
(2010) 12 GUJ CK 0115
In the Gujarat High Court
Case No : Criminal Appeal No. 25 of 1998

Rajendrabhai Kalidas Vasava and Another	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 29-12-2010

Acts Referred:

Essential Commodities Act, 1955 — Section 12AA

Citation : (2010) 12 GUJ CK 0115

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

Bench : Single Bench

Advocate : B.P. Munshi, for the Appellant; H.L. Jani, Ld. APP, for the Respondent

Final Decision : Allowed

Judgement

Z.K. Saiyed , J.—The present appeal, u/s 374(2) of the Code of Criminal Procedure, 1973, is directed against the judgment and order of conviction and sentence dated 22.12.1997 passed by the learned Special Judge, Baroda in ESTP Case No. 43/1995, whereby the accused have been convicted for the offence u/s 3 read with Section 12AA of the Essential Commodities Act for commission of breach of Clauses 2 and 5 of the Motor Spirit and High Speed Diesel (Prevention of Malpractice in Supply and Distribution) Order, 1990 and each of the Appellants were sentenced to suffer R/I for one year as well as fine of Rs. 3000/- each, in default, to undergo further R/I for three months, which is impugned in this appeal.

2. The brief facts of the prosecution case under:

3. That on 29.3.1995, at about 19.10 hrs, the Addition Mamlatdar, Vadodara (Rural) and Deputy Mamlatdar, Civil Supplies, Vadodara inspected the petrol pump run by the Appellants and upon drawing samples from the nozzle of the two pumps put up over Diesel Tank, found that sample drawn from one of the pumps contained the different of 0.0218 in density of diesel which was found to be more than the prescribed 0.0030 standard as per the FSL report and as such

the accused were found to have adulterated diesel by committing breach of the provisions of the above order. There were two pumps in petrol pump, out of which one pump was dry from which the sample drawn was in conformity with the standard laid down by the Order but the sample drawn from the running pump was not in conformity with the specified standard as laid down by the above order and hence, after recording the statements of the cashier and feeder, as it was apprehended that the accused had adulterated the diesel by adding kerosene earlier, the FIR was lodged on 27.8.1995 and before lodging the complaint, necessary sanction of the Collector & District Magistrate, was obtained and as the papers disclosed prima-facie case, charge-sheet was filed, which was given numbr as ESTP Case No. 43/1995 in the Court of learned Special Judge, at Vadodara.

4. Thereafter, the plea of both the accused Appellants were recorded on 8.9.1997, wherein, the Appellants # accused have pleaded not guilty and claimed to be tried.

5. In order to bring the home the charge levelled against the Appellants-accused, the prosecution has examined the witnesses and also produced documentary evidence before the trial Court.

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

7. After considering the oral as well as documentary evidence and after hearing the parties, learned Special Judge, Vadodara vide impugned judgment and order dated 22.12.1997 held the Appellants # accused guilty to the charge levelled against them u/s 3 read with Section 12-AA of the Essential Commodities Act, 1995 and convicted and sentenced the Appellants accused, as stated above.

8. Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned Special Judge, Vadodara, the present Appellants have preferred this appeal.

9. Heard Mr. BP Munshi learned advocate for the Appellant and Mr HL Jani learned APP for the Respondent-State.

10. Mr Munshi learned advocate for the Appellants has submitted that Appellant No. 2 is expired. Hence, this appeal qua Appellant No. 2 stands abated.

11. Mr. Munshi learned advocate for Appellant No. 1 has vehemently contended that Appellant No. 1 was staying at Vadodara and at the event of offence he was not present at the place of offence. It is contended by Mr. Munshi learned advocate that from the oral evidence of PW-5, I.O., he has stated that he has no personal knowledge in connection of the said offence. Mr Munshi has also contended that the prosecution has not followed the mandatory provisions of Section 12-AA of Essential Commodities Act. He has also read Section 8(5) of the Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and

Distribution) Order, 1990 and Schedule-III, Sr. No. 25 and argued that from the evidence of prosecution, the prosecution has failed to prove the case but the learned Judge has committed grave error while convicting and sentencing the Appellants.

12. Mr. HL Jani learned APP has read the impugned judgment and order of conviction and sentence passed by the learned Special Judge, Vadodara and has submitted the same is proper in eye of law and requires to be confirmed.

13. I have gone through the oral as well as documentary evidence produced on the record and impugned judgment and order. I have read the oral evidence of prosecution witnesses and considered the submissions of both the sides. It appears from the papers that the prosecution has failed to follow Section 12-AA of the Act and it also appears that Appellant No. 1 who is owner of the petrol pump was not present at the event of visit by the complainant. It also appears that petrol pump was in charge of Appellant No. 2 and he is now expired and appeal qua Appellant No. 2 is abated. From the Petroleum Law, it also established that prosecution has not followed mandatory provisions prescribed in the Law. In that view of the matter, I have found some substance in the appeal and the same requires to be allowed.

14. In the result, this appeal is allowed. The impugned judgment and order of conviction and sentence dated 22.12.1997 passed by the learned Special Judge, Vadodara in E.S.T.P. Case No. 43/1995 is hereby quashed and set aside. The Appellant No. 1 is acquitted from all the charges leveled against him. Since Appellant No. 2 is expired, the appeal abates qua Appellant No. 2. Bail bond stands cancelled. R & P to be sent back to the trial court forthwith.