

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

:

-

Crl.A.No.594 of 2015

JUDGMENT :

This appeal is filed challenging judgment dt.31.03.2008 in C.C.No.92 of 2007 on the file of Special Judicial I Class Magistrate (Prohibition & Excise), Visakhapatnam acquitting respondents of offences under Section 18(a)(i) r/w Section 27 (d) of Drugs and Cosmetics Act, 1940 (for short, 'the Act').

2. The case of prosecution is that on 08.10.2002 PW.1, the Drug Inspector appointed under Section 21 of the Act, inspected M/s. Sri Rama Medical Syndicate located in D.No.30-8-27/A, Bhanu Street, Dabagardens, Visakhapatnam and picked up a sample of drug '*ISMORIN - 30*' manufactured by 1st respondent as sample for analysis; that PW.1 paid Rs.252/- towards cost of the purchased sample drug; that it was manufactured in the month of October, 2001 and had an expiry date in September, 2003 and was manufactured by A.1/1st respondent; PW.1 divided the sample into four portions – each portion containing 3 x 10 capsules and sealed them in the presence of PW.2; one portion of sample was handed over to PW.2 under Ex.P.3 acknowledgment and out of the remaining 3 samples, PW.1 sent a portion of sample to the Government Analyst, Drugs Control

Laboratory, along with Ex.P.5-Form-18; on 29.01.2003, Ex.P.7 notice under Section 18-A was issued to M/s. Sri Rama Medical Syndicate, requesting it to disclose source of the sample drugs and to furnish attested copies of drug license and distribution particulars; PW.2 informed that they purchased the sample drug from M/s.Nicholas Piramal India Limited, Vijayawada under Exs.P.9 and 10 invoices, and on that basis Ex.P.12 notice was issued to the said company; thereafter, notice Ex.P.25 was issued under Section 18-B of the Act to A.1 company asking A.1 to furnish records of manufacturing, analysis and distribution particulars along with a copy of drug licence; A.1 received it, but did not reply to it. It is alleged that subsequently, PW.1 personally visited A.1 company and verified the records; in view of the Analyst report that A.1 represented by A.2 had manufactured and distributed the sample drug '*ISMORIN – 30*' and that it was not a standard quality, PW.1 filed a complaint against A.1 and A.2 for violation of Section 18(a)(i) r/w Section 37(d) of the Act.

3. Charges under the above provisions were framed. The prosecution examined PWs.1 and 2 and marked Exs.P.1 to P.40 and also MO.1.

4. After closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C. and the incriminating material in the prosecution evidence was

put to them, but they denied it.

5. By judgment dt.31.03.2008, the court below acquitted respondent/accused.

6. Challenging the same, this Appeal is filed.

7. The learned Asst.Public Prosecutor contended that the court below erred in acquitting the accused and that the evidence on record established the guilt of the accused beyond reasonable doubt.

8. Under Section 34 of the Act, where an offence under the Act has been committed by a company, every person who at the time of the offence was committed, was in-charge of and was responsible to the company for the conduct of the business of the company, as well as the company, are deemed to be guilty of the offence and liable to be proceeded accordingly.

9. Thus, in order to make any partner or Director liable for an offence committed by the Company, it has to be shown that such person was in-charge of and was responsible to the company for the conduct of its business at the time of commission of the offence.

10. P.W.1 the Drugs Inspector deposed that in Ex.P.29 letter dt.05-11-2007, he did not specifically call for the information about the Director who was in-charge of and

responsible to the A-1 company for the conduct of business of the said company at the time of manufacturing of sample drug. He also stated that the information as to the person, who is responsible for the day-to-day conduct of

A-1 company, is not mentioned in Ex.P.35 the list of Directors dt.05-11-2007. He also stated that he visited A-1 company at Thane and during his visit A-2 was not present in A-1 company and he did not see A-2 while working in his office or at the factory. He stated that the manufacturing chemist is in-charge of manufacturing of the product of the company and analytical chemist is in-charge of analysis of the product. He did not remember the name of the manufacturing chemist mentioned in the licence of A-1 company and he deposed that the name of A-2 is not mentioned either in Ex.P.36 copy of drug licence (form-26) or in Ex.P.37 copy of drug licence as manufacturing chemist or analytical chemist.

11. In view of this evidence, there is nothing on record to establish that A-2 is responsible for the day-to-day conduct of affairs of A-1 company at the time of manufacturing and distribution of the sample drug. Merely because a person is a Director of a company, it does not necessarily follow that he fulfills the requirements of Section 34(1) of the Act. Since the documents produced by prosecution do not indicate that A-2 was employed with A-1 firm and he was responsible for the day-to-day

conduct of the business of A-1 firm, no case against A-2 can be said to have been made out by prosecution.

12. Also, Section 20 of the Act deals with appointment of a Government Analyst and states that the State Government may, by notification of the official gazette, appoint such person as it thinks fit, having the prescribed qualifications, to be Government Analyst for such areas in the State and in respect of such drugs (or classes of drugs or such cosmetics or classes of cosmetics) as may be specified in the notification.

13. In the present case, no notification made in the official gazette appointing the analyst for analysis of drug under the Act has been filed, and P.W.1 admitted the same during cross-examination. He also deposed that except Ex.P.6 analysis report, he did not file any document to show that Government Analyst is duly and properly appointed as required by the Act. Since there is no such evidence, it has to be held that the prosecution had failed to prove the compliance of Section 20 of the Act.

14. In this view of the matter, I am of the opinion that the Court below had rightly acquitted the accused of the offences charged against them and that no case is made out by the prosecution for interfering with the judgment of the Court below.

15. Therefore, the appeal fails and it is accordingly dismissed.

16. Miscellaneous applications, pending if any, in this Appeal shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 30-04-2015

Ndr/*