

(1976) 08 GUJ CK 0017
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Vinay Vithaldas Shah

RESPONDENT

Date of Decision : 04-08-1976

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18(a)(ii), 18(a)(iia), 18(c), 18(c), 27, 27

Citation : (1977) 18 GLR 475

Hon'ble Judges : M.P. Thakkar, J

Bench : Single Bench

Judgement

M.P. Thakkar, J.—Breathes there a man who would not become a cynic on being apprised of the sentence imposed in the two allied cases giving rise to the twin appeals preferred by the State for enhancement of the sentence of one day's (heavens be praised that a Court cannot impose substantive sentence of less than a day) S.T. for selling innocuous salts under the label of Tetracycline? One must possess nerves of steel not to become a cynic when virtually a licence to kill is issued on payment of a paltry fine for one way of killing is to create an illusion that the disease is being curbed and cured by annihilating the bacteria, when the bacteria are allowed to become more and more vigorous without slightest resistance. What else will happen when innocuous salts are administered instead of antibiotics? And what follows will prove the oft quoted cliché: truth is stranger than fiction.

2. A Science Graduate who was employed as a "-qualified person" within the meaning of Rule 65 of the Drugs and Comseties Rules 1945 (Rules), sold and distributed 4300 capsules, purporting to be Tetracycline capsules, on his own, to a firm of Chemists and Drugists at Ahmedabad and was trapped in view of the prior written information conveyed by the purchaser firm. The capsules were seized from his possession and were sent for analysis to the Government Analyst of the Drugs Laboratory at Baroda His report indicated that the stuff which was packed in the capsules was not Tetracycline at all. The report established that the potency of the contents of the capsules was Nil. The contents, when analysed,

indicated the presence of (i) sodium bicarbonate, (ii) sodium chloride, and (iii) colouring matter, which had no therapeutic value or properties ascribable to a high potency antibiotic like Tetracycline, a drug, which, it is well-known is a life saving drug, widely prescribed and used by the medical profession. The respondent, Vinay Vithaldas Shah, was prosecuted for offences under Sections 18(i)(ii), 18 (a) (ii-a) and Section 18(c) read with Section 27 of the Drugs and Cosmetics Act, 1940 (hereafter referred to as "the Drugs Act") in Criminal Cases Nos. 1221 of 1974 and 1220 of 1974 in the Court of the Metropolitan Magistrate, 3rd" Court, Ahmedabad, and after recording the evidence of P.W.I. Raval Senior Drugs Inspector a charge was framed against the respondent for the aforesaid offences. The respondent pleaded guilty to the charge. He stated that he had procured the capsules from one Babubhai and that he had supplied the capsules to Jagdipbhai of Harikrishna Medical Agencies. He prayed for mercy on the ground that he had a family to maintain and it was his first offence. He also stated that he had lost his employment on account of the prosecution. The learned trial Magistrate accepted his plea of guilty and convicted the respondent for offences under Sections 18(a)(ii), 18(a)(ii-a) 18(c) read with Section 27, and Section 27(b) of the Drugs and Cosmetics Act. He imposed a token sentence of simple imprisonment for a day for the offence under Sections 18(a)(ii) and 18(a) (ii)(ii-a) read with Section 27(a) (i). He also sentenced him to pay a fine of Rs. 750/- and in lieu thereof, to suffer rigorous imprisonment for three month. For the offence u/s 18(c), read with Section 27(a)(ii), only a sentence of fine Rs. 750/- was imposed. So also, for the offence u/s 18(a) (i) read with Section 27 (b), a sentence of mere fine of Rs. 750/- was imposed. In effect, therefore, the respondent was sentenced to suffer imprisonment till the rising of the Court and to pay a total fine of Rs. 2,250/-. The State of Gujarat has preferred the present two appeals and has contended that the sentence imposed by the concerned trial Magistrate is unduly lenient and requires to be enhanced.

3. The learned Public Prosecutor has called my attention to the provision embodied in Section 27 of the Drugs Act which enjoins that any person who is found guilty of selling or stocking for sale or distribution any drug which is mis-branded under Clause (a), Clause (b). Clause (c), Clause (d), Clause (f) or Clause (g) of Section 17 or adulterated u/s 17B of any drug without a valid licence 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. The proviso to Section 27 empowers the Court "for any special reasons to be recorded in writing" to impose a sentence of imprisonment of less than one year. The learned Public Prosecutor argued that notwithstanding the mandatory provision embodied in Section 27 the learned trial Magistrate has imposed a sentence of less than the minimum term of one year prescribed by Section 27(a) (ii), and has imposed a ridiculously low sentence of imprisonment for one day, coupled with a fine of is even otherwise having regard to the nature of the offence, the learned trial Magistrate ought to have awarded a substantive sentence which is sufficiently deterrent to the

offender who was found guilty, as also to others who are like-minded.

4. The grounds specified in the judgment for awarding such a low sentence cannot but cause dismay. The only ground which is mentioned is that the respondent has already lost his employment and that if he is sent to jail, he will suffer more. Everyone who has to go to jail has to suffer some inconvenience. The mere fact that he will suffer inconvenience is no ground (it cannot even be considered a good excuse) for awarding less than the minimum sentence, particularly when the offence is a serious offence under the Drugs Act. The gravity of the offence hardly needs to be emphasised. That the Parliament has considered this to be a serious offence is evident from the circumstance that Parliament has not only prescribed a penalty of imprisonment extending to ten years but has made a simultaneous provision for a minimum sentence of one year. Even when the Parliament has empowered the Court to impose a lesser sentence, it is "for any special reasons to be recorded in writing" which provides a clue to the overwhelming anxiety of the Parliament to ensure that appropriate punishment is meted out and that undue leniency is not shown, without reasons, may, without good reasons which can stand the scrutiny of a social eye.

