

(2003) 09 BOM CK 0038
In the Bombay High Court
Case No : Criminal Appeal No. 142 of 1989

The State of Maharashtra	Vs	APPELLANT
Vinod Ratilal Thakkar		RESPONDENT

Date of Decision : 20-09-2003

Acts Referred:

Essential Commodities Act, 1955 — Section 8

Citation : (2003) 09 BOM CK 0038

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : K.V. Saste, app, for the Appellant; Shrish Gupte, for the Respondent

Final Decision : Dismissed

Judgement

J.G. Chitre, J.—The appellant is hereby assailing correctness, propriety and legality of the judgment and order passed by the Special Judge, Thane, in Special Criminal Case No. 25 of 1988, whereby he acquitted the respondent of the charge framed against him in context with Section 8 of the Essential Commodities Act, 1955 (hereinafter referred to as Essential Commodities Act for convenience) for infringement of Clause 3 of Maharashtra Scheduled Commodities Retail Dealers Licence order, 1986 (hereinafter referred to as order for convenience).

2. The prosecution case, in brief, is that on 8th of December, 1987, the premises of Shakti Paints, Ulhasnagar-3, were raided and five drums were seized in view of a panchanama. On 17th of December, 1987 the samples were taken out from those drums and the samples of kerosene were despatched to Chemical Analyser. The Chemical Analyser opined that the said samples contained kerosene. The respondent was indicated and faced the trial, which resulted in an order of his acquittal, which is the subject matter of challenge of this appeal.

3. Shri Saste, A.P.P. for appellant vehemently argued and submitted that the learned Special Judge committed an error in disbelieving the prosecution case

when the evidence of officers of Police Station who raided the said premises, was sufficient enough to prove the guilt of the respondents beyond reasonable doubt. He further submitted that the samples were taken out from those drums and were despatched to Chemical Analyser, who certified that the samples were of kerosene. It is his submission that when said evidence was available the Special Judge, ought to have convicted respondent for the offence for which he was charged, and as it was not done, the is Court be pleased to allow this appeal and pass the order of conviction and sentence against the respondent.

4. Shri Gupte, Counsel appearing for the respondent, submitted that the paragraph Nos. 7, 8, 9 of the impugned judgment are self eloquent and they indicated as to how the prosecution was substanceless. He submitted that though sufficient opportunity was available, the investigating agency did not collect the documentary evidence to show that the said premises were in ownership and possession of the respondent. According to him the prosecution was unable to establish that the respondent was in possession of those five drums. He further submitted that when those five drums were seized under panchanama, for the reasons best know to the prosecution, the samples were not immediately collected and therefore, the trial Judge has discarded the said evidence in respect of certificate of Chemical Analyser. He justified the order of acquittal and prayed for dismissal of the appeal.

5. The paragraphs No. 7, 8 and 9 of the judgment clearly show, as to how the learned Special Judge has appreciated the evidence on record by applying the judicial mind. He has rightly pointed out that though, sufficient opportunity was available, the investigating agency did not collect any documentary evidence to show that the respondent was concerned with the said premises from which those five drums were seized. In addition to that, the Special Judge pointed out that the samples were not collected immediately after seizure of those five drums and there has been sufficient delay of 9 days in collecting the said samples. The samples were not collected in presence of respondent and the panch witnesses, as evidence of panch witnesses shows that the samples were not collected in presence of an independent witness. The prosecution has not adduced any satisfactory explanation for explaining the delay. Therefore, the learned Special Judge was right; in discarding the certificate of Chemical Analyser, which was produced by the prosecution in support of its case.

6. Because, it is the duty of every investigating agency to collect samples of concerned commodity as soon as they have been seized, and those samples should be collected before independent witnesses. All incriminating samples should be collected as early as possible and that too in presence of independent witnesses unless there is no availability of such witnesses. But in that case prosecution should but forth satisfactory explanation in that context.

7. For the purpose of convicting the accused it was necessary to establish that the appellant was possessing those five drums. The prosecution failed to do so and therefore, it cannot, by any reasonable sense, be said that the respondent

committed infringement of Clause 4 of the above mentioned Order, which was passed in view of Essential Commodities Act.

8. The Special Judge has committed no error whatsoever, in appreciating the evidence on record. The conclusions drawn by him are consistent with evidence on record and provisions of law involved. In the matter of Shivaji Genu Mohite Vs. The State of Maharashtra, , the High Court should be slow in dislodging the finding of facts resulting into the order of acquittal in favour of the accused. It should not do so when the judgment and order challenged is well reasoned, consistent with evidence on record and provisions of law and not perverse one.

9. Thus, this Court does not find any ground for allowing the appeal. Thus, appeal stands dismissed. The bail bond furnished by the respondent shall stand discharged. Rule stands discharged.

Parties concerned to act on a simple copy of this order, duly authenticated by the Court Stenographer/Sheristedar of this Court.