

(2010) 12 GUJ CK 0167
In the Gujarat High Court
Case No : Criminal Appeal No. 1082 of 1999

Harkishan R. Joshi

APPELLANT

Vs

Maradia Chemicals Ltd. 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
Water (Prevention and Control of Pollution) Rules, 1975 — Rule 22, 27

Citation : (2010) 12 GUJ CK 0167

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

Bench : Single Bench

Advocate : Sunil L. Mehta, for the Appellant; H.L. Jani, Ld. APP for Respondent 8, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—The present appeal, u/s 378(4) of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 17.7.1999 passed by the learned Judicial Magistrate, First Class, Sayla, Dist. Surendranagar in Criminal Case No. 23/1993, 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 Directors of the said Respondent No. 1 - Company. It is alleged that in the said company is engaged in doing the business of chemical and discharging the effluent water without purifying the same. It is alleged that on 24.6.1992 Mr JD Kalyani, Assistant Environment Engineer of the office of the Board at Rajkot, has visited the factory of Respondent No. 1 for inspection, after issuing the notice. They have taken the sample water from the said company. It is alleged that after sealing the sample the same was sent to the Public Analyst 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 of the Water Act and, therefore, they are responsible for the offences under Sections 43, 44 and 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 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 AIR 2007 SCW 5553 and in Girja Prasad (Dead) by L.Rs. v. State of M.P. 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 Advocate for the Appellant. The trial Court has found that in order dated 27.4.1984 Exh.30 which empowers the complainant to file complaint, there is no signature of the Board Members. The trial Court has also considered Section 25(7) of the Act and observed that the order Ex. 35 is an order dated 26.6.1992, whereby, consent was refused, however, the sample was taken on 24.6.1992 and, therefore, as per the provisions of Section 25(3) of the Act, the prosecution has not followed the prescribed procedure. As per the provisions of Rule 22, the prosecution is bound to give notice to the Respondents which is not given. The trial Court has found that from the deposition of the witnesses and perusing the record it is clearly established that the prosecution has failed to prove its case beyond reasonable doubt. The trial court while considering the oral as well as documentary evidence has clearly observed that the prosecution has not followed the mandatory provision of the Act and the Rules. 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.

13. 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.

14. 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.

15. 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.