

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

CRIMINAL REVISION CASE No.329 of 2010

ORDER:

This Criminal Revision Case is directed against the judgment in CrI.A.No.14/2008, dated 05.02.2010 on the file of the I Additional District & Sessions Judge, Krishna at Machilipatnam, by and under which, the conviction and sentence as imposed by the trial Court was modified.

Heard the learned counsel appearing for the revision petitioner and the learned Additional Public Prosecutor, representing the State.

The petitioner/accused was charge sheeted for the offences punishable under Sections 27(b)(ii) and 28 of Drugs and Cosmetics Act, 1940. The allegations are that the petitioner/accused who was running a Grocery shop at his residence was found to be selling 37 varieties of drugs useful for human beings and animals, without having any licence and on enquiry he did not furnish any information from whom he purchased the said drugs, which were seized in the presence of mediators.

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

During course of trail, the prosecution examined PWs 1 to 3 and got marked Exs.P1 to P10 and M.Os.1 and 2. 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.

On appreciation of oral and documentary evidence, the trial Court found the accused guilty of the offences alleged, 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 a period of two months for the offence under section 27(b)(ii) of the Drugs and Cosmetics Act, 1940; and further convicted and sentenced him to undergo simple imprisonment for a period of six months for the offence under section 28 of the Drugs and Cosmetics Act, 1940.

Challenging the conviction and sentence passed by the trial Court, the accused preferred appeal CrI.A.14/2008 before the lower appellate Court. The learned Sessions Judge, on re-appreciation of oral and documentary evidence, allowed the appeal in part, setting aside the conviction and sentence imposed by the trial court against the accused for the offence under section 27(b)(ii) of the Drugs and Cosmetics Act, however, confirmed the conviction and sentence imposed against the petitioner/accused by the trial Court for the offence under Section 28 of the Drugs and Cosmetics Act. Aggrieved by the same the accused filed the present criminal revision case.

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 offence under Section 28 of the Drugs and Cosmetics Act is legal and sustainable.

Point:

The contention of the learned counsel appearing for the revision petitioner/accused is that the conviction of the petitioner/accused for the offence under Section 28 of the Drugs and Cosmetics Act cannot be sustained for simple reason that the appellate Court having disbelieved the ingredients constituting the offence under Section 27(b)(ii) of the Drugs and Cosmetics Act, clearly erred in holding that the petitioner/accused has contravened the provisions of Section 28 of the Drugs and Cosmetics Act.

On the other hand, the learned Additional Public Prosecutor submits that the prosecution has placed relevant oral and documentary evidence on record and the judgments of the Courts below are based on proper appreciation of material on record, which do not warrant any interference.

Section 27(b)(ii) of the Drugs and Cosmetics Act, 1940 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 three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more:

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 three years and of fine of less than one lakh rupees;”

Section 28 of the Drugs and Cosmetics Act, 1940 reads as under:

“Section 28. Penalty for non-disclosure of the name of the manufacturer, etc.—Whoever contravenes the provisions of section 18A [or section 24] shall be punishable with imprisonment for a term which may extend to one year, or with fine which shall not be less than twenty thousand rupees or with both.

The trial Court found the accused guilty of the offences under Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act and

convicted and sentenced him, as stated supra. On appeal, the learned Sessions Judge modified the said conviction and sentence, as stated supra, and in his judgment dated 05.02.2010 at paras 36, 37 and 39 the learned Sessions Judge observed as under:

“36. The accused is running some business. He is having grocery shop. PW 2 did not even state that the said medicines are stocked along with the other items that were kept for sale. It is a house-cum-shop. If this PW 2 testified that this heavy stock of medicines were also kept along with other general items of his kirana shop, there can be at least an influence that those medicines were kept for sale. PW 2 failed to testify the same.

37. Therefore, in the light of aforesaid circumstances, the accused is entitled to the benefit of doubt so far as the offence of stocking medicines for sale punishable under section 27(b)(ii) r/w. Sec.18(a) of Drugs and Cosmetics Act. Therefore, the accused is entitled to be acquitted for the charge under Section 27(b)(ii) r/w.18(a) of Drugs and Cosmetics Act.

39. He denied possession of items 9 and 12 to 37 under Ex.A8. The evidence of prosecution as stated supra establishes possession of items 1 to 37 with the accused. He failed to disclose the name of vendor of the said drugs listed as items 9, 12 to 37 of Form 16 under Ex.P3. Therefore, the accused is liable for punishment for the offence under Section 28 of Drugs and Cosmetics Act for violation of Sec.18(A) of the said Act.”

Ultimately, the learned Sessions Judge held that the petitioner/accused has not contravened the provisions of Section 27(b) (ii) r/w.18(a) of the Drugs and Cosmetics Act and acquitted him thereof. Having done so, the learned Sessions Judge clearly erred in finding the petitioner/accused guilty of the charge under section 28 of the Drugs and Cosmetics Act, for the reasons that when the possession of the contraband itself is disbelieved, whether there being any requirement on the part of the petitioner/accused to furnish the

names of the manufacture or supplier, as required under section 28 of the Drugs and Cosmetics Act do not arise. Therefore, the conviction of the petitioner/accused for the offence under section 28 of the Drugs and Cosmetics Act cannot be sustained and the same is liable to be set aside.

For the reasons stated above, the Criminal Revision Case is allowed. Consequently, the judgment of the appellate Court dated 05.02.2010 in Crl.A.No.14 of 2008 in so far as confirmation of conviction and sentence imposed by the trial Court for the offence under section 28 of the Drugs and Cosmetics Act is set aside and the petitioner/accused is acquitted of the offence for which he was found guilty and convicted. The bail bonds of the petitioner/accused shall stand cancelled. The fine amount, if any paid, shall be refunded to the petitioner/accused.

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

M.S.K.JAISWAL,J

Date:14.12.2015

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