

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.64 OF 2004**

The State of Maharashtra	)	Appellant/Complainant
V/s.	)	
1. Narayan Dhondu Bhamre Age : 72 years, R/o. Chinchmala, Daregaon Shiwar, Tal. : Malegaon, District - Nashik	))))	
2. Shaikh Rafiq Shaikh Kasam Age : 25 years, Tanker Driver, R/o. Ayesha Nagar, Malegaon, Tal. : Malegaon, District - Nashik	))))	
3. Shaikh Rashid Shaikh Kasam Age : 28 years, Tanker Cleaner, R/o. Ayesha Nagar, Malegaon, Tal. : Malegaon, District - Nashik	))))	
4. Sanjay Haribhau Desle Age : 32 years, R/o. Near Devi Mandir, Dyane, Tal. : Malegaon, District - Nashik	))))	
5. Bhagwan Laxman Mali Age : 35 years, R/o. Chinch Mala, Daregaon, Tal. : Malegaon, District - Nashik	))))	
6. Rajendra Chabu Lokhande Age : 31 years, R/o. Kangond, Tal. Chandwad, Tal. : Malegaon, District - Nashik	))))	Respondents/Accused

Ms. Pallavi N. Dabholkar, APP for State.

**CORAM : K.R.SHRIRAM, J.
DATE : 16th DECEMBER 2020**

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 28th March 2003 passed by the Judicial Magistrate First Class, Malegaon,

acquitting six accused (respondents) of offences punishable under Section 3 read with Section 7 of Essential Commodities Act (the said Act).

2 The allegation against respondents is that they have contravened the orders made under Section 3 of the said Act and found with 12000 liters blue coloured government controlled kerosene in a tanker no.MH-18-9859 (the said tanker) for selling the essential commodity, i.e., kerosene, illegally in the black market.

3 It is prosecution's case that on 5th October 2001 complainant (PW-12) was in Malegaon on bandobast duty. On 6th October 2001 complainant was present on the Mumbai Agra Highway bypass at Manmad Chaufully. At that time, complainant received confidential and reliable information at about 6.00 p.m. that in a tanker bearing no.MH-18-9859 containing 12000 liters of government controlled blue coloured kerosene, which has collected from Manmad HPCL Depot to deliver at Aurangabad, is going to be diverted to be sold in black market in Malegaon. PW-12 immediately arranged for two panchas, viz., Hakim Mohammad Usman and Shaikh Ayyub Shaikh Ibrahim, PW-4 and PW-3, respectively, to be present as panchas alongwith the police party. The police party comprised of PW-13, PW-8 and one Mahendra Sambrekar, who has not been examined. PW-12 informed these people about the information received by him and they were keeping a watch for the said tanker. After some time, the said tanker came from Manmad side and turned towards Dhule side. Therefore, PW-12 alongwith police party and panchas started chasing the said tanker by

government jeep bearing no.MH-15-AA-106. The tanker then turned towards Daregaon side to go to Malegaon with the police jeep chasing it. The tanker then entered a compound at Daregaon and stopped there. Two persons alighted from the driver's cabin and then joined a pipe to the tanker and the other side of the pipe was put inside an underground tank. The police party found four persons near the tanker and the driver disclosed his name as Shaikh Rafiq Shaikh Kasam, who is accused no.2. The cleaner disclosed his name as Shaikh Rashid Shaikh Kasam, who is accused no.3. Both were resident of Ayesha Nagar, Malegaon. The two other persons were accused no.4 and accused no.5, respectively.

4 It is prosecution's case that during the enquiry accused no.2 disclosed that the kerosene was to be delivered at Aurangabad in the kerosene depot of one Rana Sheth but the transporter one Vijusheth Lonari, who kept invoice with him, told accused no.2 to deliver the kerosene at Daregaon Chinchmala in the kerosene depot of one Bhamre, who is accused no.1. The tanker was seized and it was found to contain 7500 liters of blue coloured kerosene. Alongwith the tanker, plastic pipe and various other documents were seized and sample was taken from the tanker for forensic examination. Thereafter, FIR was lodged and investigation was commenced. Statements were recorded and various other documents were also collected. The prosecution thereafter filed chargesheet, charges were framed and the accused pleaded not guilty. Their defence is of total denial.

5 In all prosecution examined 14 witnesses of which PW-2, PW-3, PW-4, PW-5, PW-6, PW-9 and PW-10 turned hostile. PW-2, the photographer, who took photograph of the tanker while the raid happened, has denied that he took any photograph as stated by the prosecution. When the negatives of the photographs were shown, PW-2 stated that he had not taken the said photographs. PW-3, the panch witness, who had accompanied the raiding party, stated that when he was proceeding towards Malegaon, police stopped him at Devicha Mala and took his signature on some papers and police did not seize anything in his presence. PW-3 also denied that he was informed by PW-12 about the confidential information received. PW-4, the other panch witness, who is supposed to have accompanied the raiding party, states that when he was returning from Daregaon to go to Malegaon, the police stopped him and took his signature on written panchnama and he does not know the contents. PW-4 also denied that police seized any tanker or kerosene in his presence or the seizure panchnama was drawn in his presence. PW-4 also denied having been informed the confidential information received by the raiding team. Therefore, the fact that the tanker was found removing government kerosene to be sold in black market at Malegaon itself has not been proved through the panch witnesses or the photographer.

