

THE HIGH COURT OF TRIPURA
A G A R T A L A

CRL. REV. P. NO.61 OF 2015

Petitioner :

Shri Dilip Pal,
Son of Late Jogesh Pal,
Resident of Amarpur Motar Stand,
Near New Amarpur Town Hall,
P.O.- Amarpur, P.S. Birganj,
District- Gomati, Tripura,

By Advocates :

Mr. D.K. Das Choudhury, Advocate.
Mr. Mukul Ranjan Saha, Advocate.

Respondents :

- 1 The State of Tripura,**
- 2. Inspecting Officer (Drugs),**
O/o- The Chief Medical Officer, (Gomati) Udaipur,
P.O- R.K Pur, Gomati, Tripura.

By Advocate :

Mr. A. Ghosh, P.P

B E F O R E
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing &
Judgment & Order : **21.09.2015**

Whether fit for reporting : **YES**

JUDGMENT & ORDER(ORAL)

The short question which arises in this case is whether
the case which has been instituted against the petitioner in the

Court of the Special Judge is triable by him or not. The ancillary question which arises is whether if the trial is to be conducted by the Sessions Judge, the case should be filed through the Magistrate and committed by the concerned Magistrate or could be directly instituted before the Sessions Judge.

(2) The undisputed facts are that the petitioner is charged with having committed an offence of violating Section 18(c) of the Drugs and Cosmetics Act, 1940. This offence is punishable under Section 27(b)(ii) of the said Act.

(3) Section 18(c) reads as follows:

***“18(c)[manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug or cosmetic, except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:
PROVIDED that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:
PROVIDED FURTHER that the Central Government may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the 3[manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.”***

Therefore, any person, who manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale, or distributes any drug or cosmetic, except in accordance with the

conditions of a licence issued for that purpose violates the provisions of that Section.

(4) Section 27(b)(ii) reads as follows

“27b(ii) without a valid licence as required under clause (c) of section 18, shall be punishable with imprisonment for a term which shall 1[not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more:]”

PROVIDED that the Court may, for any adequate special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of [less than three years and of fine of less than one lakh rupees];”

It provides for a term of imprisonment which shall not be less than 3 (three) years but which may extend to 5 (five) years and fine etc.

(5) We are next concerned with the provisions of Section 36AB of the Act which reads as follows:

“36AB. Special Courts

(1) The Central Government, or the State Government, in consultation with the Chief Justice of the High Court, shall, for trial of offences relating to adulterated drugs or spurious drugs and punishable under clauses (a) and (b) of section 13, sub-section (3) of section 22, clauses (a) and (c) of section 27, section 28, section 28A, section 28B and clause (b) of sub-section (1) of section 30 and other offences relating to adulterated drugs or spurious drugs, by notification, designate one or more Courts of Session as a Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.”

(6) In this case, the Inspecting Officer (Drugs) has instituted the case under Section 36AB. It is contended on behalf of the petitioner that Section 36AB has no applicability. There can be no doubt with regard to this submission of the learned counsel. Section 36AB which has been quoted herein above clearly states that it will be applicable to offences relating to adulterated drugs or spurious drugs punishable under Section 13(a) and 13(b), Section 22(3), clauses (a) and (c) of Section 27, Section 28, Section 28A and Section 28B, and clause (b) of sub-section (1) of section 30 and other offences relating to adulterated drugs or spurious drugs. Section 18(c) is not covered under Section 36AB. Therefore, the case does not fall under Section 36AB.

(7) That brings us to Section 32 of the Drugs and Cosmetics Act which reads as follows:

“32. Cognizance of offences

2(1) No prosecution under this Chapter shall be instituted except by-

(a) an Inspector; or

(b) any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government by a general or special order made in this behalf by that Government; or

(c) the person aggrieved; or

(d) a recognized consumer association whether such person is a member of that association or not.

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter

(emphasis supplied)”

(8) We are concerned mainly with Section 32(2) which provides that all offences under the Act would not be tried by any Court inferior to the Court of Session unless otherwise specifically provided. The specific provision with regard to trial by Magistrate's is only related to those offences where the maximum punishment provided is less than 3(three) years. Reference in this behalf may be made to the first part of Section 36A, which reads as follows :

***“36A. Certain offences to be tried summarily
Notwithstanding anything contained in the Code of Criminal Procedure, 1973, [all offences (except the offences triable by the Special Court under section 36AB or Court of Session) under this Act}, punishable with imprisonment for a term not exceeding three years, other than an offence under clause (b) of sub-section(1) of section 33-I, shall be tried in a summary way by a Judicial Magistrate of the first class especially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:***

PROVIDED that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

PROVIDED FURTHER that when at the commencement of, or in the course of, a summary trial under this section it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witness who has been examined and proceed to hear or rehear the case in the manner provided by the said Code.]”

A bare reading of the Act clearly shows that the legislature in its wisdom has envisaged trials under the Act in three different Courts. One is the Special Courts which will try all offences covered under Section 36AB. The second is the Court of Sessions which will deal with all other offences covered under Section 32 and the only exception is those offences where the maximum punishment provided is 3(three) years only and the Judicial Magistrate can try these offences under Section 36A.

(9) Learned counsel for the petitioner has made reference to Section 36 of the Act to contend that the Magistrate's power to try the offence has not been taken away. In my view this submission is wholly without merit.

Section 36 reads as follows :

***“36 Magistrate's power to impose enhanced penalties
Notwithstanding anything contained in 1[the Code of Criminal Procedure, 1973, (2 of 1974)], it shall be lawful for 2[any Metropolitan Magistrate or any Judicial Magistrate of the first class] to pass any sentence authorized by this Act in excess of his power under the said Code.”***

A bare reading of Section 36 shows that it has nothing to do with taking cognizance of an offence or the trial of an offence. All that Section 36 provides is that notwithstanding the limitations of the Code of Criminal Procedure with regard to the punishment imposable by a Magistrate, if the Drugs and

Cosmetics Act provides a higher punishment then the Magistrate will be empowered under this Act to impose a punishment which is beyond his power under the Code of Criminal Procedure. Section 36 has nothing to do with the trial of cases under the Act per-say. Furthermore, one must notice that Section 36AB was introduced on 10th August, 2009 and the legislature must have been aware then when it introduced Section 36AB the provisions of Section 36 were already in force. Section 32 also was amended w.e.f. 10th August, 2009. These amendments which are subsequent in nature would obviously curtail the powers which the Magistrate may have had prior to these amendments under Section 36.

(10) Therefore, I am clearly of the view that where the offence is one where the maximum punishment provided is more than 3 years but is not an offence falling within the purview of Section 36 AB the same will have to be tried by a Court of Sessions. When a case has to be tried by a Court of Sessions and not by the Special Judge then committal proceedings will have to be followed under the Code of Criminal Procedure and the Inspecting Officer (Drugs) should have filed the complaint before the concerned Magistrate who in turn is required to commit to the Sessions Judge concerned. Therefore, the Special Judge/Sessions Judge with whom the complaint has been filed shall return the same to the Inspecting Officer

(Drugs), who may then file it before the concerned Magistrate and the complaint shall then be dealt with in accordance with law.

(11) With these observations and directions, the revision petition stands disposed of.

(12) Send down the LCRs forthwith.

CHIEF JUSTICE

Dipesh