

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

CRIMINAL REVISION CASE No.1301 of 2007

ORDER:

This Criminal Revision Case is directed against the judgment, dated 20.09.2007, passed in Criminal Appeal No.112 of 2005 by the learned IX Additional Sessions Judge (FTC), Guntur, by and under which the conviction and sentence imposed against the petitioner/accused by the learned Special Mobile Magistrate, Guntur in CC No.140 of 2004, dated 18.02.2004, was confirmed.

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

3. The allegations in the complaint, in brief, are that basing on a news item published in "Eenadu Telugu daily" regarding sale of drugs by RMPs (Registered Medical Practitioners) including Government Hospital Drugs, PW 1-Drugs Inspector along with PW 2-another Drugs Inspector conducted search in the premises of Sai Clinic at Nallakunta, SLR Nagar, H.B.Colony, Guntur along with mediators in the presence of the petitioner/accused and found medicines in a cardboard box in the first room of the clinic. When questioned, the petitioner/accused replied that the said drugs were kept for the purpose of distribution to his patients. On enquiry it was revealed that the petitioner/accused without having any licence or bills stocked the said medicines. Out of the said medicines, there were four varieties of drugs meant for Government supply and five varieties of physician samples and remaining varieties of sale packs. PW.1 seized the drugs in the presence of mediators under Form-16 and cover of panchanama.

PW.1 issued notice under Section 18A of the Drugs and Cosmetics Act, 1940 (for short 'the Act') to the petitioner/accused to disclose the source of supply of the drugs seized. A reminder was also sent to the petitioner/accused on 15.12.2003 which was acknowledged by the petitioner/accused on 20.12.2003, but no reply was sent by the petitioner/accused. Therefore, PW 1 after following due procedure, filed charge sheet against the petitioner/accused for the offences punishable under Section 18(c) read with Section 27(b)(ii) and Section 18A read with Section 28 of the Act, which was numbered as C.C. No.140 of 2004.

4. After complying with the mandatory provisions, trial was commenced, during the course of which, prosecution has examined PWs.1 to 4 and got marked Exs.P1 to P10 and MO.1. The accused denied the evidence on record.

5. The learned Special Mobile Magistrate, Guntur, on hearing both sides and on perusal of the entire material on record, by judgment, dated 18.02.2004, found the accused guilty of the offences under Section 18(c) read with Section 27(b)(ii) and under Section 18A read with Section 28 of the Act and, accordingly, convicted and sentenced him to undergo simple imprisonment for a period of six months and to pay a fine of Rs.2,000/- in default to suffer simple imprisonment for two months for the offence under Section 18(c) read with Section 27(b)(ii) of the Act, and further sentenced him to pay a fine of Rs.500/- in default to suffer simple imprisonment for one month for the offence under Section 18-A read with Section 28 of the Act.

6. Against the said judgment, the petitioner/accused preferred Criminal Appeal No.112 of 2005 on the file of the IX Additional Sessions Judge (FTC), Guntur, and the learned Sessions Judge,

by judgment, dated 20.09.2007, dismissed the said appeal confirming the conviction and sentence imposed by the trial Court. Aggrieved by the same, the petitioner/accused preferred the present revision.

7. 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 offences alleged is legal and sustainable.

8. Upon perusing the evidence on record, more particularly, that of PWs.1 and 2 and the documents produced by the prosecution, both the Courts below have concurrently held that about '40' items of medicines were found, some on the table, some in the drawer and some in the cardboard box kept by the side of the table of the accused, who was Registered Medical Practitioner, having a clinic in the name of Sai Clinic. The evidence that is produced is cogent and consistent insofar as this aspect is concerned. It is no doubt true that the two panch witnesses who were examined as PWs.3 and 4 turned hostile and did not support the case of the Drug Inspector that they accompanied him at the time of searching the Sai Clinic where the drugs were found. It is, however, not the allegation that the drugs so seized were either spurious or sub-standard. Four of the drugs said to be the Government supplies and the four are physician samples not for sale. It is also the case of the Drug Inspector that the accused was practicing as a Medical Practitioner but at the time when he visited the Clinic, there were no patients there. The evidence of PW.1/Drug Inspector is corroborated by the other Drug Inspector/PW.2 and also the documents. It is also on record that in spite of specific notices calling upon the petitioner/accused to

produce bills, licence etc., the accused has failed to produce any evidence nor did he give any reply to the notices.

9. However, the question is as to whether the petitioner/accused can be said to sell or distribute any drug so as to attract the provisions of Section 18(c) of the Drugs and Cosmetics Act?

10. The facts of the case do not show that the petitioner/accused was found to have exhibited for sale, sold or distribute the drugs. He being a Medical Practitioner has kept some medicines on the table, in the drawer and in a cardboard box besides his table. Can such an act of the petitioner/accused said to attract the stringent penal provisions remains to be seen. It may be recalled that the accused is not being prosecuted for carrying on the profession of practicing medicine in contravention of any rules and regulations.

11. Sections 18(c) and Section 27(b)(ii) of the Drugs and Cosmetics Act read as under:-

“Section 18. Prohibition of manufacture and sale of certain drugs and cosmetics.— From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—

(a)

(b)

(c) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug or cosmetic, except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter :

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:

Provided further that the Central Government may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the manufacture for sale, or for distribution, sale, stocking or exhibiting or offering for sale or distribution of any drug or class of drugs not being of standard quality.”

“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 one year but which may extend to three years and with fine which shall not be less than five thousand rupees:

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 one year and of fine of less than five thousand rupees;”

12. In **MOHD.SHABIR v. STATE OF MAHARASHTRA**^[1]

(1979) 1 SCC 568) the Supreme Court held as under:-

“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 stocking 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.”

13. Following the above decision, this Court in **ALLADI KRISHNA MURTHY v. STATE OF A.P.** [\[2\]](#), held as under in para 9:-

“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.”

14. Following the above provisions and law and the authority of the Supreme Court, it can be said that the alleged act of the petitioner/accused in keeping certain drugs in his Clinic do not attract the penal provisions of the Act. There is no evidence that he has stocked the said drugs for the purpose of sale or distribution. He was a registered Medical Practitioner and the drugs seized are from Nursing Home but not from any shop or residence.

15. In the light of the above circumstances, both the Courts below have committed illegality in arriving at a conclusion that the petitioner was responsible for the commission of the offence. The Judgments are therefore liable to be set aside and

the petitioner/accused is entitled to an acquittal.

16. In the result, the Criminal Revision Case is allowed. The conviction and sentence as imposed by both the Courts below is set aside and the fine amount, if any paid, shall be returned to the petitioner/accused.

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

M.S.K.Jaiswal, J

Date: 01.2016

dsr/smr

[\[1\]](#) (1979) 1 SCC 568

[\[2\]](#) (2006) 3 ALT (Crl) 245 (AP)