

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No.364 of 2009

Date of Decision : May 03, 2016

Gopesh and another

.....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Salil Bali, Advocate
for the petitioner.

Mr. Dhruv Dayal, Deputy Advocate General, Haryana.

T.P.S. MANN, J.

The petitioners, namely, Gopesh in his individual capacity and also being proprietor of M/s Gopesh Medicos, were tried for offences punishable under Sections 18(c) and 18A of the Drugs and Cosmetics Act, 1940 (for short 'the Act'), punishable under Sections 27(d) and 28, respectively of the Act. Vide judgment and order dated 5/8.6.2006, learned Chief Judicial Magistrate, Hisar held Gopesh guilty under Section 18(c) read with Section 27(d) of the Act and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- and in default of payment of fine, to undergo simple imprisonment for one month. He was also held guilty under Section 18A read with Section 28 of the Act and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- and in default of payment of fine, to undergo simple imprisonment for one month. Both the substantive sentences were ordered to run concurrently.

Aggrieved of the judgment of conviction and sentence passed by the trial Court, the petitioners preferred an appeal, which was, however, dismissed by learned Additional Sessions Judge, Hisar vide judgment dated 3.2.2009. Hence, the present revision in which the sentence of petitioner-Gopesh stood suspended vide order dated 1.4.2009.

In the complaint filed by Arvind Kumar, District Drug Inspector, it was alleged that on 3.7.1997 at about 5.30 p.m., he, alongwith Sh. L.C. Mittal, SDI, Hisar and Hari Ram, Peon visited the firm of M/s Gopesh Medicos, Sewak Sabha Hospital, Hisar for inspection. It's proprietor Gopesh was present at that time. During inspection, 15 kinds of drugs, which were physician's sample and not for sale, were recovered from the shop. They were seized by the Drug Inspector by detailing the same in Form-16 and, thereafter, sealed in card-board box duly signed by Shri L.C. Mittal and petitioner-Gopesh. Copy of Form-16 was handed over to Gopesh. Thereafter, a sample of drug bearing sample No.AKH-86/97 was taken from the firm. This sample was later declared to be of standard quality by the Government analyst. After obtaining custody order, notice was sent to the firm. Reply submitted thereof on 10.7.1997 was not found to be satisfactory. Accordingly, after obtaining orders for prosecution of the firm from the State Drugs Controller, Haryana, the complaint was filed against the petitioners as they contravened Section 18(c) of the Act read with Rule 65(18) by stocking drugs which were physician's sample not for sale and also Section 18-A of the Act by not disclosing the name, address and other particulars of the person from whom they were acquired and,

thus, committed offences punishable under Sections 27(d) and 28 of the Act.

At the trial, the petitioners were charged for the aforementioned offences, to which they pleaded not guilty and claimed trial.

In support of its case, complainant Arvind Kumar, Drug Inspector appeared as PW1, besides examining Harvinder Singh Sharma, Clerk as PW2 and Shri L.C. Mittal as PW3.

When examined under Section 313 Cr.P.C., petitioner-Gopesh denied the allegations of prosecution and claimed to be innocent and falsely implicated. In defence, he did not examine any evidence.

The trial Court, after hearing learned counsel for the parties and on going through the record, held the petitioners guilty and sentenced petitioner-Gopesh, as indicated above. The appeal filed by the petitioners was, however, dismissed.

Learned counsel for the petitioners has submitted that the drugs in question, as alleged by the complainant were physician's sample and not for sale. Those samples were collected by petitioner-Gopesh for the treatment of his family members. Somehow, he wrongly kept the same at his shop. The samples were not displayed for sale purpose. He had not acquired the drugs in question from anyone, rather his father had obtained them from the agent of various companies. Under these circumstances, he was unable to disclose the name of the person from whom his father had

obtained the same.

It has not been disputed by petitioner-Gopesh that the drugs were kept by him in his shop. According to him, he had kept them for treatment of his ailing family members. However, as the samples were kept in the shop, it was sufficient to indicate that they were stocked for sale.

Learned counsel for the petitioners has submitted that no independent witness was joined at the time of the alleged recovery. It has come in the evidence that a number of persons were present. However, it may be noticed that in the evidence, it has come that an attempt was made to join the independent witnesses, but none of them agreed. At the same time, no material has been brought on record by the defence that the raiding party was inimical towards petitioner-Gopesh.

In view of the above, no case is made out for any interference in the conviction of the petitioners.

As regards the question of sentence, it may be noticed that as on the date of commission of the crime, violation of the provisions of Section 18(c) of the Act made the offender liable for punishment under Section 27(d) of the Act with imprisonment not less than one year but which may extend to two years and with fine. However, for adequate and special reasons, the imprisonment could be for a period of less than one year. Similarly, violation of Section 18A of the Act made the offender liable for punishment under Section 28 of the Act with imprisonment upto one

year or fine which could extend to Rs.1,000/- or with both.

The petitioner, namely, Gopesh, is facing the agony of criminal prosecution for the last about eighteen years. He is not shown to be either involved or convicted in any other criminal case. The drugs seized from his premises were found to be of standard quality by the Government Analyst. He is currently on bail pursuant to the order passed by this Court on 1.4.2009. In view of the same, adequate and special reasons exist for awarding imprisonment for less than one year under Section 27(d) of the Act. Further, as is clear from the custody certificate produced by the learned State counsel, he has already undergone total sentence of two months. Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending Gopesh-petitioner behind the bars, once again, for undergoing the remaining sentence of imprisonment imposed upon him. Ends of justice would be suitably met, if his substantive sentences of imprisonment on both the counts are reduced to the period already undergone by him. At the same time, the fine imposed can be suitably enhanced.

Resultantly, the conviction of the petitioners under Section 18 (c) read with Section 27(d) and Section 18A read with Section 28 of the Drugs and Cosmetics Act, 1940 is upheld. The substantive sentences of imprisonment of Gopesh-petitioner on both the counts are reduced to the one already undergone by him. The fine of Rs.1,000/- imposed under Section 27(d) of the Drugs and Cosmetic Act, 1940 is, however, enhanced

to Rs.50,000/- and in default thereof, Gopesh-petitioner shall undergo simple imprisonment for six months. The fine of Rs.500/- imposed under Section 28 of the Drugs and Cosmetic Act, 1940 is enhanced to Rs.1,000/- and in default thereof, Gopesh-petitioner shall undergo simple imprisonment for three months. The enhanced amount of fine be deposited with the trial Court within three months from today.

The revision is, accordingly, disposed of.

May 03, 2016
satish

(T.P.S. MANN)
JUDGE