

(1973) 09 DEL CK 0023

In the Delhi High Court

State (Delhi Administration)

APPELLANT

Vs

Om Prakash and Another

RESPONDENT

Date of Decision : 20-09-1973

Acts Referred:

Citation : (1975) CriLJ 177

Hon'ble Judges : Prithvi Raj, J

Bench : Single Bench

Judgement

Prithvi Raj, J.—A complaint under Sections 18 (c), 18 (a) (ii) read with Sections 27 (a) (ii), 27 (b) of the Drugs and Cosmetics Act. 1940, (Act XXIII of 1940). hereinafter referred to as the Act, was filed against the respondents Om Prakash Aggarwal and Ram Gobind, that they were on 17th June, 1969, selling, stocking and exhibiting for sale drugs at their shop known as M/s. Gobind General Store without a drug license, and thereby the respondents contravened the provisions of Section 18 (c) of the Act, punishable u/s 27 (a) (ii) of the said Act, with imprisonment which shall not be less than one year. It was further alleged that on the aforesaid date. Om Parkash Aggarwal. respondent No. 1 sold one bottle of Queens Balm and 4 tablets of Sulphadiazine for Rs. 1.65 P., to one Vinod Behari Baipai. On demand, the respondent Om Prakash Aggarwal issued a cash memo for Queens Balm but refused to issue cash memo for Sulphadiazine tablets. The shop of the respondents was inspected on the same day. Respondent No. 1, Om Parkash Aggarwal was in-charge of the shop at that time. Four samples of Tetracycline Capsules, B. No. 6711, manufactured by M/s. Cyber Pharma, J-38. Kirti Nagar, New Delhi, Sulphaguanidine Tablets Batch No. not mentioned. Phenargan Tablets Batch No. 1202. bearing the label of M/s. Mav & Bayker, Bombay and Sulphadiazine Tablets Batch No. and manufacturer's name not given on the label, were taken into possession from Om Parkash Aggarwal u/s 22 of the Act in accordance with the provisions of Section 23 of the Act. Two order forms and a book in which sales were recorded were recovered and seized from the custody of the respondents u/s 22 of the Act. The samples were sent to the Government Analyst, Delhi Administration for test and analysis, The Government

Analyst reported that the samples of Phenargan tablets and the samples of Tetracycline capsules on test were found to be of standard quality, but on the samples of Sulphadiazine Tablets and Sulphaguanidine Tablets, no opinion was expressed by the Government Analyst for want of complete claims on the label. The case of the prosecution was that the tablets of Sulphadiazine and Sulphaguanidine were misbranded within the meaning of Section 17 (e) of the Act as they were not labelled as required under Rule 96 of the Drugs & Cosmetics Rules, 1945 (hereinafter referred to as the Rules) in respect of Batch number, manufacturer's name, claim regarding the standard off the tablets. The respondents were alleged to have contravened the provisions of Section 18a (ii) punishable u/s 27 (b) of the Act, with imprisonment for a term which may extend to three years. On the said complaint the accused were summoned.

2. The prosecution examined Dr. D. P. Saxena, Drug Inspector, Delhi Administration, who supported the accusations in the complaint. Despite opportunity given, Shri Saxena was not cross-examined by the respondents. On the evidence of Shri Saxena, Shri P. Chakraborty. Judicial Magistrate First Class. Delhi, framed the following charges against the respondents:

Firstly - That the respondents on 17-6-1969 at about 11.00 a. m. sold drugs. Queens Balm and Sulphadiazine Tablets and stocked and exhibited for sale various drugs as given in the recovery memo without having the requisite drug license and thereby committed an offence punishable u/s 27 (a) (ii) of the Drugs and Cosmetics Act.

Secondly - That the respondents on the aforesaid date and time stocked and exhibited for sale drug Sulphadiazine and Sulphaguanidine tablets which were misbranded within the meaning of Section 17 (e) of the Drugs and Cosmetics Act and thereby committed an offence punishable u/s 27 (b) of the Drugs and Cosmetics Act 1940.

Statements of the respondents were recorded on the charge. Respondent No, 1, Om Parkash Aggarwal pleaded guilty to the charge and prayed that he be excused as he was a Government employee. Respondent No. 2, Ram Govind pleaded guilty to the charge admitting that the medicines in question were recovered from and shop and that he had stocked them for sale without any license. He prayed that he be excused. On their plea of guilty. the learned Magistrate convicted them per orders dated 26th September, 1970. The learned Magistrate while dealing with the case of Om Parkash Aggarwal, respondent No. 1. observed that he was a public servant and a young man, and accordingly took a lenient view. In the circumstances of the case, the Magistrate ordered that Om Parkash Aggarwal be-released on execution of a bond for keeping the peace and be of good behavior for six months in the sum of Rs. 2,000/-under Section 4 of the Probation of Offenders Act, 1958. Respondent No, 2, Ram Govind was sentenced to imprisonment till the rising of the Court under Sections 27 (a) (ii) and 27 (b) of the Act and to a fine of Rs. 250/- each under both the Sections. In default of payment of fine he was to undergo S. I. for three months under each

of the two Sections. Drugs seized from them were ordered to be confiscated.

