

**Case Note:** The case involves an appeal under section 378 of CrPC against an order whereby the accused have been acquitted of the charges under Section 247 read with Section 43 & 44 of the Prevention and Control of Pollution Act, leveled against them. The factory makes black dyes and effluent in the drainage carries more particulates. Officers of Pollution Control Board have sent water samples to Public analyst and found them sub-standard. Oral and documentary evidence taken by trial court finds prosecution to have not followed the mandatory provisions during seizure. Consequent to prosecution's failure to provide proof beyond reasonable doubt, the court upholds trial court's acquittal.

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## **IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

Criminal Appeal No. 990 of 1998

Decided On: 30.10.2009

Dahyabhai Kaklubhai Solanki

Vs.

Mahendrabhai G. Naik and Ors.

Hon'ble Judges:

Z.K. Saiyed, J.

### **JUDGMENT**

Z.K. Saiyed, J.

1. The present appeal, under Section 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order of acquittal dated 22.10.1997 passed by the learned Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No. 547/1991, whereby the accused have been acquitted of the charges under Section 247 read with Section 43 & 44 of the Prevention and Control of Pollution Act, leveled against them.

2. The brief facts of the prosecution case are as under:

2.1 It is the case of the prosecution that accused No. 2 is the owner of Naik Dyestuff Industries, situated at GIDC, Phase-II, Plot No. 195 C/1, Vatva and accused No. 3 was the In-charge of the factory on 26.5.90. In the said factory black dyes is manufactured. In the said process, water is used and at the end of the process, dirty water is discharged by the factory in the GIDC Drainage which carried more particles. Thereafter, the officers of the Board have visited the factory premises and taken the sample of polluted water and sent it to the Public Analyst for analysis and as per the report of the Public Analyst, the sample was found sub-standard. On these facts, the complaint was filed before the Court, which was numbered as Criminal Case No. 547/1991 against the respondents. At the time of trial, evidence was led before the trial Court. The documents were produced and oral evidence of the witnesses were also recorded by the trial Court and after considering the oral as well as documentary

evidence, the learned Magistrate has passed the order of acquittal which is impugned in this appeal.

3. It was contended by learned Advocate Mr. Sunil Mehta for the appellant that the judgment and order of 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. The sample was seized and sealed properly. Yet, the learned Magistrate has not considered the evidence of prosecution. Therefore, the order impugned in this appeal passed by the learned Magistrate requires to be quashed and set aside.

4. 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 at this stage. Hence, this appeal requires to be dismissed.

5. Even in a recent decision of the Apex Court in the case of *State of Goa v. Sanjay Thakran and Anr.* Reported in (2007)3 SCC 75, the Court has reiterated the powers of the High Court in such cases. In para 16 of the said decision the Court has observed as under:

16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with.

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

7. 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 reasonings, 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, wherein, it is held as under:

This court has observed in *Girija Nandini Devi v. Bigendra Nandini Chaudhary* (1967)1 SCR 93 : AIR 1967 SC 1124 that it is not the duty of the appellate court

when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.

8. 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.

9. I have gone through the judgment and order passed by the trial court. I have also perused the oral as well as documentary evidence led by the trial court and also considered the submissions made by learned Advocate for the appellant. The trial court while considering the oral as well as documentary evidence has clearly observed that the prosecution has not followed the mandatory provisions during the sealing and seizing the sample. The prosecution has failed to prove its case beyond reasonable doubt. Even in the present appeal, nothing is produced or pointed out to rebut the conclusion of the trial Court. Thus, from the evidence itself it is established that the prosecution has not proved its case beyond reasonable doubt.

10. Mr Sunil Mehta learned Advocate for the appellant is not in a position to show any evidence to take a contrary view of 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.

11. In the above view of the matter, I am of the considered opinion that the trial court was completely justified in acquitting the respondent of the charges leveled against him.

12. 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.

13. I am, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the court below and hence find no reasons to interfere with the same. Hence the appeal is hereby dismissed. R & P to be sent back to the trial Court, forthwith. Bail bond, if any, stands cancelled.

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