
(2010) 12 GUJ CK 0077
In the Gujarat High Court
Case No : Criminal Appeal No. 430 of 1999

D.K. Solanki Law Officer

APPELLANT

Vs

Kalangidhar Textile Mills and Others

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Water (Prevention and Control of Pollution) Act, 1974 — Section 24, 25, 43, 44, 47

Citation : (2010) 12 GUJ CK 0077

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

Bench : Single Bench

Advocate : Sunil L. Mehta, for the Appellant; P.M. Vyas, Hiren P. Vyas, Sejal H. Vyas for Opponent 1 and D.C. Sejpal, APP for Opponent 10, 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. 1552 of 1991, 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 company and Respondents No. 2 to 8 are the Partners of the said Respondent No. 1 - Company. It is alleged that the said company is engaged in doing the business of processing and finishing of synthetic cloths and discharging the effluent water in river Sabarmati and has not constructed the plant for purifying the said water prepared without purifying the same. It is alleged that on 9.5.1981 the authorized Officers of the Board have visited the factory of Respondent No. 1 for inspection, after issuing the notice. They have taken the sample water from the said company in presence of factory in-charge. It is alleged that after sealing the sample the same was sent to the Board Analyst for analysis. It is alleged that the Analyst submitted the Report, the copy of which

was also sent to the company on 18.6.1991 by registered Post and as per the said Report it was found that the accused have committed the breach of Section 24 & 25 of the Water Act and, therefore, they are responsible for the offences under Sections 43, 44 read with Section 47 of the Water Act. Thereafter, 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, have 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 Rules framed by the Board, 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 & Ors*, reported in AIR 2007 SCW 5553 and in *Girja Prasad (Dead) by LRs v. state of MP*, reported in AIR 2007 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*, wherein, it is held as under:

...This Court has observed in *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*, that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.

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 Advocates for the parties. The trial Court has found that while taking the sample panchnama was not prepared in presence of any independent witness. The trial Court has also found that there is clear breach of provision of Rule 27. The trial Court has also clearly observed that the Board Officers have not followed the mandatory provisions of the Act and the Rules while collecting the sample. 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. R & P to be sent back to the trial Court, forthwith. Bail bond, if any, stands cancelled.