

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1478-MA-2016
Date of Decision: 03.02.2023

State through Drugs Control Officer, Karnal ... Applicant

VS.

Siri Chand & Anr. ... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Gagandeep S. Chhinna, AAG Haryana for the applicant

Mr. Dinesh Mauraya, Advocate for

Mr. GS Sandhi, Advocate for respondent No.1

Sandeep Moudgil, J.

CRM-25856-2016

For the reasons mentioned in the application, the same is allowed and the delay of 79 days in filing the appeal is hereby condoned.

CRM stands disposed of.

Main case

Application under Section 378(3) CrPC has been filed by the applicant seeking leave to appeal against the judgment dated 01.03.2016 passed by Addl. Sessions Judge, Karnal (in short, 'the trial court'), vide which the respondents have been acquitted in criminal complaint filed under the Drugs and Cosmetics Act, 1940. The respondents were charged under Section 18(a)&(c) and 27(b)(ii) of the Drug and Cosmetics Act, 1940 read with Rules 2(ee) and 123 of the Drugs and Cosmetics Rules of 1945.

On 25.7.2012, complainant Parvinder Malik, Drugs Control Officer, Karnal along with Dr. Gurmail Singh, the then District Ayurvedic Officer, Karnal inspected the premises of respondents and found that respondent No.1 had stocked twenty five different types of allopathic medicines in his shop/clinic for sale and he could not produce any registration

or licence for stocking the aforesaid drugs in contravention of Section 18(c) of Drugs and Cosmetics Act (in short, 'the Act') read with Rules 61 and 2(ee) of Drugs and Cosmetics Rules, 1945 (in short, 'the Rules') punishable under section 27(b)(ii) of the Act. He has been further charged that on the same date, time and place he failed to produce any purchase bills of the aforesaid allopathic medicines and did not maintain any record for stocking drugs in terms of Section 18(a) & 18(c) of the Act read with Rule 123 of the Rules and, therefore, has committed an offence punishable under Section 27(b)(ii) & 28 of the Act.

Learned counsel for the applicant-State contended that substantive charge against the respondents have been proved beyond shadow of doubt, through quality of evidence led by the prosecution. It has been urged that through the testimonies of PW3 Parvinder Malik-DCO and PW4 Dr. Gurmail Singh, the prosecution has fairly established that respondents had stocked 25 different types of allopathic medicines in his clinic for sale without holding any registration or licence for the same. The oral version of these two witnesses have been proved through documentary evidence as well. Moreover, the respondents have failed to establish any animus of alleged false implication in the present case and hence cannot escape from the wrath of conviction, particularly when, he had in his statement (Ex.P7) himself confessed about commission of offence.

On the other hand, learned counsel for the respondents has contended that prosecution case against the respondents stood rebutted in view of inconsistencies and improbabilities in the evidence led by it inasmuch as no evidence has been led on record by the prosecution to show that respondents

had ever sold any medicine to any patient and that too in the presence of PW3- Parvinder Malik and PW4 Dr. Gurmail Singh.

Learned counsel for the respondents urged that two witnesses of the prosecution namely; Mahinder Singh PW5 and Rajesh Chaudhary-PW6 have not supported the prosecution case and also that respondent No.1 is not running any clinic. Even if it so, mere possessing of allopathic medicines is not suffice to hold that there is contravention of Section 18(c) of the Act.

It has also been urged that the complaint Ex.P4 was filed by some fake person who could not be produced in the court by the prosecution despite acceptance of its application under section 311 CrPC since DCO Gurcharan Singh had suffered a statement to the effect that after personally going to village Sultanpur to serve summons upon PW Randhir Singh Tamak, Social Worker, he, on enquiry from Sarpanch and Lamberdar of the village, found that there is no such person in the said village and as such the said witness was given up by the prosecution being 'unnecessary' on 19.05.2015.

Heard learned counsel for the parties and gone through the case file.

The basis for launching prosecution against the respondents is complaint Ex.P4 which was received in the office of DCO-Karnal from the office of Deputy Commissioner, Karnal. This complaint bears the signature of Randhir Singh Tamak and the allegations *prima facie* depict offence of intense and grave magnitude alleged to have been committed by the respondents. The court below observed that the complaint appears to be fake one as the complainant Randhir Singh Tamak could not be produced in the court by the prosecution despite having being granted opportunity by accepting its

application under section 311 Cr.PC. Instead, Gurcharan Singh-DCO has candidly admitted in his statement dated 19.5.2015 that from his enquiry he has found that there is no such person namely Randhir Singh Tamak available in village Sultanpur. Prosecution cannot be allowed to proceed ahead with the complaint without having acquired at least, a reasonable level of certainty about the antecedents of complainant as to whether any such complainant exists or not.

That apart, Parvinder Singh Malik-PW3 DCO has admitted in his cross-examination that the complainant did not appear before him, at any point of time. He has also admitted that at the time of inspection the team tried to contact him through villagers but the said complainant was not found. He has also testified that since complainant did not appear before them so they had not conducted any verification with regard to the contents of the complaint from him. He has also testified as correct that the complainant has not mentioned his father's name as well as his address in complaint Ex.P4. The trial court has rightly observed that such an attempt on the part of prosecution not to conduct verification of facts of the complaint from the complainant, is not acceptable in legal parlance.

Likewise, Dr.Gurmail Singh-PW4 has testified as correct in his cross-examination that father's name of Randhir Singh Tamak and his address is not mentioned in the complaint and he did not know Randhir Singh Tamak, personally. They had not called him at the time of raid. Meaning thereby, the identity of original complainant namely Randhir Singh Tamak remained a mystery throughout. It is clear a novice and neophyte way of projecting the state of affairs of prosecution that they could not lay their hands on the

addresses and parentage of the complainant. The prosecution cannot be believed to be too innocent as it has pretended itself to be by not ascertaining the identity of complainant. Why the State authority/machinery has chosen to proceed ahead with the complaint when it appears to it that it seems to be filed by unanimous persons, because the prosecution could not lay its hands on the complainant. It means that the prosecution has impliedly admitted by its act and conduct that the identity of the complainant who has filed complaint Ex.P4 is fake. The trial court has rightly observed that the galore of allegations, as mentioned in the complaint Ex.P4 regarding running of clinic by the respondents without possessing any medical degree; storing of medicines by him in his shop illegally; giving intoxicating medicine/ injections to the youth of the village; doing illegal abortion of poor girls/ladies of the village which has made them incapable of conceiving for ever, remained unsubstantiated.

Inasmuch as, no such affected person, youth, or be it the affected lady having suffered illegal abortion from respondents and became barren for ever to conceive, have stepped into witness box to depose in a culpable fashion against respondents facing trial. Consequently, the very plank of the prosecution's case resting on complaint Ex.P4 has been marred.

In view of the above, this Court is of the considered view that there is no infirmity, perversity and illegality for any interference in the judgment passed by the trial court and as such the present application under Section 378(3) of CrPC, seeking leave to appeal, is dismissed.

03.02.2023

V.Vishal

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

(Sandeep Moudgil)
Judge

Yes/No
Yes/No