

HIGH COURT OF GUJARAT

STATE OF GUJARAT

Versus

ASSOCIATED CEMENT COMPANY LIMITED

Date of Decision: 16 July 2004

Citation: 2004 LawSuit(Guj) 424

Hon'ble Judges: [C K Buch](#)

Eq. Citations: 2005 4 GLR 3389, 2004 3 GLH 322, 2004 3 GCD 2349, 2005 25 AllIndCas 777

Case Type: Criminal Appeal

Case No: 227 of 1989

Editor's Note:

Criminal Procedure Code, 1973 - Sec 378 - Standards of weights & Measures Act, 1976 - Sec 32(1) - Acquittal - Appeal - Complainant has neither been examined nor grievance of said company was received by complainant Inspector - Merely because Compent officer found some lesser quantity of cement in some of the bags lying outside gates of accuseds Company - It would be wrong to presume that the accused company had delivered articles in quantity less than actual quantity - While dealing with acquittal recorded by trial Court the jurisdiction of this Court is very limited - When there is no perversity or illegality in finding recorded by trial Court - This Court is not inclined to interfere with finding of acquittal recorded by trial Court - Held, No Substance in this petition.

Acts Referred:

[Standards of Weights and Measures Act, 1976 Sec 32\(1\)](#)

Final Decision: Appeal disposed

Advocates: [K T Dave](#), [Nanavati Associates](#)

[1] Heard Mr. K.T. Dave, Id. APP appearing for the appellant-State and Mr. Prabhav Mehta, learned counsel appearing on behalf of Nanavati Associates for the respondent-accused.

[2] This is an appeal against the judgment and order of acquittal dated 7th January, 1989, recorded by the learned Judicial Magistrate First Class, Thasara, in the complaint lodged by the Inspector, Weights and Measures Department, under Section 32(1) of the Standards of Weights and Measures Act, 1976 (hereinafter referred to as 'the Act'). Having considered the findings recorded by the learned Magistrate, it appears that the learned Magistrate has considered one important aspect that there is non-examination of important witnesses though all witnesses were there. It is discussed by the learned Magistrate that the witnesses examined by the prosecution have not led the Court to the satisfaction under which any of the accused can be convicted for the offences alleged in the complaint.

[3] It is rightly submitted by Mr.Mehta that even otherwise the accused nos.2 to 5 could not have been convicted as there is no direct allegation as to their involvement in view of the scheme of the Act. Having considered the case against the accused no.1-Company, it emerges that the provisions of Section 32(1) of the Act would not apply in view of the facts pleaded in the complaint. It would be beneficial to quote Section 32(1) of the Act, which is as under :

"32(1). The Central Government may, by rules made in this behalf, direct that in respect of the class of goods or undertakings or users specified therein, no transaction, dealing or contract shall be made or had except by such weight, measure or number as may be specified in the said rules."

[4] It is not a matter of dispute that the complainant-GSFC, the purchaser of the cement from the accused no.1-Company, has neither been examined nor the grievance of the said company was received by the complainant-Inspector. Merely because the competent officer found some lesser quantity of the cement in some of the bags lying outside the gates of the accused's company, it would be wrong to presume that the accused-company had delivered the articles in quantity less than the actual quantity or the quantity more than fixed as per the contract. It is true that the reasons assigned for recording acquittal are not detailed reasons but ultimate finding recorded by the learned trial Court cannot be said to be illegal or perverse. For want of sufficient evidence, even otherwise, the accused were to be acquitted, so the acquittal of the respondent no.1-company does not require any interference. It is settled legal proposition that while dealing with acquittal recorded by the trial Court, the jurisdiction of this Court is very limited and when there is no perversity or illegality in the findings recorded by the learned trial Court, this Court is not inclined to interfere with the finding of acquittal recorded by the trial Court. Hence, this appeal is hereby dismissed. The judgment and order of acquittal dated 7th January, 1989, passed by the learned Judicial Magistrate First Class, Thasara, in T.Criminal Case No.242/1982 is hereby confirmed. Bail bond, if any, shall stand discharged. Before parting with the order, it is

relevant to note that the officers of the respondent no.1-accused Company are not served but as this Court has not recorded any finding against them, it is not necessary to see that they are served with the process of the Court. Therefore, non-service of the notice of admission would not come in way in disposing this appeal.

