



Crl.A.No.134 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

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State rep. by,
The Drugs Inspector,
Gobichettipalayam Range,
O/o. Drugs Inspector,
102, Sheik Dawood Street, Erode.

...Appellant

Vs.

P.Revathi

...Respondent

Criminal Appeal filed under Section 378(i) of Criminal Procedure Code to allow the appeal, set aside the judgment of acquittal dated 21.02.2020 in S.T.C.No.1031 of 2018 on the file of the Judicial Magistrate Court, Sathyamangalam, Erode District and convict the respondent/accused for the charges framed against her.

For Appellant : Ms.G.V.Kasthuri
Additional Public Prosecutor

For Respondent : M/s.S.Parthasarathy



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JUDGMENT

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This Criminal Appeal has been filed to set aside the order of acquittal passed by the Judicial Magistrate Court, Sathyamangalam, Erode District, in S.T.C.No.1031 of 2018 dated 21.02.2020.

2. The case of the prosecution is that on 28.06.2017, the Drug Inspector/complainant inspected the respondent's medical shop running in the name and style of M/s. Sri Sivasakthi Medicals, at that time, though the respondent, Proprietrix of the said medical shop was present, however, the endorsed Regd. Pharmacist of the said concern was not present. Thereby, the complainant issued memo to the Proprietrix and obtained acknowledgment. In response to the memo, the respondent submitted reply and also produced the license as well as the purchase and sales bills and register. Upon perusal of the same, it was found that, the Prescription register was not signed by the Endorsed Pharmacist from Bill No.3253 dated 19.06.2017 to Bill No.3306 dated 27.06.2017 and drugs were sold without any supervision of the Endorsed Pharmacist and without any sales bills. Since, the above said contravention attracts the provisions of Section 21 and 22 (2A) of the Drugs



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and Cosmetics Act, the complainant filed a complaint under Section 32 of the said Act before the trial court in STC.No.1031 of 2018. Before the trial court, the prosecution examined PW.1 and marked Exs.P1 to P.11. After adjudication, the trial court, vide impugned judgment dismissed the said complaint and acquitted the respondent. Aggrieved over the same, the appellant/complainant has come up with this Appeal.

3. Learned Additional Public Prosecutor appearing for the appellant submitted that, the trial court had dismissed the complaint filed by the appellant solely on the ground that, the appellant is not a duly appointed Drug Inspector and no authorisation was given by the State Government by issuing notification. However, it is pertinent to note that, the appellant specifically raised a plea in the ground by pointing out that the trial court had failed to see that the notification was issued under Section 21 of the said Act, vide G.O.(4D).No.20 Health and Family Welfare (M1) dated 12.07.2013. Further, in order to disprove the case of the prosecution, no documentary or oral evidence has been adduced by the respondent/accused. However, without considering any of the said facts, the trial court had



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dismissed the compliant filed by the appellant and acquitted the respondent /accused, which is not sustainable. Accordingly, the order of the trial court has to necessarily be interfered with.

4. Learned counsel appearing for the respondent submitted that, though the appellant stated that he is authorised by the State Government as per G.O.(4D).No.20 Health and Family Welfare (M1) dated 12.07.2013, however the same was neither marked before the trial court nor before this Court. Hence, in the absence of any notification as provided under Section 21 of the said Act, authorising the complainant as Drug Inspector, the trial court had rightly dismissed the complaint filed by the appellant, which is perfectly in order and the same does not warrants interference of this Court. It is the further submission of the learned counsel that in the absence of any authorisation, which affects the jurisdiction of the Drug Inspector, which was the basis on which the complaint had been dismissed, the non-examination of any witness or marking of any documents would not in any way affect the case of the defence.

5. Heard learned counsel on either side and perused the materials



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6. Time and time again, the scope and power of the High Court to interfere with an order of acquittal recorded by the trial court has been highlighted by the Supreme Court and recently in ***Babu Sahebagouda Rudragoudar & Ors. – Vs – State of Karnataka (C.A. No.985/2010 – Date – 19.04.2024)***, the Supreme Court had captured the ratio succinctly, which have to be followed in an appeal against an order of acquittal and for refreshing the law, the same is quoted hereunder :-

*37. This Court in the case of **Rajesh Prasad v. State of Bihar and Anr. (2022 (3) SCC 471)** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -*

*“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (**Chandrappa case [Chandrappav. State of Karnataka, (2007) 4 SCC 415]***

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is



founded.

(2) *The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*

(3) *Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

38. Further, in the case of **H.D. Sundara &Ors. v. State of Karnataka (2023 (9) SCC 581)** this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of



CrPC as follows: -

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.



40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

(Emphasis Supplied)

7. Thus, from the aforesaid proposition of law, it is beyond a cavil of doubt that the power of this Court is not curtailed or limited, as it is within its realm to reappreciate the evidence available on record to render a finding. However, in reappreciating the evidence, this Court has to see whether the view taken by the trial court could not be taken by any prudent man on appreciating the materials available before it. If the view taken by the trial court, considered overall on the materials placed, is just and reasonable that the view taken by the trial court is on proper appreciation of the materials, the High Court cannot interfere with the acquittal on the ground that another view is possible.

8. In light of the above legal principles enunciated by the Apex Court, this Court will now proceed to analyse the evidence on record to find out whether the view arrived at by the trial court is based on the materials



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available on record.

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9. A perusal of the materials available on record reveal that, the complainant/Drug Inspector inspected the respondent's medical shop and found certain irregularities and thereby filed the present complaint, which came to be dismissed.

