(1965) 11 MP CK 0020

In the Madhya Pradesh High Court

Case No : Criminal Appeals No''s. 259 of 1962 and 389 of 1962

Drugs Inspector, M.P., Indore — APPELLANT

Vs

M/s Chimanlal and Company and others — RESPONDENT

Date of Decision : 08-11-1965

Acts Referred:
Criminal Procedure Code, 1898 (CrPC) — Section 417(3)
Drugs and Cosmetics Act, 1940 — Section 32

Citation : (1968) JLJ 464 : (1968) MPLJ 489

Hon'ble Judges : P.V. Dixit, C.J;N.M. Golvalker, J;K.L. Pandey, J

Bench : Full Bench

Advocate : Balwantsingh, Government, for the Appellant; G.L. Oza, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sen, J.

Naginchandra and Maganlal are partners of a firm known as M/s. Chimanlal and Company They are also partners in a concern called Relief Drug House, Ahmedabad which holds a drug manufacturing licence on loan to Messrs Cadilla Laboratories, Ahmedabad. On 6-10-1959 and 13-11-1959 Manorama Raje T.B. Hospital, Indore placed an order with the accused for the supply of 3,00,000 tablets of Isonicotinic Acid Hydrazide of 100mg. strength.

The Respondents supplied the tablets in bottles which had lables of Messrs Relief Drug House. The labels showed the strength of the tablets to be 100mg. On 19-12-1959 Shri Kulkarni the Drug Inspector inspected the Manorama Raje T.B. Hospital. He took samples of the drug supplied by the aforesaid persons and sent the same to the Government Analyst for analysis. The tablets were found to be 51.29 mg. strength.

On the above allegations the Drug Inspector, M.P., Indore filed a complaint against Messrs Chiman Lal and Company, Messrs Relief Drug House, Shri

Maganlal and Shri Naginchandra in the Court of the Additional District Magistrate, Indore u/s 18 (i) and (ii) read with Section 27 of the Drugs Act, 1950.

The accused denied the guilt. They threw the responsibility for the supply on Maganlal in his individual capacity. It was also pleaded that partnership of Relief Drug House was dissolved prior 1o the supply of tablets. The Additional District Magistrate convicted the accused and sentenced Magana and Naginchandra to a fine of Rs. 200 on each count. In appeal the Additional Sessions Judge acquitted all the accused. The Drug Inspector filed an application u/s 417(3) of the Code of Criminal Procedure for leave to appeal which was granted.

When the case came before us for hearing on merits some time back question was raised regarding the competency of appeal on the basis of leave granted on a petition by a public officer acting in discharge of his duties. It was contended that it was only a private complainant who can move the Court u/s 417(3) of the Code of Criminal Procedure. In this case the Drug Inspector being a public servant application for leave was not competent.

The accused placed reliance on a Division Bench case of this Court reported in State Vs. Daulat Singh, . As we did not agree with the view taken in that case we referred the matter to the Full Bench. It was held by the majority of the Full Bench (Pandey and Golvalker JJ.) that Section 417(3) applies to all acquittals recorded in cases instituted upon complaints, including those instituted by public servants in the discharge of their duty as public servants and as such public servants are competent to apply for special leave to appeal against acquittal recorded in such cases. The third Judge (Dixit C.J.) stuck to the view held in 1957 M.P. C 273. However as the matter has been settled by the Full Bench we now proceed to hear the appeal. It is not necessary for us to repeat the reasons given by the Full Bench.

The acquittal has been on the ground that there cannot be any conviction under any of the provisions u/s 18 of the Drugs Act as no sample was taken from the Respondents while manufacturing or selling as required u/s 22 of the Drugs Act. It was also held that it is only when the sample is taken u/s 22 that a conviction can be made. The Court held that in the instant case the samples were taken from the purchaser viz. Manorama Raje T.B. Hospital, Indore. Though we do not agree with the reasons given by the appellate Court for acquittal we uphold the same for reasons that follow.

After taking the sample from the Manorama Raje T.B. Hospital on 9-12-1959 they were sent to the Government Analyst. P.W. 2 Shri Prakash Kulkarni is the Drug Inspector who took the samples. According to him the tablets were stated to contain 100 mg. on the lables manufactured by Relief Drug House. The samples were taken in 4 bottles which Shri Kulkarni, Drug Inspector sealed on the spot in presence of one Dr. J.P. Shukla. One of the bottles was given to Dr. Shukla, another was sent to the Government Analyst, M.P., Indore and the remaining two he retained. The latter two were produced before the Court. There was a stock

with the hospital of 222 bottles which were seized. They were kept in an Almirah sealed by the witness. After receipt of the report from the Government Analyst Ex. P. 5, he sent copies of them to the accused by registered post.

I need not detail the evidence of the other witnesses examined in this case. The conviction is based on the report of the analyst Exs. P. 5 and P. 6 giving the details of the analysis by the Government Analyst, M.P., Indore.

The charges against the accused are that on 15-11-1959 the accused at Ahmedabad manufactured for sale a drug Isonicotinic Acid Hydrazide which was not of standard quality and that the accused sold on 15-11-1959 to Manorama Raje T.B. Hospital 3,00,000 tablets of Isonicotinic Acid Hydrazide which are not of a standard quality. There was also a third charge saying that between 23-11-1959 to 15 11-1959 the accused manufactured the above mentioned tablets without obtaining a licence for its manufacture.

