

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL APPEAL NO.907 OF 2017

JUDGMENT:

Appellant-State filed the present Criminal Appeal by invoking the provision under Section 378(1)(4) and (5) of the Code of Criminal Procedure (Cr.P.C.) challenging the judgment dated 23.11.2016 rendered in C.C.No.639 of 2017 wherein and whereby the I Additional Judicial Magistrate of First Class, Khammam, acquitted the respondents/A-1 and A-2 for the offences under Section 18(a)(i) read with Section 16 and Section 22(1)(cca) of the Drugs and Cosmetics Act ("the Act" for brevity) punishable under Section 27(d) and 22(3) of the Act.

The case of the prosecution, in brief, is that on 28.08.2005, P.W.1 conducted raid at M/s. Sri Laxmi Venkatateswara Medical Agencies, 10-2-9/B, Mamillagudem, Khammam and lifted the sample Ibolyinn tablets B.No.SIP 002, Mft.dt.11/2004, Exp.date.10/2007, Mfg. by M/s. Shadye – Lynn Remedies, 48, Phase – II I.D.A., Mallapur, Hyderabad – 500 076 and sent the same to the Drugs Control Laboratory, Hyderabad on 28.06.2005 and the Government Analyst issued the report vide No.3644/DCL/2005, dated 09.11.2005, which opined that "the said drug sample was declared as not of standard quality for the reasons that the sample does not comply the disintegration test as per IP Specifications". Thereafter, the Drugs Inspector addressed a

letter to M/s. Sri Laxmi Venkateswara Medical Agencies on 21.11.2005, to provide the source of supply of the said drug under Section 18(a) and purchase record under Section 22(1)(cca) of the Act and on 21.11.2005, one B.Devender (L.W.2) submitted reply along with Photostat copy of purchase invoice vide No.16 dated 20.06.2005 of the said drugs which disclose that he had purchased the said drugs from M/s. Shadye – Lynn Remedies, Hyderabad. On 04.01.2006, the Drugs Inspector, P.W.1 issued notice under Section 22(1)(cca) of the Act to the A-1 firm and requested to furnish a copy of the Drug License along with a list of approved products and Manufacture records, Analytical records, distribution of records and recall particulars of the said drugs. Copy of the analytical report in Form-13 and a sealed portion of the said drugs were also sent to the A-1 firm along with notice. In spite of receipt of the said notice, A-1 firm did not give any reply. Therefore, A-1 manufactured and sold out of standard quality drugs and violated Section 18(a)(i) read with Section 16 of the Drugs and Cosmetics Act, 1940 punishable under Section 27(d) of the Drugs and Cosmetics Act and A-1 firm has not submitted any reply notice and violated the provision under Section 22(1)(cca) of the Act punishable under Section 22(3) of the Act. Hence, the case.

After filing the complaint by the Drugs Inspector, Khammam, cognizance was taken for the offence under Section 18(a)(i) read with 16 of the Act punishable under

Section 27(d) of the Act and for the offence under Section 22(1)(cca) of the Act punishable under Section 22(3) of the Act, against A-1 and A-2.

On appearance of A-1 and A-2, copies were furnished under Section 207 Cr.P.C. and they were examined under Section 239 Cr.P.C. Charges were framed for the abovementioned offences, read over and explained to them. A-1 and A-2 pleaded not guilty and claimed to be tried.

The prosecution, in order to prove its case, examined P.Ws.1 and 2 and got marked Exs.P1 to P16 and also M.O.1. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. No oral or documentary evidence was adduced on behalf of the accused.

The trial Court, on appraisal of the entire evidence, both oral and documentary, held that the prosecution has not proved the guilt of A-1 and A-2 for the offences under Section 18(a)(i) read with Section 16 and 22(1)(cca) of the Act punishable under Section 27(d) and 22(3) of the Act beyond reasonable doubt and accordingly, acquitted them. Aggrieved by the same, the appellant/State preferred this appeal.

This Court perused the entire impugned judgment and also heard the arguments.

The evidence of P.W.2 that he has obtained permission from the prosecution under Ex.P.12 and the list of products approved by the Department and sanction in favour of A-1 specifying the formula to be applied under Ex.P.14 and the

declaration from the Directors of the Company and A-2 under Exs.P.15 and P.16 respectively, are not at all helpful to the case of the prosecution, as, in this regard, the version of P.Ws.1 and 2 is quite contradictory to each other. Hence, the contradictory evidence of the main prosecution witnesses, P.Ws.1 and 2, as rightly held by the learned trial Court, is not sufficient to bring home the guilt of A-1 and A-2.

In view of the latches, lacunas and deviations in the case of the prosecution and the evidence of the prosecution witnesses, the learned trial Judge acquitted the accused persons. The reasons assigned by the learned trial Judge are well in accordance with law and the trial Court has appreciated the entire evidence in proper perspective.

Further, in an appeal against acquittal, the scope of this Court is very limited and if any perversity or illegality appears on the face of the record, then only this Court can interfere with the finding of the lower Court. It is well settled that in an appeal against acquittal, the Appellate Court can interfere only when there is possibility of one view, which is pointing towards the guilt of the accused. When there is possibility of two views and one view, which is in favour of the accused, is taken into account and the accused is acquitted by the competent Court, there is no need to interfere with the order passed by the trial Court.

In ***Mrinal Das v. State of Tripura***¹ the Apex Court held as under:

“It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, being the final court of fact, is fully competent to re- appreciate, reconsider and review the evidence and take its own decision. In other words, law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial Court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of acquittal is to be interfered with only when there are "compelling and substantial reasons" for doing so. If the order is "clearly unreasonable", it is a compelling reason for

¹ (2011) 9 SCC 479

interference. When the trial Court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts etc., the appellate court is competent to reverse the decision of the trial Court depending on the materials placed.”

In ***Maloth Somaraju v. State of Andhra Pradesh***² the Apex Court held that there can be no two opinions that merely because the acquittal is found to be wrong and another view can be taken, the judgment of acquittal cannot be upset. The appellate Court has more and serious responsibility while dealing with the judgment of acquittal and unless the acquittal is found to be perverse or not at all supportable and where the appellate Court comes to the conclusion that conviction is a must, the judgment of acquittal cannot be upset. The appellate Court has to examine as to whether the trial Court, while upsetting the acquittal, has taken such care.

In view of the judgments referred to above and having regard to the facts and circumstances of the case, I am of the view that there are no merits in the appeal and the same is liable to be dismissed.

Hence, the Criminal Appeal is dismissed confirming the judgment dated 23.11.2016 passed in C.C.No.639 of 2017 by the I Additional Judicial Magistrate of First Class, Khammam.

² (2011) 8 SCC 635

Miscellaneous applications, if any, pending shall stand dismissed.

(G. SRI DEVI, J)

12th August 2021
RRB