

(1969) 04 BOM CK 0011
In the Bombay High Court
Case No : Criminal Appeal No. 1626 of 1967

Prabhudas Kalyanji Adhia

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 09-04-1969

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18, 27, 3

Citation : AIR 1970 Bom 134 : (1969) 71 BOMLR 470 : (1970) CriLJ 455

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Advocate : N.V. Adhia, for the Appellant; V.T. Gambhirwala, Asst. Govt. Pleader, for the Respondent

Judgement

Vaidya, J.—The only question which arises in this appeal filed by Prabhudas Kalyanji Adhia against his conviction u/s 18(c) read with Section 27 of the Drugs and Cosmetics Act, 1940, for manufacturing, stocking and selling on July 15, 1966 the substance which he described as "D. D. T. compound" without a licence under the said Act is, whether the said D. D. T. compound is a drug within the meaning of that Act.

2. The accused did not dispute that at the relevant time he was manufacturing stocking and selling at 121, Parel Tank Road, Parel, Bombay 12, as proprietor of M/s. Hill Side Products D. D. T. compound, but he denied that the substance which he was manufacturing or selling was intended to be used for the destruction of vermin or insects which cause disease in human beings or animals as mentioned in a notification of the Government, of India u/s 3(b)(ii). He relied on a label which was used on his product which he produced. On one side of the label there is a picture of a theatre and it is written:

"Theatre Brand

D. D. T. Co.

Technical DOT cum Malathion

Superior Quality

Hill-side Products, Bombay."

On another side of the label it is written:

"Not for medical use.

Theatre Brand D. D. T. Is to be used with a sprayer for the control of horticultural and household pests other than those that cause disease in human beings or animals.

Caution:--Store well away from

Children, animals, food

stuffs and animal feed.

Wash hands after use.

Do not pour or spill on open fire.

Hill-side Products

Parel Tank Road, Bombay 12."

The accused did not dispute that D. D. T. was actually used in this product. His only contention, therefore, was that the product was not intended to be used as medicine and, therefore, it was not a drug. He also contended that the report of the Public Analyst, which was relied on by the complainant who was a Drug Inspector, did not mention the protocol test and hence the report was useless as evidence.

3. The learned Magistrate was of the view that notwithstanding the contents of the label, the substance manufactured by the accused was drug. It is argued before me that the finding of the learned Magistrate was not right firstly because the report of the Public Analyst did not mention the protocol test and secondly because the substance manufactured, stocked and sold by the accused was not for medicinal use and the learned Magistrate erred in relying on the report and in holding in spite of what was mentioned in the label that the D. D, T, compound sold by the accused was drug.

4. The Magistrate convicted the accused u/s 18(c) read with Section 27 of the Act and sentenced him to suffer simple imprisonment for one day and to pay a fine of Rs. 200 or in default to suffer further imprisonment for 15 days. In my judgment, the conviction and sentence passed against the appellant must be confirmed although not for the reasons stated by the Magistrate. The Learned Magistrate was not right in relying on the report of the Public Analyst which did not mention the protocol test. Nevertheless, as the accused himself has admitted that the substance which he sold contained D.D.T. and it was sold as "D.D.T. compound," it will be against commonsense to hold that it was not a drug. It is a

well-established canon of construction that in dealing with matters relating to the general public, statutes are presumed to use words in their popular sense; *uti loquitur valgu*. The Drugs and Cosmetics Act is dealing with matters relating to the general public. Its object is to regulate the import, manufacture, distribution and sale of drugs and cosmetics. There is no exhaustive definition which includes certain things which perhaps, according to popular usage, could not be included in the popular meaning of the word "drug" or in respect of which there might be some doubt as to whether they would be considered as drugs according to the popular meaning of the word. Section 3(b) reads:

3 (b): "Drug" includes --

(i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of disease in human beings or animals;

(ii) such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette." Therefore, it is necessary for us to take into consideration not merely the clause (i) and (ii) but to find out whether the substance which the accused manufactured, stocked and Sold was a substance which was popularly considered as a drug. In Halsbury's Laws of England, Volume 17, Third Edition, page 448 para 831 it is stated:

"The term "drug" includes medicine for internal or external use. In any case of doubt, it will be a question of fact for the determination of the court whether an article is a drug or not, and the answer will depend upon whether or not the substance was sold for use as medicine. An article is not necessarily a drug because it is included in the British Pharmacopoeia and may be used in the preparation of medicines, nor is an article a drug merely because it is sold under a designation which implies that it contains a drug in its composition, when in fact it does not."

In the present case, the accused himself has admitted that the substance which he sold as D. D. T. compound contained D. D. T. which is a well-known drug in the 20th century. The Oxford English Dictionary has described drug as "an original, simple medicinal substance, organic or inorganic, whether used by itself in its natural condition or prepared by art, or as an ingredient in a medicine or medicament. Having regard to the popular as well as dictionary meaning of the word "drug", I have no doubt that the D. D. T. compound which was sold by the accused was a drug irrespective of whether it was notified by the Government of India or whether it contained the chemical ingredients which the Public Analyst has found or not.

5. In the result, the conviction and sentence passed against the appellant are confirmed, and the appeal is dismissed.

6. Appeal dismissed.