

(2010) 04 GUJ CK 0057
In the Gujarat High Court
Case No : Criminal Appeal No. 843 of 2000

Adarsh Chemicals and Fertilizers Ltd. and Another	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Essential Commodities Act, 1955 — Section 7(i)(a)(ii)

Citation : (2010) 04 GUJ CK 0057

Hon'ble Judges : Rajesh H Shukla, J

Bench : Single Bench

Advocate : Jal Soli Unwala, for the Appellant; Public Prosecutor for Opponent 1, for the Respondent

Final Decision : Allowed

Judgement

Rajesh H. Shukla, J.—Present Appeal is directed against the judgment and order dated 11.08.2000 delivered by the Learned Special Judge & Additional Sessions Judge, Jamnagar in Special Criminal Case No. 6 of 1994 recording the conviction of the accused for the violation of the Fertilizers (Control) Order, 1985 and u/s 7(i)(a)(ii) of the Essential Commodities Act and imposing sentence of SI for three months and fine of Rs.1,000/-, in default, to undergo SI for one month.

2. The facts of the case briefly summarized are as follows:

2.1 The complainant visited the premises of the accused for the inspection and collected sample of pesticides (WS), which was found in a sealed bag manufactured by Adharsh Chemicals & Fertilizers Ltd., Udhana and on the basis of sample and analysis, it was found that the sample was not as per the standard and thereby the accused have violated the provisions of the Fertilizers (Control) Order, 1985 read with provisions of the Essential Commodities Act and thereby the offence u/s 7(i)(a)(ii) of the Essential Commodities Act has been committed.

2.2 On the basis of the aforesaid complaint, case was registered being Special

Criminal Case No.6 of 1994. Since it is a summary case, plea of the accused was recorded at Exh.6. The accused denied to have committed any such offence and, therefore, the learned trial Court proceeded with the trial.

2.3 In order to bring home the charges leveled against the accused, the prosecution has examined several witnesses and has also produced documentary evidence.

2.4 After recording the evidence of the prosecution witnesses was over, the Learned Special Judge & Additional Sessions Judge, Jamnagar recorded the further statements of the accused u/s 313 of the Criminal Procedure Code.

2.6 After hearing the learned APP as well as learned advocate for the accused, the Learned Special Judge & Additional Sessions Judge, Jamnagar convicted the accused for the alleged offence and sentenced them as stated hereinabove.

3. Learned Counsel, Mr. Unwala for the appellant-accused referred to the testimony of the complainant at Exh.11 and submitted that as stated by this witness, when the sample was collected from a sealed bag received from the manufacturer, Adharsh Chemicals & Fertilizers Ltd., Udhna, which rules out any possibility of tampering or adulterating. He further submitted that it is not even the case of the prosecution that there was any adulteration either by the accused or by the manufacturer. He, therefore, submitted that it is more in the nature of some kind of nominal variation in the standard. He submitted that as per the required standard, P₂O₅ should be dissoluble with 16% as against 31.68% found in the sample. He, therefore, submitted that the phosphoric acid was also found more but the difference is very less and considering this marginal difference, it is not the case of the prosecution about any adulteration and such variation may be due to various circumstance beyond control. He, therefore, submitted that the Court below has recorded the conviction erroneously without appreciating this aspect merely on the basis of the report of the Public Analyst, which was produced at Exh.16 and 26, which suggest that the sample does not conform to the prescribed standard. He submitted that even if the sample may not have conform standard, the Court ought to have found out whether there was any adulteration or any irregularity. If there is no such evidence then merely because of said marginal difference, the conviction could not have been recorded. Learned Counsel further referred to the testimony of P.W.No.2, Exh.24 and submitted that as stated by this witness, he has not carried out test or analysis as admittedly it was done by one Mr. A.R. Balas. Learned Counsel submitted that this witness has stated that he has simply drawn the sample and, thereafter, the analysis has been made by his assistant. He submitted that he himself has not carried out test and report at Exh.26 made by him is based on the report at Exh.16. Again he submitted that as stated by this witness, he has not mentioned about the details as to the analysis made, the procedure or method followed or which method was followed. He, therefore, submitted that the report at Exh.26 is in fact based on the report at Exh.16, for which, there is no evidence of the analyst. He submitted that the report at Exh.16 is made by the Analyst, Mr. A.R. Balas,

who is not examined by prosecution and, hence, the accused could not cross-examine this witness on this aspect. He submitted that the report at Exh.26 is made on the basis of the report at Exh.16 and that report itself does not contain any details as to the procedure followed or any other method adopted. He, therefore, submitted that the conviction is based merely on the basis of said report and, therefore, the impugned judgment and order recording conviction is erroneous. Learned Counsel further submitted that admittedly the sample has to be of minimum 400 gram, which is not there. He also referred to the report and the testimony of P.W.No. 2 and submitted that he has also admitted that if the sample is less than 400 gram, it would affect the result. He, therefore, submitted that the impugned judgment and order recording conviction is erroneous.

