

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL APPEAL No.1674 of 2009

JUDGMENT :

This appeal has been preferred by the State, aggrieved by the Judgment, dated 01.03.2006, passed by the XI Additional Chief Metropolitan Magistrate, Secunderabad, in C.C.No.1184 of 2002, whereby, the respondent herein was acquitted of the charges levelled against him under Section 18 (a) (vi) read with Rule 65, Sections 18-A, 27 (d) and 28 of the Drugs and Cosmetics Act, 1940.

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

3. The case of the prosecution is that on 03.04.2001, on credible information, the Drugs Inspector, Hyderabad, along with other officials went to M/s Sripal Medical Hall, situated at Sadar Bazar, Bollaram at about 11:30 AM and noticed that the respondent/accused, his brother and helper were present at the shop and conducting business. On inspection by the said team, they found that certain drugs marked as "Physician sample not for sale" along with other salable drugs. On enquiry, the respondent/accused failed to disclose the source of supply of the said samples. The officials also found 32 boxes of Oxytocin Injection for veterinary use and on demand, the respondent/accused has not produced the purchase bill for the same. Therefore, the Drug Inspector seized physician samples as well as said Oxytocin injection under the cover of mediators report

and also informed the seizure of property to the Court concerned. Thereafter, the Director, Regional office issued a show cause notice to the respondent/accused, who in turn issued reply stating that the physician samples were kept in charity box, which were collected by social organization, in order to send the same to medical camp for treating poor and providing free medicines to them on account of 28th Anniversary of Mahavir Jayanthi. The respondent/accused also produced bill, dated 20.0.2001, towards injection manufactured by M/s. Nav Bharat Agencies, A.K. Market, Hyderabad, and thereby the respondent/accused contravened the provisions of Section 18 (a) (vi) read with Rule 65, Sections 18-A, 27 (d) and 28 of the Drugs and Cosmetics Act, 1940.

4. In order to prove the guilt of the respondent/accused, prosecution examined PWs.1 to 4 and marked Exs.P-1 to P-6 besides M.Os.1 to 21. On behalf of defence, no oral or documentary evidence was adduced.

5. The trial Court, after examining the evidence adduced by the prosecution witnesses, has acquitted the respondent/accused of the charges under Section 18 (a) (vi) read with Rule 65, Sections 18-A, 27 (d) and 28 of the Drugs and Cosmetics Act, 1940. Aggrieved by the said Judgment, the State preferred the present appeal.

6. The learned Public Prosecutor has contended that the material on record establishes the ingredients to constitute the offences punishable under Section 18 (a) (vi) read with Rule 65, Sections 18-A, 27 (d) and 28 of the Drugs and Cosmetics Act, 1940, but the Court below acquitted the respondent/accused for

the said charges; that the learned Magistrate ought to have seen the accused under Rule 65 (18) Rule 96 (1) (ix) of the Act are left alone to be sold cannot even be stocked on the legal or illegal premises and ultimately, prayed to set aside the Judgment of the Court below and convict the respondent/accused.

7. The learned counsel for respondent/accused, on the other hand, contended that the trial Court, after evaluating the evidence of prosecution witnesses in detail and after perusing the documentary evidence on record, has given its findings that the prosecution has failed to establish its case against the respondent, and thus, has rightly acquitted the respondent. He contended that there are no grounds to interfere with the well-reasoned judgment of the Court below acquitting the respondent/accused. Accordingly, he prayed for dismissal of the appeal.

8. P.W.1 is the Drug Inspector. P.Ws.2 to 4, are panch as well as scribe to the mediator's. They stated that they do not know the contents of Exs.P.2 and P3 and they signed on white papers at the instance of Drugs Inspector. P.W.3 is stated that he is only scribe of mediator's report, but nothing was seized from the shop of respondent/accused by P.W.1 in his presence. He further deposed that he did not even visit the shop of respondent/accused. Similarly P.W.4 also stated that his signatures were obtained by the Drug Inspector and he does not know the contents of the case. Nothing was seized from the shop of respondent/accused in his presence. As P.Ws.2 to 4 did not support the prosecution case and declared as hostile.

9. Even from the cross-examination of P.W.1, P.W.1 has not seized any records or registers under Ex.P.2 in the presence of P.Ws.2 to 4. P.W.1 also has not served any notice on respondent/accused, who is a qualified Pharmist. No penalty whatsoever was imposed against the respondent/accused. Merely on the assumptions and inferences of PW.1 alone, it cannot be concluded that the respondent/accused kept the said physician samples only for sale and that it is not kept for other purpose. P.W.1 failed to substantiate any one of the charges levelled against the respondent/accused beyond all reasonable doubt.

10. Therefore, this Court is of the view that there is no infirmity or illegality in the Judgment of the trial Court and the trial Court after considering all the aspects, acquitted the respondent/accused and the finding of the trial Court requires no interference by this Court.

11. The Criminal appeal is accordingly dismissed confirming the Judgment, dated 01.03.2006, passed by the XI Additional Chief Metropolitan Magistrate, Secunderabad, in C.C.No.1184 of 2002. Pending miscellaneous applications, if any, shall stand closed.

G. SRI DEVI, J

23rd February 2021

YVL

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL APPEAL No.1674 of 2009

Date:23.02.2021