



Crl.A.No.733 of 2015

In the High Court of Judicature at Madras

Dated : 23.2.2023

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Appeal No.733 of 2015

State rep.by the Public
Prosecutor, High Court,
Madras-104.

...Appellant

Vs

1.M/s.Mothi Pharma (Generic),
121, (Old No.129), I Floor,
Nyniappa Naicken Street,
Chennai-3 rep.by
Thiru V.Deepak Kumar
one of the partners and in-charge
of day-to-day affairs of the firm

2.Thiru V.Deepak Kumar,
one of the partners of
M/s.Mothi Pharma, Chennai-3.

3.Tmt.A.Sasikala, one of the
partners of M/s.Mothi Pharma,
Chennai-3.

...Respondents
Accused 2 to 4

APPEAL under Section 378 of the Criminal Procedure Code to
allow the appeal, set aside the judgment of acquittal passed by the
learned District Munsif Court (Conferment of Criminal Jurisdiction)
Ranipet in S.T.C.No.776 of 2011 dated 04.7.2014, convict and

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sentence the respondents/accused (A2 to A4) in accordance with law.

For Appellant : Mr.L.Baskaran, GA (Crl.Side)
For Respondents 1 & 2: Mr.C.H.Vinobha Gandhi
For Respondent-3 : Mr.Om Sairam

JUDGMENT

This appeal has been filed by the State questioning the judgment of acquittal passed by the Court below in S.T.C.No.776 of 2011, dated 04.7.2014.

2. The State represented by the Drugs Inspector, Vellore I Range, O/o the Assistant Director of Drugs Control, Vellore Zone, Vellore-9 filed a complaint before the Court below against four accused persons under Section 32 of the Drugs and Cosmetics Act, 1940 (hereinafter called the Act), for contravention of Section 18(c) of the Act punishable under Section 27(b)(ii) and Section 18(c) read with Item No.4(ii) of the Conditions of Licence laid down in Forms 20B and 21B of the Act punishable under Section 27(d) of the Act.

3. The facts leading to filing of this appeal are as hereunder :



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(i) The Drugs Inspector, Vellore I Range received a call on 05.12.2004 from the Sub-Inspector of Police, D1 Police Station, Ranipet. He rushed to the Police Station and the Sub-Inspector of Police handed over a letter, in which, it was stated that a discreet investigation was done and it was found that A1 had been stocking various drugs at his residence for sale and distribution.

(ii) The Drugs Inspector, on receipt of this letter, conducted a house search at the residence of A1 on the very same day at about 2.45 PM after sending an advance copy of requisition to the Judicial Magistrate No.2, Walajahpet. At the time of search, the Village Administrative Officer of Velam Village was also present. During the search, it was noticed that large quantities of various drugs were stocked for sale and distribution without requisite drug licence.

(iii) The Drugs Inspector also drew samples to send them for analysis. After a detailed enquiry conducted on A1, he admitted that he had purchased large quantities of drugs under various invoices from one M/s.Maruthi Medicals Shop. A1 also submitted a voluntary statement and produced carbon copies of purchase invoices.



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(iv) The drugs were seized under Form-16 and a mahazar was prepared in the presence of two independent witnesses and the Village Administrative Officer. The seized drugs were produced before the concerned Court on the very same day and orders were obtained to keep the drugs in safe custody. The matter was investigated further and the invoices that were produced by A1 were also counter-checked. Ultimately, it was found that large quantities of drugs were stocked for sale and distribution without requisite drug licence. Accordingly, the complaint was filed against A1, A2 partnership firm as well as A3 and A4, who were the partners of A2 partnership firm.

(v) During the course of trial, A1 died and hence, the charge against A1 abated. The complaint was proceeded against A2 to A4. The Court below, on considering the facts and circumstances of the case and after analysing the evidence available on record, came to a conclusion that there was absolutely no proof to show that the drugs were kept in the residence for the purpose of selling the same in the open market. The Court below found that none of the offences alleged by the complainant was proved and hence, A2 to A4 were acquitted from all charges. Aggrieved by the same, the



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State has preferred this criminal appeal.

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4. During the pendency of this criminal appeal, A3 also died on 14.6.2020 and **hence, the appeal abates as against A3.** That leaves this Court only with A2, which is the partnership firm and A4, who is one of the partners of the firm and who also happens to be the wife of A3.

5. Heard the learned Government Advocate (Criminal Side) appearing for the State and both the learned counsel appearing for respondents 1 and 2 as well as the third respondent.

6. The learned Government Advocate (Criminal Side) appearing on behalf of the State submitted that the evidence of PW1 clearly established that large quantities of drugs were seized from A1 and those drugs were supplied to a fictitious medical shop called the said M/s.Maruthi Medicals Shop. This clearly amounts to contravention of Section 18(c) of the Act read with Item No.4(ii) of the Conditions of Licence laid down in Forms 20B and 21B.

7. The learned Government Advocate (Criminal Side)



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appearing for the State also brought to the notice of this Court the evidence of PW2 and PW3 to establish that they had signed in the forms after the drugs were seized from the possession of A1. The evidence of PW4 was also relied upon and he was the Village Administrative Officer, who was also present at the time of seizure of drugs by PW1.

8. The learned Government Advocate (Criminal Side) finally placed reliance on the evidence of PW5, who investigated the case and ultimately filed the complaint after getting sanction from the Director of Drugs Control, Chennai.

9. In the present case, the only person, who is prosecuting the matter, is A4. A4 has not been attributed with any specific overt act and she has been added as an accused only in her capacity as the partner of A2 firm. In view of the same, it must be seen as to whether the complaint has satisfied the ingredients of Section 34 of the Act.

10. Section 34 of the Act deals with offences by companies,



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which also includes a firm. Where an offence under the Act is committed by a company or a firm, every person, who, at the time when the offence was committed, was in charge and was responsible to the company or the firm for the conduct of the business, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.

11. A careful reading of the complaint shows that not even a single averment has been made against A4 to show that she was in charge and was responsible for the conduct of business of the firm. A4 has been added as an accused in this case only on the ground that she is one of the partners of A2 firm and she also happens to be wife of A3.

12. It is true that the entire concept of the role of directors/partners cannot be imported from those judgments dealing with Section 141 of the Negotiable Instruments Act, since the offence under this Act involves public health. However, that does not mean that all and sundry can be roped in as an accused just because they have lent their names as directors/partners, as the case may



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be. Since a criminal liability is being fastened against A4, there must be something available in evidence to, at least, show that A4, at some point of time, was involved in the business.

13. In the present case, the entire seizure had taken place from A1 and the seizure had happened at his residence. In view of the same, just because A4 happens to be a partner of the firm, the criminal liability cannot be fastened without there being a scrap of evidence against her.

14. This Court is not inclined to go into the reasonings given by the Court below since it deals with the merits of the case and the Court below had given the benefit of doubt in favour of the accused persons. It is enough if the focus is confined on the role played by A4 - the only person, who is now effectively conducting this appeal. Since this Court finds that the ingredients of Section 34 of the Act have not been made out as against A4 and even the evidence that was collected, does not bring about any incriminating material against A4, the appeal can be dismissed as against A4 on this short ground.



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15. In view of the above discussions and considering the fact that A4 alone is now prosecuting this appeal, this Court does not find any ground against A4. Accordingly, this criminal appeal stands dismissed.

23.2.2023

To

- 1.The District Munsif Court (Conferment of Criminal Jurisdiction)
Ranipet.
- 2.The Judicial Magistrate-2, Walajah.

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