
(2017) 12 BOM CK 0098
In the Bombay High Court
Case No : 2535 of 2017

Dr.Dilip Pundalik Patil

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-12-2017

Acts Referred:

[Drugs and Cosmetics Act, 1940](#), [Section 18\(c\)](#), [Section 27\(b\)](#), [Section 27\(B\)\(II\)](#) - Prohibition of manufacture and sale of certain drugs - Penalty for manufacture, sale, etc., o

Citation : (2017) 12 BOM CK 0098

Hon'ble Judges : Prakash D.Naik

Bench : SINGLE BENCH

Advocate : Naseem R.Shaikh, K.S.Patil

Final Decision : Disposed off

Judgement

1. Heard both the sides. With the consent of both the parties, the application was heard for final disposal.

2. Rule. Rule made returnable forthwith.

3. The applicant is arraigned as accused No.2 in Regular Criminal Case No.116 of 2013, which is pending before the Court of Chief Judicial Magistrate, Jalgaon. The offences were invoked u/s 18(c) punishable under Section 27(b)(ii) of the Drugs and Cosmetics Act, 1940 (for the sake of brevity, hereinafter referred to as "the Act"). The complaint was filed by respondent No.2 against the applicant as well as other persons.

4. The prosecution's case is as follows:(a) The complainant is a Inspector appointed u/s 21 and is authorized to institute prosecution u/s 32 of the Act.

(b) The accused No.1 is the Proprietor of M/s.Pragati Medical and General Stores situated at House No.245, Room No.1, First Floor, Tongaon, Tq.Bhadgaon, Dist.Jalgaon. Accused Nos.2 and 3 are persons illegally selling medicines from

the shop of which the licence has already been cancelled.

(c) The complainant visited the premises of M/s.Pragati Medical and General Stores on 11.10.2012 to inspect the medical shop. At the time of inspection, the Proprietor of the shop Mr.Nitin Shankarrao Patil and Registered Pharmacist of the shop were absent.

(d) On 29.10.2012, the Licensing Authority issued show cause notice to the Proprietor of the shop. The reply dated 8.11.2012, was submitted by the Proprietor to the said show cause notice. The reply was not satisfactory. On 4.12.2012, the Licensing Authority cancelled the license of the said shop w.e.f.5.12.2012 and intimated about the same to the Proprietor vide letter dated 4.12.2012.

(e) On 27.12.2012, the complainant received information that the medicines are being sold from the said shop. On 28.12.2012, the complainant alongwith others visited the shop and it was noticed that the sale of medicine was going on. At the time of visit, accused no.3 was conducting business and he was about to close the shop. At the same time, it was noticed that one patient was sitting outside the shop and he has purchased medicines from the shop. In view of the above, Muddemal was seized under Panchanama and Form 16 in the presence of Panchas.

(f) The key of the shop was with accused No.2. He is doing Allopathic practice of medicines in the premises and was conducting business with the help of accused No.3 for his own patient from the shop. The accused No.2 conducting business in connivance with accused No.1 i.e. Proprietor of the shop. The complaint was lodged on 18.2.2013.

(g) The learned Magistrate issued summons against the accused for the offences u/s 18(C) by order dated 22.3.2013.

5. The applicant has invoked the inherent powers of this Court and challenges the aforesaid proceedings on several grounds.

6. The learned counsel for the applicant submits that the applicant is a medical practitioner by profession and is running a hospital in the name of Ganesh Hospital, Bhadgoan since last 20 years. The accused No.1 is tenant of applicant No.1, who has been conducting his business viz. M/s.Pragati Medical and General Stores. It is submitted that the applicant is not concerned with the business of accused no.1 and has no connection with the said shop, except the fact that the premises is letout to the accused No.1. It is submitted that there is no evidence on record to substantiate that the business was conducted by accused No.2 in connivance with accused No.1. The order of process was therefore passed mechanically without application of mind. It is submitted that the prescription relied upon by the prosecution purportedly issued to patient Walmik koli does not show the name of the applicant as examining Doctor nor the name of the patient is reflected on the said prescription. It is therefore submitted that there is no

substance in the allegation that the said person was patient of the applicant and had purchased the medicines from the said shop. The applicant is a landlord and accused no.1 is a tenant. There is no other relationship between them. The accused No.3 had forwarded his complaint to the Assistant Commissioner, Food and Drug Administration (FDA) on 1.2.2013 against the illegal action of respondent No.2. The accused No.1 had preferred an appeal before the Secretary of Drug and Cosmetic and Medical Education Department, Mantralaya, Mumbai, challenging the order of cancellation of licence and the said authority has granted stay to the order of cancellation of licence. It further submitted that the complainant does not have requisite qualification for the post of Drug Inspector. The mandatory qualification for the said post is Degree in Pharmacy or Pharmaceutical Science or Medicines with specialization and Clinic Pharmacology or Microbiology from the University established in India. The complainant therefore had no authority to initiate prosecution against the applicant.

7. The learned counsel relied upon the decisions in the case of Sunil Bharti Mittal M. Vs. Central Bureau Investigation [AIR 2015 SC, 923].