10. The issue involved in the present case is whether the complainant/Drug Inspector has jurisdiction to inspect the respondent's premises and whether any notification in terms of Section 20(1) & (2) of the Drugs and Cosmetics Act was issued by the State Government appointing the complainant as Drug Inspector for inspecting the respondent's medical shops at the relevant point of time?

11. For better appreciation, the relevant Section of the Drugs and Cosmetics Act is extracted hereunder:-

21. Inspectors. —(1) The Central Government or a State



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Government may, by notification in the Official Gazette, appoint such person as it thinks fit, having the prescribed qualification, to be Inspectors for such areas as may be assigned to them by the Central Government or State Government, as the case may be.

(2) The powers which may be exercised by an Inspector and the duties which may be performed by him, the drugs or 2 [classes of drugs or cosmetics or classes of cosmetics] in relation to which and the conditions, limitations or restrictions subject to which, such powers and duties may be exercised or performed shall be such as may be prescribed.

(3) No person who has any financial interest 3[in the import, manufacture or sale of drugs or cosmetics] shall be appointed to be an Inspector under this section.]

4[(4) Every Inspector shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860), and shall be officially subordinate to such authority 5[having the prescribed qualification] as the Government appointing him may specify in this behalf.]

6[22. Powers of Inspectors—(1) Subject to the provisions of section 23 and of any rules made by the Central Government in this behalf, an Inspector may, within the local limits of the area for which he is appointed, —

5[(a) inspect, --

(i) any premises wherein any drug or cosmetic is being manufactured and the means employed for standardizing and testing the drug or cosmetic;

(ii) any premises wherein any drug or cosmetic is being sold, or stocked or exhibited or offered for sale, or distributed ;

(b) take samples of any drug or cosmetic,--

(i) which is being manufactured or being



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sold or is stocked or exhibited or offered for sale, or is being distributed;

(ii) from any person who is in the course of conveying, delivering or preparing to deliver such drug or cosmetic to a purchaser or a consignee;

(c) at all reasonable times, with such assistance, if any, as he considers necessary,--

(i) search any person, who, he has reason to believe, has secreted about his person, any drug or cosmetic in respect of which an offence under this Chapter has been, or is being, committed; or

(ii) enter and search any place in which he has reason to believe an offence under this Chapter has been, or is being committed; or

(iii) stop and search any vehicle, vessel, or other conveyance which, he has reason to believe, is being used for carrying any drug or cosmetic in respect of which an offence under this Chapter has been, or is being, committed, and order in writing the person in possession of the drug or cosmetic in respect of which the offence has been, or is being, committed, not to dispose of any stock of such drug or cosmetic for a specified period not exceeding twenty days, or, unless the alleged offence is such that the defect may be removed by the possessor of the drug or cosmetic, seize the stock of such drug or cosmetic and any substance or article by means of which the offence has been, or is being, committed or which may be employed for the commission of such offence;]

1[(cc) examine any record, register, document or any other material object found

2[with any person, or in place, vehicle, vessel or other conveyance referred to in clause (c)], and seize the same if he



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has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the Rules made thereunder;]

2[(cca) require any person to produce any record, register, or other document relating to the manufacture for sale or for distribution, stocking, exhibition for sale, offer for sale or distribution of any drug or cosmetic in respect of which he has reason to believe that an offence under this Chapter has been, or is being, committed;

(d) exercise such other powers as may be necessary for carrying out the purposes of this Chapter or any rules made there under.

(2) The provisions of the Code of Criminal Procedure, 2 [1973 (2 of 1974)] shall, so far as may be, apply to any search or seizure under this Chapter as they apply to any search or seizure made under the authority of a warrant issued under section 2[94] of the said Code.

2[(2A) Every record, register or other document seized under clause (cc) or produced under clause (cca) shall be returned to the person, from whom they were seized or who produce the same, within a period of twenty days of the date of such seizure or production, as the case may be, after copies thereof or extracts there from certified by that person, in such manner as may be prescribed, have been taken.]

12. Section 22 of the said Act confers the powers on the Drugs Inspector to inspect the respective premises for the purpose of carrying out inspection with regard to the sale of drugs and maintenance of necessary



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records as prescribed under the Drugs and Cosmetics Act.

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13. Though it is the claim of the Learned Additional Public Prosecutor that the notification issued appointing Drug Inspector was brought to the knowledge of the court below, the same was not considered by the trial court, however, it is to be pointed out that even before this Court the said notification has not been produced. Section 21(1) of the Act clearly prescribes that such conferment of power by the Central or State Government would be by way of a notification conferring jurisdiction on any person to perform the tasks as provided for under the Act. Therefore, the necessity of such a notification is to be issued so as to confer jurisdiction on the appellant to conduct inspection. It is to be stated, at the risk of repetition, that no such notification has been produced before the trial court or before this Court. In the absence of any notification, mere statement by the learned Addl. Public Prosecutor across the bar would not suffice to hold that the appellant had jurisdiction to conduct inspection and mere raising of ground with production of the document would not be sufficient to confer jurisdiction on the appellant and take up the complaint on file so as



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to give a finding against the respondent.

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14. Hence, the trial court after careful consideration of the said facts, had rightly dismissed the complaint filed by the appellant, in which this Court does not find any fault with.

15. For the reasons aforesaid, this Criminal Appeal stands dismissed.

16.04.2024

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NCC : Yes/No
Internet : Yes/No
Speaking order : Yes/No

To

1. The Judicial Magistrate Court,
Sathyamangalam, Erode District.
2. The Public Prosecutor,

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High Court of Madras.

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