
(1964) 09 CAL CK 0025
In the Calcutta High Court
Case No : F.O.O. No. 61 of 1964

Ranendra Nath Neogy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-09-1964

Acts Referred:

Constitution of India, 1950 — Article 20(2)
Drugs and Cosmetics Act, 1940 — Section 18, 27

Citation : AIR 1965 Cal 434 : (1965) CriLJ 206

Hon'ble Judges : H.K. Bose, C.J.; B.C. Mitra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bose, C.J.—This is an appeal from an order of Sinha, J., dated the 21st November, 1963 summarily objecting an application under Article 226 of the Constitution asking for a writ in the nature of prohibition.

2. The Appellant Stated a drug manufacturing business under the name and style of Messrs. Vitamin Laboratories, in 1946 at "Sukchar in the District of 24 Parganas Later on he transferred his business to 43/2B; Baghbazar Street, Calcutia, which apparently bore another municipal number being 16/2 Mahendra Bose Lane, Bagbazar, Calcutta: In 1948 the Government of West Bengal introduced the licensing, system for the manufacture of drugs. The issuing of such licences and renewal thereof are regulated by the provisions of the Drugs Act. 1940 and the Drug Rules of 1945 framed under the said Act. The appellant was granted licences for manufacture of biological and non-biological medicines in 1948 and such licences were for a period of two years and were renewed in the years 1950, 1952 and 1954. On the 29th October, 1954 the appellant received a letter from the Drug Licensing Authority directing him to stop the manufacturing of medicines immediately, on the ground, that the appellant was manufacturing drugs at 43/2B Bagbazar Street instead of 16/2 Mahendra Buse Lane which was the, address recorded in the licence and that he was not

observing the conditions of the licence and the provisions of the Drug Rules. Thereafter certain correspondence followed and on the 20th November, 1954 he appellant received another letter from the Drug Licensing Officer that his applications for renewal of licences, dated the 8th September, 1954 and 22nd September, 1954 had been cancelled under the Drugs Act, 1940 for reasons and defects set out in that letter and the appellant was asked to remove the defects and thereafter to apply again within six months, for renewal of his licences, after depositing the prescribed fees, and until then the appellant was not to manufacture drugs and if he did so, legal action would be taken against him. It is alleged that thereafter upon removal of certain defects the licences of the petitioner were renewed for the year 1956 for a period of two years. Thereafter the appellant filed further applications for renewal of licence on the 27th November 1958, 5th September 1960, 19th September 1960, and also for the year 1962, but no renewal was granted for the periods 1958, 1960 and 1962 in spite of several representations made for the purpose. On or about the 18th May 1960, a petition of complaint was filed by Dr. Somendra Nath Dattta, Inspector of Drugs, Government of West Bengal in the Court of the Chief Presidency Magistrate, Calcutta for the prosecution of the appellant u/s 27 of the Drugs Act read with Sections 18 (a) (i), 18 (a) (ii) and 18 (c) of the Drugs Act, 1940. In this petition of complaint It is inter alia stated that on the 11th December, 1959 Shri M. S. Saha, an Inspector of Drugs took a sample of "water for injection" B. P. Batch No. 321 manufactured by the Vitamin Laboratories from Messrs. Cross Max and Co. of 21 Patakdanga Street, Calcutta, for test and analysts, and the Government Analyst, West Bengal, reported that the drug was not of standard quality.

3. On the 5th February, 1960 the complainant Dr. Datta assisted by several inspectors of Drugs searched the premises of the firm Vitamin Laboratories in the presence of search witnesses and found water for injection B. P. ampoules being manufactured, with a stock of such finished ampoules in boxes ready for sale and seized the stock of the finished products and also certain ualabelled, filled and sealed ampoules, and empty ampoules; and certain apparatus and appliances, etc., and prepared a seizure list. On the same date the 5th February, 1960, Dr. Datta took a sample of water for injection and sent the said sample to the Government Analyst for report. The Government Analyst reported that the drug was not of standard quality. A copy of this report was sent to the appellant. It was also found on the 5th February, 1960 in course of the search and seizure that the finished water for injection B. P. ampoules bore labels without the date of manufacture as required under the Drug Rules. It further appeared from search of the records of the Drug Licensing Officer, West Bengal, that the appellant had no licence for manufacture for sale, sock for sale and sale of drugs from premises No. 13/2B Bagbazar Street Calcutta, In the circumstances, the appellant was alleged to be manufacturing for sale, stocking for sale and selling water for injection without necessary licence for the premises No. 43/2B Bagbazar Street thereby contravening Section 18 (c) of the Drugs Act and was