6 PW-5, another panch witness to prove that accused no.2 and accused no.3 produced certain documents like cash memo also turned hostile. PW-5 states that police never took his signature on any panchnama

and denies that the signature on the panchnama was his. PW-5 also has denied that the police prepared seizure panchnama of the cash memo in his presence. PW-6, who was an employee of one Ajit Rana, the person who had purchased the kerosene and through whom the said Rana had forwarded the demand draft for the price of the kerosene, has also denied that he has personal knowledge of unloading the kerosene at Malegaon. Ofcourse PW-6 has stated that the payment for kerosene, which was made by Mr. Rana, has not been received. PW-9, the transporter also turned hostile. Even the tanker owner, who is PW-10, states that he had given the tanker on hire basis to PW-9 and further states in his cross examination that he did not even know that his driver and cleaner were found while unloading kerosene from the said tanker into a kerosene depot of accused at Dharegaon illegally.

7 PW-1, the Manager of HPCL, stated that he has prepared filling slip of kerosene to fill 12000 liters of kerosene into the said tanker. PW-1 is, however, unable to identify the driver of the said tanker. The documents indicate that one Rana Sahebram Mannualal of Aurangabad had requested the depot of HPCL to deliver 12000 liters kerosene by the said tanker. PW-8, PW-11, PW-12, and PW-13 are all part of the raiding party.

8 PW-14 is the Investigating Officer. PW-14 had admitted in his cross examination that he did not draw seizure panchnama of stock register of accused no.1 or seize original stock register of kerosene of accused no.1. This is very relevant because the tanker was supposed to have been unloading the kerosene into an underground tank in a plot of land which

belong to accused no.1. The tanker, as noted earlier, was filled with 12000 liter but when the raid happened, it was found with only 7500 liters. The prosecution should have, therefore, seized the stock register of accused no.1 to tally the quantity loaded in the tanker, the quantity found in the tanker and what was found in the underground tank. PW-14 has not even seized the original gate register of HPCL. The extract of the gate register at Exhibit 72 also does not disclose the number of vehicle entering the gate of HPCL or the number of outgoing vehicle from the gate of HPCL, Manmad. PW-14 also admits that he did not draw any sketch of the spot or record statement of any witnesses who were in the neighborhood where the tanker was found to be unloading.

9 Infact even PW-12 states that he did not record the statements of people in the neighborhood. Only PW-8, PW-11, PW-12, PW-13 and PW-14 were supporting the prosecution's story stating that accused no.2 and accused no.3 brought the said tanker containing 12000 liters of kerosene from HPCL depot and alongwith accused no.4 and accused no.5 were unloading the said kerosene in the kerosene depot of accused no.1. Even the tanker owner or the transporter did not support the prosecution's story. This means that apart from the police officials, there is not a single eye witness to support the prosecution's story. It does not mean that the Court has to discard the evidence of police officials. But I wonder why the statements of neighbors of the plot, where the kerosene was unloaded. were not recorded. The prosecution has to prove that accused no.1 had instructed accused no.2

and accused no.3 to deliver the government controlled kerosene, which was bought by somebody else, to be delivered illegally in his compound. The fact is there is no corroboration by any panch witness because all the panch witnesses turned hostile. Though the Investigating Officer and complainant have proved the panchnama, the panchnama is not proved by the testimony of panch witnesses. It is not just one panch witness who has turned hostile but all panch witnesses and even the photographer has turned hostile.

10 Based on these facts and circumstances and the evidence before the Trial Court, the Trial Court came to a conclusion that the charge against the accused have not been proved beyond reasonable doubt.

11 The Apex Court in ***Ghurey Lal V/s. State of U.P¹*** has culled out the factors to be kept in mind by the Appellate Court while hearing an appeal against acquittal. Paragraph Nos.72 and 73 of the said judgment read as under :

72. The following principles emerge from the cases above :

1. The appellate court may review the evidence in appeals against acquittal under sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness'

1. (2008) 10 SCC 450

credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that trial court was wrong.

73. In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when :

i) The trial court's conclusion with regard to the facts is palpably wrong;

ii) The trial court's decision was based on an erroneous view of law;

iii) The trial court's judgment is likely to result in "grave miscarriage of justice";

iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

v) The trial court's judgment was manifestly unjust and unreasonable;

vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/ report of the Ballistic expert, etc.

vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

12 The Apex Court in many other judgments including ***Murlidhar & Ors. V/s. State of Karnataka***² has held that unless, the conclusions reached by the trial court are found to be palpably wrong or based on

2. (2014) 5 SCC 730

erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, Appellate Court should not interfere with the conclusions of the Trial Court. Apex Court also held that merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view.

We must also keep in mind that there is a presumption of innocence in favour of respondent and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court.

The Apex Court in *Ramesh Babulal Doshi V/s. State of Gujarat*³ has held that if the Appellate Court holds, for reasons to be recorded that the order of acquittal cannot at all be sustained because Appellate Court finds the order to be palpably wrong, manifestly erroneous or demonstrably unsustainable, Appellate Court can reappraise the evidence to arrive at its own conclusions. In other words, if Appellate Court finds that there was nothing wrong or manifestly erroneous with the order of the Trial Court, the Appeal Court need not even re-appraise the evidence and arrive at its own conclusions.

13 I have perused the impugned judgment, considered the evidence and also heard Ms. Dabholkar, learned APP. I do not find anything palpably wrong, manifestly erroneous or demonstrably unsustainable in the

3. 1996 SCC (cri) 972

impugned judgment. From the evidence available on record, there is nothing to substantiate the charge leveled against accused.

14 There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting the accused, the Trial Court observed that the prosecution had failed to prove its case.

15 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

16 Appeal dismissed.

(K.R. SHRIRAM, J.)

Gauri A.
Gaekwad

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by Gauri A.
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