8. Learned APP submits that there is no substance in the arguments advanced by the applicant. The submissions are based on disputed question of facts. Prima facie case was made out for issuance of process. There is evidence against the applicant as a person, who was conducting the business at the said Pharmacy in connivance with accused No.1. The evidence on record was sufficient to issue process and therefore at this stage, the proceedings should not be quashed. The process was issued on the basis of the documents on record, which prima facie makes out the offences and therefore this is not a fit case to exercise powers u/s 482 of the Code of Criminal Procedure. The learned APP relied upon the affidavit in reply and documents annexed thereto and submitted that there is sufficient evidence for issuance of process against the applicant accused.

9. In the affidavit filed by respondent No.2, it is stated that the accused No.2 is running a hospital and is practicing in Allopathy. The accused No.2 is the owner of the premises and claims to be landlord of the said premises, which is let out to accused No.1. When the deponent visited the shop, he found that the licence had expired and the same was not renewed. The accused No.1 was running the medical shop in the premises owned by the applicant. The applicant did not produce the requisite degree certificate in spite of calling upon to do so. The show cause notice was issued to accused No.1. The explanation was not satisfactory and hence, the licence of the medical shop was cancelled on 4.12.2012. The Officers inspected the premises of shop on 28.12.2012. The accused No.1 is running the shop in the premises of the applicant. The deponent also relied upon inspection report, which was annexed to the said affidavit. It is contended that accused Nos.1 and 2 had signed the Panchanama. The statement of accused No.3 was recorded. The shop is being running in connivance with accused No.2. The premises is owned by the applicant and this is not a fit case to exercise powers u/s 482 of the Code of Criminal Procedure.

10. On perusal of the documents, it can be gathered that the accused No.1 is the Proprietor of the subject shop premises. The license to conduct the business was issued to accused No.1. The license had expired on 16.4.2012. This fact would show that there was licence to conduct the business, which is undisputed and that the same had lapsed on the aforesaid date. The licence was not renewed. The Authorities thereafter cancelled the license vide order dated 4.12.2012. It is apparent that licence was not renewed after 16.4.2012. It is also pertinent to note that it has been cancelled w.e.f.5.12.2012. The accused No.1 has challenged the said order before the appropriate authority, which order has been temporarily stayed by the concerned authority, which is evident from the communication dated 23.1.2013. Both the parties have not pointed out as to whether the said appeal is decided finally or it is still pending with the interim order in force.

11. The accused are being prosecuted for the offence u/s 18(c) of the Act punishable u/s 27(b) of the Act. The relevant portion of Section 18 of the Act reads as follows:" 18 Prohibition of manufacture and sale of certain drugs and cosmetics. -From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf-

(a)

(b)

(c) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic], except under, and in accordance with the conditions of, a license issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:

Provided further that the [Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the [manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality."

12. The present prosecution has been lodged for commission of the offence u/s 18(c) of the Act. Except making a bald statement that accused Nos.2 and 3 are selling the medicines from the shop of accused No.1 of which licence is already cancelled, there is no material to show that the applicant was conducting the business from the said premises. The applicant is owner of the premises. The applicant was not found in the said shop premises. On the basis of the alleged fact that accused No.3 was closing the said shop, inference cannot be drawn that the applicant and the accused No.1 were acting in connivance with each other in selling the medicines from the said shop. The license stands in the name of

accused No.1. The license had expired on 16.4.2012. The premises were raided on 11.10.2012. The licence was thereafter cancelled on 4.12.2012, which order was subsequently stayed by the Appellate Authority. The prosecution cannot be lodged on the basis of inferences. It is true that the Trial Court had issued process on the basis of averments made in the complaint. However, considering the fact that accused No.1 was the licence holder and was Proprietor of shop premises, the order of process does not depict application of mind. The prescription, which is purportedly recovered from the patient by the respondent and the raiding party, does not mention the name of the patient or the name of the applicant as a Doctor, who has prescribed the said medicines. The accused cannot be subjected to the prosecution on the basis of conjectures.

13. In the case of Sunil Bharti Mittal (supra), the Supreme Court has observed that the powers u/s 204 has to be exercised judicially. A person ought not to be dragged to the Court merely because a complaint has been filed. If a prima facie case is made out, the process can be issued. However, the sufficient grounds for proceedings appearing in the Section are of immense importance. It is these words which amply suggest that the opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such opinion is to be stated in the order. The order is liable to be set aside, if no reason is given therein while coming to the conclusion that there is prima facie case against accused, though the order need not contain detailed reasons. The accused No.1 is being prosecuted for violation of Section 18(c) being proprietor of shop without licence. There is no provision like common intention or vicarious liability of any other person.

14. Analyzing the factual matrix of the matter as stated herein above, there is no justification for initiating prosecution against the applicant. It would be abuse of process of law to continue the said prosecution. The order of process and proceedings are therefore liable to be quashed and set aside. Hence, I pass the following order: ORDER

(I) Criminal Application No.2535 of 2017 is allowed.

(II) The order issuing process dated 22.3.2013 passed by the Chief Judicial Magistrate, Jalgaon in Regular Criminal Case No.116 of 2013 and the proceedings in the said case are quashed and set aside.

(III) Rule is made absolute.

(IV) Application stands disposed of.