
(1996) 04 BOM CK 0065

In the Bombay High Court

Case No : Criminal Revision Application No. 2 of 1996

M/s. Mediscarch Laboratories and others

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 25-04-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 179, 180

Citation : (1997) CriLJ 1269

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Advocate : C.S. Gonsalia and V.K. Bodke, for the Appellant; G.U. Bhole, Public Prosecutor, for the Respondent

Judgement

1. Assistant Drugs Controller, State of Goa, Panaji inspected the premises of M/s. Goa Pharma, Panaji on 3-8-1987 and took sample of 4 X 3 X 5 ml. OTOCHLOR Chloramphenicol ear drops, Batch No. G/170, bearing date of manufacture as 6/87 and expiry date 11/88, which was manufactured by M/s. Mediscarch Laboratories, Thane Maharashtra, petitioner No. 1 in this revision. Samples of other drugs were also taken. These drugs were stocked/exhibited for sale in the said premises of M/s. Goa Pharma, Panaji. The said sample of ear drops was sent for analysis to Government Analyst, Drug Testing Laboratories, Bombay, who declared that the same was not of standard quality. Report No. GO-100/87 dated 30-10-1987 of the Government Analyst found that the said sample contained antibiotic activity equivalent to 3.5 percent of chloramphenicol which is 72% of the labelled amount of chloramphenicol. Show cause notice dated 17-11-1987 along with the copy of the test report of the Govt. Analyst was sent to M/s. Goa Pharma, Panaji, who disclosed vide letter dated 27-11-87 in reply to show cause that they had purchased the said drug from M/s. Entod Pharmaceuticals, Bombay vide invoice No. 335 dated 14-7-1987. The said M/s. Entod Pharmaceuticals is petitioner No. 3 in this petition. Thereafter, show cause notice dated 27-1-88 was issued to M/s. Entod Pharmaceuticals, Bombay and G. V. Masurkar, who is petitioner No. 4 in this revision, and is proprietor of M/s. Entod Pharmaceuticals

Bombay who replied vide letter dated 15-2-1988 that they had purchased the said drugs from M/s. Medisearch Laboratories, Bombay vide invoice No. 04 dated 9-7-1987. Thereafter, sealed portion of the said drug and copy of test report dated 30-10-1987 was sent to M/s. Medisearch Laboratories, Bombay, who, vide letter dated 4-1-1988, addressed to the Joint Commissioner, Food and Drugs Administration, Maharashtra, challenged the (sic) Test Report of the Government Analyst. On 9-8-1988, stock of 19 x 5 ml. OCTOCHLOR Chloramphenicol ear drops, batch No. G/170 was seized by Asst. Drugs Controller, State of Goa, Panaji u/s 22(1) of the Drugs and Cosmetics Act, 1940, receipt in Form 16 of the stock of drugs seized was given to Mr. G. R. Naik, Manager, Goa Pharma, Panaji, who acknowledged the receipt thereof. Thereafter, statements of Production Manager of M/s. Medisearch Laboratories and proprietor of M/s. Entod Pharmaceuticals were recorded. After obtaining written sanction from the Drugs Controller and the controlling authority to launch prosecution, complaint for contravention of provisions of Section 18(a)(i), read with Section 16(1)(a) and Section 17(c) read with Section 27(d) of the Drugs Act, 1940 was filed.

2. The said complaint had been filed against M/s. Medisearch Laboratories, who manufactured the said ear drops, petitioner No. 1, its proprietor, petitioner No. 2, M/s. Entod Pharmaceuticals, petitioner No. 3 who had purchased the said drugs from M/s. Medisearch Laboratories and from whom the drug was purchased by M/s. Goa Pharma, Panaji and also proprietor of M/s. Entod Pharmaceuticals, who is petitioner No. 4. No prosecution was launched against M/s. Goa Pharma, from whom the sample was taken.

