

(2010) 03 GUJ CK 0041
In the Gujarat High Court
Case No : Criminal Appeal No. 351 of 1993

Bharat Fertilizer Industries Ltd. and Another	APPELLANT
Vs	
State of Gujarat and Another	RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374(2)
Essential Commodities Act, 1955 — Section 3, 7
Fertiliser (Control) Order, 1957 — Section 13(1)

Citation : (2010) 03 GUJ CK 0041

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : Virat Popat, for S.V. Raju, for the Appellant; A.J. Desai, Ld. APP for Opponent 1, for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed, J.—The present appellant has preferred this appeal u/s 374(2) of the Code of Criminal Procedure, against the judgment and order of conviction and sentence dated 6.3.1993 passed by the learned Special Judge, Mehsana in Essential Commodity Case No. 16/1989, whereby, the learned Special Judge has convicted the accused-appellants and sentenced accused No. 2 to undergo three months R/I and to pay a fine of Rs. 500/-, in default, to undergo further S/I for one month, whereas, the learned Judge has imposed a fine of Rs. 500/- upon the accused No. 1. It is also ordered that the amount of fine of Rs. 500/- imposed upon accused No. 1 shall be recovered from accused No. 2.

2. The case of the prosecution is that on 23.11.1988, the complainant Agricultural Inspector, has visited the shop of accused No. 2 and has taken the sample of fertilizer. On chemical analysis of the said sample in the Laboratory at Gandhinagar, it was found that as per the report of the public analyst dated 31.12.1988, the water soluble phosphoric acid content was found 13.85% instead of 16%. Therefore, on the basis of the said report, the complainant has

issued show-cause notice to the accused. It is further alleged that the accused No. 1 had produced the said granulated super phosphate fertilizer and had sold the same to Shree Ganesh Co-Op. Consumer Stores Ltd. It is also alleged that the said granulated super phosphate fertilizer cannot be produced as well as sold. In spite of the aforesaid position, the accused had produced/manufactured the same and sold it and thereby committed a breach of Section 13(1)(a) of the Fertilizer (Control) Order 1957. On these facts, the complaint was filed before the trial Court, which was numbered as Essential Commodity Case No. 16/1989 against the present appellants-accused. At the time of trial, evidence was led before the trial court. The documentary evidence was also produced and oral evidence of the witnesses was also recorded by the trial court and after considering the oral as well as documentary evidence, the learned Special Judge has passed the order of conviction and sentence, which is impugned in this appeal.

3. Heard Mr. Virat Popat learned advocate for Mr. SV Raju for the appellants and Mr. AJ Desai learned APP for the respondent-State.

4. Mr. Virat Popat learned advocate has submitted that in this case the present appellants are convicted and sentenced for the offence u/s 3 read with Section 7 of the Essential Commodities Act. He has submitted that the Fertilizer (Control) Order, 1957 which is now repealed by Fertilizer (Control) Order, 1985. He has also produced the copy of the said order and contended that the proceedings were initiated under the Old Order. Accused No. 2 who was a Sales Manager at Nadiad and his evidence is also on record. It appears from his evidence that there was an admission that the production and manufacturing activities have been done at Bombay and, therefore, the accused No. 2 cannot be connected with the manufacturing activities.

5. I have perused the old Fertilizer (Control) Order, 1957 and new Ordinance has come into force in the year 1985. Therefore, the submission made by the learned Counsel for the appellants is required to be considered. I have also perused new Fertilizer (Control) Order, 1985. It appears that Fertilizer (Control) Order, 1957 has been repealed by new Fertilizer (Control) Order, 1985 and the complaint which was lodged against the appellants cannot be entertained and the conviction and sentence imposed by the learned trial Judge is required to be quashed and set aside.

6. In view of this, I am of the opinion that looking to the new Fertilizer (Control) Order, 1985, the case of the appellants is covered. Even the learned Counsel for the appellants Mr. Virat Popat has relied upon the decision of the Apex Court in the cases of (i) Hirabhai Chhibabhai Tandel v. State of Gujarat reported in : (2004) 6 SCC 421, (ii) Jagan M. Seshadri Vs. State of Tamil Nadu, , and (iii) The State of Uttar Pradesh Vs. Seth Jagamander Das and Others, and argued that when the new Ordinance is in force then an act done after the repeal of the Act, cannot be held punishable by reference to that Act. I am in full agreement with the submission of the learned advocate for the appellants. Even Mr. AJ Desai

learned APP is unable to convince this Court that the order of conviction and sentence is required to be confirmed. In that view of the matter, there is sufficient substance in the submissions of learned advocate for the appellants and the appeal requires to be allowed.

7. In the result, this appeal is allowed. The impugned judgment and order of conviction and sentence dated 6.3.1993 passed by the learned Special Judge, Mehsana in Essential Commodities Case No. 16/1989, is hereby quashed and set aside. Bail bond if any, stands cancelled. R & P to be sent back to the trial Court, forthwith.