
(1995) 09 GUJ CK 0026
In the Gujarat High Court
Case No : Criminal A. No. 627/95

Shri Dahyabhai Kalubhai Solanki

APPELLANT

Vs

N.J. Industries and Others

RESPONDENT

Date of Decision : 15-09-1995

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 19, 39, 40
Criminal Procedure Code, 1973 (CrPC) — Section 245
Gujarat Air (Prevention and Control) of Pollution Rules, 1983 — Rule 8

Citation : (1996) CriLJ 2787 : (1996) 1 GLR 768

Hon'ble Judges : D.G. Karia, J

Bench : Single Bench

Advocate : B.R. Gupta, for the Appellant; K.G. Vakharia, for Tushiar Mehta, for Respondent Nos. 1 to 6 and K.P. Raval, Addl. P.P. for the Respondent No. 7, for the Respondent

Final Decision : Dismissed

Judgement

D.G. Karia, J.

1 Gujarat Pollution Control Board, through its Law Officer, has filed both these appeals against the order of acquittal for the offence u/s 39 read with Section 40 of the Air (Prevention and Control of Pollution) Act, 1981 (for short, "the Air Act, 1981).

2. It was alleged against the respondent accused persons that they did not provide port holes, platforms conveniently located for easy access to port holes and all other necessary facilities for taking samples or emission from chimney in the industrial units of the respondents-accused and thereby committed offences punishable u/s 39 read with Section 40 of the Air Act, 1981. The complaint is lodged against the accused persons on basis of the default data-sheet at Exh. 5 and on basis of the authority of lodging the complaint as per the resolution at Exh. 6. On inspection of the factory units of the respondents the aforesaid drawbacks were noticed and report was accordingly prepared. It is stated in the

report that there was chimney and polluted air was emitting there from. The said inspection-report is at Exh. 17, in both the Criminal Cases.

3. Considering the evidence of the complainant. Dahyabhai Kalubhai Solanki, and that of Dhaval Laxmikant Bhatt and P.K. Gohil, the learned Chief Metropolitan Magistrate, Ahmedabad, by the impugned order of acquittal, held that the complainant Board failed to prove that the Ahmedabad area was declared as an air pollution control area u/s 19 of the Air Act, 1981, inasmuch as the recognition was not by reference to a map or by publication in the official Gazette and at least in two local newspapers for wide publicity. On this ground and on the ground that the prosecution case was not proved on facts, the learned Chief Metropolitan Magistrate, by his order dated April 8. 1995, in both the cases, ordered to acquit the respondents-accused.

4. Both these appeals are preferred against the aforesaid order of acquittal.

5. Mr. Sanjay Gupta, learned Advocate appearing for the appellant-Board conceded that the Board did not prove that the Ahmedabad area was declared as air pollution control area by producing the official Gazette in which such declaration was published, nor any of local newspapers wherein any such declaration was notified. Mr. Gupta, however, contended that the complainant. Dahyabhai Kalubhai Solanki, deposed that the Board had promulgated Ahmedabad area as air pollution control area in the official Gazette as well as in two local newspapers. But neither the official Gazette nor any of two local newspapers were produced on record.

6. Chapter IV of the Gujarat Air (Prevention and Control) of Pollution Rules. 1983 provides for prevention and control of air pollution. Rule 8 relates to manner of declaration of an area as air pollution control area. The said Rule reads as under:-

8. Manner of declaration of an area as an air pollution control area.- Any area or areas declared as a pollution control area or areas u/s 19 shall be so declared by a reference to a map or by reference to any district or partly by one method and partly by the other and shall be published in the Official Gazette and at least in two local newspapers for wide publicity. Admittedly, there is no compliance by the complainant Board in respect of publication of a declaration either in the official Gazette and in two local newspapers for wide publicity. Merely because the Law Officer who lodged the complaint on behalf of the complainant-Board stated in his evidence that there was such declaration, in the Gazette and the newspapers, and in absence of production of either the Gazette or any of the newspapers, would not bring home the charge under Sections. 39 and 40 of the Air Act, 1981.

7. In this connection, in the case of Gujarat Pollution Control Board Vs. Rushabh Industries, this Court (Coram K.J. Vaidya. J.) held that discharge of the accused u/s 245 of the Criminal Procedure Code in the identical circumstance of not producing the copy of the notification declaring Ahmedabad as a pollution controlled area would be illegal, inasmuch as the Magistrate discharging the accused on the ground that copies of Gazette notification and daily newspapers

were not produced and as such the action of the Magistrate was deprecated and ultimately the order of discharge was quashed. In that case, prior to the framing of charge, the complainant had given evidence before the Court deposing to the effect that the Government of Gujarat had declared Ahmedabad as a pollution controlled area by a notification dated 6-8-1984 which was duly published in Gazette, as required under the Act and the rules made thereunder. According to the complainant, the said notification was also further duly published in two local newspapers. However, neither the official Gazette nor any of the local daily newspapers were produced on record in that case even. This Court, therefore, quashed the order of discharge in that case, holding that the learned Magistrate was labouring under some right or wrong suspicion about the existence of the notification in question and its due publicity in two local daily newspapers and nothing prevented him to direct and insist upon the complainant to produce the same on record for the purpose of satisfying the judicial conscience regarding existence of such notification. Accordingly, despite the learned Magistrate calling and insisting upon the complainant to produce the notification in question and its due publication in two daily newspapers, it still failed to produce them, without any genuine reasonable explanation, it would certainly be open to the learned Magistrate to draw any adverse inference against it. But without calling upon the complainant to produce the copy of the notification in question, such an inevitable exercise at pre-trial stage and to summarily discharge the accused would be unjust and illegal. In the instant case, Mr. Gupta has not produced the copy of the Gazette or any of the two local newspapers and the notification of declaring Ahmedabad as a pollution controlled area, along with the memo of appeal, nor he was in a position to produce any such document at the time of hearing of the appeal. Besides, this is not a case wherein the accused has been discharged. as was the case in the ruling reported in 1995 (I) GLR 1082. In the present case, the respondent accused has been acquitted after full trial. Therefore, in my view, the ratio laid down in the above decision of Rushab Industries would not be applicable to the present case.

8. There is yet another aspect of the case. In both the cases, the witness Dhavul Laxmikant Bhatt deposed in his examination-in-chief that at the time of his visit at the factory, there was no hole in the chimney, nor there was any stair case or platform to have access to the chimney. However, he stated in his cross-examination that kurssur (sic) was joined with the mild stone chimney and that there was platform and staircase for access to port holes of the chimney. The learned Magistrate found that there was contradictory evidence on basis of which the accused persons were entitled to be acquitted. The evidence is to the effect that there was chimney and that polluted air was passing through it. It is alleged that there was no port hole in the chimney. If there was emission of polluted air from the chimney, there must be some hole in the chimney, and in the absence thereof there could not be any emission of polluted air from the chimney. The learned Magistrate has, therefore, rightly concluded that the evidence on behalf of the complainant-Board was contradictory.

9. As regards acquittal appeal, it is settled legal position that the High Court should not normally interfere with the order of acquittal, unless material irregularity or manifest error or illegality is pointed out. When two views are possible, the view adopted by the trial Court should normally be accepted and that the order of acquittal should not be disturbed lightly. In any view of the matter, no material illegality and manifest error have been pointed out by the appellant. There is no merit in the appeals.

10. In the result, both the appeals are dismissed.