

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

Criminal Revision Case No. 1057 of 2008

ORDER:

This Criminal Revision Case is directed against the judgment, dated 17.07.2008, passed in Criminal Appeal No.492 of 2006 by the learned III Additional Sessions Judge, Guntur, by and under which the conviction and sentence imposed against the petitioner/accused by the learned Additional Junior Civil Judge, Chilakaluripet, Guntur District, in CC No.166 of 2006, dated 17.11.2006, was confirmed.

2. The allegations in the complaint, in brief, are that the petitioner/accused is the Proprietor of M/s. Sri Pavan Medicals at D.No.8-195 C, Choutra Centre, Chilakaluripet, having sales drug licences in Forms 20 and 21. On 04.12.1999, on information that the petitioner/accused was dealing with drugs in the premises bearing D.No.21-209, Police Station Road, Chilakaluripet, PW.1 – Inspector of Drugs visited the said premises along with LWs.2 to 5 the Drug Inspectors and mediators respectively and found the petitioner/accused was present in the first room of the building and conducting business in drugs. They found certain drugs stocked in the racks and in card board boxes on floor and noticed that the drugs are physician samples, which are not to be sold and certain saleable drugs. When the petitioner/accused was asked whether he possess any sales drug licence to sell drugs in that premises and to produce purchase bills for all those drugs, he replied that he does not have any sales drug licence to that premises and he has not produced any purchase bills for all the drugs found. Then PW.1 seized the drugs in the presence of LWs.2 to 6 under Form-16 and cover of panchanama duly signed by LWs.2 to 6 and the petitioner/accused.

On 06.12.1999 the entire seizure was reported to the Inspector General, Drugs Control Administration, Hyderabad, and PW.1 issued notice under Section 18A of the Drugs and Cosmetics Act, 1940 (for short 'the Act') to LW.6 to disclose the source of supply of the drugs. LW.6 replied on 14.12.1999 stating that he gave first room of his Nursing Home on sub-lease to the petitioner/accused for his business. Based on that, on 16.12.1999, PW.1 issued notice under Section 18A to the petitioner/accused to disclose the source of seized drugs. The petitioner/accused gave reply stating that the drugs seized on 04.12.1999 belong to him only of his M/s. Sri Pavan Medicals, Chotra Centre, Chilakaluripet and he can produce purchase bills for all the drugs seized within 10 days, but he has not submitted the same till 17.04.2000. On 18.04.2000 PW.1 issued another notice to the petitioner/accused to produce purchase bills and on 22.07.2000, the petitioner/accused produced some purchase bills for some seized drugs. For confirmation of ownership of D.No.21-209, Police Station Road, Chilakaluripet, a notice was issued to LW.10 on 24.10.2000 and on the same day LW.10 gave reply to PW.1 stating that he gave the above building to LW.6 on lease with effect from March 1997. The investigation reveals that the petitioner/accused was having retail sales drugs licence in Forms 20 and 21 at D.No.8-195 C, Choutra Centre, Chilakaluripet, but does not have any licence for the first room of D.No.21-209, Police Station Road, Chilakaluripet. On 20.07.2001 LW.3 who was incharge of Drugs Inspector, Narasaraopet received prosecution orders from the Director, Drugs Control Administration, Hyderabad, to prosecute the petitioner/accused. Hence, they filed charge sheet against the petitioner/accused for the offences punishable under Section 18(c) read with Section 27(b)(ii), Section 18(a)(vi) read with

Section 27(d) and Section 18A read with Section 28 of the Act, which was numbered as C.C. No.166 of 2006.

3. After complying with the mandatory provisions, trial was commenced, during the course of which, prosecution has examined PWs.1 to 8 and got marked Exs.P1 to P42 and MOs.1 to 3. The accused denied the evidence on record.

4. The learned Additional Junior Civil Judge, Chilakaluripet, on hearing both sides and on perusal of the entire material on record, by judgment, dated 17.11.2006, found the accused guilty of the offences under Section 18(c) read with Section 27(b)(ii), Section 18(a)(vi) read with Section 27(d) and Section 18A read with Section 28 of the Act and, accordingly, convicted and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for one month for the offence under Section 18(c) read with Section 27(b)(ii) of the Act, and sentenced to undergo simple imprisonment for a period of one year and also to pay a fine of Rs.500/- in default to suffer simple imprisonment for 15 days for the offence under Section 18(a)(vi) read with Section 27(d) of the Act and he was also sentenced to pay a fine of Rs.500/- in default to suffer simple imprisonment for 15 days for the offence under Section 18-A read with Section 28 of the Act.

5. Against the said judgment, the petitioner/accused preferred Criminal Appeal No.492 of 2006 on the file of the III Additional Sessions Judge, Guntur, and the learned Sessions Judge, by judgment, dated 17.07.2008, dismissed the said appeal confirming the conviction and sentence imposed by the trial Court. Aggrieved by the same, the petitioner/accused preferred the present revision.

6. Heard Sri T.Bali Reddy, learned Senior Counsel, appearing

on behalf of Sri K. Suresh Reddy, learned counsel for the revision petitioner/accused and the learned Additional Public Prosecutor for the State and perused the entire material on record.