5. In the present case, the respondent is a Science Graduate (See his written statement dated February 19, 1975). As he is a "qualified person" within the definition of Rule 65 of the Rules, he was employed at a firm of Chemists. He, acting on his own, appears to have sold as many as 4300 capsules, purporting to be Tetracycline capsules. The appellant pleaded guilty and in terms admitted that he had committed the offence. According to him, he had obtained these capsules from one Babubhai. He admits that he sold the capsules to Jagdipbhai of the firm of Harekrishna Medical Agencies. The report of the Government Analyst Ex. 10, clearly shows that the capsules did not contain any drug of therapeutic value. Its potency as Tetracycline was nil. It only contained ingredients useless from the therapeutic point of view, viz. (i) sodium bicarbonate, (ii) sodium chloride, and (iii) colouring matter. In other words, these were spurious capsules of no therapeutic value. The danger of allowing spurious drugs to be marketed is self-evident. The relatives of the sick and the ailing would purchase these drugs and would be under the impression that the drugs would be working and the patients would get better. The Doctors treating the patient would be under the impression that the disease is being checked by Tetracycline capsules. And the patient may well die because he would have remained untreated. Hundreds of such patients must have lost their lives. To take a lenient view in an offence of this character is to virtually abet the offence. Such offences must be put down with an iron hand. It is rarely that such offences come to light. When they come to light, the prosecution does not always succeed in establishing the offence. In those few cases where the evidence is foolproof and a conviction is secured, the Courts cannot defeat the intention of the Parliament by refusing to impose an appropriate sentence. It would amount to setting at naught the will of the Parliament. It will amount to repealing the provisions for all practical purposes. It will amount to issuance of a licence to commit such offences. And those who are

indulging in these nefarious practices would draw inspiration from the circumstance that the business which reaps profits at the cost of the lives of the sick and the ailing citizens can be carried on with impunity. It is difficult to understand as to how a lenient view can be taken of such offences. There is, therefore, no doubt that the sentence imposed by the learned trial Magistrate is ridiculously low and altogether inadequate. The sentence must, therefore, be enhanced.

6. The learned Counsel for the respondent has made an emotional appeal on the ground that the respondent is a young man who has a family to maintain and that he may not have known that the capsules were spurious ones. When an explanation was called for from him by the Assistant Director of Drugs Control Administration, by a letter "dated May 8, 1974, he sent a written reply dated June 5, 1974. This inquiry was made u/s 18A of the Drugs Act which casts an obligation on every person who is not the manufacturer of a drug or cosmetic or his agent for the distribution thereof, to disclose the name, address and other particulars of the person from whom he acquired the drug or cosmetic. The respondent stated that he had purchased the drug from one Babubhai Vadilal - an employee of a chemist-and that he had supplied the same to Jagdipbhai of Harekrishna Medical Agency. He stated that he was not in a position to furnish any further information. The respondent has not purchased these capsules from any authorized dealer. He does not possess any bill for such purchase. He offered to sell the same without a bill at less than the prevailing market rate. These are circumstances which cannot be lost sight of. So also, it cannot be overlooked that he was a .science Graduate and that he secured an employment as a "qualified person" with another firm of Chemists known as "Jayesh Medical Stores." He was not acting on behalf of his employer, but he was acting on his own. There is his mere word for his statement that he purchased the drugs from one Babubhai, an employee of another firm of Chemists. For aught we know, he himself might be the manufacturer of the spurious drugs. If it was his case that he was acting in a bona fide manner, he could have discharged the onus resting on him and could have established his defence under Sub-section (3) of Section 19, which provides that a person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of Section 18 if he proves - (a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof. Obviously, he could not seek the protection of Sub-section (3) of Section 19 because he had, on his own admission, acquired the drug from an employee of a chemist, and not from any licensed dealer. Why should a person who was in this very line of business purchase the goods from someone other than an authorized dealer and offer to sell the same without a bill? It, is therefore, difficult to believe the statement that he did not know that the capsules were spurious ones.

7. Even the learned trial Magistrate who has taken an unduly sympathetic view has not accepted this statement of the respondent. I,-therefore, do not see any good reason to impose a sentence of less than the minimum prescribed by

Section 27. The offence is punishable with imprisonment for a term which may extend to 10 years and the minimum that a Court is obliged to impose is one year. In my opinion, having regard to all the circumstances of the case, a sentence of at least two years" rigorous imprisonment must be imposed.

8. The appeals are therefore, allowed. The sentence imposed by the trial Court for an offence u/s 18(a)(ii) and Section 18(a)(ii-a) read with Section 27 is enhanced from one of substantive sentence of simple imprisonment for one day to one of R.I. for two years. The substantive sentence of fine will remain. The sentence imposed under the other two heads is also enhanced from a mere fine of Rs. 750/- to a substantive sentence of R.I. for one year over and above the fine of Rs. 750/- for each offence. The substantive sentences will run concurrently. Warrant for arrest to issue.