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Court : Gujarat

Decided On : Jan-24-2011

Judge : Z.K.Saiyed, J.

Acts : Code of Criminal Procedure (CrPC) - Section 378(4); Prevention of Food Adulteration Act - Sections 7(i), 16(i) A(i)

Appeal No. : CRIMINAL APPEAL No. 1521 of 2010.

Appellant : State of Gujarat.

Respondent : Hemangini Nitinkumar Patel and ors.

Advocate for Pet/Ap. : MR HL JANI, Adv.

Judgement :

1. The appellant-State of Gujarat has preferred the present appeal under Section 378(4) of the Code of Criminal Procedure, 1973 against the Judgment and Order of acquittal dated 27th April 2010 passed by the learned Metropolitan Magistrate, Court No.8, Ahmedabad, in Criminal Case No.01 of 1994 for the offences punishable under the Prevention of Food Adulteration Act, 1954, whereby the learned Magistrate has acquitted the respondents-accused of the charges levelled against them.

2. The short facts of the prosecution case is that the appellant was serving as Food Inspector. On 22nd October 1991, the complainant visited the partnership firm of the original accused persons at about 15:00 hours. At that point of time, the

accused No.1 was present in the firm. It is the case of the complainant that after giving his identity as Food Inspector, the complainant purchased 600 gms. Nilkanth Branded Besan after paying consideration as sample. It is also the case of the complainant that after following due procedure of sealing, the sample was sent for analysis to the Public Analyst, Vadodara. On examination, the Public Analyst found that the said sample was adulterated and not upto the standards and provisions laid down under the Prevention of Food Adulteration Act, 1954. The said sample was manufactured by the accused No.7-Shri Saibaba Floor Mills, Ahmedabad. Therefore, after following the due procedure, complaint was filed against the respondent-accused in the Court of learned Judicial Magistrate First Class, Ahmedabad for the offences punishable under Section 7(i) and 16(i) A(i) of the Prevention of Food Adulteration Act, 1954.

3. Thereafter the trial was conducted before the learned Magistrate. To prove the case of the prosecution, prosecution has produced oral as well as documentary evidence. After considering the oral as well as documentary evidence, the learned Magistrate has acquitted the respondents-accused from the charges alleged against them by his Judgment and Order of acquittal dated 27th April 2010.

4. Being aggrieved and dissatisfied with the said Judgment and Order of acquittal dated 27th April 2010 passed by the learned Metropolitan Magistrate, Court No.8, Ahmedabad in Criminal Case No.01 of 1994, the appellant-State of Gujarat has preferred the above mentioned Criminal Appeal.

5. Heard Mr.H.L. Jani, learned Additional Public Prosecutor, appearing on behalf of the appellant. I have also gone through the papers and the Judgment and Order passed by the learned Magistrate.

6. Mr.H.L. Jani, learned Additional Public Prosecutor, has contended that the Judgment and Order of acquittal passed by the learned Magistrate is not proper, legal and it is erroneous. He has also argued that the learned Magistrate has not considered the evidence of the witnesses. He has argued that the learned Magistrate has not considered the fact that the Food Inspector has followed the proper procedure while collecting the sample, etc. are just and proper. The sample was seized and sealed properly. Yet, the learned Magistrate has not considered

the evidence of prosecution. He, therefore, contended that the order of acquittal passed by the learned Magistrate is without appreciating the facts and evidence on record and is required to be quashed and set aside by this Hon'ble Court.

7. It is a settled legal position that in acquittal appeal, the Appellate Court is not required to re-write the judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondents-accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned judgment is just, legal and proper and requires no interference by this Court. Hence, this appeal requires to be dismissed.

8. Even in a recent decision of the Apex Court in the case of *State of Goa v. Sanjay Thakran & Anr.* Reported in (2007)3 SCC 75, the Court has reiterated the powers of the High Court in such cases.

9. Similar principle has been laid down by the Apex Court in the cases of *State of Uttar Pradesh v. Ram Veer Singh & Ors*, reported in 2007 AIR SCW 5553 and in *Girja Prasad (Dead) by LRs v. state of MP*, reported in 2007 AIR SCW 5589. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

10. It is also a settled legal position that in acquittal appeal, the appellate court is not required to re-write the judgment or to give fresh reasoning, when the reasons assigned by the Court below are found to be just and proper. Such principle is laid down by the Apex Court in the case of *State of Karnataka v. Hemareddy*, reported in AIR 1981 SC 1417.

11. Thus, in case the Appellate Court agrees with the reasons and the opinion given by the lower court, then the discussion of evidence is not necessary.

12. I have gone through the order of acquittal passed by the learned Magistrate. I have also perused the oral as well as documentary evidence led before the trial Court and also considered the submissions made by learned advocates for the

parties.

13. The trial Court has, after appreciating the oral as well as documentary evidence, found that original accused Nos.1 to 4 and 12 are out of India. It is also observed by the learned Magistrate that there is nothing on record to show as to how sample was collected. It is also observed by the learned Magistrate that sample was taken on 22nd October 1991 and Public Analyst's report is dated 19th November 1991, i.e. approximately after a period of one month. In the said report, presence of insects were not found. It is also observed by the learned Magistrate that sanction to file complaint was given on 27th February 1992 and complaint was filed on 05th May 1994, i.e. after a period of more than two years. Even it is also observed by the learned Magistrate that both the reports, i.e. report of public analyst and report of Central Food Laboratory, are contradictory. The trial Court has observed that there are serious lacuna in the oral as well as documentary evidence of prosecution. Nothing is produced on record of this appeal to rebut the concrete findings of the Trial Court.

14. Thus, the appellant could not bring home the charges against the respondents-accused in the present appeal. The prosecution has miserably failed to prove the case against the respondents-accused. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

15. Mr.Jani, learned Additional Public Prosecutor, is not in a position to show any evidence to take a contrary view in the matter or that the approach of the trial Court is vitiated by some manifest illegality or that the decision is perverse or that the trial Court has ignored the material evidence on record.

16. In above view of the matter, I am of the considered opinion that the trial Court was completely justified in acquitting the respondents-accused of the charges levelled against him.

17. I find that the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it.

18. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and hence find no reasons to interfere with the same. Hence the appeal is hereby dismissed. The Judgment and Order of acquittal dated 27th April 2010 passed by the learned Metropolitan Magistrate, Court No.8, Ahmedabad, in Criminal Case No.01 of 1994 is hereby confirmed. Bail bond, if any, shall stand discharged. Record and Proceedings, if any, be sent back to the trial Court concerned, forthwith.

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