
(2010) 03 GUJ CK 0016
In the Gujarat High Court
Case No : Criminal Appeal No. 1071 of 1999

Bombay Garage (Ahmedabad) Ltd.	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 03-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374
Essential Commodities Act, 1955 — Section 3, 7

Citation : (2010) 03 GUJ CK 0016

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

Bench : Single Bench

Advocate : R.S. Sanjanwala, for the Appellant; R.C. Kodekar, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The appellant has preferred this appeal u/s 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code for brevity) challenging the order of conviction passed by the learned Special Judge, Ahmedabad on 29th August, 1999 in Special Criminal Case No. 238 of 1995 convicting the appellant-original accused of the charges of commission of offence punishable u/s 7 of the Essential Commodities Act, 1955.

2. The facts in brief leading to filing of the present appeal deserves to be set out as under:

3. It is the case of the prosecution that the accused No. 1, was licensed holder dealer engaged in the retail and sale of petrol, and high speed diesel from its place of business located near Shahibaug Underbridge and the accused No. 2 (who has been acquitted by the learned Special Judge by his aforesaid order) was alleged to be the Manager of accused No. 1, M/s. Bombay Garage Pvt. Ltd., therefore, he was responsible for day to day affairs of the accused No. 1 - firm. On 14.12.1994, the Investigating Officers of the Department of Food and Civil Supplies, Government of Gujarat visited the said petrol pump and inspected the

functioning of the petrol pump and verified the records maintained by the petrol pump and also physical stocks of petrol and diesel found in the said premises of the petrol pump and compared the same with the records pertaining to the petrol pump. The density of petrol and diesel was also verified by the Investigating Officer by measurement and compared the same with the available figures in the Density Register of the accused No. 1. The samples of petrol and diesel of the accused No. 1 were drawn by the Investigating Officers and same were forwarded to FSL for analysis and upon receipt of the report from FSL, it was found that the variation in the density of petrol was found to be well beyond the prescribed limits meaning thereby that there was contravention of 1990 Order on the part of the accused. The Investigating Officers carried out detailed panchnama in presence of panchas and recorded the statement of accused No. 2. During the course of investigation of physical verification of the stocks and comparing the same with stock register and other documentary evidence like bills, receipts etc., it was found that there was an excess stock to the tune of 990 liters of petrol and the accused had committed breach of contravention of 1981 Order and since the 1981 Order and 1990 Order are issued under the provisions of Essential Commodities Act, the accused committed offence as per the provisions of Section 3 of the Act, which is punishable under the provisions of Section 7 of the said Act.

4. Both the accused pleaded not guilty at Exhibit 6 and 7 and claimed to be tried. Further statement of the accused recorded under the provisions of Section 313 was recorded. During the course of trial, three witnesses Viz. P.W.-1, Ashok Chandulal Dudhia at Exhibit 9, P.W.-2, Lavjibhai Sadabhai Parmar at Exhibit 24 and P.W.-3, Vishnubhai Prahladji Thakor at Exhibit 35 have been examined. Also the following documentary evidence have been produced on record before the learned trial Judge.

1. Exhibit 11 - Statement of accused No. 2
2. Exhibit 12 - Seizure memo.
3. Exhibit 13 - Statement of monthly stock of June, 1994.
4. Exhibit 14 - Statement of monthly stock of June, 1994.
5. Exhibit 15 - Statement of monthly stock of Sept., 1994.
6. Exhibit 16 and Exhibit 17 - Statement of monthly stock of Oct., 1994.
7. Exhibit 18 - Statement of monthly stock of Nov., 1994.
8. Exhibit 19 - Statement of monthly stock of Dec., 1994.
9. Exhibit 20 - Bill of Bharat Petroleum Corporation.
10. Exhibit 21 - FSL report.
11. Exhibit 22 - Complaint

12. Exhibit 25 - Panchnama.

5. After hearing both the parties, the learned Special Judge, Court No. 15, Ahmedabad vide judgment and order dated 24th August, 1999 in Special Criminal Case No. 238 of 1995, was pleased to acquit the accused No. 2 of all charges and the accused No. 1 was found guilty of having committed offence as per Section 3 of the Essential Commodities Act, 1955 and therefore, the accused No. 2 was ordered to pay Rs. 7500/- towards the fine.

6. Being aggrieved and dissatisfied with the said order, the appellant preferred present appeal.

7. Shri R.S. Sanjanwala, learned Counsel has submitted that the impugned order of conviction being erroneous and contrary to the record of the case, deserves to be quashed and set aside. He has submitted that the learned Special Judge has not considered the defence of the present appellant, while passing the judgment and order. He has contended that even the ingredients of provisions of Section 3 of the Essential Commodities Act, have not been proved beyond reasonable doubt, yet, the learned trial Judge has convicted the present appellant. Even the learned trial Judge has not considered the fact that the prosecution has not led any evidence to establish that 990 Lts. of petrol was in excess. The prosecution has failed to establish that the appellant has indulged in any mal practice and/or adulteration of petrol and therefore, benefits of doubt ought to have been given to the appellant. Therefore, the order passed by the learned Special Judge, Ahmedabad is required to be quashed and set aside.

8. Shri R.C. Kodekar learned APP appearing for the respondent-State has submitted that this Court need not interfere or reverse the decision of sentence unless and until it is demonstrated by the appellant that the finding and reasoning of the Trial Court are so perverse so as to result into miscarriage of justice. He has read the judgment and evidence produced on record. He has contended that looking to the conduct of the accused, now a days, it is not proper for the society and if such kind of act is carried on by the firm, then the vehicles can be damaged. He has also read the provisions of penalty and vehemently contended that conviction order is not proper because there is lessor punishment imposed by the learned trial Judge. He has contended that present appeal was filed in the year 1999 and looking to the time gap, he is not making any statement to enhance the sentence, but he has vehemently contended that the order the learned Special Judge is required to be confirmed.

9. This Court has perused the records and proceedings of the Trial Court and heard the learned Counsel of the respective parties at length. On perusal of the record and the submission made by both the learned Counsel, I am of the opinion that the decision of the Trial Court does not suffer from any infirmity what so ever. The appellant has failed in establishing that the decision of the Trial Court suffers from any perversity. On the contrary the decision of the Trial Court is just and proper and it is based upon the evidence and it is after proper

appreciation. The Trial Court has rightly come to the conclusion that the appellant has failed in establishing its case beyond reasonable doubt and, therefore, the order of acquittal dated 24.8.1999 passed by learned Special Judge, Ahmedabad in Criminal Case No. 238 of 1995 deserves to be confirmed.

10. In view of the above, this Appeal is dismissed. The impugned judgment and order dated 24.8.1999 passed by the learned Special Judge, Court No. 15, Ahmedabad, in Special Criminal Case No. 238 of 1995 is hereby confirmed. Bail bond stands cancelled. R & P to be sent back to the trial Court, forthwith.