HIGH COURT OF GUJARAT

SUN PHARMACEUTICALS LTD
Versus
STATE OF GUJARAT AND ORS

Date of Decision: 01 February 2013

Citation: 2013 LawSuit(Guj) 141

Hon'ble Judges: Sonia Gokani

Case Type: Criminal Revision Application

Case No: 73 of 2007

Subject: Criminal

Acts Referred:
Code Of Criminal Procedure, 1973 Sec 397, Sec 401

Final Decision: Revision dismissed

Advocates: Nanavati Associates, R C Kodekar

Cases Referred in (+): **4**

Sonia Gokani, J.

[1] The petitioner has challenged the order of the learned Additional Sessions Judge dated 22.11.2006 passed in Criminal Appeal No.49 of 2006, whereby the learned Additional Sessions Judge partly confirmed the order of the Collector, Bharuch imposing penalty against the seizure of the stock worth Rs.9,77,460/- of the petitioner company in the following factual background.

1.1. The petitioner company is engaged in the business of manufacturing of bulk drugs and its intermediates. It is required to use furnace oil and hexane as raw-material, which is considered as solvent under Section 2(i) of the Solvent, Raffinate and Slop(Acquisition, Sale, Storage and Prevention of use of Automobiles) Order, 2000. By virtue of Section 3 of the said order, a license was required for the acquisition, storage or sale of solvent. The petitioner company had the licence, which was granted and was valid up to 31.12.2004. It is averred that inadvertently the petitioner company could not renew the licence in time, and therefore, it

applied for the renewal on 21.12.2005. In the meantime, on 28.12.2005 Mamlatdar, Ankleshwar visited the plant of the petitioner for a surprise check and directed seizure of solvent amounting to Rs.9,77,459/- on the ground that the company did not have the licence and no steps were taken for the renewal for a long time though the same expired on 31.12.2004 and that the Register keeping the details of solvent licence usage was not maintained. Mamlatdar, thus, seized 9639 liters of Hexane and 31,673 liters of furnace oil amounting to Rs.3,43,919/- and Rs.6,33,540/- respectively. Combined value of the seized material was Rs.9,77,459/-.

1.2. A show cause notice was issued by Collector, Ankleshwar on 20.2.2006. After a bipartite hearing on 22.5.2006, the Collector directed to impose penalty of Rs.4,88,730/- by giving a detailed order.

1.3. Aggrieved by the said order, the Company preferred Criminal Appeal No.49 of 2006 dated 20.6.2006. The Court reduced the penalty to Rs.2,44,365/-. Therefore, this revision under Section 397 read with Section 401 of the Code of Criminal Procedure.

[2] Learned advocate Mr. K.D. Gandhi for Nanavati Associates fervently argued before this Court that when the company had already applied for licence and the licence was subsequently granted, it would always relate back to the date on which it has expired. Therefore, it should be considered and treated as mere irregularity and no offence could be said to have been committed by the Company. In the alternative, he argued that the penalty imposed is on a higher side and it ought to have been imposed considering the nature of default.

[3] Learned Additional Public Prosecutor Mr. Kodekar has objected to the interference in this revision. According to him, there is no illegality much less any patent perversity which would warrant interference by this Court. He urged that ordinarily in revisional jurisdiction, the Court is not to interfere at all.

[4] Upon thus, hearing both the sides and considering the material on record, this Court has found no ground for it to interfere in the revisional jurisdiction. At the outset, it would be profitable to reproduce citations of judgments in which there are the well laid down fundamental principles to demonstrate as to when the revisional jurisdiction can be exercised by this Court.

[5] In the case of K. Chinnaswamy Reddy vs. State of Andhra Pradesh & another, 1962 AIR(SC) 1788 the Apex Court held as under:-

7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of S. 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not, convert the finding of acquittal into one of conviction by the indirect method of ordering retrial when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may, however, indicate some cases of this kind which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce. or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; an in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of S. 439 (4). We have, therefore, to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.

