
(1987) 01 MAD CK 0059
In the Madras High Court
Case No : Criminal M.P. 10957 of 1986

K. Bhimraj and others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 09-01-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Drugs and Cosmetics Act, 1940 — Section 18, 18(b), 18A, 19(3), 32

Citation : (1987) LW(Cri) 312

Hon'ble Judges : K.M. Natarajan, J

Bench : Single Bench

Advocate : R. Sukuntharaj, for the Appellant; Kannappa Rajendran for State, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Natarajan, J.—The accused in C.C. No. 421 of 1986 on the file of the 15th Metropolitan Magistrate, Madras, have filed this petition under S. 482, CrI.P.C., to quash the proceeding against them. The respondent, namely, Drug inspector, Parktown, Range 1, Madras, has filed a complaint against these petitioners under S. 32 of the Drugs and Cosmetics Act, 1940 for contravention of R.146 read with Ss. 18(b) and 18A of the said Act. According to the complaint, the first petitioner—first accused is the proprietor of Sha Bhimraj Lalchand at No. 27, Perumal Mudali St., Madras. Accused 2 and 3, who are petitioners 2 and 3, are the sons of the first accused and they are all managing the affairs of the business. On 7.3.1984 at about 1 p.m. the then Drug Inspector inspected the premises—Accused 2 and 3 were present at that time and it was observed that they were found selling and stocking for sale the cosmetics which were detailed in the complaint and which were not manufactured by licensed manufacturer and thereby contravened the provisions of S. 18(b) of the said Act. Since the accused did not disclose the name and address of the person from whom they acquired them, they have contravened the provision of S. 18A of the said Act. The Drugs Inspector seized all the cosmetics under a cover of mahazar in the prescribed form in the

presence of two independent witnesses. On 9.3.1984, he issued a show cause notice to the accused and after getting a reply, he filed the complaint since the reply is not satisfactory. The main grounds alleged in the petition as well as the submissions made by the Learned Counsel for the petitioners are that the petitioners are only dealers and not manufacturers and hence they cannot be proceeded with for the contravention of the relevant provisions of the said Act. Further, kumkum and eye mye are used for religious purposes and hence, they do not come under the definition of "cosmetics" since they were used only for signifying the marital status of the Hindu lady. Further they purchased the products from the manufacturer, and they do not even open the seal and so the manufacturer alone is liable for the standard of the product.

2. As regards the first contention, that kumkum and eye mye seized from the accused do not come under the definition of "cosmetics", the Learned Counsel for the petitioners relied on the decision reported in Commissioner of Sales tax v. Pradeep Products 1970 26 S.T.C. 74. In the above quoted case, it was held--

On the finding of fact ingoor and sindoor are not used for beautifying the face or the body. Their use is confined to married women, only for the purpose of indicating their married status. In view of such use, it can hardly be said that ingoor and sindoor would answer the connotation of the phrase "toilet and cosmetics."

Under S. 6(aa) of the said Act, "cosmetic" has been defined as follows--

"Cosmetics" means any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and includes any article intended for use as a component of cosmetic, but does not include soap.

3. In this case, the Drugs Inspector seized the following cosmetics:-

1. Anitha Deluxe Kumkum, manufactured by Messrs Dhanalakshmi Products, Madras-79.
2. Subham Delux Kumkum, M/s. Dhanalakshmi Industries
3. Eye show Kan-mye, M/s. Dhana Products Madras
4. Alankar Kumkum Meron
5. Singari Mini Kajal, Rekha Products, Madras
6. Sinkari Eye-mye, A. Anandan Products, Madras
7. Singari Kumkum deluxe, Rekha Products
8. Singari Kumkum powder.

There is nothing to show that these items are used only for the purpose of

indicating the married status of women and confined to married women as was held in that case. Even if the contention of the Learned Counsel for the petitioners is accepted, it would apply only to Kumkum and not to eye-mye or the other items seized in the case. It is a matter to be decided during trial, as to whether they are used only by married women, and that too to indicate their married status and not for the purpose of beautifying the face or the body. It is too premature to hold that all these articles would not come under the definition of "cosmetics". Hence, I do not find any merit in the contention of the Learned Counsel for the petitioners.

4. Next, it was contended by the Learned Counsel for the petitioners that the offences for which the accused were charged come under Chapter 4, which relates only to the manufacture of drugs and the manufacturer alone is liable for prosecution and not the seller. It has to be noted that even the heading reads as follows--

"Manufacture, sale and distribution of drugs".

5. S. 18(b) reads as follows--

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) sell, or stock or exhibit for sale, or distribute any drug or cosmetic which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder.

It is clear from the above provision that the seller is also liable for contravention of any of the provisions of the Act, and not the manufacturer alone as contended by the petitioners.

6. Coming to the next charge, S. 18A reads as follows--

Every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetic.

This section also negatives the contention of the Learned Counsel for the petitioner, since the person other than the manufacturer of drug is bound to disclose to the Inspector the name and address of the person through whom they acquired the said cosmetic. If really the said Chapter relates only to the manufacturer, there is no necessity for this provision under which a person who was in possession of the cosmetic for sale to disclose the source of acquisition. In this case, also, since the accused did not disclose the name and address of the person from whom they acquired the cosmetics, to the Drugs Inspector, they

were prosecuted under S. 18-A of the Act, R.146 also deals with prohibition of sale or distribution. The petitioners were prosecuted for the contravention of the said rule. Under the said rule, no person shall sell or distribute any cosmetic unless the cosmetic, if of Indian origin, is manufactured by a licensed manufacturer and labelled and packed in accordance with these rules. Since the petitioners have not disclosed the particulars of the person from whom they have acquired that it was purchased from a licensed manufacturer, they were also prosecuted under the said rule.

7. Lastly, it was contended by the Learned Counsel for the petitioner that by virtue of S. 19(3) of the Act, the petitioners cannot be held to be liable. S. 19(3) reads as follows--

A person, not being the manufacturer of a drug or cosmetic, or his agent for the distribution thereof, shall not be liable for a contravention of S. 18 if he proves--

(a).....

(b) that he did not know and could not with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section and

(c).....

It is a matter to be decided only during trial and the burden is on the accused that they did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of the said Act. There is absolutely nothing to show that the petitioners acquired the drugs from a licensed manufacturer or that in spite of their diligence they were not aware of the contravention of the provisions of the Act. Anyhow it is a matter to be agitated before the trial court, and prima facie, we do not have any material to support the said plea. For all these reasons, I am of the view that the petitioners have not made out any case for quashing the proceedings against them. As such the petition is liable to be dismissed.

8. In the result, the petition fails and stands dismissed. However, it is open to the petitioners to raise all their contentions and such other legal pleas open to them before the lower court and that the magistrate is directed to give opportunity to the petitioners to establish the same and then dispose of the case according to law and on merits, without being influenced by any of the observations made in this order.