
(2010) 02 GUJ CK 0031
In the Gujarat High Court
Case No : Criminal Appeal No. 429 of 1999

D.K. Solanki, Law Officer

APPELLANT

Vs

Eagle Ultramarine Industries and Others

RESPONDENT

Date of Decision : 11-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Water (Prevention and Control of Pollution) Act, 1974 — Section 24, 25, 26, 43, 44

Citation : (2010) 02 GUJ CK 0031

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

Bench : Single Bench

Advocate : K.P. Shah and Sunil L. Mehta, for the Appellant; Tushar Mehta, for Opponents 1-5 and D.C. Sejpal, APP for Opponent 6, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present appeal, u/s 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 24.04.1998 passed by the learned Chief Metropolitan Magistrate, Ahmedabad, in Criminal Case No. 470 of 1992, whereby the learned Magistrate has acquitted the respondents - accused from the charges levelled against them.

2. The brief facts of the prosecution case is that the respondent No. 1 is the factory and respondents No. 2 to 6 are the partners of the said factory and accused No. 7 is the Chemist of respondent No. 1 Factory. It is alleged that the factory is producing 125 Ton Ultra-marine every month and during the production they are discharging dirty water without purifying the same and passing the same in Khari River through the drainage. It is alleged that on 18.12.1987 the respondents have applied to the Board for consent which was rejected on 30.5.1988. It is alleged that on 23.9.1991 the officers of the Board have visited the factory premises for inspection and took the sample of effluent water which was sent for analysis. It is alleged that the Public Analyst submitted the Report and as per the said Report it was found that the accused have committed the

breach of Section 24, 25 & 26 read with Section 43 & 44 of the Water Act and, therefore, after obtaining sanction complaint has been filed against the respondents - accused. Thereafter, the trial was conducted against the respondents - accused. The trial Court examined the witnesses and also considered the documentary evidence led before it and after considering the documentary as well as oral evidence has acquitted the respondents - accused from the charges levelled against them.

3. It was contended by learned Advocate Mr. Sunil Mehta for the appellant that the judgment and order of the learned Magistrate is not proper, legal and it is erroneous. He has also contended that the learned Magistrate has not considered the evidence of the witnesses. He has contended that the Board Officers have followed the rules prescribed by law and the Officer of the Board have also followed the procedure of taking the sample. The sample was seized and sealed properly. Yet, the learned Magistrate has not considered the evidence of prosecution. Therefore, the order impugned in this appeal passed by the learned Magistrate requires to be quashed and set aside.

4. Learned Advocate, appearing for the respondents - original accused, has supported the judgment and order of acquittal passed by the trial Court and contended that the trial Court has rightly acquitted the respondents - accused.

5. It is a settled legal position that in acquittal appeal, the Appellate Court is not required to re-write the judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondents-accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned judgment is just, legal and proper and requires no interference by this Court at this stage. From the perusal of record it appears that the prosecution has not followed Rule 27, which is mandatory and, therefore, there is no question to entertain this Appeal. Hence, this appeal requires to be dismissed.

6. Even in a recent decision of the Apex Court in the case of State of Goa v. Sanjay Thakran and Anr. Reported in (2007)3 SCC 75, the Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision the Court has observed as under:

16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and

the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with.

7. Similar principle has been laid down by the Apex Court in the cases of State of Uttar Pradesh v. Ram Veer Singh and Ors. reported in 2007 AIR SCW 5553 and in Girja Prasad (Dead) by LRs v. State of MP reported in 2007 AIR SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

8. It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasonings, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Apex Court in the case of State of Karnataka Vs. Hemareddy Alias Vemareddy and Another,

9. Thus, in case the appellate court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence is not necessary.

10. I have gone through the judgment and order passed by the trial court. I have also perused the oral as well as documentary evidence led by the trial court and also considered the submissions made by learned Advocate for the appellant. The trial court while considering the oral as well as documentary evidence has clearly observed that the complainant has no personal knowledge and as per the instruction he has filed complaint. The trial Court has observed that from the evidence it is difficult to believe whether the sanction to file complaint to the complainant is legal. The trial Court has also found from the record that panchnama was not made in presence of any independent witness. The trial Court has also observed that the prosecution has not examined the Board Analyst who can be said to be an expert. The trial Court has clearly found that the prosecution has failed to prove its case beyond reasonable doubt. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the trial Court. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

11. Mr Sunil Mehta learned Advocate for the appellant is not in a position to show any evidence to take a contrary view of the matter or that the approach of the trial court is vitiated by some manifest illegality or that the decision is perverse or that the trial court has ignored the material evidence on record.

12. In the above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against him.

13. I find that the findings recorded by the trial court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been

committed by it.

14. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence find no reasons to interfere with the same. Hence the appeal is hereby dismissed. The Judgment and order dated 24.4.1998 passed by learned Chief Metropolitan Magistrate, Ahmedabad, in Criminal Case No. 470 of 1992 is hereby conformed. R & P to be sent back to the trial Court, forthwith. Bail bond, if any, stands cancelled.