
(2011) 04 GUJ CK 0095
In the Gujarat High Court
Case No : Criminal Appeal No. 96 of 1998

Jigneshbhai Jagdishbhai Patel	Vs	APPELLANT
Arvindbhai Manibhai Patel and Another		RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 374(2)
Essential Commodities Act, 1955 — Section 12A, 12AA, 3

Citation : (2011) 04 GUJ CK 0095

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

Bench : Single Bench

Advocate : D.F. Amin,s 1, for the Appellant; H.L. Jani, Additional Public
Prosecutor for Respondents 2, 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 21.1.1998 passed by the learned Special Judge, Vadodara in E.S.T.P. Case No. 27 of 1995, whereby the learned Special Judge has convicted the Appellant u/s 12AA and Section 3 of the Essential Commodities Act for contravening provisions of Order 2(c)(l)(m)(n) and 4(b) of Motor Spirit and High Speed Diesel (Prevention of Mal Practicing In Supply & Distribution) Order 1990 and sentenced the Appellant to undergo R.I. for 18 months and to pay a fine of Rs. 10,000/-, in default, to undergo R.I. for six months.

The brief facts of the prosecution case is as under:

The allegations levelled against the accused are that on 9.2.1995, the Officer of District Supply Officer, Vadodara, visited a business premises of M/s. S.K. Patel & Co. and noticed the stock of diesel and petrol stored in underground and overhead tanks and also noticed that the accused, partner of M/s. S.K. Patel & Co. were dealing in petrol and diesel without obtaining dealership from the Oil Co. and also, they were not keeping the density register, meter reading book.

The accused was selling the petrol and diesel unauthorized The Officer the said Department took the sample of the petrol and diesel and seized the stock of the same. On 16.6.1995, the complainant obtained sanction from the Collector for filing complaint against the accused persons for the offence aforesaid. On 1.9.1995, the complainant filed complaint against M/s. S.K. Patel & Co. and its partners including present Appellant in the Court of Special Judge, constituted u/s 12A of the Essential Commodities Act, which was numbered as Summary Case as ESTP Case No. 27 of 1995.

2. Thereafter, statements of the witnesses were recorded, panchnama was drawn and accused was arrested. Due to sufficient evidence against the Appellant, charge-sheet was filed and case was registered as numbered as ESTP Case No. 27 of 1995.

3. Thereafter, the charge was framed against the Appellant. The Appellant - accused pleaded not guilty and claimed to be tried.

4. To prove the case against the Appellant, the prosecution has produced documentary evidence and also examined in all 5 witnesses before the trial Court.

5. Thereafter, after examining the witnesses, further statement of the Appellant - accused u/s 313 of the Code of Criminal Procedure was recorded in which the Appellant - accused has denied the case of the prosecution.

6. After considering the oral as well as documentary evidence and after hearing the parties, learned Special Judge, Vadodara vide judgment and order dated 21.1.1998 held the Appellant - accused guilty to the charge levelled against him as stated above.

7. Feeling aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Special Judge, Vadodara, the present Appellant has preferred this appeal.

8. Learned advocate Mr. D.F. Amin appearing on behalf of the Appellant submitted that there were several contradictions between the documentary evidence produced by the prosecution to prove the case against the accused. He further submitted that the accused has not committed any offence punishable u/s 12AA of the Essential commodities Act for contravention of the provisions of the order 2(c)(1)(m)(n) and Order 4(b) of the Motor Spirit and High Speed Diesel (Prevention of Malpractice in Supply and Distribution) Order, 1990 and even the accused has not committed any breach of the condition No. 4(1) of licence issued under the Gujarat Essential Commodities (Licence, Control and Stock Declaration) Order, 1981. He further submitted that the learned Judge has failed to appreciate that the xerox copy of licence at Exhibit 40 and 41 produced do not contain Condition 4(1) and the therefore, the learned trial Judge has wrongly convicted the accused. During the course of arguments, he submitted that he is not arguing this matter on merits, but simply he is arguing for the quantum purpose and prayed to reduce the sentence imposed by the learned trial Judge as

the sentence imposed by the learned trial Judge is very harsh in nature.

9. The learned APP Mr. H.L. Jani for the State strongly opposed the submissions made by the learned advocate for the Appellant. It was contended by learned APP that the judgment and order of the Sessions Court is just and proper and as per the provisions of law; the Sessions Court has properly considered the evidence led by the prosecution and looking to the provisions of law itself it is established that the prosecution has proved the whole ingredients of the evidence against the present Appellant. But, he has agreed to the submissions made by the learned advocate regarding reducing sentence imposed by the learned trial Judge.

10. I have perused the judgment and order and reasons given by the learned Judge also. I have also considered the submissions advanced by the learned advocates for the parties. I have also perused the entire record of the case and therefore, I am of the considered opinion that learned Special Judge has rightly convicted and sentenced the Appellant and I am in full agreement with the reasons assigned by the learned Sessions Judge. I have considered his submission about the quantum of punishment and looking to the quantum of punishment, the sentence imposed by the learned Special Judge is required to be modified after considering the submissions made by the learned advocate Mr. Amin for the Appellant. Therefore, the sentence is hereby reduced from 18 month to three months.

11. In view of the above, the Appeal is partly allowed. The judgment and order dated 21.1.1998 passed by the learned Special Judge, Vadodara in ESTP Case No. 27 of 1985, is hereby modified to the extent of 3 months instead of 18 months imposed by the learned Special Judge. If the Appellant is on bail, he is hereby directed to surrender before the Jail Authority within four weeks from the date of this order, failing which, the concerned Court shall issue non-bailable warrant to effect the arrest of the Appellant. Rest of the judgment of he learned Sessions Court shall remain unaltered. Record and proceeding be sent back to the concerned trial Court.