

(2008) 05 GUJ CK 0057
In the Gujarat High Court
Case No : Criminal Appeal No. 965 of 1994

State of Gujarat

APPELLANT

Vs

Pravinkumar Bhuderbhai Patel and Others

RESPONDENT

Date of Decision : 02-05-2008

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 27, 28, 28A

Citation : (2008) 05 GUJ CK 0057

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : P.D. Bhate, app, for the Appellant; M.B. Gandhi for respondent 1 and K.R. Raval for respondents 2 - 8, for the Respondent

Judgement

Akil Kureshi, J.—Heard learned APP Shri Bhate for the appellant State and learned advocate Shri Gandhi who appears for respondent No. 1. Though the appeal was called out on several occasions, no one appeared for rest of the respondents.

2. This appeal is directed against the judgment and order dated 30th July 1994 passed by the learned Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No. 734/93.

3. Respondent Nos.1 to 7 were convicted for offence punishable u/s 27(d) and 28A of the Drugs and Cosmetics Act 1940 (hereinafter to be referred to as "the said Act") and respondent No. 8 was convicted for offence u/s 27(b)(ii) and 28 of the said Act. Respondent Nos.1 to 7 were sentenced to imprisonment for a day and fine of Rs. 1,000/- and in default of payment of fine, simple imprisonment for ten days. Respondent No. 8 was sentenced to imprisonment for the day and fine of Rs. 500/- and in default of payment of fine, simple imprisonment for ten days.

4. It is the case of the appellant that the provisions contained in the said Act provide for minimum sentence below which sentence can be awarded only for

adequate and special reasons to be recorded in writing. In the present case no special reasons were recorded. It was, therefore, contended that the impugned judgment requires interference and the sentence is required to be enhanced.

5. On the other hand, learned advocate Shri Gandhi appearing for some of the accused submitted that from the record, it emerges that it was a case of plea bargaining. No evidence was led. The accused had admitted the charges and the learned Judge had imposed the sentence which was commensurate with the default noticed. It was contended that the allegations were of not properly maintaining the record and other such technical defects and there was no complaint about being spurious drugs or any such serious offence. Be that as it may, the learned Judge could not have imposed sentence below the minimum prescribed under the said Act without recording proper reasons for the same.

6. Section 27(d) of the said Act prescribes punishment of imprisonment for a term which shall not be less than one year but which may extend to two years and with fine. Proviso, however, permits the Court for any adequate and special reasons to be recorded in the judgment to impose a sentence of imprisonment for a term less than one year. Similarly, Section 27(b)(ii) also prescribes imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than five thousand rupees. Proviso permits the Court for adequate and special reasons to be recorded in the judgment to impose imprisonment for less than one year and fine less than Rs. 5,000/-. It may, however, be noted that neither Section 28 nor Section 28A prescribe any minimum sentence and permit the Court to impose fine also.

7. Ordinarily, therefore, I would have struck down the judgment and inquired further as to what imprisonment should be awarded in the facts of the present case. There are a few facts peculiar to the present appeal which however need to be noted. Firstly, more than 14 years have passed since the defects were detected. Accused had pleaded guilty and not contested the charges. Upon admission, sentence was awarded which presumably must have been suffered by the accused. I have also perused the complaint and the annexures thereto. The allegations are of procedural defects and of buying and selling medicines without maintaining full records and also for storing samples of medicines not meant for sale. Though the breaches cannot be countenanced, they do not appear to be such which should result into serious consequences particularly when it appears to be the first offence of the accused.

8. Considering all these aspects of the matter, though the decision of the learned Judge cannot be approved since sentence below the minimum was imposed without recording special or adequate reasons, for the foregoing reasons, I am not inclined to enhance the term of imprisonment. Fine, however, shall have to be increased since otherwise also I find that the learned Judge imposed fine which was inadequate. Considering the nature of involvement of the accused, considering the quantity of drugs with respect to which the defects were

detected, it is provided that each of the respondents shall pay fine of Rs. 10,000/- (Rupees ten thousand) inclusive of what has already been paid. In case of default of payment of fine, they shall undergo simple imprisonment of three months.

9. In the result, the appeal is partially allowed. Sentence of imprisonment is left unaltered. Fine is increased to Rs. 10,000/- (Rupees ten thousand) each inclusive of what the respondents might have already paid pursuant to the impugned judgment which shall be paid by 30th June 2008. In case of default of payment of fine, such defaulting respondents shall suffer simple imprisonment of three months. The appeal is disposed of in above terms.