punishable u/s 27 of the Drugs Act. The further charge was that the appellant had manufactured for sale, stocked for sale and sold misbranded "water for injection" B. P. contravening Section 18 (a) (ii) read with Section 17 (a) of the Drugs Act and was as such punishable u/s 27 of the Act. The further charge was that the appellant had manufactured for sale, stocked for sale and sold "water for injection" B. P. 10 cc. ampoules not of standard quality thereby contravening Section 18 (a) (i) of the Drugs Act punishable u/s 27 of the Act. This criminal case came to be tried by Sri S. K. Sanyal Presidency Magistrate (9th Court) Calcutta and on the 4th March, 1961 the appellant was convicted and sentenced to pay a fine of Rs. 1,000 and in default to suffer rigorous imprisonment for six months for the offence committed u/s 18 (a) (i) of the Drugs Act read with Section 27. The appellant was further convicted and sentenced to pay a fine of Rs. 500 and in default to suffer rigorous imprisonment for two months for being found guilty u/s 27 of the Act read with Section 18 (c) thereof. The appellant was further convicted and sentenced to pay a fine of Rs. 200 and in default to suffer rigorous imprisonment for one month for being found guilty u/s 27 of the Act read with Section 18 (a) (ii) of the Act. The appellant thereupon deposited the said fine of Rs. 1,700 and preferred an appeal to this High Court being criminal appeal No. 514 of 1961 and the said appeal is still pending for hearing before this Court.

4. Subsequently on the 13th March, 1962 the same Inspector, Dr. Somendra Nath Datta, filed another petition of complaint in the Court of the Chief Presidency Magistrate against the appellant and one Amiya Kumar Dey, an employee of the appellant. In this petition of complaint it is alleged that upon information received that the appellant was carrying on manufacture for sale and was stocking for sale "water for injection" B. P. and normal saline ampoules B. P. the petitioner Dr. Datta accompanied by Mr. N. C. Banerjee, of the Enforcement Branch of the Calcutta Police on the 11th October, 1961 inspected the premises No. 43/2B Baghbazar Street and found manufacturing process, filling and sealing labelling, packing, etc., of "water for injection" B. P. and ampoules of normal saline B. P. were going on in full swing and the Inspector also found in stock a big quantity of ready stock of finished water for injection B. P. and normal saline ampoules B. P. and also filled and sealed ampoules without labels, empty ampoules and loose labels at that premises. The Inspector took samples of water for injection" B. P. and ampoules of normal saline B.P. manufactured by the firm of the appellant for test and analysis and Mr. Banerjee of the Calcutta police on the same date that is, 11th October 1961, seized a big quantity of "water for injection" B. P. and normal saline B. P. in course of such seared. The appellant came to the premises when the search was going on but the employer Amiya Kumar Day was in charge of and looking after the manufacture at the time the Inspector and the Police Officer visited the premises and conducting the seared and seizure. On the 12th October 1961 the Inspector sent both the aforesaid samples of injection and normal saline to the Government Analys, West Bengal, for report on test and analysis. The Government Analyst submitted his report

stating that the samples of "water for injection" and "normal saline" were not of standard equality as defined in the Drugs Act and the rules thereunder. Copies of such reports were sent to the appellant on the 13th December, 1961 but the appellant did not send any reply nor took any steps to controvert the segment made in the report. It is further allowed in the petition of complaint that the seized ampules of water and normal saline have labels which bore no address of the manufacture or the date of manufacture as required by the Drug Rules and as such were misbranded drugs under the Act. It was further ascertained from search of the records of the Drug Licensing Officer, West Bengal that the appellant had no licence for manufacture for sale of drugs at premises No. 43/2B Baghbazar Street and as he had thus contravened Section 18 (c) of the Drugs Act and Sections 18 (a) (i) and 18 (a) (ii) read with Section 17 (a) of the Act, the appellant was punishable u/s 27 of the Act and Amiya Kumar Dey was punishable u/s 27 of the Act read with Section 109 of the Indian Penal Code for having abetted the commission of the several offences mentioned in the petition.