3. Feeling dissatisfied with the quantum of sentence, the State has come up in revision against the order passed by the learned Magistrate on 26th September, 1970, on the ground that the learned Magistrate had disregarded the mandatory provisions of Section 27 (a) (ii) of the Act in not punishing the respondents in accordance with the provisions of the said section.

4. Section 27 of the Act contemplates that whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale or distributes any drug (i) deemed to be misbranded under clauses (a) to (g) of Section 17 or adulterated u/s 17-B (ii) without a valid license as required under Clause (c) of Section 18, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to ten years and shall also be liable to fine, provided that the Court may, for any special reasons to be recorded in writing, impose a sentence of imprisonment of less than one year.

5. On a perusal of charges framed against the respondents it is evident that the first charge against the respondents was that they on 17th June, 1969, sold drugs, Queens Balm and Sulphadi-azine tablets and stocked and exhibited for sale various drugs as given in the recovery memo, without having the requisite drug license and thereby committed an offence punishable u/s 27 (a) (ii) of the Act. This charge was framed against the respondents for their failure to have the requisite drug license for the sale of medicines which offence is punishable with imprisonment for a term which shall not be less than one year but which may extend to 10 years and shall also be liable to fine.

6. The second charge against the respondents was that they on the 17th June, 1969, had stocked and exhibited for sale drugs Sulphadiazine and Sulpha-Euanidine tablets which were not labelled in the prescribed manner as required under Clause (e) of Section 17 of the Act. They were accordingly charged for having misbranded the aforesaid drugs and thereby committed an offence punishable u/s 27 (b) of the Act under which they were liable to punishment with imprisonment for a term which may extend to three years or with fine or with both.

7. So far as punishment u/s 27 (b) of the Act was concerned ends of justice would have been met if the respondents had been sentenced to pay fine alone. Under the aforesaid provision it was not obligatory for the Court to sentence the respondents to a term of imprisonment. The grievance of the State, however, is in respect of the sentence awarded to the respondents u/s 27 (a) (ii) of the Act for having sold the drugs in question without a valid license as required under Clause (c) of Section 18 of the Act.

8. Shri K. R. Kalia, learned Counsel for the respondents, contended that the provisions of the Probation of Offenders Act, 1958, (herein to be called "Probation Act") were applicable in determining the question of punishment to be awarded under the Act, It was further contended that the Court taking into

consideration the facts of the case considered that it was expedient to release Om Parkash respondent on execution of a bond for keeping the peace and be of good behavior for six months in the sum of Rs. 2,000/- under the provisions of the Probation Act. Om Parkash having executed the requisite bond for keeping the peace and be of good behavior for six months in the sum of Rs. 2,000/- and the period of bond having already expired, the present petition had become infructuous qua him. It was, Therefore, contended that Om Parkash having already complied with the impugned order, period in respect of which was already over, it would not be desirable and proper to interfere with the impugned order so far as Om Parkash was concerned.

8-A. The first question to be determined, Therefore, would be whether the provisions of the Probation Act would be applicable in offences under the Act.

9. Section 4 of the Probation Act empowers a Court to release certain offenders on probation of good conduct. The said section envisages that when any person was found guilty of having committed any offence not punishable with death or life imprisonment and the Court by which the person was found guilty was of opinion, that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it was expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behavior.

10, The aforesaid section without doubt empowers the Court to release offenders on probation of good conduct provided if the offender was found guilty of having committed an offence not punishable with death or imprisonment for life. The benefit of Section 4 of the Probation Act can be given to an accused person if the Court by which the said person was found guilty, was of opinion that having regard to the circumstances of the case including the nature of the offence and the character of the offender, it was expedient to release him on probation of good conduct, in such a case only, notwithstanding anything contained in any other law for the time being in force, the Court may instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties to appear and receive sentence when called upon during such period, not exceeding three years, as the Court may direct, and in the meantime the offender shall keep the peace and be of good behavior. The only restriction placed on the powers of the Court in extending the benefits of Section 4 of the Probation Act at those cases where a person was found guilty of having committed an offence punishable with death or imprisonment for life. In all other cases if the Court thought, having regard to the circumstances of the case including the nature of the offence and the character of the offender, that it was expedient to release him on probation, it may instead of sentencing him to

