

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-09-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Crl.R.C. No. 161 of 2010
and M.P.No.1 of 2010

C.Raja .. Petitioner/Single Accused
-Vs-

The State rep. by Drug Inspector
Dharmapuri Range
(Office of the Assistant Director of
Drug Control, Salem Zone, Salem)
No.7, Thiruvalluvar Street
Subramaniya Street
Salem-5
Crime No.1 of 1996.

.. Respondent/Complainant

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Krishnagiri, Krishnagiri District, in C.A.No.48 of 2007, dated 24.04.2009, confirming the judgment of conviction and sentence passed by the learned District Munsif-cum-Judicial Magistrate, Pachampalli, Krishnagiri District, in C.C.No.91 of 2006, dated 10.04.2007.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.V.Arul
Government Advocate
(Criminal Side)

ORDER

The case of the prosecution is that on 15.11.2005, when the petitioner's medical shop was inspected by the Drug Inspector along with Senior Drug Inspector, Salem Zone, they found that Axychem Injection Ocxiteron Injection and Alcepro Injection were sold without receipts and without Doctor's prescription. Further, it was found that the owner of the medical shop has not maintained the purchase register for the purchase of TAXIM 250 mgs. injections. Hence, the Inspector of Drugs, Dharmapuri Range, has lodged a complaint against the petitioner before the District Munsif-cum-Judicial Magistrate, Pochampalli, Krishnagiri District, under Section 18(c) of the Drugs and Cosmetics Act 1940 r/w. Rule 65(4)(3)(1) of Drugs and Cosmetics Act, 1945; Section 18(c) of the Drugs and Cosmetics Act 1940 r/w. Rule 65 (9) (a) of the Drugs and Cosmetics Act 1945; and Section 18(c) of the Drugs and Cosmetics Act r/w. Rule 65 (4)(4)(1) of the Drugs and Cosmetics Act, 1945 and the same was taken on file in C.C.No.91 of 2006. During trial, two witnesses were examined and Exs.1 to 25

were marked. The learned District Munsif-cum-Judicial Magistrate, Pochampalli, found the petitioner guilty for the offence under Section 27(d) of Drugs and Cosmetics Act (three counts) and sentenced him to undergo rigorous imprisonment for three months each and directed him to pay a fine of Rs.2,000/- each, in default to undergo simple imprisonment for one month each. The sentences were directed to run concurrently. Aggrieved against the same, the petitioner preferred an appeal before the Additional District and Sessions Judge, Krishnagiri, Krishnagiri District, in C.A.No.48 of 2007 and the same was dismissed by judgment dated 24.04.2009, thereby, confirming the judgment passed by the Trial Court. Aggrieved against the same, the petitioner/accused has come forward with the present Criminal Revision Case.

2. Mr.E.Kannadasan, learned counsel for the petitioner submits that the petitioner is not arguing the case on merits, but, he confined his argument only on sentence. The learned counsel mainly argued that there is no specific offence made out against the petitioner. He would further add that the Trial Court has taken into consideration that there was no spurious or adulterated medicines found in the medical shop, but, the only allegation is that the petitioner has failed to maintain the purchase register, which is not a grave offence, but, the petitioner has been sentenced to undergo rigorous imprisonment for three months each (three counts). He would further add that the Calendar Case is of the year 2006 and now that nine years had lapsed. He would further contend that the petitioner is now aged about 50 years and he is the sole breadwinner of the family and he has aged parents to take care of and he has to take care of his children and therefore, leniency may be shown in reduction of sentence, as he is now repenting for the offence.

3. Mr.V.Arul, learned Government Advocate appearing for the respondent would submit that in Section 27(d) of Drugs and Cosmetics Act, there is a proviso, which provides that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year and accordingly, the Trial Court in its judgment has given adequate reasons and finding that the accused has not maintained the purchase register has rightly convicted the accused for the offence under Section 27(d) of Drugs & Cosmetics Act and he was given only a minimum punishment of rigorous imprisonment for three months each (three counts) and the sentences were ordered to run concurrently and the same was confirmed by the Appellate Court, after considering the entire materials available on record, therefore, it requires no interference at the hands of this Court.

4. Heard both sides. By consent, the main Criminal Revision Case itself is taken up for final disposal.

5. Section 27 of the Drugs and Cosmetics Act, 1940, deals with the "Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter" and at this juncture, it is relevant to extract the proviso relating to 27(d) of Drugs and Cosmetics Act, which reads as

under:-

"(d) any drug, other than a drug referred to in clause (a) or clause (b) or clause (c), in contravention of any other provision of this Chapter or any rule made thereunder, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years and with fine which shall not be less than twenty thousand rupees:

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year."

6. From a reading of the above provision, it is clear that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year and impose fine. Taking into consideration of the fact that the learned counsel appearing for the petitioner is not arguing the matter on merits, but, he is confining his argument only on the question of sentence imposed on the petitioner/accused by the Appellate Court and prayed for showing leniency in reduction of sentence and in this case as rightly pointed out by the learned counsel for the petitioner, the petitioner has not sold any spurious or adulterated medicines, but, the only allegation against him is that he has not maintained the purchase register properly, which will not have any serious consequences, apart from that, the proviso of Section 27(d) of the Drugs and Cosmetics Act, 1940, provides for imprisonment of less than one year and fine, this Court taking into consideration the submission of the learned counsel for the petitioner that the petitioner is aged 50 years and he has to take care of his family members and he is the sole breadwinner of the family and he is a first time offender, I am of the view that some leniency can be shown to the petitioner in reducing the sentence. Accordingly, while confirming the conviction imposed by the Appellate Court by the judgment dated 24.04.2009, the sentence alone is reduced from three months rigorous imprisonment each (three counts) to two months rigorous imprisonment each (three counts) and the sentences were directed to run concurrently. The petitioner is directed to deposit a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) as fine. At this juncture, it is represented that the petitioner has already paid the fine of Rs.6,000/- imposed by the Trial Court. Hence, the petitioner is directed to deposit a sum of Rs.19,000/- (Rupees Nineteen Thousand only) (after deducting the fine already paid by them before the Trial Court i.e., Rs.25,000/- - Rs.6,000/- = Rs.19,000/-) to the credit of C.C.No.91 of 2006 on the file of the District Munsif-cum-Judicial Magistrate, Pochampalli, Krishnagiri District, within a period of one month from the date of receipt of a copy of this order, failing which, the judgment passed by the Appellate Court shall stand revived.

7. In the result, with the above modification in sentence, this Criminal Revision Case is partly allowed. Consequently, connected Miscellaneous Petition is closed. The Trial Court is directed to

take steps to secure the presence of the petitioner/accused to undergo the remaining period of sentence, if any. It is needless to mention that any sentence already undergone by the petitioner/accused shall be given set off as contemplated under Section 428 of Cr.P.C.

Sd/-
Assistant Registrar(Records)

//True Copy//

Sub Assistant Registrar

paa

To

- 1.The Drug Inspector
Dharmapuri Range
(Office of the Assistant Director of
Drug Control, Salem Zone, Salem)
No.7, Thiruvalluvar Street
Subramaniya Street
Salem-5.
 - 2.The Additional District and Sessions Judge
Krishnagiri
Krishnagiri District.
 - 3.The District Munsif-cum-Judicial Magistrate
Pachampalli
Krishnagiri District.
 4. The Public Prosecutor, High Court, Madras.
- + 1 cc to Mr.E. Kannadasan, Advocatet SR.52027

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and M.P.No.1 of 2010

TM(CO)
Eu 12.10.15

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