3. The petitioners raised the question of jurisdiction of the J.M.F.C. Panaji, who tried the offence in question on the sole ground that the Court had no jurisdiction as M/s. Goa Pharma had not been joined as a party. The Magistrate accepted the contention of the petitioners and discharged them. Asst. Drugs Controller filed revision against the said order in the Court of Sessions and Learned Addl. Sessions Judge Mapusa allowed the revision by setting aside the order of discharge, passed by the Magistrate and remanded the matter for proceeding in accordance with law. This order is dated 31-8-1995, which is challenged in this revision. In the revision also the sole objection raised, is relating to jurisdiction on the ground that M/s. Goa Pharma had not been joined as party and, as such, the petitioners could not be tried by J.M.F.C. Panaji.

4. Advocate Shri C. S. Gonsalia, argued on behalf of the petitioners and submitted before me that in order to attract Section 179, Cr.P.C., the consequence must be integral part of the act and that in the facts and circumstances of the case, the petitioners cannot be prosecuted before the J.M.F.C. Panaji in absence of M/s. Goa Pharma. Panaji being joined as co-accused. In support of his submission, he placed before me a number of rulings on the subject, which are :- In Re: Jivandas Savchand, ; M.H. Alexander and Another Vs. Smt. Clairia Alexander, ; State Vs. Nathumal Damumal and Others, ; Shivraj Tobacco Company v. State of Maharashtra, (1982) 1 FAC 313; Rakesh

Palta v. State of Andhra Pradesh 1983 EFR 78; Smt. Sunder Ben and another v. State of Maharashtra (Cr. Rev. Appln. No. 117/1983); State of Punjab Vs. Nohar Chand, ; Sumit Lal C. Shah v. State of Rajasthan, 1984 Drug Cases 54; and on the strength of the said rulings, it was argued by Advocate Shri Gonsalia that sale is not a consequence or integral part of manufacture, as a result of which Section 179, Cr.P.C. is not attracted. Of course, he did not dispute the proposition laid down in several judgments that in case M/s. Goa Pharma, Panaji was joined as an accused, the petitioners could be tried along with the said firm before the Judicial Magistrate, F.C. Panaji.

5. P.P. Shri G. U. Bhobe, relied upon the judgment of Smt. Sunder Ben and another v. State of Maharashtra (supra) and pointed out that the facts under consideration are identical and, as such, the revision is liable to be dismissed. He drew my attention to the definition of "manufacture" u/s 3(f), which is as under :-

"manufacture" in relation to any drug (or cosmetic) includes any process or part of a process for making, altering, ornamenting, finishing, Packing, labelling, breaking up or otherwise, treating or adopting any drug (or cosmetic) with a view to its sale (or) distribution but does not include the compounding or dispensing (of any drug, or the packing of any drug or cosmetic), in the ordinary course of retail business; and "to manufacture" shall be construed accordingly."

He, therefore, contended that the drug in question was manufactured for sale or distribution, which is a consequence of manufacture, without which the manufacture would be incomplete. He, therefore, contends that the revision has no merit and the same be dismissed.

6. The only point involved in this revision relates to the jurisdiction pertaining to place of trial and, as such, it is necessary to refer to some of the authorities which have been placed before me.

7. In State of Punjab Vs. Nohar Chand, , the question which came up before the Apex Court was, whether the manufacturer of sub-standard fertilizer could be tried along with Marketing Agent at Kapurthala. The sub-standard fertilizer was, admittedly, manufactured at Ludhiana by M/s. Varinder Agro-Chemicals (India) and it was sold by marketing agent M/s. Sachdeva Enterprises at Kapurthala. It was held therein (Para 7) :

"Now if manufacturing sub-standard fertilizer is by itself an offence and marketing the sub-standard fertilizer is itself a distinct offence, but they are so inter-connected as cause and effect, both can be tried at one or the other place. If one manufactures the sub-standard fertilizer, wherever it is marketed, the inter-relation or causal connection is of cause and effect. The situation will be adequately covered by Ss. 179 and 180 of the Code of Criminal Procedure. We are in agreement with the later decision of the Division Bench rendered on March 9, 1983 that the Court where the sub-standard fertilizer is being marketed will equally have the jurisdiction to try the manufacturer of sub-standard fertilizer.