punishment at once, direct him to be released on his entering into a bond. Such a power can be exercised by a Court notwithstanding anything contained in any other law for the time being in force. The provisions of the Probation Act, however, shall not have effect on the provisions of Section 31 of the Reformatory Schools Act, 1897, or Sub-section (2) of Section 5 of the Prevention of Corruption Act 1947, or the Suppression of Immoral Traffic in Women and Girls Act, 1956 or of any law in force in any State relating to juvenile offenders or borstal schools as envisaged by Section 18 of the Probation Act. The use of the words "notwithstanding anything contained in any other law for the time being in force" in Section 4 of the Probation Act and the specific rider contained in Section 18 of the Probation Act to the effect that the provisions of the Act would not affect the provisions of Section 31 of the Reformatory Schools Act, 1897, or Sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947, or the Suppression of Immoral Traffic in Women and Girls Act, 1956. or of any law in force in any State relating to juvenile offenders or borstal schools, leaves no manner of doubt that except in respect of cases enumerated in Section 18 of the Probation Act and in cases where the offender was found guilty of having committed an offence punishable with death or life imprisonment, notwithstanding anything contained in any other law for the time being in force, the Court was empowered to release a person instead of sentencing him to any punishment, on his entering into a bond with or without sureties if the Court was of the opinion that having regard to the circumstances of the case including the nature of the offence and the character of the offender, it was expedient to release him on probation of good conduct.

11. The Act was already on the statute book when the Probation Act was passed in 1958. The Legislature at the time of passing the Probation Act was aware of the provisions of Section 27 (a), (ii) of the Act. The Legislature in its wisdom chose not to apply the provisions of the Probation Act in respect of cases enumerated in Section 18 of the Probation Act and in a case where the offender was found guilty of having committed an offence punishable with death or transportation for life.

12. In the premises it has to be held that the provisions of Section 4 of the Probation Act were available to the Court when the Court thought that instead of sentencing Om Parkash to punishment, it was expedient to release him on probation of good conduct on his entering into a bond.

13. The question of the provisions of Probation Act being applicable to the offenders who were found guilty under the provisions of Section 135 of the Customs Act and Rule 126-P (2) of the defense of India Rules was considered by a Division Bench of the Calcutta High Court in Aravinda Mohan Sinha Vs. Prohlad Chandra Samanta, . In that case the accused persons were convicted under Rule 126-P (2) of the defense of India Rules for failure to give necessary declaration in respect of the gold found in their possession and u/s 135 of the Customs Act for being in possession of smuggled gold. The accused persons were given the

benefit of Section 4 of the Probation Act and were released on their entering into a bond for keeping the peace and be of good behavior on their being convicted under Rule 126-P (2) of the defense of India Rules while on being convicted u/s 135 of the Customs Act, the accused were sentenced to a fine only. Punishment for an offence under Rule 126-P (2) of the defense of India Rules was imprisonment for a term of not less than 6 months and not more than two years and also fine.

14. A contention was raised in the above-cited case before the High Court that in sentencing the accused to fine only u/s 135 of the Customs Act and in dealing with them under the Probation Act was bad in law. Dealing with the contention the Division Bench observed that Rule 126-P (2) of the defense of India Rules provides for a minimum punishment but it did not override the provisions of Probation Act. It was further observed that the aforesaid rule related to the term of the sentence, in respect of which a minimum period of sentence was fixed but it did not take away the Magistrate's power to take action u/s 3 or 4 of the Probation Act if the Magistrate thought it expedient to take such action. Fixation of minimum sentence, it was observed, was not in conflict with the provisions of Probation Act where the Magistrate thought it expedient that the probation was in lieu of sentence.

15. A Division Bench of this Court in *Municipal Corporation of Delhi Vs. Rattan Lal*, observed that there was no legal bar to the applicability of provisions of Section 4 of the Probation Act in the case of a person who was convicted under the provisions of Section 16 of the Prevention of Food Adulteration Act. However, the Bench observed that in view of the general scheme of the Prevention of Food Adulteration Act and the intention of the legislature as revealed by the prescription of the minimum sentence for those found guilty of various offences under the prevention of Food Adulteration Act, the Court should not lightly resort to the provisions of the Probation Act in case of persons found guilty of food adulteration.

