

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1269-2019(O&M)

Date of decision:22.10.2019

Mukesh Kumar

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Gautam Dutt and
Mr. P.R.Yadav, Advocates for the appellant

Mr. Anmol Malik, AAG, Haryana

ANIL KSHETARPAL, J.

Correctness of judgment, convicting the appellant, passed by Additional Sessions Judge, Gurugram dated 3.4.2019 while deciding complaint under Sections 18/27 of Drugs and Cosmetic Act, 1940 (hereinafter referred to as Act of 1940) has been assailed. Appellant has been sentenced to undergo rigorous imprisonment for a period of 4 years and to pay a fine of Rs.1 lac for having committed an offence punishable under Section 27 (b) (ii) of Act of 1940. Appellant was also held liable to undergo rigorous imprisonment for a period of one year for having committed offence under section 28 of the Act of 1940.

The case of the prosecution is that Sh. Lalit Goyal, the then Senior Drug Control Officer, Gurugram alongwith Smt. Pooja Chaudhary, Drugs Control Officer, Gurugram inspected the un-licenced premises belonging to the appellant situated at village and post office Ghamroj, Tehsil Sohna, District Gurugram for the purpose of investigation of sale of

Scheduled Allopathic drugs. The accused was found stocking for sale, exhibiting for sale, offer for sale and selling the drugs to the customers without any prescription and cash memo. 30 types of Allopathic drugs were seized, found stocked for sale in different racks and on the counter of the shop. Two independent witnesses were joined. The drugs were seized, packed in cardboard boxes. Form 16 was prepared and signed by the appellant. Appellant could not produce licence as necessarily required under Section 18 of the Act. Appellant alongwith sealed seized cardboard boxes and form 16 were produced before learned Judicial Magistrate with a request to pass an order of custody of the seized drugs as required under Section 23 (5) (b) of the Act.

After serving a show cause notice and getting sanction from the competent authority, complaint was filed in Court.

Prosecution in order to prove its case examined PW 1 Lalit Kumar Goyal (Assistant State Drug Controller), PW 2 Digvijay Singh (independent witness), PW 3 Umed Singh, (Clerk who proved the sanction) and PW 4 Pooja Chaudhary, Drug Control Officer. Sh. Pankaj Kumar Jain could not examined, as he, by then, had expired.

Incriminating circumstances and evidence appeared on record were put to the accused as required under Section 313 Cr.P.C who claimed false implication and opted to lead evidence in defence but did not lead any evidence.

This Court has heard learned counsel for the appellant as well as State and with their able assistance has gone through the judgment passed and the record. Learned counsel for the appellant has submitted that there is

no evidence of sale of scheduled drugs and therefore, offence under Section

27 (b)(ii) of the Act is not made out. While drawing attention of the Court to the statement of Pooja Chaudhary, PW 4, has submitted that the members of the raiding party did not purchase medicine from the appellant and they did not take any photograph and carry out videography of the spot. PW1- Lalit Kumar Goyal has admitted that they did not purchase any drugs from the appellant.

On the other hand, learned counsel for the State has submitted that the recovery is from the shop of the appellant and he had stocked the scheduled drugs in the racks constructed for the purposes of exhibiting for sale and on the counter kept in the shop. He, “hence”, submitted that the judgment passed by the learned Trial Court be upheld.

Before dealing with the arguments of the learned counsel for the parties, it would be appropriate to note that exhibit P1 is Form 16 prescribed under Rule 55 and 145B of the Rules framed under the Act of 1940. It is apparent that large quantity of Allopathic drugs were found and appellant had signed Form-16 acknowledging seizure of the drugs. Appellant with his own hand had written on the aforesaid form that

“the above mentioned 30 types of allopathic drugs have been taken from my shop, properly packed in two boxes and sealed. I had signed the two boxes. I also received a copy of Form 16”.

Appellant has also put a date under his signatures apart from that spot memo Ex.P 2 is also signed by the appellant. Still further Ex.P3 is writing of the appellant at the time when the search and seizure was carried out and he admitted that officials of the Department of Drug Control visited his shop and he was found present and running a chemist/pharmacy shop stocking allopathic drugs and he does not have a valid retail sale licence.

