
(1960) 10 BOM CK 0003
In the Bombay High Court
Case No : Criminal Ref. No. 75 of 1960

State	Vs	APPELLANT
Nathumal Damumal and Others		RESPONDENT

Date of Decision : 06-10-1960

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 179, 180, 221, 227
Drugs and Cosmetics Act, 1940 — Section 18

Citation : AIR 1962 Bom 21 : (1961) 63 BOMLR 362 : (1961) ILR (Bom) 735 : (1961) NLJ 271

Hon'ble Judges : Patel, J

Bench : Single Bench

Advocate : M.A. Rane, Asstt. Govt. Pleader, for the Appellant; M.V. Paranjape, for the Respondent

Judgement

Patel, J.

(1) This is a Reference, which it is not possible for me to accept on the grounds made out in the judgment of reference. A few facts may shortly be stated for the purposes of the judgment. I will employ the nomenclature used for the parties in the trial Court.

(2) The petitioners in the Sessions Court were three of the accused along with one Nathumal Damumal trading in Deolali Camp in Nasik District. Nathumal Damumal was Accused No. 1 Accused No. 2 Messrs. India Drugs Laboratory Private Ltd., is a drug manufacturing company in Calcutta. Accused Nos. 4 to 6 are Directors of Accused No. 2. Accused No. 1 purchased 15,000 lbs., of tincture laricis BP 1891 manufactured by accused No. 2 on 15th March 1956. Accused No. 1 transported this tincture to Indore and thereafter sent 5000 lbs to Nasik by rail and 10000 lbs by truck to Malegaon. Drugs Department got information about these drugs having been consigned by accused No. 1, as a result of which, at both the places, i.e. at Nasik and at Malegaon, the officers intercepted the goods. Samples were taken by the Drugs Inspector at Nasik when the goods were lying

in the railway yard and sent for chemical analysis to the Analyser. The Analyser certified that the samples were not according to the standard specified in the Act. As a result of this certificate all the accused were prosecuted u/s 18(a)(I),(ii) and (iii) of the Drugs Act, 1940. Accused No. 2 had also given a warranty to accused No. 1, and therefore, an offence u/s 28 was also alleged against accused Nos. 2 to 6. Preliminary inquiry was held by the learned Magistrate and at that stage it was contended on behalf of accused Nos. 2 to 6 that so far as they were concerned the offence was completed at Calcutta and therefore they could not be tried at Nasik for the offences charged against them. It appeared to the learned Magistrate that an offence u/s 109 of the Indian Penal Code was made out from the evidence on record. He, therefore held that if an offence of abetment is made out, then clearly the Nasik Court would have jurisdiction to try these offences even if the facts stated in the complaint made out a clear offence only at Calcutta, regarding the sale and the manufacture of these goods. Against this judgment accused Nos. 4, 5 and 6 went in revision to the Sessions Court challenging the order of learned trial Magistrate. The learned Sessions Judge took the view that in view of the fact that the sale in favour of accused No. 1 was completed by accused No. 2 and the others in Calcutta and they had nothing to do with transport of the goods from Calcutta to Nasik or Malegaon, they could not be said to have committed any offence within the jurisdiction of the Nasik Court. He also was of the view that in the original complaint Section 109 was not mentioned at all. Therefore, apparently he thought that a charge u/s 109 could not be framed against the accused. Under these circumstances, he made the reference for quashing the proceedings against accused Nos. 2 to 6.

(3) The question is, whether the accused can be regarded as having committed any offence within the jurisdiction of the Court within the meaning of Section 18(a) of the Drugs Act, 1940. Section 18, so far as is relevant, for the purpose of this Act and the charge is to this effect:

". no person shall himself or by any other person on his behalf-

(a) (1) manufacture for sale, (2) sell, (3) stock, (4) exhibit for sale, or (5) distribute-

(I) any drug which is not of standard quality;

(ii) any misbranded drug;

(iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof, the true formula or list of ingredients contained in it in a manner readily intelligible to the members of the medical profession;

* * * * *

It is undoubtedly true that the offence of manufacture is completed at Calcutta as soon as the accused manufactured the goods at Calcutta for the purpose of sale. They cannot clearly, therefore, be charged in Nasik for manufacture for

