

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

MONDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIFTEEN

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

CRIMINAL APPEAL No.563 of 2015

Between:

The State of A.P., rep.by the
Public Prosecutor, High Court,
Hyderabad

.... APPELLANT

AND

B.Pradeep Kumar

....RESPONDENT

The Court made the following:

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

CRIMINAL APPEAL No.563 of 2015

JUDGMENT:

This criminal appeal is filed by the State against the judgment dated 11.08.2008 in C.C.No.679 of 2002 on the file of the III Additional Chief Metropolitan Magistrate, Hyderabad, by and under which, the learned Magistrate acquitted the respondent/accused of the offence charged.

2. The respondent/accused was charged sheeted for the offences punishable under Sections 27(b)(ii), 28 and 27(d) of Drugs

and Cosmetics Act, 1940. The allegations are that the respondent/accused who was doing business under the name and style of M/s.Sri Katyayani Super Market, Panjagutta, Hyderabad was found to be selling the products, such as, Dr.Smyle Prickly Heat powder, Nycil Lavender Prickly heat powder, Nycil sandal powder, shower to shower powder, Boro line, Itch guard cream etc., without having any valid licence.

3. After complying with the mandatory provisions, the learned Magistrate examined the accused under section 251 Cr.P.C, and the respondent/accused pleaded not guilty.

4. The matter was taken up for trial. During course of trial, the prosecution examined PWs 1 to 4 and got marked Exs.P1 to P7 and M.Os.1 to 7.

5. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and no oral or documentary evidence was adduced on his behalf.

6. After hearing the arguments on either side, by the impugned judgment, the learned trial Court, found that the prosecution could not prove its case against the respondent/accused beyond all reasonable doubt and accordingly acquitted the respondent/accused of the offence charged.

7. Aggrieved by the said judgment, the State preferred the present appeal contending that the learned Magistrate ought to have believed the evidence of PWs 1 and 2, who are the official witnesses, and their evidence was erroneously discarded. The learned Additional Public Prosecutor submitted that the acquittal of the respondent/accused is not proper and hence the appeal.

8. The learned counsel appearing for the respondent/accused submits that the articles that were seized from the shop of the

respondent/accused are all different companies' powders, which are cosmetics and they do not come under the definition of 'drugs'. The learned counsel further contends that having considered all the aspects and the evidence on record, the learned Magistrate has rightly acquitted the respondent/accused, which do not warrant interference by this Court.

9. Now the points that arise for consideration in this appeal are:

1. Whether the prosecution has proved its case beyond all reasonable doubt?
2. Whether the Court below has committed any error in coming to the conclusion in the form of impugned judgment, by and under which, the respondent/accused has been acquitted of the offence charged?

10. The case of the prosecution is that the respondent/accused, without having any valid licence, has been found selling drugs viz. different companies' powders and hence he is liable for punishment of the offence charged. PWs 1 and 2 are the official witnesses, who are alleged to have conducted raid on the shop of the respondent/accused and seized the material objects. PWs 3 & 4 are alleged to be the panch witnesses to prove the raid and seizure of the material objects by PWs 1 and 2. Admittedly, PWs 3 and 4 turned hostile and did not support the case of the prosecution. Absolutely, there is no independent corroboration with the testimony of PWs 1 and 2. The defence put forth by the respondent/accused is that PWs 1 and 2 never visited his shop and no material was seized from his possession. In that view of the matter, the evidences of PWs 1 and 2 found to be not reliable and satisfactory. The learned Magistrate who had an opportunity to observe the demeanour of witness has held that the evidence is not sufficient for bringing home the guilt of the respondent/accused.

11. Upon reappraisal of the oral and documentary evidence

available on record, I do not find any grounds to take a different view other than the view taken by the learned Magistrate. There are no merits in the appeal.

12. Accordingly, the Criminal Appeal is dismissed.

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

M.S.K.JAISWAL,J

Date: 06.07.2015

Dsr