



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.....OF 2024
(@Petition for Special Leave Appeal (Crl.) No.256 OF 2022)

PALANI

...APPELLANT(S)

VERSUS

THE TAMIL NADU STATE

...RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

Leave granted.

2. This appeal arises out of an order passed by the learned Single Judge of the High Court of Judicature at Madras dated 6th September 2021 in CRLRC No.413 of 2019, by which interference in the order of the Additional District & Sessions Judge, Tiruvallur¹ dated 16th April, 2019 has been refused. The lower Appellate Court had modified the order of the Chief Judicial Magistrate² dated 23rd November 2018 in as much as it set aside the appellant's conviction under Section 18 (c) read with Section 27 (b)(ii) of

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Reason:

¹ 'The lower Appellate Court'

² 'The Trial Court'

the Drugs and Cosmetics Act, 1940³ while confirming the conviction and sentence in regard to Section 18(A) read with Section 28, of the said Act.

3. A brief review of facts, as borne out by the judgments of the Courts below is necessary for adjudication of the instant dispute.

3.1 One Palani⁴ ran a clinic which on 13th October, 2015 was inspected by the officials of the State, viz. The Pallippattu Range Drug Inspector; Joint Director, Tiruvallur District Health Department; Zone Drug Inspector Poonamallee.

3.2 The inspection found 29 types of allopathic medicines meant for distribution without the proper paperwork (license) for sale. Moreover, upon being questioned as to the source of procurement of these medicines, details remained unfurnished.

3.3 The Drug Inspector, Pallippattu filed a complaint under Section 200 Code of Criminal Procedure, 1973 under the Sections noted above. Prosecution was initiated on the basis of 6 witnesses; 12 Exhibits and with the 29 types of medicines (a small quantity⁵) recovered, being marked as material objects.

³ Hereinafter referred to as 'The Act'

⁴ Referred to as 'The Appellant'

⁵ Annexure P-1

3.4 Upon consideration of the evidence presented, the Trial Court found the case of the prosecution to have been proved beyond reasonable doubt and, therefore, the Appellant was sentenced to two years rigorous imprisonment along with a fine of Rs. 1,00,000/-. In default whereof, he was to undergo three months simple imprisonment for the offences under Section 18(c) read with Section 27(b)(ii). For the offence under Section 18A read with 28 of the Act, the sentence was six months simple imprisonment with a fine of Rs. 20,000/- with one-month simple imprisonment in default. Sentences awarded were concurrent in nature. Further, a cost of Rs.2500/- stood imposed for newspaper publication under Section 35 of the said Act.

3.5 On appeal, the learned Additional District & Sessions Judge, i.e., the lower Appellate Court was faced primarily with the issue, of whether it has been proved that the drugs recovered were in the possession of the appellant for the purpose of sale/distribution.

3.6 In deciding this question, the Court noted that no patients or any other persons were examined to establish that the drugs so confiscated were actually sold. No bills/receipts were produced. It was noted that PW5 as also PW3 testified to the fact that the Appellant was running a medical shop, but it was observed that no

proof had been offered to show that the drugs in the clinic were for sale. The Court also relied on Ex. P-10 (*letter of the accused to the Drug Inspector*) referred to as A-10 in its judgment, to state that there is only admission of possession but none for sale/distribution. It was, therefore, observed that no evidence has been put forth by the complainant in regard to sale and/or distribution. The offence under Section 18 (c) of the Act was, therefore, not proven.

3.7 The conviction and sentence in this regard was set aside while others were confirmed. Accordingly, it was held that the Appellant was entitled to a refund of Rs. 1,00,000/-.

4. A criminal revision case stood filed against the judgment and order of the lower Appellate Court. It was observed that the scope of a Revisional Court is limited and is not akin to an Appellate Court. On account of the absence of any perversity or infirmity in the order of the lower Courts, the revision was dismissed. A further prayer was made to set aside the conviction and sentence under Section 18(A) of the Act and *vice* it, a fine could be imposed. The same was rejected.

5. Hence, the present appeal.

6. We have heard Mr. S. Nagamuthu, learned senior counsel and Mr. M.P. Parthiban, learned counsel for the appellant and Dr. Joseph Aristotle, learned senior counsel for the respondent-State.

7. Before us, there is not a serious challenge to the conviction itself. However, it is submitted that the appellant, being a doctor, had no ill intention (*mens rea*) to contravene the law and undertake any action which may be scuttling the statutory provisions. It is as such prayed that the sentence of imprisonment be modified to that of a fine.

8. A proper sentence, as has been observed by this Court in ***Mohammad Giassudin v. State of Andhra Pradesh***⁶ is an amalgam of many factors pertaining to the offence itself as also others such as prior record if any, age, record of employment, education, home life, social adjustment and emotional and mental conditions of the offender etc.

9. At present, the impugned judgment as it stands, convicts the Appellant under Section 18A read with Section 28 of the Act. Both these provisions concern the disclosure or non-disclosure respectively of the name of the manufacturer. The former stipulates a requirement for every person who is not a manufacturer or agent of distribution to disclose the name of the person from whom he has acquired such drug or cosmetic. The latter

⁶ (1977) 3 SCC 287

imposes a punishment for violation of the aforesaid requirement to the tune of imprisonment up to a year or with a fine not less than Rs.20,000/-, or with both.

10. In the present case, the punishment imposed is six months simple imprisonment with the minimum statutory fine.

11. It is not in dispute that the Appellant is a doctor. We notice that this Court in *S. Athilakshmi v. State Rep. by The Drug Inspector*⁷ had acquitted a doctor of stocking a small amount of drug as the same was not slated to be equal to selling medicines across the counter in a shop. This offence, as already noted above, was found not proved by the lower Appellate Court.

12. The only aspect which remains is a non-disclosure of the name of the manufacturer. We find that the quantities of the 29 kinds of medicines recovered from the clinic run by the Appellant, were of small quantity. In such a situation, non-disclosure of the name of the manufacturer/person from whom the said medicines were acquired, cannot be said to be endangering public interest (*which obviously, is the primary object of the prohibition in law*) by allowing the circulation of such substances unauthorizedly.

⁷ 2022 SCC OnLine SC 269

13. In the attending facts and circumstances, considering that the Appellant is a doctor and also keeping in view the observations of this Court in *Mohammad Giassudin* (supra), we are of the considered view that imposing a sentence of imprisonment would be unjustified, particularly when the intent to sell/distribute under Section 18(c) of the Act has been held unproven. Therefore, we find it fit to modify the impugned judgment, set aside the sentence of imprisonment as awarded, and instead thereof, impose a fine of Rs.1,00,000/- on the Appellant.

14. The appeal is allowed to the extent indicated above. The exemption from surrendering granted by this Court *vide* order dated 7th January, 2022 is made absolute. Pending application(s) if any, shall stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(SANJAY KAROL)

New Delhi;
14th February, 2024.

LAWCHAKRA.IN