[6] As can be noted from the discussion to be followed hereinafter, neither there is any glaring defect in procedure nor any manifest error of law resulting into miscarriage of justice which would necessitate interference in this case. It would be worthwhile also to refer to the decision of this Court dealing with confiscation of goods under the provisions of Essential Commodities Act, rendered in case of Bhai Nihalchand Modh vs. State of Gujarat,2000 JX (Guj) 635. In this case, the petitioner was holding wholesale licence as producers in edible oilseeds. Such licence was valid upto 31.12.1986. When his premise was inspected by the Inspector certain irregularities were found and his licence was not renewed. Therefore, the quantity mentioned in the order was seized and notice was issued under Section 6B of the Essential Commodities Act, 1955 asking him to show cause as to why the commodities should not be confiscated. The licence

was renewed with effect from 1.6.1987. Thus for a short period there was no renewal. The District Supply Officer, however, held such irregularity as proved and confiscated the entire commodity.

The petition came to be filed under Articles 226 and 227 before the High Court when the appeal was allowed partly and confiscation was ordered of the 50% of the goods. This Court (Coram: C.K. Thakkar, J.) partly allowed the petition by holding that the question raised was not pure question of law but the requirements of licence was undoubtedly the need of controlled order and whether a particular quantity was in possession of the petitioner was a pure question of fact. There was no allegation against the petitioner that he disposed of any commodity by taking undue advantage of the situation or by black-marketing it. Therefore, in a writ jurisdiction, the Court, instead of permitting confiscation of the 50% of the goods, allowed only 10% of the commodity to be confiscated and remaining commodity had been given back while upholding the power of the concerned authority by invoking the provisions of Section 6A with regard to the confiscation of the goods.

[7] As far as the present petition is concerned, as mentioned hereinabove, he was manufacturing the bulk drugs and intermediates and he had required the licence under the Solvent, Raffinate and Slop(Acquisition, Sale, Storage and Prevention of use of Automobiles) Order, 2000. Such licence was valid upto 31.12.2004. However, till 21.12.2005, for nearly one year, he did not make any attempt to renew the licence. Again, once having given an application on 21.12.2005 for renewal, it does not appear anywhere on the record as to when the licence was renewed, assuming that the same had been subsequently renewed. In the show cause notice, what has been alleged is that the stock registers required to be maintained have not been orderly maintained. Thus, registers, which keep details of the solvent licence usage since also were not maintained in absence of the licence, it would not be possible for the authority to know whether any advantage of the situation has been taken by the revisionist herein or not. Assuming for the sake of arguments that the licence was renewed from the date on which it expired by giving it a retrospective effect, then also one of the terms of the licence is for the licensee to maintain the registers. This is necessary to ensure that no undue advantage is taken by any person or no black-marketing is done in absence of renewal of the licence and in absence of maintenance of any registers, authority would have no check over any of these aspects and licencee cannot, on one hand, be allowed to be exempted maintenance of registers for want of licence and on the other hand be permitted to plead regularization of licence retrospectively.

[8] It is not in dispute that the licence, which was valid upto 31.12.2004 got renewed much later, and therefore, Mamlatdar when visited the factory premises was well within his right to confiscate the goods exercising the powers under the Essential

Commodities Act. There is no infirmity in his invoking the provision and passing the order of confiscation of the seized goods, and therefore, no interference is desirable as far as that stage is concerned.

As far as the amount of penalty is concerned, the total seizure is worth Rs.9,77,459/-. The Collector, after bipartite hearing, imposed the penalty of 50% of the seized goods and when challenged in the appeal, Court reduced the same further by 50% and thus the penalty as that stands today is 25% of the total seized value of the confiscated goods. Neither sides could point out any limit for imposing such penalty.

It would be worthwhile to refer to the judgments of the Apex Court given in case of Collector of Ganjam and anr. vs. Ramesh Chander Pandhi,2009 1 NSC 227, this ratio gets reiterated. The Apex Court in the case ofDeputy Commissioner, Dakshina Kannada District vs. Rudolph Fernandes, 2000 3 SCC 306, while dealing with the issue of limit of funds payable under the proviso to Section 6A(1) in lieu of confiscation of the vehicle, has held thus-