This is so obvious that any further discussion appears to us to be super-fluous."

The Apex Court, therefore, came to the conclusion that the manufacturer could be tried along with the marketing agent by the Court, within whose jurisdiction, the sub-standard fertilizer was marketed.

8. Two other judgments on the point under consideration are that of this Court, which are :- State v. Nathumal Damumal 1962 Cri LJ 16 (supra) and Smt. Sunder Ben and another v. State of Maharashtra (supra).

9. In State v. Nathumal Damumal 1962 Cri LJ 16 (supra) this Court was concerned with a prosecution u/s 18(a) of the Drugs Act, 1940. In the said case, one Nathumal Damumal trading in Deolali Camp in Nasik had purchased 15,000 lbs. of tincture laicism BP 1891, manufactured by M/s. India Drugs Laboratory Private Limited, Calcutta. The goods were transported from Calcutta to Indore and thereafter 5000 lbs. of the said drug was sent to Nasik by rail and 10000 lbs by truck to Malegaon. Drugs Department got information about the transportation of the said drug and, as such, the officers intercepted the goods at Nasik and Malegaon. Samples were taken, which were sent to Chemical Analyser and it was found that the said samples were not according to the standard specified in the Act. The prosecution was launched at Nasik against the manufacturer, as well as Nathumal Damumal, who had purchased the drugs. On these facts, it was held that the offence of manufacture was complete at Calcutta, as soon as the accused manufactured the goods at Calcutta for the purpose of sale and they could not be charged in Nasik for manufacture for sale. Similarly, the goods were sold to Nathumal Damumal at Calcutta and they cannot be charged at Nasik for this offence either, "stocking or exhibiting" for sale would also not be triable at Nasik since they are not stocking or exhibiting for sale either by themselves or by anyone else on their behalf at Nasik. The Court then examined the question as to whether the manufacturer could be said to have distributed the goods at Nasik for the purpose of sale. It was pointed out that if the manufacturers had themselves consigned the goods from Calcutta to Indore or from Indore to Nasik, then there could have been no question of any argument regarding distribution. But the goods in this case were sold to Nathumal Damumal at Calcutta and the transaction was complete. Nevertheless, it was held that the word "distribute" is wide enough to include the repose of the goods at Nasik, even after a completed sale at Calcutta, since the manufacturers were aware that the goods were bound for Nasik. It was further held that it is clear that the ordinary and general meaning of the word "distribute" is sufficient to convey spreading of goods anywhere by whatever means that may be employed and even though the sale was complete at Calcutta, there could be no doubt that they were intended for Nasik. Process of distribution commenced at Calcutta and ended at Nasik and where the goods came to be reposed for the purpose of sale. Taking into consideration that the Act was enacted to control the rampant evil of misnamed drugs or substandard drugs from being sold which may in some cases prove seriously injurious to the purchaser, it was held that it

was not possible to give any other meaning to the word "distribute" and to give any other meaning, would be to frustrate the purpose of the Act and enable the manufacturers to manufacture drugs irresponsibly and spread them throughout the length and breadth of the Country and escape the consequences for such manufacture. After having reached the said conclusion, it was held that Section 179 of Code of Criminal Procedure was clearly attracted, since one of the ingredients of the offence of distribution was actually reaching of the goods at the place for which they were intended. The objections raised by the manufacturer were, therefore, rejected.

10. The other ruling of this Court reported in the case of Smt. Sunder Ben and another v. State of Maharashtra (supra) is in fact on all fours, in so far as the facts of the case in revision are concerned. In the said case, the petitioners were partners of the firm "Crystal Chemicals Indore" doing manufacture of different pharmaceutical products, including "Codorin". Batch No. 252 was sold by the petitioners to M/s. Prima Medical Agency of Indore on 16-12-1976. The said M/s. Prima Medical Agency of Indore, in turn, sold the same to M/s. Prithlyani Medical Stores, Gondia and the Drugs Inspector had taken samples from M/s. Prithlyani Medical Stores, Gondia. The complaint was filed against the petitioners/manufacturers and the proprietor of M/s. Prima Medical Agency at Indore under Sections 18(a)(ii), 18(a)(iv), Section 17(c), read with Section 27 of the Drugs Act, 1940. The firm M/s. Prithlyani Medical Stores, Gondia and its proprietor, were not prosecuted in view of Section 19(3) of the said Act. The prosecution was launched at Gondia. The manufacturers challenged the jurisdiction of the Court at Gondia, but the said objection was overruled. The point involved in the revision in relation to interpretation of Section 179 of Cr.P.C. fell for consideration as under :-

