

CRM-A-648-MA of 2013 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-A-648-MA of 2013 (O&M)
Date of decision: 30.01.2019

State of Haryana

.....Applicant

versus

Arun Bhatia

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Raj Kumar Makkar, Sr. DAG, Haryana.
Mr. Anil Shukla, Advocate, for the respondent.

RAMENDRA JAIN, J. (ORAL)

State has preferred this application under Section 378(3), seeking leave to appeal against judgment dated 23.03.2013 of the Appellate Court, acquitting the respondent under Sections 27(a) and 28 of the Drugs and Cosmetics Act, 1940 (in short the 'Act'), while setting aside judgment of conviction dated 04.06.2012 and order of sentence dated 05.06.2012 holding him guilty and sentencing to undergo rigorous imprisonment for one year and pay fine of ₹1,000/- under Section 28 of the Act; in default thereof to undergo simple imprisonment for one month and to undergo rigorous imprisonment for five years and pay fine of ₹10,000/- under Section 27(a) of the Act; in default thereof to undergo simple imprisonment for six months.

Briefly, on 07.02.2001, a medical officer inspected the premises of M/s Shivam Medicos, Faridabad, and found the respondent selling drugs to the customers as a proprietor. Samples of various tablets like Combiflam, Isokin-300 were taken, out of which Combiflam was declared substandard

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by the analyst on 11.05.2001. Resultantly, District Drugs Inspector, Faridabad, filed a complaint under Sections 17 and 18 Punishable under Sections 27 and 28 of the Act and Rules framed thereunder.

After holding trial, trial Court convicted the respondent in the manner as narrated above in the opening part of the judgment.

Being aggrieved, respondent preferred an appeal and got success inasmuch as while accepting his appeal, the Appellate Court acquitted him.

Learned State counsel *inter alia* contends that the respondent never applied for re-analysis of second sample collected by the medical officer from his shop to counter the first analytic report against him. First Appellate Court has wrongly and erroneously acquitted the respondent on the ground that medicine, of which sample was taken from his shop, was not a life saving drug, ignoring the fact that sample of the same was found substandard. The First Appellate Court also illegally recorded in the impugned judgment that complaint was filed beyond the period of limitation, though it was filed well within time. The First Appellate Court also ignored the admission of the respondent in his cross-examination that he did not mention about re-analysis of sample in Ex.PW1/24.

On the other hand, learned counsel for the respondent contends that respondent could not have been put to trial without impleading the manufacturer of the drugs of which samples were taken. On the strips of the tablets, names of the manufacturers were very much printed, but they were never impleaded as party. Since, respondent was only a seller of the manufactured drugs, therefore, he could not have been prosecuted solely without prosecuting the manufacturer and his supplier/dealer. In support of

his contention, learned counsel has placed reliance on ***M/s Dashmesh Kheti***

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Store and others v. State of Punjab, 2013(1) R.C.R.(Criminal) 150, which has also been referred in the impugned judgment. Sanction was granted to prosecute the manufacturer.

Having given thoughtful consideration to the rival submissions, this Court finds the instant application completely devoid of any merit for the reasons to follow.

DW4 Anil Kumar, Clerk of the office of Drug Controller, own witness of the complainant, testified and admitted that respondent had applied for re-analysis of the sample vide letter Mark DW2/1. This witness has admitted that application of the respondent-accused for re-analysis was not entered in the record. Thus, from the admission of own witness of the applicant-complainant, it is evident that respondent had applied for re-analysis of the sample, but his said legal right was snatched away by the complainant by not sending the second sample for analysis. Therefore, in the absence of the same, respondent could not have been convicted. Ambiguity about the date of application sent by the respondent in his cross-examination as DW2 pointed out by learned State counsel, relates to the insignificant aspect of the case inasmuch as the First Appellate Court has taken into account the correct date of application of the respondent. In view of discussion above, argument raised by learned State counsel that the respondent never applied for re-analysis being contrary to the facts is turned down.

The argument raised by learned State counsel that the First Appellate Court failed to appreciate that sample was found substandard, has no legs to stand in view of the fact that right of the respondent-accused for

getting re-analysis of the second sample was snatched away by the

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complainant department on account of its negligence by not entering the same into its record.

Reference to document Ex.PW1/24 by the learned State counsel in the statement of respondent-accused as DW1 is meaningless inasmuch as the statement of a witness has to be read as a whole and not in isolation. State counsel cannot be permitted to pick and choose a particular line, which is not otherwise in its favour.

In view of discussion made above, this Court is not inclined to differ with the judgment of acquittal rendered by the First Appellate Court.

Leave to appeal declined.

January 30, 2019
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No