

(1984) 04 AHC CK 0041
In the Allahabad High Court

Ravindra Prakash Arya

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 24-04-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 26, 29, 323
Drugs and Cosmetics Act, 1940 — Section 18, 18A, 26, 27, 27A

Citation : (1984) CriLJ 1321

Hon'ble Judges : K.C. Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.C. Agarwal, J.—This revision is directed against the judgment of I Additional Sessions Judge, Ghaziabad, upholding the contention of the Union of India that the complaint filed by the Drugs Inspector under the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the Act) against the applicant for the offences under Sections 27(a)(ii) read with Section 18(c), Section 27(a)(i) and Section 27(b) read with Section 18(a)(i), Section 18(a)(ii), 18(a)(iii) Section 28 read with Section 18A of the Drugs and Cosmetics Act, 1940, which is triable by the Sessions Court.

2. It appears that on receiving information that the accused applicant was selling spurious drugs from his shop known as M/s. Aggrawal Medicine Company, Upper Bazar, Modinagar, a test purchase of 5 capsules of Oxytetracycline, Batch No. 190773, manufactured by M/s. Cooper pharma, New Delhi, was made along with other drugs from the aforesaid shop. The capsules were sent to the Director, Central India pharmacopoeia Laboratory, Ghaziadad, for testing. By his test report-dated 31.7.1974, the Director declared that the" drug was not of acceptable quality for the reasons given in his report. The premises of the aforesaid shop was again inspected on 9.4.1974. No licence, whatsoever, for stocking and sale of drugs was found issued to Dr. Ravindra Prakash Arya the applicant, by the licensing authority till 9.8.1974. On the basis of these

allegations and some others a complaint was filed on 16.1.1976 against the applicant for being prosecuted for the offences mentioned above.

3. The Chief Judicial Magistrate took the statement of the Drugs Inspector u/s 200, Criminal P.G. and, thereafter, summoned the applicant.

4. During the pendency of the case, the Union of India made an application for committing the case to the Sessions Court on the ground that the punishment which could be awarded to the applicant was beyond his power and jurisdiction. The application was opposed by the applicant. The Chief Judicial Magistrate rejected the application holding that it was not mandatory for him to commit the case to the Court of Session at that stage, when the recording of the statement of PW 1 had been started. The Chief Judicial Magistrate held that if at any time or at any stage of framing of the charge, he came to the conclusion that the offences were such that adequate punishment could not be awarded by the Chief Judicial Magistrate, the case would be committed to the Court of Session, u/s 323, Criminal P.C. 1973.

5. In revision, taken against this order by the Union of India, the learned Sessions Judge held that as for the offences the punishment provided was beyond the jurisdiction of the Chief Judicial Magistrate, the case was liable to be committed to the Court of Session. For this purpose, the learned Sessions Judge relied on a decision of the Calcutta High Court referred to in *The State Vs. Bejoy Kr. Chatterjee and Others*, and also on another decision of this Court given in Criminal Revn. No. 48 of 1980, *Brij Lal v. Union of India* decided on 11.3.1980.

6. In this revision which has been preferred against the aforesaid order of the I Additional Sessions Judge, Ghaziabad, the learned Counsel urged that Section 36 of the Act conferred exclusive power of trial on the Magistrate, hence, the learned Additional Sessions Judge committed an error in directing the Chief Judicial Magistrate to commit the case to the Court of Session.

7. Section 36 was inserted by Act 11 of 1955. The marginal note of Section 36 reads as under:

Magistrate's power to impose enhanced penalties.

8. The Magistrate's power as given in the old Code of Criminal Procedure was to impose imprisonment up to two years. It was when the Act provided for the imposition of sentence of three years, then Section 36 was brought in. In order to get over this difficulty, Section 36 laid down that notwithstanding anything contained in the Code of Criminal Procedure, 1898, it shall be lawful for any Presidency Magistrate or Magistrate of the First Class to pass any sentence authorised by this Act in excess of his powers conferred by the Code of Criminal Procedure.