5. At the outset it is to be stated that the object of The Act is to deter a person from illegally dealing in an essential commodity and consequently, impose a deterrent penalty against a person dealing in them illegally. While doing so, the law takes care to prevent the owner of any vehicle from aiding or assisting such an illegal activity. As per the preamble of the Act, the Act is to provide, in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce, in certain commodities. For this purpose, S. 3 empowers Central Government to provide for regulating or prohibiting the production, supply and distribution of essential commodity and trade and commerce therein if the same is considered necessary or expedient inter alia for maintaining or increasing supply of any essential commodity or for securing their equitable distribution and availability at fair prices by passing an appropriate order. Section 6A as quoted above provides for seizure and confiscation of essential commodity for contravention of any order issued under S. 3. Further S. 6B provides for issuance of show cause notice and the procedure for confiscation of the seized essential commodity as well as any package, covering or receptacle in which essential commodity is found or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity. Section 6C provides for appeal against the confiscation order and the procedure for return of confiscated article in case where appeal filed against the confiscation order or the order passed under S. 7 forfeiting the essential commodity is set aside. Thereafter, S. 6D provides that the order of any confiscation under The Act shall not prevent the infliction of any punishment to which the person affected thereby is liable under The Act. Therefore, even if the

essential commodity or the vehicle is confiscated, the person can be prosecuted and the penalty provided under S. 7 can be imposed. Section 7(1)(a) provides for punishment to any person who contravenes any order made under S. 3. Section 7(1)(b) and (c) empowers the Court to forfeit to the government any property in respect of which the order has been contravened or to forfeit any package, covering or receptacle in which the property is found and also animal, vehicle, vessel or other conveyance unsed in carrying the property.

6. In the light of aforesaid provisions, second proviso to S. 6A is required to be considered. First it is to be stated that the proviso limits the power of the competent authority to recover fine up to the market price for releasing the animal, vehicle, vessel or other conveyance sought to be confiscated. So maximum fine that can be levied in lieu of confiscation should not exceed the market price. For our purpose, relevant part of proviso would be "in the case of.... vehicle... the owner of such..... vehicle shall be given an option to pay, in lieu of its confiscation, a fine not exceeding the market price at the date of seizure of the essential commodity sought to be carried by such..... vehicle". Question is whether fine should not exceed the market price of the seized essential commodity or whether it should not exceed the market price of the vehicle. For this purpose, it appears that there is some ambiguity in the Section. It is not specifically provided that in lieu of confiscation of vehicle a fine not exceeding the market price of the vehicle or of the seized essential commodity is to be taken as measure. Still however, it is difficult to say that measure of fine is related to the market price of the essential commodity at the date of its seizure. It nowhere provides that fine should not exceed market price of the essential commodity at the date of seizure of the vehicle. The proviso requires the competent authority to give an option to the owner of such vehicle to pay in lieu of confiscation a fine not exceeding the market price. What is to be confiscated is the vehicle and, therefore, measure of fine would be relatable to the market price of the vehicle at the date of seizure of the essential commodity sought to be carried by such vehicle. This would also be consistent with the scheme of S. 7 which provides for levy of penalty. It empowers the Court trying the criminal case to pass an order forfeiting to the Government any property in respect of which the order under S. 3 has been contravened. It also empowers forfeiture to the Government any package, covering or receptacle in which the property is found and in addition any animal, vehicle, vessel or other conveyance used in carrying the commodity. Therefore, not only the essential commodity which is seized is to be forfeited, but the vehicle also could be forfeited to the Government. Hence, measure of fine which is required to be levied in lieu of confiscation under second proviso to S. 6A(1) would be relatable to the market price of the vehicle and not of the seized essential commodity. And, the fine amount in lieu of confiscation is not

to exceed the market price of the vehicle on the date of seizure of essential commodity. That is to say, limit of such fine would be up-to the market price of the vehicle on the relevant date and it is within the discretion of the competent authority to fix such reasonable amount considering the facts and circumstances of each case.

[9] Although in the instant case, there is no question of confiscation of vehicle as Mamlatdar having exercised powers under the Essential Commodities Act, had confiscated the goods and later on penalty had followed after completing the due process of adjudication. Although the amount of penalty is not specified anywhere from the above referred decisions, it can be deduced that from the proviso to section 6(A) as well as aforementioned decisions, it can be said that fine cannot exceed the market price of essential commodity at the date of seizure. In the instant case, as the total seizure was worth Rs.9,77,959/-, the amount sought to be challenged in the instant revision is 25% of the said price. Therefore also, there is no violation of any of the proviso or the ratio laid down by the higher Courts warranting interference by this Court.

[10] Resultantly, this Court finds no justification in interfering in the revisional jurisdiction. Revision is, therefore, dismissed.