

HON'BLE SMT. JUSTICE ANIS

Crl.R.C. No. 1540 of 2007

DATE: 27.02.2015

Between:-

Dr.B.Muralidhar Reddy
Petitioner/

□ □

Accused

and

The State of A.P. Respondent

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JUDGMENT:-

This Criminal Revision Case is directed against the judgment dated 07.11.2007 delivered in CrI.A.No. 50 of 2005 on the file of the Special Sessions Judge-cum-IV Additional District Judge, Tirupati, whereby the conviction and sentence imposed on the accused by the learned Judicial Magistrate of I Class, Puttur in C.C.No. 467 of 2001 dated 02.02.2005 for the offence punishable under Section 18(c) read with 27(b)(ii) of Drugs and Cosmetics Act, 1940, were confirmed.

For the sake of convenience, the parties are hereinafter referred to as they are arrayed in CrI.R.C.No. 1540 of 2007.

The case of the prosecution in brief is that on 12.11.1997, PW1 – Drug Inspector along with two mediators i.e. PWs.2 and 5, visited the clinic of the petitioner-accused, is practicing as RMP Doctor and found drugs stored in it. When the complainant – PW1 asked the accused to show drug licence he did not produce it and replied that he did not take the licence, then PW1

seized the drugs in the presence of PWs.2 and 5 in the Form-16 under cover of panchanama and after obtaining sanction from the Director, Drugs Control Administration, he filed the complaint against the accused for the offence punishable under Section 18(c) read with 27(b)(ii) of Drugs and Cosmetics Act, 1940 (for brevity "the Act"). After appearance of the accused, copies of the case documents were furnished to him and when he was examined under Section 251 Cr.P.C. he denied the offence.

During the course of trial, the prosecution examined PWs.1 to 5 and got marked Exs.P1 to P17 and M.Os.1 to 38. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses wherein he denied the evidence and did not chose to examine any witness on his behalf.

After considering the oral and documentary evidence, the trial Court, vide judgment dated 02.02.2005 in C.C.No. 467 of 2001, convicted the accused of the offence punishable under Section 18(c) read with Section 27(b)(ii) of the Act and sentenced to undergo simple imprisonment for a period of three months and also to pay a fine of Rs.1000/-, in default, to suffer simple imprisonment for one month. Being aggrieved by the judgment of the trial Court, the accused preferred

Crl.A.No. 50 of 2005 and the Special Sessions Judge-cum-IV Additional District Judge, Tirupati, vide judgment dated 07.11.2007 in Crl.A.No. 50 of 2005, while dismissing the appeal confirmed the conviction and sentence imposed by the trial Court. Challenging the judgment of the lower appellate Court, the accused has filed the present Criminal Revision Case.

The learned counsel for the petitioner-accused has contended that the accused is a registered medical practitioner and practicing in village and he never sold drugs to anyone and he does not have any licence to sell the drugs, but he only prescribes medicines to the villagers. It is further contended that on 14.11.1997, there was a medical camp in the village for which the accused stored drugs given by the donors to be distributed to the patients in the medical camp and the Drug Inspector at the time of his visit did not find the accused selling any drugs to the patients nor seized any registers from him. It is further submitted that the accused under Ex.P12 – Form-16 addressed a letter to the Drug Inspector at the earliest point of time clearly stating about the medical camp scheduled to be conducted on 14.11.1997 in the village, for which he collected the medicines from the donors. He also stated that he is conducting the medical camp every three months in the village and not doing any business of selling drugs. It is also argued that PW1 – Drug Inspector in his cross-examination admitted that on

the date of his visit, no business transaction was going on and there was no board of medical shop and he did not find any bill book or stock register in the clinic. It is also contended that a perusal of the Form – 16 shows that different types of medicines were collected and no bulk drugs were stored by the petitioner and the accused was not doing any business in the sale of drugs. It is further contended that mere stocking of drugs will not constitute an offence and he relied upon a judgment reported in

Alladi Krishna Murthy v. State of A.P.^[1] wherein this Court held as follows:

“There is no evidence adduced by the prosecution that A2 was indulging in selling the drugs at his house. There is no mention by any of the witnesses that they are intended for sale. As A1 disowned the responsibility, the appellate Court came to a conclusion that as he was not in possession of the drugs, he was not liable for conviction. The trial Court, on the simple ground that A2 was in possession of the drugs came to a conclusion that he committed the offence and the appellate Court confirmed the same.

