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CRL.Appeal.No.23 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2022

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THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

CRL.Appeal.No.23 of 2016

State rep. by
The Public Prosecutor,
High Court, Madras-600 104.
[Drugs Inspector,
Intelligence Wing,
Office of the Director of the Drugs Control,
Chennai-6.] ... Appellant/ Complainant

Vs.

1.Sultan Ajmalsha (A3),
Propreitor of Mashan Homeo Pharmacy,
No.63, Purasaiwakkam High Road,
Chennai-600 007.
2.Mallika Babu (A4),
General Manager cum Person In-charge of Business,
Mashan Homeo Pharmacy,
No.63, Purasaiwakkam High Road,
Chennai-600 007. ... Respondents/ Accused 2 & 4

PRAYER: This Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code against the judgment in C.C.No.6095 of 2004 (Split up from C.C.No.12826 of 2006) dated 07.02.2013 on the file of the X Metropolitan Magistrate, Egmore, Chennai.



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For Appellant : Mr.R.Kishore Kumar
Government Advocate (Crl.Side)

For Respondents : Mr.A.V.Arun

JUDGMENT

The appeal against acquittal preferred by the State in a case arising out of Drugs and Cosmetics Act, 1940. The charge against the respondents who are arrayed as A3 and A4, being the proprietor and General Manager of Mason Homeo Pharmacy is under Section 18(c) read with condition 3 of the Licence in Form 20 D of the Drugs and Cosmetics Act, 1940. The aforesaid Section states that the manufacturer of Homeo or any Drug is supposed to sell the products only to a valid licence holder. The respondents herein, being wholesalers have given an undertaking to the authorities that they will sell, stock or exhibit for sale or distribute the drugs only to persons who hold licence. However, the respondents on 11.03.2003 were found selling Homeo products to M/s.Muthu Pharmacy and this came to light when the premises of Muthu Pharmacy was inspected by a Drug Inspector. The Drug Inspector found that M/s.Muthu Pharmacy had a valid licence only upto the year 2003 but failed to renew it subsequently and only after the raid they ha



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renewed the licence in the year 2006. Without ensuring whether Muthu Pharmacy has valid licence or not, the respondents had sold their homeo products in whole sale to Muthu Pharmacy.

2. Before the Trial Court, the representatives of Muthu Pharmacy were arrayed as A1 and A2, they pleaded guilty and paid the fine for the case against them in C.C.No.95 of 2004 deposed after splitting up the case against other accused taken on filed in C.C.No.12826 of 2006.

3. The Trial Court after trial held that the prosecution has failed to prove the charges beyond reasonable doubt. The Trial Court has assigned a reason that between the year 2003 and 2006, Muthu Pharmacy was not able to renew their licence due to certain shortcomings of providing persons with requisite qualification and the said shortcoming of Muthu Pharmacy being admitted, they have been convicted. The respondents were not aware of that and hence in the normal business practice, presumed that Muthu Pharmacy had renewed the licence and hold a valid licence. Therefore supplied the drugs bonafidely. The Trial Court has also considered the explanation given



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by the respondents vide letter dated 19.04.2003, wherein they have stated that they were not aware that Muthu Pharmacy is not holding licence to sell homeopathy medicines and they had apologised for their ignorance and sought for excuse. On a cumulative consideration of the facts, the Trial Court has held that the prosecution has failed to establish offences attracting Section 27 read with Section 18(c) and condition 3 of the licence in Form 20-D of the Drugs and Cosmetics Act, 1940.

3. The learned Government Advocate representing the appellant would submit that prosecution has proved the factum that the respondent has sold homeopathy drug to a person who did not hold valid licence and the said person has admitted his guilt and suffered sentence. He would further submit that ignorance of law is no excuse and therefore the order of the Trial Court has to be reversed.

4. A reading of the complaint and the material placed on record indicates that M/s.Muthu Pharmacy running pharmaceutical business since 1991 were holding valid licence till the year 2003 and their application for



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renewal been kept pending for other technical reasons which obviously would not be known to the supplier i.e., the respondents. From the records it is also clear that the said Muthu Pharmacy's licence been subsequently renewed in the year 2006. The explanation of the respondents which is marked as Ex.P.13 has not been properly considered by the complainant before lodging the complaint and the Trial Court has rightly considered the same and dismissed the complaint.

5. This Court finds no error in the reasoning given by the Trial Court for acquitting the accused. Hence, the Criminal Appeal against acquittal preferred by the State is dismissed and the judgment of the Trial Court in C.C.No.6095 of 2004 is confirmed.

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Index:Yes/No

Speaking Order : Yes / No

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DR.G. JAYACHANDRAN, J.

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To:
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