4. Learned A.P.P., Mr. Jani resisted the application and submitted that as discussed in the impugned judgment, the P.W.No. 2 has specifically stated in his testimony at Exh.24 that analysis was made by his assistant in his presence and under his guidance and, therefore, it cannot be said that P.W.No.2 himself cannot testify or the report is not valid. It is submitted that the variation is admittedly found as stated in the report at Exh.16 and 26 suggesting that the sample does not conform with the standard and, therefore, breach has been committed. Therefore, learned A.P.P., Mr. Jani submitted that whether the analysis has been made by X or Y, in which, it is required to be considered that the analysis was made in his supervision and under the guidance of Mr. A.R. Balas and, therefore, the report cannot be brushed aside. He submitted that it is stated that the details are not mentioned in the register as well as the details as to the procedure and the method adopted is also not mentioned actually in the report at Exh.16 that by itself would not make it unbelievable. For that purpose, he referred to the testimony of P.W.No.2, Exh.24 and submitted that he has explained as to what has transpired and the method of P2O5 is provided in FCO Schedule-II on the basis thereof, therefore, the sample does not conform with the standard and, therefore, merely because there is no mention in the report about the procedure and the method, the impugned judgment and order cannot be said to have been erroneous. However, he also fairly stated that report is not of minimum 400 Gram as required.

5. In view of the rival submissions, it is required to be considered whether the impugned judgment and order could be sustained or not. It is evident from the record that there are no allegations with regard to any adulteration and the same has been collected from the sealed bag supplied by the manufacturer, Adarsh Chemical & Fertilizer Ltd., therefore, the contention of the learned advocate that whatever the marginal difference is there could not be attracted to the present accused as he has simply received from the manufacturer, for which, he has no control. Therefore, first aspect, which is highlighted is with regard to any possibility of adulteration or manipulation, which does not appear to so and that is not the case of the prosecution.

6. Another facet of the arguments with regard to report at Exh.16 and 26 that

the conviction is recorded only on the basis of said report and opportunity of cross-examination has not been given to the accused as the person, who has carried out the analysis is not examined is required to be appreciated. The report at Exh.16 has been made by Mr. A.R. Balas and P.W.No. 2 has stated in his testimony at Exh.24 that in his presence and under his supervision and guidance, Mr. A.R. Balas had carried out test and analysis. He has also explained with regard to the procedure stating that P2O5 FSC Schedule-II is applicable and he has also stated that report was prepared and on that basis, the analysis has been made, however, admittedly in the report at Exh.16, there is no mention about any details including the procedure and the method followed. The report at Exh.24 is made on the basis of the report at Exh.16. Therefore, the basis for which the report at Exh.26 is report at Exh.16 and the person, who carried out the said test, may be under the supervision of P.W.No. 2, who is not examined. Had he been examined, the accused could have opportunity to cross-examine with reference to the report including as to how he has arrived at conclusion. Admittedly, report at Exh.16 does not contain as to any procedure and any details and as also method adopted or followed. Further admittedly, sample, which is required to be taken has to be minimum 400 gram and it is also stated by P.W.No. 2 in his testimony at Exh.26 that otherwise, it would affect the analysis report. A close look at the report at Exh.16 and 26 would suggest that the sample is of 1 gram, which was tested. Therefore, again it would raise doubt with regard to manner in which the analysis was made and the test was carried out. Even assuming that the analysis was made by Mr. A.R. Balas under the guidance and under the supervision of P.W.No.2, at-least manner and method and the details as to the procedure followed ought to have been recorded, which his not to be found in the report at Exh.16. It transpires that the report, Exh.26 is based no the report at Exh.16 and, therefore, it would raise doubt about the conclusion. Further the case of the prosecution is at the most that the sample does not conform or adhere to the standard prescribed and difference is marginal. Therefore, when there are not allegation for adulteration and as stated by the learned Counsel, it could be for various reasons when it is supplied by the manufacturer, it would not be appropriate to record conviction for said marginal difference based on the report, which cannot be readily accepted.

7. In view of the aforesaid facts and circumstances, this Court is of the opinion that recording conviction of the accused for the violation of the Fertilizers (Control) Order, 1985 and u/s 7(i)(a)(ii) of the Essential Commodities Act cannot be sustained.

8. In the result, Criminal Appeal accordingly stands allowed. Judgment and Order dated 11.08.2000 delivered by the Learned Special Judge & Additional Sessions Judge, Jamnagar in Special Criminal Case No.6 of 1994 recording the conviction of the accused persons for the offence u/s 7(i)(a)(ii) of the Essential Commodities Act, 1955 is quashed and set aside and the appellant No. 2 viz., Jayant K. Patel is ordered to be set at liberty forthwith, if not required in any other offence. He is on bail and, hence, his bail bonds stand cancelled. The fine

paid by the appellants-accused, if any, is ordered to be refunded.