

(2013) 07 KAR CK 0040

In the Karnataka High Court

Case No : Criminal Revision Petition No. 310 of 2009

M/s. Attavar Medicals and Sri. Ramdas Attavar Proprietor

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18c, 27(b)(ii)

Citation : (2013) 07 KAR CK 0040

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : A. Keshava Bhat, for the Appellant; G.M. Sreenivasa Reddy, HCGP, for the Respondent

Final Decision : Partly Allowed

Judgement

H.N. Nagamohan Das, J.—This revision petition is directed against the judgment of conviction and sentence dated 20.03.2004 in C.C. No. 301/1991 passed by Civil Judge (Junior Division) and JMFC at Belthangady and confirmed by the judgment dated 19.01.2009 in Criminal Appeal No. 107/2004 passed by II Additional Sessions Judge at Mangalore convicting and sentencing the petitioner No. 2 for the offences punishable u/s 18(c) of the Drugs and Cosmetics Act 1940, to undergo simple imprisonment for a term of six months and to pay fine of Rs. 5,000/-. On failure to pay the fine amount to undergo further simple imprisonment for a term of six months. Petitioner No. 1 is a proprietary concern and petitioner No. 2 is its proprietor engaged in the business of selling pharmaceuticals under valid licence from the concerned department. The licence obtained by the petitioners on 17.10.1988 was valid up to 31.12.1989. Before the expiry of the licence the petitioners applied for renewal of the same. During the pendency of the renewal application the Assistant Drug Controller, Mangalore received a communication stating that the qualified employee of the petitioner No. 1 in the pharmaceutical stores tendered his resignation. Consequently, the drugs department passed an order on 20.9.1990 cancelling the licence issued in

favour of the petitioner No. 1. Even after the cancellation of licence the petitioners carried on the business without employing a qualified person in the shop. Consequently, on 14.11.1990 the Drugs department raided the petitioners' shop and found that they were carrying on business without valid licence even after cancellation. For this offence a complaint was filed before the Trial Court u/s 18(c) of Drugs and Cosmetics Act 1940. After framing the charges the prosecution examined 4 witnesses as P.W. 1 to P.W. 4 and Exhibits P1 to P42 and M.O. 1 to M.O. 91 are marked. After hearing the arguments the Trial Court framed the following three points for its consideration.

1. Whether prosecution proved that accused No. 2 - Ramdas Attawar, the sole proprietor responsible for the conduct of the day-to-day business of accused No. 1-Firm subsequent to Assistant Drug Controller, Mangalore, by his order dated: 20.9.1990, cancelling the drug licence of accused No. 1-Firm had without having valid licence sold Scheduled drugs on 14.11.90 in the accused No. 1-Firm to V.L. Humber, the Drugs Inspector?

2. Whether prosecution proved that accused No. 2-being the sole proprietor and responsible for the conduct of day-to-day business of accused No. 1-Firm, subsequent to 20.9.90 without having valid drug licence had exhibited or stocked Scheduled drugs in accused No. 1-Firm for sale?

3. What order?

2. On appreciation of the oral and documentary evidence the Trial Court held that the prosecution has proved the charges leveled against the petitioners. Consequently the Trial Court convicted the petitioners and sentenced petitioner No. 1 to pay a fine of Rs. 5,000/- and petitioner No. 2 to under go simple imprisonment for a term of six months and to pay fine of Rs. 5,000/- and on default to pay fine amount, to undergo simple imprisonment for a further period of six months. Aggrieved by this judgment of conviction and sentence of the Trial Court the petitioners filed an appeal before the lower appellant Court in Criminal Appeal No. 107/2004. The lower appellant Court on re-appreciation of the entire material on record passed the impugned judgment dismissing the appeal and confirming the judgment of the Trial Court. Hence this revision petition.

3. Heard the arguments on both the side and perused the entire review petition papers.

4. It is not in dispute, that the Assistant Drug Controller, Bangalore passed an order on 20.09.1990 cancelling the licence issued in favour of the petitioners on the ground that there is no qualified person in the pharmaceuticals store run by them. Despite the cancellation of the licence the petitioners continued to carry on the business without a valid licence. On credible information the Drugs department raided the shop of petitioner on 14.11.1990 and found that petitioners were running their business without valid licence. This is proved and established by the prosecution by examining P.W. 1 to P.W. 4 and by producing Exhibits P1 to P42 and M.O. 1 to M.O. 91. The concurrent finding of both the

Courts below that prosecution has proved charges leveled against the petitioners is supported by evidence on record and I find no justifiable ground to interfere with the same.

5. Section 27(b)(ii) of the Drugs and Cosmetics Act provides for minimum sentence of one year which may be extended up to 3 years with a fine which shall not be less than Rs. 5,000/- or 3 times the value of the drugs confiscated whichever is more. The proviso further specifies that for any adequate and special reasons to be recorded in the judgment, sentence of imprisonment for a term of less than 1 year or fine of less than Rs. 5,000/- can be imposed. In the instant case the Courts below levied fine of Rs. 5,000/- on petitioner No. 1 proprietary concern and I find no justifiable ground to interfere with the same.

6. On petitioner No. 2 sentence of 6 months simple imprisonment and fine of Rs. 5,000/- is levied. The incident had taken place in the year 1990. Now we are in 2013, 23 years have elapsed. The offence against the petitioners is that they were selling the drugs without valid licence. From the material on record it is seen that the petitioners were running pharmaceutical stores by obtaining a valid licence from the concerned department. Since a qualified employee in the shop tendered his resignation and in the absence of another qualified person the licence in favour of the petitioners came to be cancelled. Further it is noticed that the renewal application filed by the petitioners was pending consideration with the drugs department. It is not the case of the prosecution that the petitioners were selling substandard or furious or adulterated drugs. In the circumstances I am of the considered opinion that the sentence levied on petitioner No. 2 calls for interference.

7. The Drugs and Cosmetics Act was of the year 1940. The Probation of Offenders Act is of the year 1958. Section 18 of the Probation of Offenders Act is a non-obstante clause which is having an overriding effect on the Drugs and Cosmetics Act. Further it is settled position of law that as a matter of rule the benefit under the Probation of Offenders Act cannot be extended. For special reasons and in rarest of rare cases the Courts are having the power to extend the benefit of Probation of Offenders Act. In the facts and circumstances of this case while confirming the order of conviction on petitioner No. 2 I am of the considered opinion that levy of fine of Rs. 10,000/- without any imprisonment will meet the ends of justice. To this extent the impugned order of sentence requires modification. For the reasons stated above, the following;

ORDER

i. Revision petition is partly allowed.

ii. The judgment of conviction of petitioners passed by trial Court dated 20.03.2004 in C.C. No. 301/1991 and the lower appellate Court in Crl. Appeal No. 107/2004 dated 19.01.2009 are hereby confirmed.

iii. The sentence levied on petitioner No. 1 to pay fine of Rs. 5,000/- is hereby

confirmed.

iv. The sentence of six months simple imprisonment on petitioner No. 2 is hereby set aside.

v. Petitioner No. 2 is sentenced to pay fine of Rs. 10,000/- and in default to pay the fine amount to undergo simple imprisonment for a term of one month. Ordered accordingly.