"When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

It was observed that a plain reading of the Section 179, Cr.P.C. shows that the offence is triable where the act is done or where the consequence has ensued and there could be no doubt that the Court at Indore had jurisdiction to try the offence and the question which fell for consideration was whether the Court at Gondia had jurisdiction to try the manufacturer. In support of the submission, Counsel for the petitioners relied upon the decision reported in case of Bassein Drugs and Pharmaceutical Industries Pvt. Ltd. v. State of M.P., 1979 MPLJ Note No. 55, order passed by the Apex Court, dismissing the SLP against the said judgment of the Madhya Pradesh High Court; Ganga Prasad Jaiswal Vs. Chhotelal Jain, ; State Vs. Dhulaji Bavaji, . The prosecution had relied upon State v. Nathumal Damumal 1962 Cri LJ 16 (supra). After consideration of the said authorities, it was held that the consequences have ensued only at Gondia where the Drugs Inspector had raided the shop of M/s. Prithlyani Medical Stores and

recovered the misbranded drugs and, as such, the Court at Gondia had jurisdiction to try the offence u/s 179, Cr.P.C. The contention of the Counsel for the petitioners was that the consequences would be deemed to have ensued only at Indore as soon as the Codorin tablets were sold by the petitioners to M/s. Prima Medical Agencies, Indore and not at Gondia, where the misbranded drug was recovered. Rejecting this contention, it was pointed out that if the said interpretation was accepted, then in a given case, it may be possible for the manufacturer to defeat the very object of Section 179, Cr.P.C. by setting a fictitious person and selling him at the firms' instance and thereafter managing the distribution of the drug at some other places.

11. The matter can be looked at from another angle. The drugs are manufactured for the purpose of sale to the consumers and the actual consequence of misbranded manufactured drug is on the consumer. This consequence is in fact integral part of manufacture since manufacture of drug without its sale, has no meaning. The misbranded drugs having delirious and dangerous consequence on the consumer, may spread in various parts of the Country. It is not possible to take the view that the manufacturer can be prosecuted only at the place of manufacture of drugs, because such stand may lead to escape of defaulting manufacturers from prosecution. There may be cases where the prosecution is satisfied that in view of Section 19(3) of the Act, the seller is not liable for prosecution. Drug Inspectors, u/s 22 of the Act, are empowered to take samples within local limits of the area in which they are appointed. They can file complaints only in the Court having jurisdiction over the local limits of the area in which they are appointed. In such eventualities, if the seller cannot be prosecuted in view of Section 19(3) of the Act, the drug inspector will have no power to file complaint in the Court in whose jurisdiction the adulterated drug was manufactured. This would mean that the manufacturers of drugs would not be subject to prosecution in the State in which the adulterated drug is found for the purpose of sale and distribution. Moreover, u/s 32 of the Act even aggrieved consumer can file complaint where the adulterated drug was sold. It is the consumer who ultimately bears the brunt of such drug. In the absence prosecution of seller, who may be protected u/s 19(3) of the Act, the consumer will be forced to file the complaint at the place where the drug in question was manufactured which may be far off place. Moreover, even though initially the prosecution may be launched against both, the manufacturer and the seller, but in the course of trial, the seller may establish that he is protected u/s 19(3) of the Act and, in such eventualities, the trial against the manufacturer may also be questioned on this count.

12. In view of the above, I have no reason whatsoever to come to a different conclusion than the one which was arrived at in Smt. Sunder Ben and another v. State of Maharashtra (supra). Accordingly, I do not find any merit in this revision and the revision is, hereby, dismissed.

13. Revision dismissed.