7. The learned counsel appearing for the petitioner/accused contends that both the Courts below have erred in finding the petitioner/accused guilty of the offences alleged and have not appreciated the evidence on record in proper perspective. The Courts below have relied upon the evidence of PW 1-Drug Inspector, PW 4-the Doctor, who 10 days after the incident informed the Drug Inspector that he has sublet part of his Nursing Home to the petitioner/accused for running his medical shop and also a Punch witness who is running a medical shop in the area and who is having trade rivalry with the petitioner/accused. The learned counsel submits that the material on record do not show that the petitioner/accused has contravened any of the provisions as alleged and hence the impugned judgment is liable to be set aside.

8. On the other hand, the learned Additional Public Prosecutor submits that both the Courts below have appreciated the evidence of the material witnesses and taking into consideration the statement of the petitioner/accused himself that he has taken a part of the Nursing Home of PW 4 and doing business, even though he is having licence to do business at another place, and the evidence on record clearly establish the offence alleged and hence there are no merits in the revision and the same is liable to be dismissed.

9. Now the point that arises for consideration in this revision is whether the conviction and sentence imposed by the Courts below against the revision petitioner/accused for the offences alleged is legal and sustainable.

Point:

10. The admitted fact is that the petitioner/accused is a licenced chemist and druggist, having his medical shop under the name and style of "Pavan Medicals" at Door No.8-195 C, Choutra Centre, Chilakaluripet. He was having licence issued under the provisions of the Drugs and Cosmetics Act. But, however, on 04.12.1999 it was found that the petitioner/accused is selling certain medicines by keeping them in premises bearing Door No.21-209, Police Station Road, Chilakaluripet, where PW 4, an Ayurvedic Medical Practitioner is having Nursing Home under the name and style of "Rajyalakshmi Nursing Home" The drugs that were found in the front room of the Nursing Home were purchased by the petitioner/accused from the wholesalers, who were examined as PWs 5 to 7, who all deposed that they have supplied the medicines to the Pavan Medicals which stand in the name of the petitioner/accused. Some other medicines were found which were physician samples not for sale, but which were to be used by Allopathic Practitioners.

11. The Nursing Home of PW 4 was surprised by PW 1-Drug Inspector along with PWs 2 and 8 on 04.12.1999. PW 1-Drug Inspector was accompanied by two other Drug Inspectors and two Punch witnesses, one of them was examined as PW 3. PW 1-Drug Inspector has addressed a letter to the petitioner/accused on 16.12.1999 which is Ex.P12. The petitioner/accused gave reply to it on 28.12.1999 which is Ex.P14. In the said letter, the petitioner/accused admitted that PW 4-Dr.K.Prasad Reddy is running Nursing Home under the name and style of "Rajyalakshmi Nursing Home" at Door No.21-209, Police Station Road, Chilakaluripet and the petitioner/accused took the first room of the above Nursing Home on lease from PW 4 from where the drugs were seized on

04.12.1999. He further informed that he is having licence and having medical shop under the name and style of "Pavan Medicals" which is situated at Choutra Centre, Chilakaluripet and he purchased the drugs for that medical shop from wholesalers, who have been examined as PWs 5, 6 & 7.

12. PW 4 Doctor deposed that he let out the front room of his Nursing Home on sub-lease to the petitioner/accused on 01.09.1999 on a rent of Rs.250/- per month. PW 4 was also present when the premises was inspected and he also signed on the relevant papers. When the premises was inspected on 04.12.1999, PW 4 informed the Drug Inspector about sub-leasing the premises to the petitioner/accused on 14.12.1999 under Ex.P10. On 06.12.1999 PW 1-Drug Inspector sent a letter to PW 4 Doctor which is Ex.P9 and Ex.P10 is the reply given by the petitioner/accused. Ex.P11 is the copy of the rental agreement between PW 4 Doctor and the petitioner/accused, dated 01.09.1999.

13. The evidence of PW 1-Drug Inspector is to the effect that on 04.12.1999 he along with other Drug Inspectors PWs 2 and 8 and the Punch witness PW 3 found the petitioner/accused stocked certain medicines in a portion of Nursing Home. It is also in his evidence that the petitioner/accused is having licence to sell medicines under the name and style of "Pavan Medicals" which is situated at D.No.8-195 C, Choutra Centre, Chilakaluripet, but not for Rajyalakshmi Nursing Home. Even the Punch witness PW 3 also corroborates the claim of PW 1.

