. Putting such suggestion, it cannot be said that the accused has admitted that he is dealing with 'packaged drinking water'. On the contrary, even prior to visit of the Food Inspector, it was the specific case of the accused that they never deal with any 'packaged drinking water' or 'mineral water' but only deal with 'water' and after it was chilled the same was filled in a carboy and stored. Thus, in absence of any contemporaneous record produced and proved by the complainant, not even suggested in any prior documentation before deposition in the Court in respect of witnessing treatment plant in running condition and 'packaged drinking water' being stored, it can never be proved and believed that accused is dealing with 'packaged drinking water'. He has also further admitted that on the date of visit, he was knowing that the accused did not have BIS mark certification. Despite that, he has to admit he did not seize any carboys of 'packaged drinking water' stored in the premises of the accused. He has further admitted that the

Food Inspector has power to seize even the goods. He had to admit that if he intended to draw sample of 'packaged drinking water' from the premises of the accused on the date of visit, he could have done that. He has further admitted that nowhere either in the act or the rules prohibits drawing of sample from a manufacturer, who has license under Rule 50 of '*the Rules, 1955*'. He had to further admit that for selling sample water, no license as provided under Rule 50 of the Rules, 1955 is required.

[4.8] There is one more reason to doubt the case of the prosecution when they claim that the accused was dealing with 'packaged drinking water' when appellant - Food Inspector visited the premises he knew that carboys did not have BIS certification mark over the same, there was breach of Rule 49(28) of '*the Rules, 1955*' and straightaway he could have seized that carboys and establish that it did not contain any BIS certification mark as required under Rule 49 (28) of '*the Rules, 1955*'. Rule 49 of '*the Rules, 1955*' is placed in part IX of the head, "conditions for sale and license". Appendix 'B' of the Rules prescribes definition and standards of quality where standards of quality for 'mineral water' as also 'packaged drinking water' provided in Article A.32 and Article A.33 of Appendix 'B'. Nowhere either '*the Act, 1954*', or the Rules provide any standards of quality prescribed under Appendix 'B', 'C' or 'D' of the Rules for simple 'water'. That means person who is dealing in simple water may be packing the same cannot be said to be included in a definition of 'food' as defined under Section 2(v) of '*the Act, 1954*' which requires license for manufacture sale etc.

[4.9] Appendix 'B' and 'C' are prescribed, which reflects standard of quality prescribed under Rule 5 of '*the Rules, 1955*'. Thus, it is clear that 'packaged drinking water' and 'mineral water', manufacturer of sale etc. requires not only BIS certification mark but standard of quality are also prescribed for the same. Coming to the deposition of Chetan Sharma - P.W. 2 - Peon of the Food Department, Surat Municipal Corporation, he is under direct control of Food Inspector and he has to perform what he entrusts him. What appellant - Food Inspector has not deposed to in the deposition, with a view to clarify glaring mistake in the complaint, it has been so stated by P.W. 2 Chetan Sharma when he states before the Court that alongwith appellant - Food Inspector before quarter to two years at about 4:00 p.m. from their office, they went to establishment named as Amrut Water and at about 5:00 p.m. they reached there. Thereafter, they went to Swagat Water just behind Amrut water. Not only visit to Amrut water is not stated by the Food Inspector in his deposition, he has not even stated in his deposition about any such complaint of requirement of license is filed against Amrut Water or not. Not only that, even P.W. 2 Chetan Sharma has also not deposed to before the Court what they did at Amrut Water. In a diametrically opposite version from the version of Food Inspector, he went on to state that the respondent - accused owner of the premises of Swagat Water was present in the premises was filling the carboys. However, in his examination-in-chief, he has stated that Swagat Water is dealing in potable water. He had to admit that premises, which is visited by them in the name of Swagat Water, it was on ground floor and in the



said township, in the upper floors, there are residential premises. He had to further admit that even Amrut Water is also situated at the ground floor and his house is in a flat like premises.

[4.10] This is the nature of evidence led before the Court. The evidence led by the prosecution does not inspire confidence in absence of any contemporaneous record that the accused was dealing in 'packaged drinking water' as claimed by the appellant – Food Inspector.

[4.11] As such, probable defence raised and pleaded by the accused inspires much confidence as prior to even visit of the Food Inspector at his premises he alongwith owner of Amrut Water very clearly stated to Surat Municipal Corporation and competent authority that they are dealing with simple water chilling it and supplying it as per the requirement. They have very categorically made clear that they are not dealing either in 'mineral water' or even 'packaged drinking water'. Though there are several such Institutions, which deal with simple water and chilling process named by them in their communications except these two Institutions, no requirement of license was asked for from any of the Institutions named therein. Not only that, neither the Food Inspector nor competent authority in the Surat Municipal Corporation even attempted to reply their two communications made much prior to the date of visit, Exhs.41 and 27. Not only, the evidence led before the Court inspires no confidence as they fail to prove the case against the accused beyond the reasonable doubt but it appears that accused and even Amrut Water are being

targeted by Surat Municipal Corporation through such Food Inspectors. The learned Magistrate has assigned good reasons supported by evidence led before the Court and recorded an order of acquittal. Therefore, even if there are two views possible, the view, which is favourable to the accused is to be accepted, in an acquittal Appeal. Whereas in the present case, the defence raised appears to be more probable than the case pleaded by the prosecution. Therefore, I see no reason to interfere with the well reasoned judgment and order of acquittal recorded by the learned Magistrate. Therefore, this Appeal is without any merit, and therefore, it is hereby dismissed. Record and Proceedings, if any, to be returned forthwith.

**(UMESH A. TRIVEDI, J.)**

*siji*