The learned counsel for the revision petitioner/A2 further submitted that mere possession of the drugs is not sufficient to attract the provisions of Section 27 of the Act and thus, A2 is not liable for conviction. In support of his contention, the learned counsel for the revision petitioner relied on a judgment of the Supreme Court in Mohd. Shabir v. State of Maharashtra [(1979) 1 SCC 568], wherein the Supreme Court held as follows:

“Section 27 postulates three separate categories of cases and no other: (1) manufacture for sale; (2) actual sale; (3) stocking or exhibiting for sale or distribution of any drugs. The absence of any comma after the word “stocks” clearly indicates that the clause “stocks” or exhibits for sale” is one indivisible whole and it contemplates not merely stocking the drugs but stoking the drugs for the purpose of sale and unless all the ingredients of this category are satisfied, Section 27 of

the Act would not be attracted.”

In the present case, there is no evidence to show that the petitioner had any shop or he was selling the drugs as proved by the prosecution that the tablets were recovered from his possession. Under Section 27-A(i)(ii) read with 18 of the Act it must be proved by the prosecution affirmatively that he was selling the drugs stocked with him. The possession of drugs does not appear to be punishable under any of the provisions of the Act. If the essential ingredients of Section 27 of the Act are not satisfied, the petitioner has to be given the benefit of doubt and acquitted. As there is no evidence to show that the petitioner kept the stocks for sale without licence, the proving of mere possession is not sufficient to convict him for the said offence.”

The learned counsel has also relied on another judgment reported in **State, P.P., Madras v. G. Balagurunathan**^[2] wherein it is held to the following extent:

“The words “stock or exhibit for sale” found under Section 18(c) of the Act, are indivisible and the person stocking a drug cannot be held guilty unless he does so for sale. As stated earlier, in the present case, there is no evidence to show that the respondent has stocked the medicines, which he had in his possession, for the purpose of sale and to make out an offence under Sec.18(c) of the Act, the prosecution must also prove that they were stocked and exhibited for sale and not merely that they were stocked. Mere stock by itself is not an offence under Section 18(c) unless the said stock is meant for sale or distribution, in the absence of any evidence that the respondent stocked the medicines in his house for distribution or sale, the trial Judge was justified in acquitting him under Section 18 (c) of the Act.”

He has relied on yet another decision reported in **State of Karnataka v. M/s. Kannika Stores, Mysore and others**^[3] wherein it is held as under:

“If we consider the general connotation of the words “offer for sale” and in the context it is understood by intending customers exhibiting them in a prominent manner in a shop, whether

dealing in the same goods or some other goods, would amount to offer for sale. Therefore, ultimately the manner of keeping or exhibiting them in a shop would assume relevance and importance to see if they were really offered for sale. Admittedly, in the shop in question the accused were dealing in provisions and other articles and at any rate that was not a drug shop. PW3 one of the panch witnesses who was having his shop opposite to the shop of the accused stated that he had never seen the accused selling any drugs in their shop.

In view of the amendment to S. 18(a) we do not think the decisions referred to by the trial Court are applicable on all fours to the facts of the instant case as in those decisions the question was whether mere possession without proof of they being possessed for the purpose of sale was liable to be punished. No decision was brought to our notice attracting the provisions of S. 18(a) after amendment of the Section in 1982. We have considered the facts of the case in the light of the meaning that could be attributed to the words "offer for sale", namely, that whether such articles are displayed in a shop so as to make a customer know that they were available for purchase. As this element in the facts of this case is not proved, we find no grounds to interfere with the judgment of the trial Court. Appeal is dismissed."

and the learned counsel for the petitioner prays to allow the revision case and acquit the accused from the charged offence.

The learned Public Prosecutor has contended that the accused did not give the names of the donors who gave the medicines for distribution on the day of medical camp. Further the accused has also not filed any receipts about the receiving the medicines from the donors, as such, the prosecution made out a case and the findings recorded by both the Courts need no interference, and prays to dismiss the revision case.