Invoices of the drugs were not found. He has stated that he is planning to apply for a valid licence, however, till date he has not applied.

As noticed above, the prosecution proved its case by examining two officials from the Department of Drug Control and an independent witness. It has been specifically admitted that the search and seizure is from the shop of the appellant.

In view of the aforesaid evidence, now let us examine the argument of the learned counsel for the appellant. Section 27 of the Act of 1940 provides that whosoever himself or by any other person on his behalf, manufactures for sale or for distribution, sales or stocks or exhibits or offers for sale or distributes. Sub clause (b) of Section 27 provides that any drug 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 3 years.

Section 18 (c) makes it mandatory to obtain a licence, for manufacture or for sale or for distribution, or sale or stock or exhibit or offer for sale or distributes any drug.

Learned counsel for the appellant has relied upon a judgment passed by the Hon'ble Supreme Court in the case of **Mohd. Sabir versus State of Maharashtra** (1979) 1 SCC 568 to contend that there is no evidence of stock of the drugs for sale and therefore, appellant has been wrongly convicted under Section 27(b)(ii) of the Act.

This Court has carefully read the judgment passed by the Hon'ble Supreme Court while interpreting Section 27 (b)(ii). In that case a young man was found travelling with 17000 white tablets apprehended at the Railway station. In those facts, the Hon'ble Supreme Court held that

there is no evidence that the drugs seized were stocked or exhibited for sale and hence offence under Section 27 (b)(ii) is not made out. Operative part of the judgment passed by the Hon'ble Supreme Court is as under:-

“4. On an interpretation of Section 27, it seems to us that the arguments of Mr. Singh is well founded and must prevail. The words used in Section 27, namely, "manufacture for sale", sells, have a comma after each clause but there is no comma after the clause "stocks or exhibits for sale". Thus the section postulate 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. In the present case there is no evidence to show that the appellant had either got these tablets for sale or was selling them or had stocked them for sale. Mr. Khanna appearing for the State, however, contended that the word "stock" used in section is wide enough to include the possession of a person with the tablets and where such a person is in the possession of tablets of a very huge quantity, a presumption should be drawn that they

were meant for sale or for distribution. In our opinion, the contention is wholly untenable and must be rejected. The interpretation sought to be placed by Shri Khanna does not flow from a true and proper interpretation of Section 27. We, therefore, hold that before a person can be liable for prosecution or conviction under Section 27(a) (i) (ii) read with Section 18 (c) of the Act, it must be proved by the prosecution affirmatively that he was manufacturing the drugs for sale or was selling the same or had stocked them or exhibited the articles for sale. The possession simpliciter of the articles does not appear to be punishable under any of the provisions of the Act. If, therefore, the essential ingredients of Section 27 are not satisfied the plea of guilty cannot lead the Court to convict the appellant.”

On analysis of the facts of the present case viz-a-viz facts of the judgment passed in the case of Mohd. Sabir (supra), this Court finds that aforesaid judgment is not applicable to the facts of the present case. In this case the search and seizure is from the shop/premises occupied by the appellant. He had stocked the drugs in the racks and on the counter fabricated for the purpose of displaying them for sale. The seized quantity clearly proves that stocked drugs were not for any other purpose. Still further accused has not led any evidence to prove that these drugs were stocked for any other purpose and not for sale.

In view of the aforesaid, this Court finds that the conclusion

drawn by the learned Additional Sessions Judge with regard to the applicability of Section 27 (b)(ii) requires no interference.

In the end, learned counsel for the appellant has submitted that appellant is a simpleton villager, first time offender and the only bread earner in the family. Therefore, he prayed for a lenient view.

Keeping in view the facts of the present case, the appellant being a first time offender and the minimum sentence as provided under Section 27(b)(ii) is 3 years, hence, while reducing the sentence awarded to the appellant under Section 27 (b)(ii) of the Act to 3 years, the present appeal is dismissed with the aforesaid modifications.

22.10. 2019

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)**JUDGE**

Yes / No

Yes / No