

The allegations against revisionist are that on 6.9.2005, complainant Dinesh Kumar alongwith Dr. Ashok Monga and Dr. Kuldeep Rai checked the shop of present revisionist-accused Suresh Kumar, situated near Purana Thana, Bathinda. He was found stocking allopathic drugs for

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sale and distribution at his premises. On inquiry, he could not produce valid sale drug licences. 21 types of allopathic drugs were seized. It was further stated that licence of M/s Sharma Medical Store, Bathinda, was cancelled by the State Drugs Controller, Punjab, on 4.8.2005. Accused in collusion with his brother Rakesh Kumar applied for retail sale licence in the name of M/s Shri Pal Medical Store, Bathinda, on 24.8.2005 which was also not granted.

It also comes out that after receipt of report and completing all the formalities, a complaint was actually filed on 15.9.2008 i.e. after three years of said recovery. Both the Copurts below held that complainant proved the case against revisionist.

I have heard the learned counsel for revisionist, the learned State counsel and have also carefully gone through the file.

Before this Court, revision has been pressed only on the point of limitation.

The learned counsel for revisionist has contended that Section 27 (b) (ii) of the Drugs and Cosmetics Act, 1940, under which revisionist has been convicted, earlier carried the imprisonment which shall not be less than one year, but which may extent to three years. At the time of commission of offence in the year 2005, the maximum sentence in that case was three years. The sentence under Section 28 of the Drugs and Cosmetics Act, 1940, was upto one year. It is contended that under Section 468 Cr.P.C., the limitation for filing the complaint was three years.

Section 468 Cr.P.C lays down as under :-

“[S. 468. Bar to taking cognizance after lapse of the period of limitation.]- (1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an

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offence of the category specified in sub-section (2), after the expiry of period of limitation.

(2) The period of limitation shall be -

- (a) six months, if the offence is punishable with fine only;
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
- (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

Admittedly, in this case, at the time of commission of offence, the maximum sentence, which could be awarded to revisionist, was three years. Therefore, under Sub-section (2) Clause (c) of Section 468 Cr.P.C., the limitation for taking the cognizance was three years. Recovery was effected on 6.9.2005. The complaint was filed on 15.9.2008 which is beyond said prescribed period of three years. Therefore, the complaint is patently barred by limitation.

The learned State counsel has argued that in this case, a notice was issued to revisionist on 18.11.2005 and he did not respond to the said notice. Therefore, limitation is to be counted from the said date.

I am of the view that offence was committed when allopathic drugs were recovered from the possession of accused- revisionist without having a valid licence on 6.9.2005. The subsequent formalities of issuance of notice etc. are part of proceedings and all the proceedings were to be completed within said prescribed period of three years and complaint was required to be filed before the said period of three years which was not done

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in present case. Hence, the complaint is held to be barred by limitation. Accordingly, revision is allowed. The judgment dated 10.11.2017, passed by the learned Additional Sessions Judge, Bathinda, and the judgment of conviction and order of sentence dated 10.10.2014, passed by the learned Additional Chief Judicial Magistrate, Bathinda, are hereby set aside and revisionist stands acquitted of charges framed against him. Bail bond and surety bond of revisionist stand discharged.

(KULDIP SINGH)
JUDGE

16.12.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No