
(2015) 08 GUJ CK 0018
In the Gujarat High Court

Case No : Criminal Appeal (for Enhancement) No. 687 of 2015

State of Gujarat

APPELLANT

Vs

Elicon Pharmaceuticals Private Limited and Others

RESPONDENT

Date of Decision : 14-08-2015

Acts Referred:

Citation : (2015) 08 GUJ CK 0018

Hon'ble Judges : S.G. Shah, J

Bench : Single Bench

Advocate : K.L. Pandya, APP, for the Appellant; Mehulsharad Shah, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.G. Shah, J—Rule. Learned advocate Mr. Mehul Sharad Shah waives service of rule for admission of appeal for respondents.

2. Both the learned advocates have agreed to decide the appeal on merits because compilation of relevant documents are available with the respondents and since respondents have already pleaded guilty before the trial Court, the only issue in this appeal is regarding enhancement of sentence.

3. I have heard learned advocates at length and perused the impugned judgment. It is undisputed fact that respondents - accused have been convicted u/s. 33-EEC(a)(i) and sentenced to undergo imprisonment only till rising of the Court ("T.R.I.", for short) before the Court itself with fine of Rs. 10,000/-, and if fine is not paid, then he has to undergo one month S.I. Since, there were in all three accused, they have immediately deposited the fine of Rs. 30,000/- and have undergone the sentence of T.R.I, and therefore, practically, the impugned judgment has been executed so far as conviction and imprisonment is concerned. However, State, the prosecuting agency has impugned such judgment and order dated 24.11.2014 by Judicial Magistrate First Class, Umargam in Criminal Case No. 1021 of 2003. The respondents are original accused and they are referred in

the same capacity; amongst which, accused No. 1 is a private limited company dealing in manufacturing and selling pharmaceutical products, whereas, accused Nos. 2 and 3 are its Directors. Case of the prosecution is to the effect that when sample was collected and sent for analysis from the bottle of Shilajit dealt with by the accused, the contents of Shilajit was not found in the bottle by the Government Analyst, and therefore, Food Inspector has initiated the complaint. The sum and substance of the appeal is to the effect that instead of convicting and sentencing the accused by minimum imprisonment, learned trial Court has sentenced and awarded imprisonment only T.R.I. with fine of Rs. 10,000/-. Therefore, initially, it is purely a legal issue to ascertain that whether any minimum sentence is prescribed for such offence or not. If we peruse Section 33-I(1)(d), it becomes clear that the prescribed period of imprisonment while dealing with the spurious ayurvedic drug, is a term, which shall not be less than one year and fine which shall not be less than Rs. 50,000/- or three times of the value of the drug confiscated, whichever is more. However, such provision is having proviso, which provides that "the Court may for any adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment for a term of less than one year and fine of less than Rs. 50,000/- or three times the value of the drug confiscated, whichever is more." Therefore, prima facie and basically it is the discretion of the Court to impose particular punishment, though minimum punishment is prescribed; but, only with a condition that if lesser punishment than prescribed punishment is imposed, then, the Court has to assign adequate and special reasons for the same.

4. With reference to above position of law, if we peruse the impugned judgment as well as record and proceeding, it becomes clear that there are several lacunas in the prosecution case inasmuch as (1) though sample was collected on 17.9.1999, the complaint was filed in the year 2003, (2) sample so collected was not preserved for rechecking by other laboratory, (3) though accused No. 2 being Director of the company has in categorical terms disclosed to the complainant that they have only packed the medicine for marketing, but actual Shilajit was purchased by them from one Jay Ambe Ayurvedic Suppliers and disclosed the bill number, date, address and details of payment etc. confirming that the capsules which were seized as sample by the complainant is prepared from the raw material such supplier; but, the complainant - Food Inspector has never bothered to inquire about the source of such raw-material and has failed to prosecute them or even to initiate any appropriate proceedings against such supplier, (4) though sample was collected on 17.9.1999, it was forwarded to Food & Drugs Laboratory only on 4.10.1999 i.e. after 20 days and laboratory has confirmed its report only on 31.3.2000 and (5) the bill of Jay Ambe Ayurvedic Suppliers is produced by the accused before the complainant, but it is being ignored.

5. It seems that even after such irregularities, when criminal case has been dragged from the year 2003 till the year 2014, the accused have pleaded guilty confirming that they do not object to the investigation and report to the FSL, but since they are not manufacturing Shilajit and they are preparing the product in

saleable mode, they may be pardoned.

6. It seems that, thereupon, the trial Court has considering the overall aspect of the matter, awarded the sentence as aforesaid. However, probably, because all the reasons are not explained in the impugned judgment, the prosecution has preferred this appeal. However, on verification of entire record and compilation produced by the respondents, it becomes clear that except such technicalities, there is no substance in the appeal. It is settled legal position that in acquittal appeals, the Court should set-aside the acquittal only and only if illegality or irregularity are there on face of the record and not because of possibility of different view on same set of facts and evidence. Therefore, I do not see any reason to deviate from the decision of the trial Court while awarding minimum imprisonment to the respondents by interfering in the impugned judgment so as to enhance either imprisonment or fine imposed by the impugned judgment.

7. In view of above facts and circumstances, I do not see any merits in the appeal and the same is dismissed.