
(1996) 11 AHC CK 0004

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 3107 of 1982

Smt. Renu Chopra

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 05-11-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Drugs and Cosmetics Act, 1940 — Section 17A, 18, 27
Penal Code, 1860 (IPC) — Section 120B

Citation : (1997) 21 ACR 161

Hon'ble Judges : G.P. Mathur, J

Bench : Single Bench

Advocate : Rajesh Tandon, for the Appellant; G.A., for the Respondent

Judgement

G.P. Mathur, J.—This petition u/s 482, Code of Criminal Procedure has been filed for quashing the proceedings of Criminal Case No. 98 of 1977, State v. J.K. Chopra and Ors., u/s 18/27 Drugs and Cosmetics Act and Section 120B, I.P.C.

2. The Inspector of Drugs filed a criminal complaint against J.K. Chopra and eleven others in the Court of Chief Metropolitan Magistrate, Kanpur for their prosecution u/s 27 of the Drugs and Cosmetics Act and Section 120B, I.P.C. the applicant Smt. Renu Chopra is daughter of Sri J.K. Chopra and is arrayed as accused No. 9 in the complaint. The material allegations in the complaint are that a Firm M/s. Spa Pharma of which J.K. Chopra and his wife Smt. Gargi Chopra were partners was granted a licence on 31.5.1965 to manufacture drugs. Smt. Gargi Chopra (accused) also worked as Analytical Chemist in the said Firm. On 14.9.1971 accused J.K. Chopra moved an application before the Assistant Controller of Drugs, U.P. for granting approval to Smt. Gargi Chopra as Manufacturing Chemist. About 50 drugs manufactured by the Firm M/s. Spa Pharma were reported to be not of prescribed standard. Apprehending action, the partners of the Firm M/s. Spa Pharma sold the same to Sri Gajanan Goyal on 17.7.1973. J.K. Chopra and V.K. Seth constituted another Firm in the name and

style of M/s. B. Jay Pharma in 1972 and an application was given on 30.3.1973 for grant of a licence to manufacture drugs. The accused Niranjan Prasad, Assistant Controller of Drugs and accused R. K. Arora Inspector of Drugs knowing fully well that accused J.K. Chopra was earlier running the Firm M/s. Spa Pharma, the drugs manufactured by which had been found to be sub-standard, made a recommendation for grant of licence to the Firm B. Jay Pharma. Manufacturing licence was in fact granted in favour of the aforesaid Firm on 11.5.1973 and Smt. Gargi Chopra was shown as manufacturing chemist in the licence. Another firm by the name of M/s. B. Jay Pharma (Sales) was also constituted at Kanpur of which the applicant Renu Chopra, daughter of J.K. Chopra aforesaid and Smt. Puspa Seth, wife of B.K. Seth were partners. This Firm started selling drugs manufactured by Firm M/s. B. Jay Pharma. The case of the prosecution further is that Firm M/s. B. Jay (Sales) sold Dextrose Injections and some other Drugs manufactured by the Firm M/s. B. Jay Pharma to L.L.R. Hospital, Kanpur on 9.4.1974. These drugs were given to the patients in the Hospital and several of them died between 11.4.1974 to 14.4.74. Sample of the drugs sold by the Firm B.J. Pharma (Sales) was collected from the Hospital and was sent for analysis to Government Analyst, Central Drugs Laboratory, Calcutta who reported the same to be adulterated. Thereafter a complaint was filed against twelve persons including Dr. Niranjan Prasad, the then Assistant Controller of Drugs, U.P. and Sri R.K. Arora, the then Inspector of Drugs, Kanpur.

3. It is well-settled that proceedings of a criminal case can be quashed by the High Court u/s 482, Code of Criminal Procedure, if the allegations made in the F.I.R or the complaint did not disclose commission of an offence. At this stage, the court is not concerned with the correctness of the allegations made and has to proceed on the basis that the same are correct. The allegations in the complaint show that the applicant was a partner of the Firm M/s. B. Jay Pharma (Sales) which sold some drugs manufactured by the Firm M/s. B. Jay Pharma to L.L.R. Hospital, Kanpur on 9.4.1974 and that number of patients died on account of the fact that they were administering the aforesaid drugs. The sample of the drugs sold by the applicant's firm to the Hospital was sent for analysis to the Government Analyst, Central Drugs Laboratory, Calcutta and a portion of his report is reproduced below:

Injection of Dextrose I.P.B. No. 636 Sub-standard/presence of fibre like material visible with unaided eye in ordinary day light. Pyregens present, phenol present.

Water for Injection Sub-standard/presence of glass particles visible with unaided eye in ordinary day light.

Normal Saline Solution for Injection Sub-standard/presence of glass particles. Visible with unaided eye in ordinary day light/phenol present.

4. Government Analyst also reported that bottles contained phenol, the use of which is prohibited in Indian Pharmacopoeia and British Pharmacopoeia, Phenol is, protoplasmic poison and is toxic to all types of cells and is known to cause

haemolysis of human blood.

