
(1964) 05 PAT CK 0002
In the Patna High Court
Case No : Govt. Appeal No. 15 of 1963

State of Bihar

APPELLANT

Vs

Sitaram Sahu and Another

RESPONDENT

Date of Decision : 06-05-1964

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 367
Drugs and Cosmetics Act, 1940 — Section 1(3), 18

Citation : AIR 1964 Patna 477 : (1964) CriLJ 443

Hon'ble Judges : G.N. Prasad, J

Bench : Single Bench

Advocate : B.D. Singh, for the Appellant;

Final Decision : Allowed

Judgement

G.N. Prasad, J.—This is an appeal by the State Government against the acquittal of the two respondents after trial on charges under Clauses (a) and (b) of Section 27 of the Drugs Act (23 of 1940) for stocking and exhibiting for sale certain misbranded drugs in contravention of Section 18(a)(ii) of the Act and for doing so without license in contravention of Section 18(c) of the Act read with Rules 59 (2) and 61 (i) of the Drugs Rules. The offences are said to have been committed on the 27th October 1961 at a Kirana shop of the respondents situated in mahalla Baribazar of Hazaribagh town.

2. The prosecution case is that on the aforesaid date Shyam Sunder Prasad (P. W. 3), the Inspector of Drugs, visited the shop of the respondents and found Anocin, Anacin, Bedna Santi Ras and Raj Bedna Santi Ras being exhibited there for sale. He also found a photograph of Ram and Sita with the cartoon of Amogin exhibited in the shop. He seized the aforesaid articles along with a cash memo of a firm known as Jai Janta and Company with head office at Patna. The seizure was made in the presence of some witnesses, one of whom was Ajit Kumar Sarkar (P.W. 1) and the seizure list (Ext. 3) was prepared in form No. 16 prescribed by Rule 55 of the Drugs Rules, A copy of the seizure list was also

handed over to the respondents and one of them Mahabir Sahu endorsed his signature on the seizure list (Ext. 3). Thereafter on enquiry from the Director of Health Services, who is the Chief licensing officer for the purposes of the Drugs Act, it transpired that Jai Janta and Company of Patna was not a licensed manufacturer of drugs in the State of Bihar. From the Civil Surgeon of Hazaribagh, who is the licensing the respondents held no license for selling drugs, authority of his district, it was ascertained that The Drugs Inspector thereupon submitted a prosecution report and the present prosecution was started.

3. The respondents denied that any drug had been seized from their shop or that they had stocked or exhibited for sale any drug in contravention of the law.

4. Before the learned trying Magistrate the prosecution relied upon the evidence of the Drugs Inspector (P. W. 3) supported by that of Sarkar (P. W. 1), one of the search witnesses, and an assistant of the Civil Surgeon's office Lalit Kishore Prasad (P. W. 4). Upon a consideration of their evidence the learned Magistrate came to the conclusion that Anocin, Anacin, Bedna Santi Ras and Raj Bedna Santi Ras were rnisbranded drugs which had been seized by the Inspector (P. W. 3) from the Kirana shop of the respondents where they had been stocked and exhibited for sale. The learned Magistrate also found that the respondents were not in possession of any license for sale of drugs. The learned Magistrate, however, acquitted the accused persons only on the ground that the prosecution had not brought on the record or filed in Court a copy of the notification contemplated by Sub-section (3) of Section 1 of the Drugs Act appointing the date when Chapter IV of the Act would take effect in a particular State. The learned Magistrate pointed out that several opportunities had been given to the prosecution for filing the notification in question; but in spite of it the prosecution did not produce any such notification and thereby left behind a great lacuna in the evidence for the prosecution. Holding that it had not been proved that Section 18 of the Act which is to be found in Chapter IV of the Act was in effect in this State, the learned Magistrate acquitted the respondents.

5. So far as the findings of fact reached by the learned Magistrate are concerned, I find that they are amply supported by the materials on the record. It has been proved that the respondents had stocked and exhibited for sale articles described as Anocin, Anacin, Bedna Santi Ras and Raj Bedna Santi Ras in their Kirana shop. But I am not satished that Bedna Santi Ras and Raj Bedna Satni Ras were drugs within the meaning of Section 3(b) of the Act. The definition of drug which is to be found in the Act shows that medicines and substances prepared in accordance with Ayurvedic or Unani systems of medicine have been excluded from the category of drugs for the purposes of the Act. Evidently Bedna Santi Ras and Raj Bedna Santi Ras appear to be Ayurvedic medicines, and at any rate it has not been proved that they are drugs within the meaning of the Act. As to the remaining two articles Anocin and Anacin, there can be no doubt that they were drugs and their packets resembled the packets of the real manufacturers of

these drugs, namely, Geoffry Manufacturing Co. Private Ltd., Bombay. These two articles were, therefore, imitations of drugs and as such misbranded drugs within the meaning of Section 17(a) of the Act. It has also been proved that the respondents had no licence for selling drugs. Therefore, they had contravened the provisions of Section 18(a)(ii) and 18(c) of the Act, provided these provisions were in force in this State on the 27th October 1961.

6. The true fact is that the whole of Chapter IV of the Drugs Act including Sections 18 and 27 came into force in the State of Bihar with effect from the 1st February, 1947. The notification issued to this effect by the State Government is Notification No. 220 L.S.G.R. dated the 28th August, 1946, which was published at page 791 of the Bihar Gazette, Part II, dated the 4th September, 1946. At the same page of the Gazette is also to be found Notification No. 219 L.S-G.R. dated the 28th August, 1946, which shows that the 1st February, 1947, was also appointed as the date when the Bihar Drugs Rules, 1945, came into force. There can, therefore, be no room for doubt that the relevant provisions of the Act and the Rules were in force in the district Hazaribagh on the date of the present occurrence.

7. No doubt, it was the duty of the person in charge of prosecution to have produced the aforesaid notifications before the learned Magistrate. But the negligence of the prosecutor in this regard cannot justify any Court to decide a case before it contrary to law. A Court is expected to know, whether the parties to proceeding before it assist it or not, what the law is on a particular subject and to apply it correctly. For this purpose; it is the duty of the Court to find out whether a particular provision of the law is or is not in force in the area over which it exercises jurisdiction. Otherwise, it cannot hope to decide cases according to law for which alone it exists. It was not at all necessary that these notifications should have been tendered as exhibits in the case. A court has to take judicial notice of them. But the learned Magistrate has chosen to remain ignorant of them, and though he was assisted therein by the prosecuting counsel, the fact remains that he has recorded an order of acquittal which is illegal and must, therefore, be set aside.

8. The result is that I find the respondents guilty under Clauses (a) and (b) of Section 27 of the Act and convict them accordingly. Under Clause (a) I sentence each of them to undergo simple imprisonment for one year. I impose no separate sentence upon them under Clause (b). The appeal is accordingly allowed.