14. The contention of the learned counsel for the petitioner/accused is that PW 4 Doctor did not inform PW 1-Drug Inspector on 04.12.1999 that he has sub-let part of his Nursing Home to the petitioner/accused for running medical store and only on

14.12.1999 he gave that reply and hence that cannot be believed. It may be recalled that PW 4 Doctor furnished the said information in pursuance to Ex.P9 which was dated 06.12.1999 addressed by PW 1-Drug Inspector to PW 4 Doctor. Ex.P11 is the rental agreement in between the petitioner/accused and PW 4 Doctor. This was also furnished to PW 1-Drug Inspector by PW 4 Doctor. Merely because such an information was furnished by PW 4 Doctor to PW 1-Drug Inspector on 14.12.1999 the same cannot be viewed with any suspicion and on that ground that cannot be disbelieved. It is in the evidence of PWs 1, 2, 8, the Punch witness-PW 3 and PW 4 Doctor that on 04.12.1999 the petitioner/accused was found selling medicines in the front portion of the Nursing Home being run by PW 4. Ex.P11 which contains the signature of both PW 4 and the accused, the authenticity of which is not challenged, clearly shows that the petitioner/accused obtained part of front room of Rajyalakshmi Nursing Home for selling the medicines.

15. Upon carefully perusing the entire voluminous oral and documentary evidence on record, the facts that are proved are that the petitioner/accused was having a licence to sell medicines under the name and style of "Pavan Medicals", at Door No.8-195 C, Choutra Centre, Chilakaluripet. However, he was found to be in possession of certain drugs kept in front room of the premises bearing Door No.21-209, Police Station Road, Chilakaluripet, where PW 4 is running a Nursing Home under the name and style of "Rajyalakshmi Nursing Home". The oral and documentary evidence on record clearly shows that the petitioner/accused was selling medicines at a place, other than the place where he has licence to sell. There is no gain saying fact that a licensee is not supposed to store, stock or sell the drugs at a place other than the place where he

has been given licence to sell. Therefore, I have no hesitation to conclude that the petitioner/accused has contravened the provisions of the Act and Rules made thereunder and thereby himself liable there for.

16. The next aspect however, is as to what is the nature of the offence that is committed by the petitioner/accused. As already noticed, the petitioner/accused has been charge sheeted for three violations viz., Section 18(c) read with Section 27(b)(ii), Section 18(a)(vi) read with Section 27(d) and Section 18A read with Section 28 of the Act. Upon perusing the provisions alleged to have been contravened by the petitioner/accused, I have no hesitation in holding that the ingredients of Section 18(a)(vi) read with Section 27(d) and Section 18A read with Section 28 of the Act are not attracted to the facts of the present case. However, the offence committed by the petitioner/accused squarely falls within the provisions of Section 18(c) which is punishable under Section 27(b)(ii) of the Act.

17. Section 18(c) of the Drugs and Cosmetics Act reads as under:

“Section 18. Prohibition of manufacture and sale of certain drugs and cosmetics.—

From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—

- (a)
- (b)
- (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 6 [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.”

18. The punishment for the offence under Section 18(c) of the Act is provided under Section 27(b)(ii) of the Act, which reads as under:

“Section 27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter.

—Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes, —

(a)

(b) any drug— (i) deemed to be adulterated under section 17A, but not being a drug referred to in clause (a), or

(ii) without a valid licence as required under clause (c) of section 18, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than five 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 and of fine of less than five thousand rupees;”

19. Therefore, it is held that the petitioner/accused has contravened the provisions of Section 18(c) of the Drugs and Cosmetics Act, which is punishable under Section 27(b)(ii) of the Act. His conviction for the said offence cannot be interfered with, since it is based on legally acceptable evidence and the findings of the Courts below do not suffer from any illegality or irregularity, warranting any interference. However, as already stated, the two other charges, viz., Under Section 18(a)(vi) read with Section 27(d) and Section 18A read with Section 28 of the Act are not made out in the present case.

20. The next aspect of the matter is what is the proper sentence that can be inflicted.

21. As noticed above, the petitioner/accused was a licenced chemist and druggist of Chilakaluripet town and he was having licence to do business under the name and style of "Pavan Medicals" at Door No.8-195C, Choutra Centre, Chilakaluripet. He was doing business at the said premises. In addition to that, he has also stored nearly 100 items of drugs in "Rajyalakshmi Nursing Home" which was being run by the Doctor PW 4 by obtaining a portion thereof on sublease. The drugs that have been seized are neither spurious, misbranded nor the drugs of which expiry date has expired.

22. In that view of the matter, by invoking the proviso to Section 27(b)(ii) of the Act, I feel that ends of justice would be met if the petitioner/accused is sentenced to fine, instead of sentencing him to imprisonment for the offence under section 18(c) of the Drugs and Cosmetics Act.

23. In the result, the Criminal Revision Case is allowed in

part. The conviction and sentence as imposed by both the Courts below for the offence under section 18(a)(vi) read with Section 27(d) and Section 18A read with Section 28 of the Drugs and Cosmetics Act is set aside, and the fine amount, if any paid, shall be returned to the petitioner/accused. The conviction recorded by both the Courts below against the petitioner/accused for the offence under Section 18(c) read with Section 27(b)(ii) of the Drugs and Cosmetics Act is confirmed. However, the sentence of one year imprisonment is set aside, instead the petitioner/accused is sentenced to pay a fine of Rs.20,000/- (Rupees twenty thousand only) in addition to the fine amount of Rs.5,000/- as imposed by the Courts below, in default, the petitioner/accused shall suffer simple imprisonment for a period of three months.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 30.12.2015

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