

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

CRIMINAL APPEAL No.1167 of 2005

JUDGMENT:

This appeal is filed challenging the judgment dt.17-01-2005 in C.C.No.230 of 2001 of the Additional Munsif Magistrate, Chirala acquitting the respondents of offences under Section 18(a)(i) r/w Section 27(c) of the Drugs and Cosmetics Act, 1940 (for short 'the Act').

2. Heard the learned Public Prosecutor.

3. The learned Public Prosecutor was not able to furnish the correct address of respondent Nos.1 to 4. Therefore, notices of respondent Nos.1 to 4 were not served. However, after hearing the prosecution, since this Court is convinced that there is no merit in the appeal, this Court is proceeding to decide the appeal notwithstanding the fact that respondents are not served.

4. The case of the prosecution is that on 07-09-1999, the Drugs Inspector lifted the drug "perinorm tablets" batch No.9001GDF allegedly manufactured by IPCA Laboratories Limited, Athal, Silvasa from M/s.Veeradwamy Medical Stores, Chirala for analysis. He came to know that they purchased the drug from A-4 on 09-09-1999. The Drug Inspector forwarded the sample

portion of the drug to the Government Analyst, Drug Control Laboratory, Hyderabad. On 09-09-1999 A-3 confirmed that they purchased the drug from A-2. On 15-09-1999, the Drug Inspector requested the manufacturer to submit the differences between the Control samples maintained by them and suspected batch of Perinorm tablets. On 24-09-1999 the Drug Inspector received letter from A-5 confirming that they sold the tablets to M/s.Veera Swamy Medicals, Chirala. The Drug Inspector along with other Drug Inspectors visited M/s.Shree Balaji Pharma Distributors, Secunderabad, whose proprietor stated that he neither purchased nor sold the drug of perinorm tablets. On 24-09-1999, the Drug Inspector received the letter from A-1, proprietor of A-2 firm, along with copy of invoice of M/s.Shree Balaji Pharma Distributors. On 15-11-1999 the Drug Inspector received the letter from M/s.Shree Balaji Pharma Distributors along with copy of invoice of Vijay Lakshmi Pharmaceuticals Distributors, Karimnagar. It is alleged that the complainant received analysis report wherein the analyst declared that the perinorm tablets are not of standard quality. On 06-11-1999, the Drug Inspector along with another Drug Inspector visited the manufacturing unit and the General Manager, IPCA Laboratories declared that the sample shown by the Drug Inspector is spurious. Thereafter sanction was obtained

for prosecution of accused, and the complaint was filed. It was contended that accused are liable to be punished for committing offence under Section 27(c) of the Act.

5. When the accused were examined under Section 239 Cr.P.C., after framing of charges under Section 18(a)(i) r/w Section 27(c) of the Act, they denied that they were guilty and claimed to be tried.

6. Prosecution examined P.Ws.1 to 5 and marked Exs.P-1 to P-49 and M.Os.1 and 2.

7. After closure of prosecution evidence, accused were examined under Section 313 Cr.P.C. They denied the evidence.

8. By judgment dt.17-01-2003, the Court below had acquitted the accused.

9. Questioning the same, this appeal is filed by the State.

10. The learned Public Prosecutor contended that the Court below erred in acquitting the accused and that the judgment of the Court below is unsustainable.

11. It is the case of prosecution that the drug in question was lifted from the shop of P.W.2, who in turn had obtained the drug from A-3, and A-3 had obtained it

from A-1. It is the contention of A-1 that he purchased the drug from M/s.Shree Balaji Pharma Distributors, Secunderabad, who is a licensed drug Distributor. On the other hand, it is the case of prosecution that Balaji, proprietor of M/s.Shree Balaji Pharma Distributors, had given a statement that he neither purchased the drug nor sold the drug. So, A-1 had not obtained the drug from M/s.Shree Balaji Pharma Distributors.

12. There is no evidence to show that A-1 to A-4 were found manufacturing the drug. The Drug Inspector had not verified the duplicate invoice No.04222 lying with M/s.Shree Balaji Pharma Distributors although he visited the said firm. He did not verify and seize the original records concerned to prove that M/s.Shree Balaji Pharma Distributors did not supply the medicine to A-1.

13. Moreover, as per Section 22(2) of the Act, when the Drug Inspector conducts a search and seizure, he has to follow the procedure laid down under the Code of Criminal Procedure. So, when sample of drug was lifted from the shop, the Drug Inspector should lift the sample in the presence of two independent witnesses as provided under Section 100(4) Cr.P.C. In the present case, admittedly he did not do so. Thus, there is no material on record to show that the sample lifted and the sample sent for analysis, is the same one. This is a

factual infirmity in the case of prosecution.

14. Also, when the Drug Inspector takes samples, he shall tender the fair price thereof and acquire written acknowledgment as per Section 23(1) of the Act. Nothing is stated in the evidence of P.W.1 that he tendered the price and acquired the samples under acknowledgment.

15. Although P.W.2 stated that the Drug Inspector purchased the drugs from him, the bill Ex.P-47 shows that P.W.2 sold 8 x 10 perinorm tablets while according to P.W.1 he purchased 4 x 20 perinorm tablets. This discrepancy is not explained by prosecution.

16. Also, according to P.W.1, after lifting the sample, he divided it into four portions and gave one sample portion to P.W.2 leaving three samples with him. He further stated that he sent one sealed portion sample to the Government Analyst and another sealed sample to the IPCA Laboratories. So, he would have only one portion of sample left with him. However, he produced two sealed sample portions. How he could produce two sealed sample portions before the Court when he ought to have only one sealed sample portion with him, is not explained by prosecution.

17. In view of these discrepancies, I am of the

opinion that the prosecution has not proved the guilt of accused beyond reasonable doubt and accused are entitled to benefit of doubt. The Court below has given valid reasons for acquitting the accused. I do not see any error or infirmity in the same warranting interference by me in exercise of my powers under Section 378 Cr.P.C.

18. I do not find any merit in the appeal and the same is accordingly dismissed.

19. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 25-02-2015

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