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(1995) 01 GUJ CK 0011

In the Gujarat High Court

State of Gujarat — APPELLANT

Vs

Bombay Novelty and Another — RESPONDENT

Date of Decision : 19-01-1995

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 397, 397
Drugs and Cosmetics Act, 1940 — Section 18(1)(i), 18(1)(i) , 18(c), 18(c), 27A

Citation : (1996) 1 GLR 143

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Judgement

J.N. Bhatt, J.—In this appeal u/s 397 of the Code of the Criminal Procedure, 1973 (''Code'' for short), the appellant-State has challenged the quantum of punishment in impugned order of sentence passed by the learned Metropolitan Magistrate, Ahmedabad City, in Criminal Case No. 274 of 1986, on 10th October 1986.

2. The respondents are the original accused. Respondent No. 1 is the proprietory firm and respondent No. 2 is a proprietor who is doing business in the name and style of ''M/s. Bombay Novelty'', at Ahmedabad. The respondents were tried in the trial Court in the aforesaid criminal case for the offence punishable under Sections 18(1)(i) and 18(c) of the Drugs and Cosmetics Act, 1940 (''Act'' for short). Both the accused persons had pleaded guilty to the charges before the trial Court and they came to be convicted for the said offences. Therefore, both the accused are ordered to pay a fine of Rs. 250/- and in default of payment of fine, to undergo simple imprisonment for one month. The State of Gujarat being dissatisfied by the quantum of sentence awarded to the accused has filed this appeal for enhancement of sentence.

3. The original complainant - Drug Inspector raided the shop of the accused persons on 26-2-1985 and seized two boxes of Barcqline Soothing Perfumed Cream tubes. The said tubes did not contain any batch number. 24 tubes were collected by the Drug Inspector. As per provisions of law, on one sample, seal

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was affixed and the same was forwarded alongwith the letter to the Government Laboratory for examination and report on 26-2-1985. As per the report, sample indicated that there was presence of 11.67 Gms. of Zink Oxide contents in the sample tube. The said tubes were manufactured by one Meena Cosmetics of New Delhi. After receipt of the report, the original complainant-Drug Inspector filed complaint which was registered as Criminal Case No. 274 of 1986 in the Court of the learned Chief Judicial Magistrate, at Ahmedabad, on 12-3-1986 alleging that the accused have committed breach of the provisions of Sections 18(a)(i) and 18(c) read with Section 27A of the Act.

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5. Having regard to the facts and circumstances of the case and the relevant provisions of the Act, it becomes very clear that the impugned order of sentence is not only lenient but it is grossly inadequate and insufficient. The reasons assigned by the trial Court for taking lenient view cannot be upheld and sustained. In fact, matter could have been sent back, but after taking into consideration the intervening long period and the relevant provisions of law, and submissions raised on behalf of the accused that after long delay instead of remanding the matter, it may be decided by this Court in this appeal. The trial Court has also wrongly mentioned the sentence order under the provisions of Section 27 of the Act.

6. Section 18 of the Act provides prohibition of manufacture and sale of certain drugs and cosmetics. Section 18 of the Act reads as under:

Sec. 18. From such date as may be fixed by the State Government, by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf -

(a) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute -

(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;

(ii) any cosmetic which is not of a standard quality or is misbranded or spurious;

(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 active ingredients contained in it together with the quantities thereof;

(iv) any drug which by means of any statement, design or device accompanying it or by any means, purports or claims, to prevent, cure or mitigate, any such disease or ailment or to have any such effect as may be prescribed;

(v) any cosmetic containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;

(vi) any drug or cosmetic in contravention of any of the provisions of this

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Chapter or any rule made thereunder.

(b) sell, or stock or exhibit or offer for sale, or distribute any drug or cosmetic which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder;

(c) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug or cosmetic, except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter;

7. The trial Court found accused guilty for committing breach of the provisions of Section 18(c) of the Act. For the breach of Section 18(c) in case of drug, the accused is liable u/s 27 of the Act and in case of cosmetic items, he is liable u/s 27A of the Act.

8. Section 27A of the Act prescribes for penalty for manufacture, sale etc. of cosmetics in contravention of the provisions of Chapter IV of the Act. Barcqline Soothing Perfumed Cream tubes, admittedly, fall under category of cosmetics and therefore, the accused is liable for the offence punishable as provided u/s 27A of the Act. Section 27A reads as follows:

Sec. 27A. Penalty for manufacture, sale etc., of cosmetics in contravention, of this Chapter:

Whoever himself or by other person on his behalf, manufactures for sale or for distribution or sells, stocks or exhibits or offers for sale -

(i) any cosmetic deemed to be spurious u/s 17-C shall be punishable with imprisonment for a term which may extend to three years and with fine;

(ii) any cosmetic other than a cosmetic referred to in Clause (i) above in contravention of any provisions of this Chapter, or any rule made thereunder shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.

9. Section 27A(i) of the Act provides punishment in case of a breach of provisions of Section 17-C. So in case of cosmetic, it may be put to spurious use. Section 17-C is punishable u/s 27A of the Act, whereas in the case of cosmetics other than cosmetics referred to in Clause (i) as above, in violation of any provision of Chapter IV or any rule made thereunder is punishable with imprisonment for a term which may extend to one year''s or with fine which may extend to one thousand rupees or with both. The trial Court has directed each one of the accused to pay a fine of Rs. 250/- for the breach of the provision of Section 18(c). Section 18(c) of the Act provides a prohibition of manufacture or sale or stock or exhibit for sale or distribute any drug or cosmetic except in accordance with the condition of licence issued for such purpose under this Chapter. Nothing in this section shall apply to the manufacturer subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis. In this case, Barcqline tubes on examination were

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only with presence of contents of 11.67 Gms. of Zink Oxide. There were no contents of Boric Acid as per requirement and as stated on the cartoon from the sample taken by the Drug Inspector. Thus, the Barcqline Soothing Perfumed Cream tubes collected from the accused were found to be substandard and showing lack of required chemical contents.

10. Having regard to the facts and circumstances emerging from record and considering the nature of offence and other attending circumstances, ends of justice will be satisfied, if the sentence of payment of fine is increased to Rs. 1,000/-, instead of Rs. 250/- imposed by the trial Court upon both the accused. The accused No. 1 who is a proprietory firm is sentenced to pay a fine of Rs. 1,000/- instead of Rs. 250/-. The accused No. 2 Mahemudbhai Abdulkarim Maniar proprietor of the said firm is sentenced to undergo imprisonment till rising of the Court and to pay a fine of Rs. 1,000/- (Rupees one thousand only) and in default of payment of fine, to undergo Simple Imprisonment for one month. Accordingly the appeal is partly allowed.

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