9. In this connection, the argument of the applicant's counsel next made was that Section 36 of the Act overrides Section 26(b) of the new Code, which corresponded with Section 29 of the old Code. The submission does not appear

to be correct. Section 26 of the new Code deals with the jurisdiction of various Courts mentioned therein whereas Section 29 of the new Code lays down the sentences which Magistrates may pass. Sub-section (1) of Section 29 of the new Code provides that the Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or imprisonment for life or of imprisonment for a term exceeding seven years. Sub-section (2) or (4) deals with matters with which we are not directly concerned. Section 29 of the old Code, which is equivalent to Section 32 of the old Code, imposes a limit as to sentence which the Magistrates may pass. Section 26 of the Act was enacted, as" stated above, when the Magistrate of the First Class under the old Code had power to impose punishment up to two years. The court of the Chief Judicial Magistrate was created by the new Code. Sub-section (1) of Section 29 Conferred upon the Chief Judicial Magistrate the powers about which details have already been given above. Before the amendment, a Magistrate of the First Class could not impose punishment of three years, which the Act wanted to be given in case of certain offences being, established. To override this difficulty that Section 36 was enacted. It has nothing to do with providing for jurisdiction on him to try a case. It did not provide that all the offences contemplated by the Act had to be decided only by the Magistrates of the First Class.

10. After the Amending Act 13 of 1964, the maximum sentence awardable to a case of Clause (a) can extend to ten years. This is beyond the powers of the Magistrate of the First Class under the old Code as well as under the new Code. The Chief Judicial Magistrate also under Sub-section (1) of Section 29 cannot give ten years in cases where offences attracting Clause (a) of Section 27 had been committed before the enactment of U.P. Act 47 of 1975. After the enactment of U.P. Act 47 of 1975, the punishment provided is imprisonment for life and where a Court awards the sentence of imprisonment which is less than imprisonment for life, it can do so only by recording special reasons in writing.

11. From what I have said above, it is clear that Section 36 had been wrongly taken help of for the argument that the offences contemplated by Clause (a) of Section 27, where the sentence could extend to ten years, were. triable by the Magistrate of the First Class.

12. There are some offences provided for by the Act where the punishment is less and may fall within the jurisdiction of the magistrate of the first class or the Chief Judicial Magistrate. That would be a case different from one where the sentence is beyond jurisdiction of the magistrate of the first class and the Chief Judicial Magistrate.

13. Subsequently, Section 27 of the Act was amended and laid down that the offences mentioned in it shall be punishable with imprisonment for a term which shall not be less than one year and which may extend to ten years. The amendment of Section 27 was brought by Act 13 of 1964 coming into force on 15.9.1964.

14. The complaint filed by the Drugs Inspector against the applicant was in respect of the offences which have been mentioned above. Under these provisions, the applicant could be convicted and sentenced for the term which travels beyond the power of the magistrate as conferred upon him by the Code of Criminal Procedure, 1973. Under this Code, a magistrate can award the sentence up to seven years. The first Schedule to the Code of Criminal Procedure deals only with the offences under the Penal Code. This Schedule would indicate that a Presidency Magistrate or a Magistrate of the First Class would have no power to award the sentence of ten years which is permissible u/s 27A. That being so, the Chief Judicial Magistrate could not try and decide the case.

15. In *The State Vs. Bejoy Kr. Chatterjee and Others*, , the Calcutta High Court was seized with a similar controversy. It has elaborately dealt with the other aspects of the matter and has repelled a similar argument raised before it that a case under the Act is liable to be tried by a magistrate and not by the Sessions Court. I am in complete agreement with the view taken in that case.

16. Learned Counsel for the applicant relied on certain decisions of the Supreme Court and this Court on the competency of the Magistrate to deal with a matter arising out of the Forest Act. One of the cases reported is in *State of Uttar Pradesh Vs. Sabir Ali and Another*, . That was a case where there was a special provision. Finding that there was a special provision for the trial of the offences under the Forest Act by the second class Magistrate the Supreme Court held that it could be done by IIInd Class Magistrate. It further observed that in the event of the case being tried by the Magistrate of the First Class, the accused of Forest Act would lose his right of appeal.

17. In the instant case, the Drugs and Cosmetics Act does not contain any special provision which could override the general provisions of the Code of Criminal Procedure. There is nothing in the Act which requires that the Presidency Magistrate or the Magistrate of the First Class would be entitled to decide even a case where the accused is liable to imprisonment for a term beyond the power conferred upon him by the Code of Criminal Procedure. There being no special provision, the general provision contained in the Code of Criminal Procedure would apply.

18. As stated above, the emphasis of the learned Counsel on Section 36 was misplaced. There was a definite object for enacting it at the time when it was so done. The marginal note of Section 36 is also indicative of its intention. For a limited purpose help of the marginal note can be taken to find out the true scope of Section 36. To my mind, the court below was right in allowing the revision and in directing the Chief Judicial Magistrate to commit the case to the Court of Session.

19. In the result, the revision fails and is dismissed. The Chief Judicial Magistrate is directed to comply with the order of the High Court expeditiously. The learned Sessions Judge to whom the case would, thereafter, be committed, would also

keep the urgency of the matter in view while trying it.