

THE HON'BLE SRI JUSTICE RAJA ELANGO

Crl.R.C. No.765 of 2006

ORDER :

The petitioner preferred the present Criminal Revision Case by invoking the provisions under Sections 397 and 401 of the Code of Criminal Procedure being aggrieved by the judgment, dated 18-04-2006 passed in Crl.A.No.84 of 2005 by the Special Judge for Trial of Offences under S.C./S.T. (PoA) Act-cum-V Additional District & Sessions Judge, Medak at Sanga Reddy, wherein and whereby the learned Special Judge confirmed the judgment, dated 13-06-2005 passed in C.C.No.47 of 2003 by the Judicial Magistrate of First Class, Special Mobile Court, Sanga Reddy, wherein the learned Judicial Magistrate of First Class convicted the petitioner/accused and sentenced him to undergo imprisonment for a period of one year and to pay a fine of Rs.5,000/-, in default to suffer Simple Imprisonment for three months for the offence under Section 27(b)(ii) of Drugs Cosmetic Act, 1940 and further sentenced to undergo imprisonment for a period of one year and to pay a fine of Rs.2,000/-, in default to suffer Simple Imprisonment for two months for the offence under Section 27(d) of Drugs Cosmetics Act, 1940.

The case of the prosecution is as follows :

On 06-12-2001, the complainant, who is the Drugs Inspector, Medak District, has inspected the stores of District Co-ordinator of Hospital Services, District Headquarters Hospital, Sangareddy and found the black phenyl in two drums (200 litres) which do not contain labels and was supplied by M/s.Padmavathi Medicals, Cuddapa. Then he has drawn two

samples as per the procedure and sent it to Government Analyst, Hyderabad for analysis and on 22-4-2002, the complainant received the test report stating that the Black Phenyl is not of standard quality as the sample does not meet specification under schedule 'o' of Drugs and Cosmetic Act, 1940 for Black Phenyl. Then the complainant forwarded a copy of the said report to the District Coordination, Hospital Services, Sangareddy, along with sealed sample containing one litre of black phenyl which was drawn from their stores under acknowledgment and requested to disclose the source of supply of the subject batch Number of Black Phenyl. They disclosed that they purchased the subject Batch No. Phenyl from M/s.Dayanand Medical Agencies, Inderbagh, Hyderabad and then the complainant addressed a letter to the said M/s.Dayanand Medical Agencies, Inderbagh, Hyderabad requesting to disclose the source of supply of the subject batch No. Phenyl and in turn they addressed a letter that they have purchased the same from M/s.Saibaba Chemical Industries, Hyderabad vide Bill No.140, dated 9-11-2001. Then the complainant addressed a letter to M/s.Saibaba Chemical Industries, Hyderabad requesting to confirm whether it manufactured and sold the subject batch No. Phenyl to M/s.Dayanand Agencies.

The accused, being the proprietor of M/s.Saibaba Chemical Industries, Hyderabad has given a reply to the complainant stating that he manufactured 400 litres of Black Phenyl Batch No.0146, manufacturing date, October, 2001 and expiry date, March, 2003 and entire stock of the said Batch phenyl was sold to M/s.Dayanand Medical Agencies, Inderbagh, Hyderabad vide invoice No.140, dated 9-11-2001 and that their product was declared not of standard quality due to unwashed second hand drums. On perusal of the

concerned copies of record, it is revealed that the accused sold 400 litres of black phenyl of batch No.0146 but as per records (Manufacturing record and certificate of analysis) the said product batch No. size is 200 litres only and that he has not followed conditions of licence i.e., Rule 74 (c) and Rule 74(o) read with schedule M Part I S.No.9 of Drugs and Cosmetics Rules and thereby contravened Section 18 (c) of the Drugs and Cosmetics Act.

On 21-6-2002, the complainant seized 367 litres of the subject Batch No., which is not of standard quality of Black phenyl from stores of District Coordinator of Hospital Services, District Headquarters Hospital, Sangareddy under the cover of panchanama. The said seizure was informed to the court as per Section 23(5) (b) of the Drugs and Cosmetics Act. The accused (1) manufactured and sold drug which is not of standard quality contravening Section 18(a)(i) read with Rule 126 and (ii) sold 400 litres Black Phenyl of Batch No.0146, but as per manufacturing record and certificate of analysis, the said product batch No. Size is for 200 litres only. The accused has not tested for remaining 200 litres contravening rule 74 (c) and he has not maintained batch records for remaining 200 litres, contravening Rule 74(o) read with Schedule 'M' part I S.No.9. The accused has not followed condition of licence thereby contravening Section 18(c) of the Act. Hence, the accused contravened Section 18(a)(i) read with Rule 126 and Section 18(c) read with Rule 74(c) and Rule 74(o) read with Schedule 'M' Part I S.No.9 punishable under Section 27(d) and 27(b)(ii) respectively of Drugs and Cosmetics Act, 1940 and Rules made thereunder.

To substantiate the said allegations, the prosecution examined P.Ws.1 to 9 and got marked Exs.P1 to P53 documents and M.Os.1 to 3.

The learned trial Court as well as the appellate Court relying the evidence of witnesses, more particularly P.W.1 and also the certificate issued by the Analyst, convicted the accused as stated above.

The samples were taken in the year 2001. The petitioner has been facing the trial and mental agony due to pendency of the case for the last 15 years. Admittedly, the trial Court and appellate Court, when the petitioner not disputed the fact of non-availability of labels in the stocks wherein they have taken samples, answered the said point that since it is admitted by the accused, there is no necessity to prove the same. But, this Court is of the view that during the criminal trial it is always the duty of the prosecution to prove the guilt. Merely on the guise of statement of the accused the Court cannot come to a conclusion that the said samples were taken only from the goods supplied by the petitioner herein. In any event, as the said circumstances are against the petitioner herein and placing reliance on the decision of the Apex Court in *Bharat Prasad Gupta Vs. State of West Bengal*¹ the conviction imposed on the petitioner/accused by the Courts below is confirmed and the sentence of imprisonment imposed on the petitioner/accused by the Courts below is set aside and the petitioner is directed to pay another Rs.10,000/- as fine.

Accordingly, the Criminal Revision Case is disposed of.

JUSTICE RAJA ELANGO

20th September, 2016
skmr

¹ 1996 AIR 1043