sale. Similarly it is also clear that they having sold the goods to accused No. 1 at Calcutta, they cannot be charged at Nasik for this offence either. "Stocking or exhibiting" for sale would also not be triable at Nasik since they are not stocking or exhibiting for sale either by themselves or by anyone else on their behalf at Nasik. The question is, whether they can be regarded as having distributed the goods at Nasik for the purposes of sale. It is true that if they themselves had consigned the goods from Calcutta to Indore or from Indore to Nasik, then there could have been no question of any argument regarding distribution. But in this case the goods were sold to accused No. 1 at Calcutta and the transaction was complete there. It, however, appears to me that the word "distribute" is wide enough to include the repose of the goods at Nasik, even after a completed sale at Calcutta. The bill given to accused No. 1 and which is on record clearly shows that accused Nos. 2 to 6 were selling these goods to Shahenshah Medical Stores, Nasik Road, Nasik. They knew, therefore, clearly enough that the goods were bound for Nasik. It may be that accused No. 1 thought it inconvenient to take the goods by the direct road and had to adopt the circuitous road to avoid the Prohibition Act. But it was clearly known to these accused that the goods were bound to travel to Nasik for the purposes of the Medical Stores at Nasik. Webster's Dictionary gives several meaning of the word "distribute" as follows: (1) to divide among several or many to deal out; apportion; allot; (2) to spread out so as to cover a surface or a space; (3) to divide or separate, as into classes, orders, kinds, or species; to classify; assort, as specimens, letters, etc. The same meaning is found in the Oxford's Concise Dictionary. Murry's Standard Dictionary gives a somewhat better definition. The second meaning attached to the word is "to spread or disperse abroad, through a whole space or over a whole surface; properly, so that each part of the space or surface receives a portion; less definitely, to spread generally scatter." It is clear that the ordinary and general meaning of the word "distribute" is sufficient to convey spreading of the goods anywhere by whatever means that may be employed. Even though the sale was complete at Calcutta, there can be no doubt that they were intended for Nasik. The process of distribution commenced at Calcutta and ended at Nasik where the goods came to repose for the purposes of sale.

(4) It is contended that the first or the third meaning assigned in Webster's Dictionary as stated above is the proper meaning to be given to it. A word is bound to have several meanings, but the meaning to be assigned to it must depend upon the context in which the word is found. The Act is enacted to control the rampant evil of misnamed drugs or sub-standard drugs from being sold. Such drugs may in some cases prove seriously injurious to the purchaser. It was for the protection of the public that the stringent provisions have been made. While construing a Statute a reasonable meaning has to be assigned to words used, having due regard to the context in which they are used and the objects of the Act. The Legislature has used the words "sell, stock, exhibit for sale or distribute." Each word must be given a distinct meaning and if a legitimate meaning is to be given to each one of the words, there can be no

doubt that the word "distribute" must have the meaning, which I have indicated above. To give it any other meaning would be to frustrate the purpose of the Act and enable manufacturers to manufacture drugs irresponsibly and spread them throughout the length and breadth of the country and escape the consequences for such manufacture.

(5) Mr. Paranjape has relied on the case of *Uttam Chand v. Emperor*, ILR 39 Cal 344 , where the question of interpretation of the Excise Act was involved. One Lakhi Ram was found with certain quantity of opium at a place different from the place of business of his master. Both Lakhi Ram and his master were prosecuted and it was held by the Court that the expression "on behalf of" connoted some benefit to the person on whose behalf another person might act. This case has no application to the present case, because I am not considering the phrase "by any other person on his behalf" in the earlier part of Section 18 I am concerned with the word "distribute" alone. If once this conclusion is reached, then there is no doubt that Section 179 will apply, since one of the ingredients of the offence of distribution is the actual reaching of the goods at the place for which they were intended. They have reached Nasik, and if that is so, as held in *In Re: Jivandas Savchand* , Section 179 must apply.

(6) There is another aspect from which this matter may be viewed. The learned Magistrate held a preliminary inquiry and then this question of jurisdiction came up. If these accused sold the goods to accused No. 1 at Calcutta, which enabled accused No. 1 to commit the offence u/s 18 at Nasik, then clearly they have abetted the offence committed by accused No.1. in that case Section 180 of the Criminal Procedure Code becomes applicable and the offence can be tried at Nasik.

(7) It is argued, however, by Mr. Paranjape that in the complaint, there is no allegation that these accused abetted accused No.1 in the commission of any offence and, therefore, the accused could not be charged u/s 109 for abetment. There is a clear answer to this contention in the provisions of the Criminal Procedure Code, which enable the Court to frame proper charges for offences disclosed in the allegations and in proper cases even alter it at any stage of the trial in accordance with the evidence, provided no prejudice is caused to the accused. In this case there can be no question of prejudice because we are still at the stage of charge. The learned trial Magistrate has clearly indicated Section 109 as being applicable to the case. Since the offence is clearly made out on the allegations, charge for this offence must be framed.

(8) The result is that the reference made by the learned Sessions Judge must be rejected. In view of what I have stated above, I direct the learned Magistrate, if he has not already done so, to frame an additional charge u/s 109 of the Indian Penal Code and proceed with the trial.

(9) Reference rejected.