

(1965) 01 AHC CK 0005

In the Allahabad High Court

Case No : Govt. Criminal Appeal No. 1739 of 1963

State

APPELLANT

Vs

H.L. Sahgal

RESPONDENT

Date of Decision : 19-01-1965

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18, 27
Drugs and Cosmetics Rules, 1945 — Rule 59, 61

Citation : AIR 1967 All 292 : (1967) 37 AWR 455 : (1967) CriLJ 681

Hon'ble Judges : H.C.P. Tripathi, J

Bench : Single Bench

Advocate : Additional Government Advocate, for the Appellant; C. Tiwari, for the Respondent

Final Decision : Allowed

Judgement

H.C.P. Tripathi, J.—This is an appeal against an order of acquittal recorded by a Magistrate, 1st class, Allahabad, in a case u/s 27(b) of the Drugs Act, 1940.

2. The facts of the case lie in a short compass. Opposite party is the proprietor of M/s Sahagal Stores, 15 B/Elgin Road, Allahabad, which is a chemist shop dealing in medicines. He held a drug licence No. 20A/37 for dealing in drugs which admittedly expired on 10th of June, 1962. On 23rd of June, 1962, the Drugs Licencing Authority issued notice Ex. Ka 2 to the opposite party informing him that as the period of his drug licence has expired he should deposit the necessary fee and submit an application in the prescribed form for its renewal. This notice was undoubtedly served on the opposite party as is apparent from his explanation dated 30th of November, 1962. Ex. Ka 5 which he sent to the show cause notice dated 28th of November, 1962. In spite of this notice, however, the applicant did not apply for the renewal of his licence.

3. On 27th of November, 1962, he sold one phial of Enos Fruit Salt and one Phial of Dettol against cash receipt Ex. Ka 1 to Sheo Charan (P. W. 1) orderly to Drugs Inspector. When questioned he admitted to have sold the aforesaid drugs against

payment on the aforesaid date when his licence had already expired on the 23rd of June, 1962. He, however, denied that by doing so he had committed any contravention of any provision of the Drugs Act and pleaded that after the receipt of the show cause notice by the Drugs Inspector on 28th of November, 1962, he had applied for the renewal of his licence and his application was pending disposal.

4. The learned Magistrate was of the opinion that as the opposite party's application for the renewal of his licence was still pending disposal which he had filed within three days of the receipt of the notice to show cause he was not liable for conviction u/s 27 of the Act.

5. I have heard the learned counsel for the parties. There can be no doubt that the order of the learned Magistrate is wholly perverse and must be set aside. The learned Magistrate has remarked that

"in the proviso to Section 69(8) of the Act it is mentioned that if the applicant fails to apply for renewal of his licence before the expiry of the licence in force the fee payable for the renewal of such licence shall be Rupees 20/- plus an additional fee of Rs. 20/-. This means that renewal is permissible even after the date of the expiry of the licence.

This is the reason which has weighed with the learned Magistrate in recording the acquittal. It is no doubt true that under Rule 50 (3) of the rules framed under the Drugs Act a licence can be renewed even after its expiry. This does not, however, mean that a person whose licence has expired can go on selling medicines without a licence or without getting it renewed. In the circumstances of the present case the licence had expired on 10th of June, 1962, and in spite of service of notice on the opposite party on 23rd of June, 1962, to get his licence renewed he took no action in that regard till 28th of November, 1962. There can be no doubt therefore that the opposite party had contravened Section 18(a)(v) of the Drugs Act read with Rule 61 and has made himself liable for punishment u/s 27(b) of the Act for having sold Enos Fruit Salt and Dettol in contravention of the rules. It has come in evidence that both of them are drugs within the meaning of the Act.

6. For the reasons mentioned above this appeal is allowed. The order of acquittal recorded by the learned Magistrate is set aside and the opposite party is convicted u/s 27(b) of the Drugs Act and sentenced to pay Rs. 50/- as fine and in default to undergo simple imprisonment for one month.