Now, the point for determination is whether the judgment of the lower appellate Court in CrI.A.No.50

of 2005, dated 07.11.2007 which is under revision is liable to be set aside as prayed for?

Heard the learned counsel for the petitioner-accused, the learned Public Prosecutor appearing for the State and perused the material placed on record.

POINT:-

As per the prosecution case, on 12.11.1997, PW1- Drug Inspector along with PWs.2 and 5 visited the clinic of the accused and found drugs stored in it. When they demanded the accused to show the licence for storing the drugs, the accused failed to produce the same, as such, the complaint was filed against the accused. PW1 deposed these facts and in the presence of mediators i.e. PWs.2 and 5, he seized the drugs in Form No.16. According to PW1, the accused was not selling the drugs in the clinic at the time of his visit, there was no board of medical shop and he did not see any stock register, bill books, etc. in his possession. The main contention of the accused, who stated at the earliest point of time under Ex.P12, is that on 14.11.1997, there was a medical camp in their village and some donors gave the medicines for distributing to the villagers who are in need of those medicines, as such, he kept the medicines in a box and he was not indulging in any business activities. A perusal of Ex.P1-Form-16 and Ex.P3 – Mahazarnama, dated 12.11.1997 shows that the drugs seized by PW1 are not of bulk quantity and 38 medicines of different

manufacturers in different quantities were seized. Those medicines include cough syrups, tablets, ointments, etc.

The contention of the learned counsel that the accused was not selling the drugs which were stocked in the clinic and will not attract Sections 18 and 27 of Drugs and Cosmetics Act, 1940 was settled by this Court in the judgment cited *supra*(1) wherein it is clearly held that the accused was not indulging in selling the drugs in his house and there is no evidence to show that the accused intended to sell the drugs. In the present case also the accused is a medical practitioner having licence to practice and when there was a medical camp on 14.11.1997, he stored some medicines in his clinic and the Drug Inspector found neither any persons purchasing the medicines from the accused nor the accused was indulging in selling the drugs which were kept in his clinic. There is no other independent witness produced by the prosecution to show that the accused had any medical shop or he was selling drugs to the patients. Therefore, mere stocking of the drugs without any sale itself is not an offence punishable under Section 18(c) of the Act unless such stock is meant for sale or distribution. In the absence of evidence that the petitioner stocked the medicines in his clinic for distribution or sale, it cannot be said that the accused is guilty of the charged offence and this aspect has been rightly decided in judgment cited *supra*(2).

As per the evidence on record, the prosecution has not produced any evidence to show that the accused was doing business of sale of drugs in his clinic and the prosecution did not seize any bill book, therefore, the allegation made by the prosecution that the accused was doing business in sale of drugs is baseless and the trial Court as well as the lower appellate Court have not considered Ex.P12 which was given at the earliest point of time by the accused. Further, the villagers also in their evidence stated about the medical camp going to be held on 14.11.1997 and the same was supported by Exs.P10 and P11 – pamphlet received from Larven Rural and Health Education Society. In these circumstances, the prosecution has failed to prove that the accused, who stocked some medicines not in bulk quantities in his clinic, was selling those drugs to the patients in the medical camp, and mere stock of drugs, which are meant for distributing to the patients free of cost, without any proof of selling them to the public would not constitute the offence punishable under Section 18(c) read with 27(b)(ii) of the Act, therefore, the petitioner is entitled to be acquitted.

Accordingly, the Criminal Revision Case is allowed and the judgment dated 07.11.2007 delivered in Crl.A.No. 50 of 2005 on the file of the Special Sessions Judge-cum-IV Additional District Judge, Tirupati is set aside, and consequently, the revision petitioner – accused is acquitted of the offence punishable under Section 18(c)

read with 27(b)(ii) of Drugs and Cosmetics Act, 1940.

As a sequel to the allowing of the Criminal Revision Case, miscellaneous petitions, if any pending, shall stand disposed of as infructuous.

ANIS, J

27.02.2015

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[\[1\]](#) 2006(3) ALT (CrI.) 245 (A.P.)

[\[2\]](#) 2001(2) ALT (CrI.) 516 (Mad.)

[\[3\]](#) 1994 CrI.L.J. 743