5. The case of the appellant in the petition under Article 226 of the Constitution further is that on the 10th February, 1963 another prosecution case was started against him by the Enforcement Branch, Calcutta Police, before the Chief Presidency Magistrate, Calcutta, and huge quantity of drugs, and manufacturing instruments and accessories were seized by the Enforcement Branch. There was no petition of complaint in this case but the Chief Presidency Magistrate had taken cognizance on the report of the Police Officer and the said case is in the remand stage, But in the course of the hearing before us we are told that the appellant moved the criminal revisions jurisdiction of this Court against this prosecution, but the said application has been dismissed.

6. On the 27th June, 1963 the appellant moved this Court under Article 226 of the Constitution for a Writ of Mandamus against the Drug Licensing Authority, Government of India and Government of West Bengal, and Mr. Justice Banerjee issued a Rule calling upon the respondents to show cause why the licences of the petitioner for the periods 1958, 1960 and 1962 will not be renewed. This matter was numbered as 243 of 1963. We are told that this Rule has since been discharged. But the appellant has presented another petition making for a Writ of Mandamus in respect of this renewal of licences. This petition under Article 226 of the Constitution asking for a Writ of Prohibition for restraining the criminal proceedings pending in the Court of the Chief Presidency Magistrate and for restraining launching of criminal prosecutions in future was moved before Mr. Justice Sinha on the 21st November, 1963 but was summarily rejected by him. It is against this order of Sinha, J., that the present appeal has been preferred and the contention before us at the hearing has been that the appellant cannot be prosecuted more than once for the same offence inasmuch as Article 20(2) of the Constitution and Section 403 of the Code of Criminal Procedure provide a complete bar to a second prosecution in respect of the same charge or same offence. It is submitted that inasmuch as an appeal is pending in this Court in respect of the prosecution started on the 4th March 1961, the further

prosecution started on the 13th March, 1962 is violative of Article 20(2) of the Constitution and Section 408 of the Code of Criminal Procedure. It appears to us that this contention on behalf of the appellant is unsound and is without any substance. A perusal of the two petitions of complaints filed on the 4th March, 1961 and 13th March, 1962 makes it abundantly clear that they are not identical. The prosecutions are based on different searches and seizures made at different times and upon commission of the offences at different points of time. Moreover, the second petition of complaint relates to illegal manufacture of "water for injection" B. P. and also another drug, namely, Normal Saline B. P., whereas the first petition of complaint was based on the illegal manufacture of only "water for injection" B. P. Further the second complaint was in respect of the illegal manufacture which was found to be going on in full swing on the 11th October 1961, whereas the first complaint was in respect of the manufacture of "water for injection" on or about the 5th February 1960. So although no doubt the allegations with regard to contravention of Sections 18 (a) (i), 18 (a) (ii) read with Section 17 (a) and Section 18 (c) of the Drugs Act, or in other words, the sections contravened and under which the offence is punishable are identical in both cases, the offences in respect of which the two prosecutions have been launched cannot by any stretch of imagination be regarded as identical.

7. It has been clearly, laid down by the Supreme Court in the case of State, of Bombay v S. L. Apte, AIR 1981 SC 578, that if the offences in respect of which prosecutions started are distinct and different, there is no question of the Rule as to double jeopardy as embodied in Article 20(2) of the Constitution being applicable. At page 581 of the Report, Ayyangar, J., who delivered the judgment of the Supreme Court observed as follows:--

"To operate as a bar the second prosecution and the "consequential punishment thereunder must be for the "same offence". The crucial requirement; therefore, for attracting the Article" is that the offences are the same, that is, they should be identical. If, however, the two offences are distinct then notwithstanding that the allegations of facts in the two complaints might be substantially similar, the benefit of the ban cannot be invoked."

8. As I have pointed out already, the contravention of the sections for which the second prosecution was started was a continuing offence and an offence distinct, and different from that which was the subject-matter of the first prosecution and consequently the principle of double jeopardy is not attracted to the facts and circumstances of this case.

9. There is thus no substance in this appeal and it is accordingly dismissed. There will be no order as to costs.

B.C. Mitra, J.

10. I agree.