

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.819 OF 2016

JUDGMENT:

This Criminal Appeal, under Section 378(3) & (1) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is filed by the State against the judgment, dated 12.5.2011, in C.C.No.1776 of 2005 on the file of the III Additional Chief Metropolitan Magistrate at Hyderabad whereunder and whereby, respondent Nos.1 and 2/A-1 and A-2 were found not guilty of the offences punishable under Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act, 1940 and acquitted for the said offences under Section 255(1) Cr.P.C.

2. Case of the prosecution, in brief, is as follows:

The complainant is a Drug Inspector appointed under Section 21 of the Drugs and Cosmetics Act having jurisdiction over the state of Andhra Pradesh. On 15.10.2004, the Drug Inspector along with another Drug Inspector namely Sakku Bai and witnesses – Sumith Kumar Gupta and Muralikrishna visited the super market of the accused and found certain drugs which were stocked for sale in inside premises. A-1 and A-2 were present and they failed to show any drug licence for stocking the drugs for sale. So, the complainant seized the stock of the said drugs under Form No.6 under cover of panchanama and the accused also failed to give any information with regard to purchase invoices of seized drugs and the complainant informed the seizure to the Court and obtained orders for safe custody. A-1 and A-2 confessed that they

are selling the drugs without any valid licence, which is violation under Drugs and Cosmetics Act, and also they did not disclose the name, address and other particulars of the person from whom they acquired such drugs by not producing purchase invoices. Hence, the complaint was filed against the accused to take action as per law.

3. Complaint was taken on file under Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act. On appearance of the accused, copies of all documents were furnished to him. The accused were examined under Section 251 Cr.P.C. They pleaded not guilty and claimed to be tried.

4. To substantiate the case of the prosecution, P.Ws.1 to 3 were examined and Exs.P-1 to P-8 were marked besides case properties – M.Os.1 to 5.

5. After closure of the evidence on the prosecution side, the accused were examined under Section 313 Cr.P.C. They denied the evidence on the side of the prosecution. On behalf of the accused, D.W.1 was examined and no documents were marked.

6. The learned trial Judge, basing on the evidence adduced and after elaborate discussion, found the accused not guilty for the offences under Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act and accordingly, acquitted them. Challenging the same, the State filed the present appeal.

7. Heard and perused the material available on record.

8. The short point considered by the learned trial Judge is:

“Whether the complainant has filed notification regarding her appointment as Drug Inspector to the local area having jurisdiction to lift the samples?”

9. The learned trial Judge recorded the reasons in the impugned judgment at para No.16 as under:

“... So, the burden is upon P.W.1 to file her appointment order to show she is having jurisdiction for the Banjara Hills area by the date of lifting samples. In spite of cross examination of P.W.1, she did not make any efforts to produce the document. So, the Court can draw adverse inference against P.W.1 for not producing the said document as if the document is produced it will be against to the complainant. So, she failed to produce the same. When the accused are very much challenging the jurisdiction of P.W.1 for lifting the samples, the burden is on the complainant to discharge her burden. But, she did not take any steps to produce her authorisation or having jurisdiction to inspect that area and in view of the decision reported in 2010(1) ALT (Crl.) 219 (A.P.) it is held that:

“Criminal Procedure Code, 1973, Sec.396 – Drugs and Cosmetics Act, 1940, Sec.18(a)(i), 18(c), 18A, 18B, 24, 22(1)(cca), 27(d), 27(b)(ii), 28, 28A, 28 and 22(3) – Main submission is non filing of any notification duly notifying the area under which Drug Inspector was authorised to discharge duties and in the absence of any such notification, entire proceedings illegal and improper”.

“Government has to issue a notification duly notifying the area under which the Inspector can discharge his duties – No such notification placed before courts below – No G.O. Notifying the area under which P.W.1 Drug Inspector could discharge his duties – Admittedly relevant Gazetted notifications appointing P.W.1 as Drug Inspector not filed – No explanation given by prosecution for not filing relevant G.O. before trial Court.”

In view of the above decision also, the burden is on the Drug Inspector to file the notification appointing the Drug Inspector to that local area having jurisdiction to lift the samples. But, P.W.1 has not taken any steps. So, there is no merit in the arguments of the learned APPO that on the mere technicalities, the complaint cannot be dismissed. But, according to Sec.21, it is mandatory on the part of the complainant to file the document. But, she failed to do so. The learned counsel for the accused argued M.Os.1 to 5 are only medicated dental cream, cotton wool and dettol germicider. No doubt, M.Os.1 to 5 are not spurious drugs and cosmetics. But, for selling the same also, licence is necessary for any super market as contemplated under Sec.18(a) of Drugs and Cosmetics Act as this accused is not having licence. So, they failed to produce the same. So, mere M.Os.1 to 5 are not spurious drugs is not sufficient to acquit the accused.

As Sec.22 of Drugs and Cosmetics Act : Powers to Inspectors:

“Subject to the provisions of Sec. 23 and of any rules made by the Central Government in this behalf, an Inspector may, within the local limits of the area for which he is appointed.”

But, due to the latches on the part of complainant for not filing of notification to that local area is fatal. Hence, point no.2 is answered accordingly against the complainant.”

Considering all the facts and circumstances of the case, this Court is of the view that the findings of the learned trial Judge are in accordance with law and therefore, the impugned judgment warrants no interference of this Court.

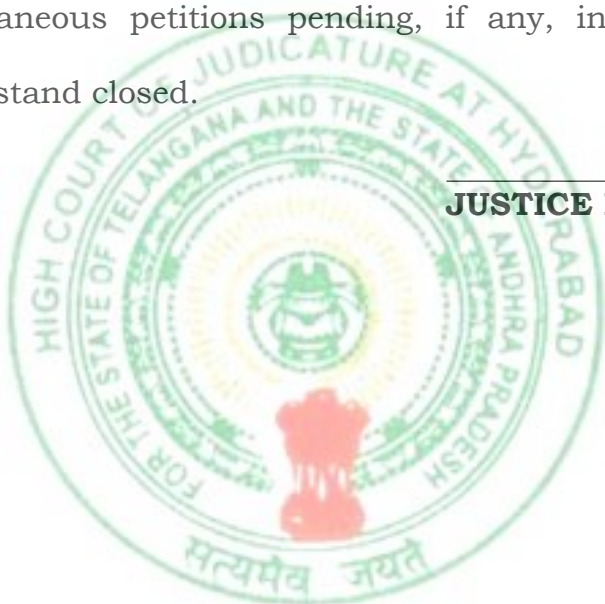
10. Further, in a case of acquittal, if the trial Court consists of two views and basing on one of the views, which is in favour of the accused, acquits the accused, normally, the appellate Court will not interfere with the judgment of the trial Court unless and otherwise, the evidence adduced by the prosecution clinchingly

points towards the guilt of the accused. In the present case, the learned trial Judge has considered all aspects and acquitted the accused. Hence, this Court is not inclined to interfere with the judgment of acquittal of the trial Court and the appeal fails and is liable to be dismissed.

11. Accordingly, this Criminal Appeal is dismissed confirming the judgment, dated 12.5.2011, in C.C.No.1776 of 2005 on the file of the III Additional Chief Metropolitan Magistrate at Hyderabad.

12. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

6.9.2016
AMD

JUSTICE RAJA ELANGO

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AMD