5. Section 17A of Drugs and Cosmetics Act (hereinafter referred to as the Act) lays down when a drug shall be deemed to be adulterated. If a drug consists in whole or in part of any filthy putrid or decomposed substance or if it has been prepared, packed or stored under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health, it will be adulterated within the meaning of Sub-section (a) or (b), as the case may be. Similarly, if a drug contains any harmful or toxic substance which may render it injurious to health, it will be adulterated within the meaning of Sub-section (e). According to the report of the analyst, the drugs supplied by the Firm M/s. B. Jay Pharma (Sales) to the Hospital were of the type enumerated in Sub-section (a), Sub-section (b) and Sub-section (e) and were, therefore, adulterated within the meaning of Section 17A of the Act. Section 27 provides that whoever sells any drug deemed to be adulterated u/s 17A, shall be liable to be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than five thousand rupees. The allegations in the complaint show that the applicant is a partner of the Firm which sold adulterated drugs to the Hospital. Therefore, the case of the applicant clearly comes within the purview of Section 27 of the Act and the proceedings instituted against her cannot be quashed.

6. Learned Counsel has next submitted that the proceedings against some co-accused of the same complaint have already been quashed by the High Court and, therefore, the proceedings against the applicant also deserved to be quashed. Copies of Judgments given by this Court in three cases have been filed as Annexures 6, 7 and 8 to the petition. So far as the cases of Dr. Niranjana Prasad and B.K. Arora, being CrI. Misc. Application Nos. 3707 of 1977 and 4543 of 1979, are concerned, they stand on entirely different footing. B.K. Arora was the Inspector of Drugs and Sri Niranjana Prasad was posted as Assistant Controller of Drugs, U.P. with Head Quarter at Lucknow in the year 1970 and thereafter he was transferred as Joint Director of Medical and Health. These two persons are Government servants and they had no connection whatsoever either with the Firm which manufactured the drugs or with the Firm which sold the same to the Hospital. The only allegations made against them in the complaint is that they made a recommendation for grant of a licence for manufacturing drugs in favour of the Firm M/s. B. Jay Pharma although they knew that some partners of this Firm were earlier running another Firm by the name of M/s. Spa Pharma and some of the drugs manufactured by this Firm had been reported to be substandard. There is no dispute that these two persons had played no part either in manufacture or in the sale of the Drugs to the Hospital and, therefore, their cases are entirely distinguishable from that of the applicant.

7. So far as the case of Smt. Puspha Seth (Criminal Misc. Application No. 5272 of 1980) is concerned, a learned single Judge recorded the following findings while quashing the proceedings.

To my mind, therefore, to let such a complaint proceed against Smt. Pushpa Seth who is the Head of the Department of Hindi at Mahila Mahavidhyalaya, Kanpur, a college affiliated to Kanpur University, who is not at all concerned in the business of manufacturing of the drugs and who is only a partner in the Firm looking after sales, would cause a lot of harassment to her and would be an abuse of the process of the court.

With profound respects. I am unable to accept the submission of the learned Counsel that for the reasons recorded in the case of Smt. Pushpa Seth, the proceedings against the applicant should also be quashed. Deed of partnership of the Firm M/s. B. Jay Pharma (Sales) has been filed as Annexure 1 to the petition and it shows that the applicant Renu Chopra had ten per cent share in the partnership. There is no recital anywhere that she would be a sleeping partner or that she will have no concern with the affairs of the Firm. Clause (6) of the Deed shows that a special provision was made for Km. Anita Chopra, minor daughter of J.K. Chopra and she was only admitted to the benefits of the partnership business. However, there is no such provision with regard to the applicant. The applicant is none else but the daughter of J.K. Chopra who is controlling the Firm B. Jay Pharma which manufactured the adulterated drugs. At this stage when the evidence is yet to be adduced, it is not possible to hold that the applicant had no role to play. Learned Counsel has also referred to *State of Karnataka v. Pratap Chand*, 1981 AWC 295 and *Ashok Kumar Khurana Vs. State of U.P. and Others*, where it was held that in view of Section 34 of the Act, a partner of the Firm is liable to be convicted for an offence committed by the Firm if he was in charge of and was responsible to the Firm for the conduct of the business of the Firm or if it is proved that the offence was committed with the consent or connivance of or attributable to any neglect on the part of the partner concerned. This finding cannot be recorded in favour of the applicant at this stage as the controversy involved depends upon facts. In both the cases, relied upon by the learned Counsel, matter had come up to the High Court after decision on merits by the trial court and first appellate court wherein both the parties had given complete evidence in support of their case. In this petition u/s 482, Code of Criminal Procedure, it is not possible to record such a finding in favour of the applicant. Therefore, the proceedings against the applicant cannot be quashed on the ground that proceedings of the same complaint have already been quashed by this Court as against three other accused.

8. For the reasons mentioned above, there is no merit in this petition. The petition is accordingly dismissed and stay orders are vacated. The trial court is directed to proceed with the trial expeditiously as on account of the stay granted by this Court the proceedings have remained stayed since May, 1982.