

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.349 of 2012

JUDGMENT:

This Criminal Appeal, under Section 378(1)&(5) of the Code of Criminal Procedure, 1973, is filed by the appellant/State, challenging the judgment, dated 29.08.2009, passed in C.C.No.168 of 2005 by the learned Judicial Magistrate of First Class, Hindupur, whereby, the respondent/accused was found not guilty of the offences under Section 18(a)(vi) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 (for short, 'the Act') and Section 18(A) read with Section 28 of the Act and accordingly, he was acquitted under Section 255(1) Cr.P.C.

2. Heard the learned Additional Public Prosecutor representing the appellant/State, learned counsel for the respondent/accused and perused the record.

3. Learned Additional Public Prosecutor representing the appellant/State would contend that there is specific evidence of P.W.1 – Drug Inspector with regard to the sale of drugs by the accused in his shop and those drugs were meant to be supplied purely by the Government and the evidence of P.W.1 substantiates the same; that further, there is also evidence of other witnesses to substantiate the guilt of the accused for the offences under Section 18(a)(vi) read with Section 27(d) of the Act and Section 18(A) read with Section 28 of the Act; that the trial Court erroneously acquitted the accused for those offences and ultimately, prayed to set aside the impugned judgment and convict and sentence the accused for the said offences.

4. Learned counsel for the respondent/accused would contend that no independent witness supported the case of the prosecution; that the drugs were found in the verandah of the accused and the same were placed by some farmers and the accused has nothing to do with those drugs; that the trial Court rightly terminated the criminal proceedings against the accused and ultimately, prayed to sustain the impugned judgment.

5. In view of the submissions made by the learned counsel for both sides, the point that arises for determination is:

“Whether the accused is liable to be convicted for the offences under Section 18(a)(vi) read with Section 27(d) of the Drugs and Cosmetics Act, 1940 and Section 18(A) read with Section 23 of the Drugs and Cosmetics Act, 1940?”

6. **POINT:-**

P.Ws.2 and 3 are said to be the independent witnesses, who were witnesses to the seizure of drugs from the shop of the accused. These two witnesses did not support the case of the prosecution. P.W.2 stated that he was informed about the seizure of the drugs from the shop of the accused containing two boxes – M.Os.1 and 2. P.W.3 also did not state about the seizure of M.Os.1 and 2 - boxes containing drugs from the shop of the accused. P.W.1 is the Drug Inspector. In his evidence, he stated that he went to the shop of the accused to serve suspension order under Ex.P-2 and he stated that he called P.Ws.2 and 3 to witness the seizure of drugs from the shop of the accused, which were meant to be supplied by the Government freely. There is no specific evidence of P.W.1 as to from which place, the questioned drugs were seized. The consistent defence set up by the accused is that

the seizure of the drugs was made around 9:00 A.M. from the verandah of the shop wherein the drugs were kept there by some of the farmers. Though there is a report from P.W.4 stating that the drugs were meant to be supplied by the Government to the farmers free of cost and they are not for sale, the trial Court held that it is not appropriate to base conviction solely on the testimony of P.W.1 – Drug Inspector when the defence of the accused is that some farmers have placed the drugs in the verandah. P.W.1, in his evidence, had stated that in the presence of P.Ws.2 and 3, he entered the nature of drugs seized in form No.16 and obtained the signatures of P.Ws.2 and 3 on form No.16. However, in the given circumstances, it is not appropriate to believe the sole testimony of P.W.1 to base a conviction. The trial Court had given elaborate reasons while recording acquittal of the accused for the offences under Section 18(a)(vi) read with Section 27(d) of the Act and Section 18(A) read with Section 28 of the Act. The findings of the trial Court are based on record. There is nothing to take a different view. The appeal is devoid of merit and is liable to be dismissed.

7. Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 29.08.2009, passed in C.C.No.168 of 2005 by the learned Judicial Magistrate of First Class, Hindupur.

8. Miscellaneous Petitions pending, if any, in this Criminal Appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 19.12.2018
AMD

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