
(2015) 10 GUJ CK 0107
In the Gujarat High Court
Case No : Criminal Appeal No. 666 of 1998

State of Gujarat	Vs	APPELLANT
Ramchandra Devmal Co. and Others		RESPONDENT

Date of Decision : 09-10-2015

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18(a)(i), 18(a)(vi), 27, 28

Citation : (2015) 10 GUJ CK 0107

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : H.L. Jani, A.P.P., for the Appellant

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J—The present Appeal is filed by the Appellant - State of Gujarat challenging the impugned judgment and order rendered in Criminal Case No. 2832 of 1995 by the learned Chief Judicial Magistrate, Vadodara dated 15.5.1998 by which the conviction has been recorded for the offence under the Drugs and Cosmetics Act. However, the sentence has been awarded only till rising of the Court with fine.

2. Heard learned APP Shri H.L. Jani for the Appellant State. Learned APP Shri Jani has referred to the provisions of the Drugs and Cosmetics Act and emphasized that though the amendment has been made in the year 2008 prescribing "not less than minimum sentence", the court may have a regard to the casual approach in awarding the sentence. Learned APP Shri Jani has referred to Exh. 26 and submitted that it is on this basis while recording the conviction the sentence has been awarded till rising of the court and therefore the present Appeal has been filed.

3. As it appears from the background of the facts, the incident occurred in the year 1985 with regard to the sale of antiseptic cream which was sold by the Respondents without bill which has led to the filing of the complaint which

culminated into the criminal case. However, as recorded in the judgment, the Accused No. 3 has expired and the case prolonged for about twelve years and it has been stated that it was never anticipated that such antiseptic tube could have a reaction or the side effects. Therefore, considering the facts and circumstances, the court below has recorded the conviction on the basis of the purshis and awarded the sentence till rising of the court with specific observation that the Respondents - Accused persons have undergone sufficient trauma during this period and in fact Respondent No. 3 has also expired.

4. It is also required to be mentioned that the law has its stand at the relevant time with different provisions referred to provided for the sentence with the word "may extend to 1 year, 3 years etc." like Section 18(a)(i), 18(a)(vi) etc. read with Sections 27 and 28. The amendment in the year 2008 was brought in for the first time prescribing "not less than minimum sentence". Thus, as the law prevailed at the relevant time did not prescribe the minimum sentence and therefore considering the facts and circumstances while recording the conviction, the lesser punishment was awarded by the court below i.e. till rising of the court with fine of Rs. 10,000/-. Therefore considering the background and the overall appreciation of the material and evidence, it cannot be said that the judgment is erroneous much less perverse while recording the conviction on the basis of the admission purshis. However, the approach in the sentence could be a matter of discretion. Again in a given background of the facts, further, the doctrine of proportionality in sentence would be attracted and considering the time consumed or the lapse of time in the trial was considered which cannot be faulted with.

5. Therefore, in view of the broad guidelines laid down by the Hon"ble Apex Court with regard to the approach while considering such appeals, the court is required to consider and weigh the appreciation of material by the court below. In the facts of the case as the conviction has been recorded on admission, the issue of sentence in exercise of discretion may not be a ground for interference in the present Appeal. It is well accepted that if the statute has not provided minimum sentence and the discretion is exercised for the sentence within the limits prescribed by the statute, the appellate court would not substitute its own findings in acquittal appeals as the quantum of sentence is not to be substituted by the appellate court. Therefore the present Appeal could not be entertained and deserves to be dismissed and accordingly stands dismissed.