Now as regards the third charge the evidence of the prosecution is that the accused had a licence, called a loan licence. On the basis of this loan licence they were entitled to get the drug manufactured only from Cadilla Laboratories, Ahmedabad. It was alleged by the prosecution that the Cadilla Laboratories did not manufacture the Drug, they got these manufactured elsewhere which was against the condition of licence.

There is no legal evidence to establish this charge. The only evidence is that of P.W. 1 Bhat who is the senior Drug Inspector of Baroda District. He says that he had visited the Cadilla Laboratories on 11-3-1960 with a view to check whether they had manufactured the drug on behalf of the Relief Drug House. He was told by one Mr. Modi one of the partners of the Laboratory that no such drug was manufactured there. The evidence of Shree Bhat P. W- 1 is hearsay. Shri Modi has not been examined. Besides the statement of P.W. 1 Bhat there is not an iota of evidence that the accused did not manufacture the drug from the Cadilla Laboratories. Therefore, there cannot be any conviction u/s 18(c) of the Act which says that no persons shall manufacture for sale any drug without a licence issued for such pur?pose. The prosecution admits that they had a loan licence. It was for the prosecution to establish by examining a responsible person from the Laboratory that the accused did not get the tablets in question manufactured from the Cadilla Laboratories. Therefore, there cannot be any conviction of the Respondents u/s 18(c) of the Act.

The other charges are under Sections 18(a)(i) and 18(a)(ii) of the Drugs Act. We have already quoted the charges. The section under which the accused have been charged are as follows:

Section 18- From such dale 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) manufacture for sale, or sell, or stock or exhibit for sale, or distribute

(i) any drug which is not of standard quality

(ii) any misbranded drug.

Under Section 3(f) of the Act ''manufacture'' is defined. In relation to any drug it includes any process or part of process for making, altering, ornamenting, finishing, packing, labeling, breaking up or otherwise etc. The crux of the offence is that the drug must be of standard quality. So far as standard quality is concerned it has been defined u/s 16 of the Act.

It means that the drug complies with the standard set out in the Schedule. As per Schedule the standard prescribed for the drug in question should be:

The standards of identity, purity and strength specified in the current edition for the time being of the British Pharmacopoeia or the British Pharmaceutical Codex or any other prescribed Pharmacopoeia or adopted by the Permanent Commission on Biological Standardization of the World Health Organisation.

The above are the standards for the comparison. No doubt the reports of the Analyst Exs. P. 5 and P. 6 mention that the tablets in question were of 51-29 mg. whereas the standard according to British Pharmacopoeia should be between 95 to 105 mg. Apart from the fact that the sample should have been compared not only with British Pharmacopoeia but also with other standards mentioned in the Schedule the report of the Government Analyst cannot be made use of without examining him. The Government Analyst who sent the report has not been examined. He is an expert and his evidence can only be used as an expert after he is examined in the Court.

The learned Government Advocate pointed out that the evidence of the analyst is admissible u/s 25 (3) of the Drugs Act, which runs as follows:

Any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the fact stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken or the said warrantor has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

The Government Advocate contends that it is not necessary that the Government Analyst should be examined and his report can be taken as evidence. We are not at all in agreement with this interpretation of Section 25 (3). Section 25 has to be read along with Section 22 of the Act which describes the powers of Inspectors. u/s 22 (b) the Inspectors are authorized to take samples of any drug which is being manufactured or being sold or is stocked or exhibited for sale oris being distributed It is after taking samples that an Inspector has to send them to the Government Analyst. Section 23 speaks of procedure how the Inspectors would take samples. It is after observing all these formalities, that Section 25 (3) comes into operation.

In the instant case the evidence disclosed that no such steps "were taken. In fact it is not disputed that the samples were not taken while the drug was being manufactured or sold or from A place where it was stocked for sale or distribution u/s 22 (b). Therefore, there cannot be any question of the report of Analyst being A conclusive evidence. Therefore, if the report cannot be made available u/s 25 (3) of the Act it cannot be read as evidence without the Government Analyst being examined.

The acquittal by the appellate Court is on the ground that there has been no seizure u/s 22 of the Drugs Act. It is wrong to say that A person cannot be convicted of selling or manufacturing a sub-standard drug if samples are not taken at the stage mentioned in Section 22 (b). It will be laying too broad a proposition. There can be a conviction u/s 18 notwithstanding a fact that the Inspector did not take the sample as contemplated u/s 22 (b) of the Act, if the prosecution can establish otherwise the ingredients of offence u/s 18 of the Act.

It was argued by the Learned Counsel for the State that in the evidence that has been laid the accused can be convicted u/s 18 (A) (ii) of the Act for misbranding. Apart from the fact that the accused were never asked to meet the charge, nor was any question put to them with the knowledge that they had to meet the same, the offence of misbranding also depends on the tablet containing 51 mg. of the Isonicotiuic Acid Hydrazide. As the report is inadmissible, no conviction can be made for this offence as well.

However as stated above as we do not find any legal evidence for convicting the accused, the appeal is dismissed.

