

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 614 OF 2002

The State of Maharashtra
(Through Drugs Inspector,
Food & Drugs Admn.,
791/93, New Guruwar Peth, Pune-42.) ... Appellant.

V/s.
Shri Lalchand Manik Upadhye,
Age about 26 yrs., Occ.: Proprietor
of M/s.Mahavir Medical & Gen.Stores
C.T.S. No.69, Shop No.97,
A/op. Varvande, Tal: Daund,
Dist.: Pune. ... Respondent.

Dr.F.R.Shaikh, APP for the appellant- State.

Pawan Mali i/b. Prakash Naik for the respondent.

CORAM : S.B. SHUKRE, J.

DATED : 19th October 2015.

PC.

This appeal is preferred against the judgment and order dated 30th January 2002 passed in R.C.C. No.6/2001 by the Judicial Magistrate, First Class, Daund thereby acquitting the respondent- accused of the offences punishable under the relevant provisions of Drugs (Price Control) Order, 1995 ("Drug Control Order" for short) and sections 3 and 3(2) read with section 7 of the Essential Commodities Act, 1955. Briefly stated, the facts of the present case are under:

The respondent- accused was prosecuted by the State through the Inspector, Food and Drugs Administration, Pune for various offences punishable under the relevant provisions of the Drugs (Price Control) Order, 1995 and the Essential Commodities Act, 1955 on the allegation that the respondent had sold to various customers a drug known as “Rabipur Injection” at the price more than the price contained in the price-list issued under the Drugs Control Order or indicated on the label of the container whichever was less. On merits of the case, the learned Magistrate found that prosecution evidence was extremely insufficient to connect the accused with the charge that was framed against him and, therefore, the learned Magistrate, by judgment and order dated 30th January 2003, acquitted the respondent- accused of the offences with which he was charged. Not being satisfied with the same, the State is before this Court by in the present appeal.

2. It is seen from the evidence available on record that the original price-list of the drug in question which was very vital for the prosecution case was not produced in the evidence by the prosecution. It is also seen that though the allegation was about selling of Rabipur Injection of batch Nos.345 and 360 to various customers at higher price, the containers of this drug of batch Nos.345 and 360 were not produced in the evidence before the Court. The law requires that in such a case it must be proved by the prosecution that the drug was sold at the price higher than the one indicated in the price-list issued under the Drugs Control Order or one indicated on the label of the container of the drug whichever is less. But, unfortunately, either of these vital facts have not

been established by the prosecution. Therefore, the learned Magistrate has rightly held that in these circumstances it would be highly unsafe to hold that the maximum retail price of Rabipur Injection of batch Nos.345 and 360 was only Rs.250/- i.e. Rs.15/- less than the price at which this drug was allegedly sold by the respondent. In these circumstances of the case, on the basis of such evidence, the respondent could not have been found guilty of the offences with which he was charged. No case is made out to interfere with the impugned judgment and order. The appeal deserves to be dismissed.

3. The appeal stands dismissed.

(S.B. SHUKRE, J.)