16. While dealing with a similar question, the Supreme Court in *Ishar Das Vs. The State of Punjab*, observed.

If the object of the legislature was that the provisions of the Probation of Offenders Act should not apply to all cases where a minimum sentence of imprisonment is prescribed by the statute, there was no reason to specify subsection (2) of Section 5 of the Prevention of Corruption Act in Section 18 of the Probation of Offenders Act. The fact that out of the various offences for which the minimum sentence is prescribed, only the offence under Sub-section (2) of Section 5 of the Prevention of Corruption Act has been mentioned in Section 18 of the Probation of Offenders Act and not the other offences for which the minimum sentence is prescribed shows that in case of such other offences the provisions of Probation of Offenders Act can be invoked.

It was further observed.

.... the Probation of Offenders Act was enacted in 1958 subsequent to the enactment in 1954 of the Prevention of Food Adulteration Act. As the legislature enacted the Probation of Offenders Act despite the existence on the statute book of the Prevention of Food Adulteration Act, the operation of the provisions of Probation of Offenders Act cannot be whittled down or circumscribed because of the provisions of the earlier enactment, viz., Prevention of Food Adulteration Act....the non obstinate clause in Section 4 of the Probation of Offenders Act is a clear manifestation of the intention of the legislature that the provisions of the Probation of Offenders Act would have effect notwithstanding any other law for the time being in force.

17. It is thus firmly established that except for the cases where an offender has been found guilty of having committed an offence punishable with death or imprisonment for life or where minimum sentence is prescribed under Sub-section (2) of Section 5 of the Prevention of Corruption Act, the Divisions of the Probation Act would be applicable in all other cases notwithstanding anything contained in any other law for the time being in force.

18". It is true that offences under the Act are menace to public health. The Act takes a serious note of the widespread anti-social evil practiced by some people in infringing the provisions of the Act and it was in this view of the matter that the legislature prescribed the minimum imprisonment for one year which can extend to 10 years as contemplated by Section 27 (a) of the Act. The Court, in the circumstances, should not have lightly resorted to the provisions of Probation Act in the case of Om Parkash. Now that the Court had chosen to give benefit of Section 4 of the Probation Act to Om Parkash and had released him on his executing bond for keeping the peace and be of good behavior in the sum of Rs. 2,000/- for a period of six months, and Om Parkash having already complied with the terms of the orders and having executed the bond and successfully completed the above said period, he had complied with the impugned order, the period of which is already over. The State having failed to seek suspension of the operation of the impugned order, it is too late in the day to contend that the case of Om Parkash should be re-opened and that adequate sentence be imposed upon him.

19. In Municipal Corporation of Delhi Vs. Anand Sarup, in a similar case. P. S Safeer, J., declined to interfere with, the order on the ground that the respondent in that case had already complied with the terms of the order passed against him.

20. The case of Ram Govind, however, stands on a different footing. Admittedly, he was the proprietor of the shop in which the various medicines and drugs had been stocked for sale. His sentence u/s 27 (a) (ii) for selling, stocking or exhibiting for sale any drug without a valid license as required under Sub-clause (c) of Section 18 of the Act was inadequate. He having pleaded guilty to the charge, should have been adequately punished by the Court, as in terms of Section 27 he was liable to an imprisonment for a term which was not to be less than one year but which may extend to 10 years and was also liable to fine. It

may be noted here that the Court, for any special reasons to be recorded in writing, could have imposed a sentence of a period of less than one year. But, in the instant case no special reasons in writing were recorded by the Court. His sentence till the rising of the Court and fine of Rs. 250/- u/s 27 (a) (ii) of the Act was inadequate. However, his conviction and sentence till rising of the Court and fine of Rs. 250/- u/s 27 (b) of the Act was proper as under the aforesaid provision of law he could be punished with imprisonment for a term which may extend to three years or with fine or with both. On being convicted u/s 27 (b) of the Act even a sentence of fine alone could be imposed on Ram Govind. He, however, was sentenced to undergo imprisonment till the rising of the Court.

21. In view of my finding that the sentence imposed upon Ram Govind u/s 27 (a) (ii) of the Act was not adequate, I am of the opinion, that it is a fit case where proper sentence ought to have been passed. The contention of Shri K. R. Kalia that to send Ram Govind to Jail now, after a long lapse of nearly three years, will be a great hardship, is hardly a circumstance for consideration of the question of proper sentence, though it may be relevant to consider the quantum of sentence to be imposed. However, taking into consideration the fact that the quantum of sentence is being considered now after three years I am of the opinion that the ends of justice will be met by sentencing Ram Govind to rigorous imprisonment for three months and to pay a fine of Rs. 1,000/-, in default of payment of which he shall further undergo rigorous imprisonment for three months. Ordered accordingly.