
(1958) 05 PAT CK 0010

In the Patna High Court

Ramlagan Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 16-05-1958

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18, 21, 27, 32
Evidence Act, 1872 — Section 57

Citation : (1960) CriLJ 845

Hon'ble Judges : R.K. Choudhuri, J;K. Sahai, J

Bench : Division Bench

Judgement

K. Sahai, J.—The petitioner has been convicted u/s 27 of the Drugs Act, 1940, for contravention of Clauses (a) (ii) and (c) of Section 18 of the same Act and sentenced to pay a fine of Rs, 150/-, or in default to suffer rigorous imprisonment for three months.

2. Admittedly, the petitioner is the, owner of a homeopathic medicine shop known as Sathi Homeo Laboratory which is situated in Mohalla Bakerganj of Laheriasarai town. The prosecution case is that Shyam Sundar Prasad (P.W. 2), who was then the Inspector of Drugs, Tirhut Division, visited the petitioner's shop on the 12th March, 1955 and found 44 ampules of quinine bi hydro-chloride, 33 of them being with labels and 11 without labels. Shyam Sundar Prasad was transferred and Vishwanath Prasad Srivastava (P.W. 1) was appointed as Inspector of Drugs, Tirhut Division, in May 1954. He submitted a complaint dated the 14th April, 1955, which was received by the Sub-divisional Magistrate concerned on the 4th May, 1955. In due course, the petitioner was put upon his trial with the result which I have already mentioned.

3. The first point which Mr. Rameshwar Choudhary has taken on behalf of the petitioner is that the petitioner's trial must be held to be vitiated because an Inspector of Drugs alone can institute a prosecution under the Act and there is no material on the record to show that Vishwanath Prasad Srivastava (P.W. 1) was duly appointed as an Inspector. He has also contended that nothing outside

the record can be looked into for this purpose. In support of these contentions, he has drawn our attention to the decision of a learned Single Judge of this Court in *Abdul Hamid v. The State* 1955 BLJR 40.

4. Sub-section (1) of Section 32 of the Drugs Act provides that no prosecution under Chapter IV of the Act shall be instituted except by an Inspector. Section 21(1) of the same Act lays down:—

(1) The State Government may, by notification in the official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for the purposes of this Chapter within such local limits as it may assign to them respectively.

There is a proviso to this Sub-section, but that is irrelevant for the purposes of this case. The effect of these provisions is that no one except an Inspector appointed by the State Government by notification in the Official Gazette can launch a prosecution under the Drugs Act. In *Abdul Hamid* case 1955 BLJR 40, the learned Advocate for the State conceded that there was no evidence on the record to prove that Shyam Sundar Prasad, who had instituted the prosecution, had in fact been notified by the State Government to be an Inspector of Drugs. It further appears that the relevant notification in the Bihar Gazette was not brought to the notice of the learned Judge nor was he invited to take it into consideration on this point. The case is, therefore, no authority for the proposition contended for by Mr. Rameshwar Choudhary that this Court cannot take into consideration the Bihar Gazette at this stage in order to ascertain whether Vishwanath Prasad Srivastava (P.W. 1) was an Inspector appointed by the Government on the date on which he instituted the prosecution.

5. Section 57 of the Evidence Act provides for judicial notice being taken of some facts. Under Sub-section (1) Judicial notice has to be taken of all laws in force in the territory of India, It can hardly be argued that the law, which is in question in a particular case, should be put in evidence as an exhibit on the records of that case. Sub-section (7) reads:—

7. The accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any State, the fact of their appointment to such office is notified in any official Gazette.

Under this Sub-section, Judicial notice has to be taken of the office occupied by a particular individual if the fact of his appointment is notified in the official Gazette. Such notice can be taken if the Gazette is produced for inspection of the Court at the time of the argument in the original, appellate or revisional court, just as the law can be perused at any stage under Sub-section (1). It is obviously unnecessary for the prosecution to put a copy of the relevant notification on the record of the case as an exhibit.

6. The learned Additional Standing Counsel has referred to notification No. III-DI-1-79/54-6780-11, dated the 11th March, 1954, published in the Bihar Gazette

of the 24th March, 1954. Under . this notification, Vishwanath1 Prasad "Srijvastava was appointed as Drugs Inspector on a temporary basis with effect from the 23rd February, 1954 (afternoon) and was posted in South Bihar. Under notification No. III-DI-1-79/54-21621-H dated the 20th August, 1954, published in the Bihar Gazette of the 1st September, 1954, Vishwanath Prasad Srivastava, temporary Drugs Inspector, was posted to the Tirhut Division with effect from the 31st May, 1954 (afternoon) in place of Shyam Sundar Prasad (P.W. 2). In view of these two notifications, there can be no doubt that P.W. 1 was an Inspector of Drugs on the date on which he instituted the prosecution in this case. There ;s, thus, no contravention of Section 32(1) of the Act. I, therefore, hold that the petitioner's trial in this case has not been vitiated.

7. The only other point which Mr. Choudhary has taken is that the finding that the petitioner had .stocked the ampules of quinine bi hydrochloride for sale is not based upon adequate materials. I have considered this point. There are two very strong circumstances against the petitioner. Firstly all the 44 ampoules were found on the racks in his shop where he stocked other medicines for sale. Secondly, no one can ordinarily be expected to keep so many as 44 ampules for personal use. In view of these facts, I am gf opinion that the finding is fully justified though there Is no direct evidence on the point.

8. I do not find any good ground for interference with the petitioner's conviction and sentence. The application is, therefore, dismissed.

R.K. Chaudhuri, J.

9. I agree.