

(1992) 01 KAR CK 0014
In the Karnataka High Court
Case No : Criminal Appeal No. 388 of 1988

State of Karnataka

APPELLANT

Vs

Channakeshawa Medicals

RESPONDENT

Date of Decision : 27-01-1992

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18 A, 18 C, 27

Citation : (1992) ILR (Kar) 3004

Hon'ble Judges : Shivappa, J; Hiremath, J

Bench : Division Bench

Advocate : T.S. Mohamed Ali, SPP, for the Appellant; Kumud C. Rao, for the Respondent

Final Decision : Dismissed

Judgement

Hiremath, J.—The State has come up in Appeal challenging the Judgment of the Court of the J.M.F.C., Hassan acquitting the accused of the offence under Sections 27 and 18(A) of the Drugs and Cosmetics Act. The Drugs Inspector filed a complaint before the trial Court for these offences alleging that on 12.1.81 when he inspected A-1 - the firm he found that the drugs stated in the complaint were stocked and exhibited for sale and out of them we are now concerned only with M.Os 2 and 3 which are the two misbranded strips. On that day he gave notice to the accused persons not to sell them and on 15.1.81 he seized the material objects - Items 2 and 3 out of the list given in the complaint. They related to Hypnotic - 5 capsules. The accused No. 1 is a pharmacy doing business in drugs at Belur and accused Nos. 2 and 3 are partners of the firm and described as "qualified persons" in the licence. The trial Court on the evidence adduced before it came to the conclusion that they were not proved to be misbranded strips. A perusal of M.Os. 2 and 3, according to the trial Court, raises a doubt as to the correctness of the prosecution case, because if a strip of 10 tablets is cut into pieces containing 4 tablets into two parts two tablets in one part, all the parts would not be containing the batch number and the date of

manufacture, retail price and Rule 96 is not attracted. It is the prosecution case that M.Os 2 and 3 were not containing batch number or the price and date of manufacture. P.W.1 admitted that he was not aware whether the prints on the strip would disappear if spirit falls on it. In the statement u/s 313 Cr.P.C. neither of the accused Nos. 2 and 3 took such a defence that due to the fall of spirit the words had disappeared. The mere cutting of a whole strip into parts may not be of great consequence if the prosecution is able to prove that in fact they were not containing the batch number or the price and date of manufacture. If we are not able to agree with this conclusion of the trial Court as contended by the prosecution, the next question would be whether the prosecution has proved that these strips were stocked for sale in the shop, fn this behalf the Decision of the Supreme Court in the case of Mohd. Shabir Vs. State of Maharashtra, is most relevant and clearly attracts the facts of this case.

2. The Supreme Court held that Section 27 postulates three separate categories of cases and no other: (1) manufacture for sale; (2) actual sale; (3) stocking or exhibiting for sale or distribution of any drugs. The absence of any comma after the word "stocks" clearly indicates that the clause "stocks or exhibits for sale" is one indivisible whole and it contemplates not merely stocking the drugs but stocking the drugs for the purpose of sale and unless all the ingredients of this category are satisfied, Section 27 of the Act would not be attracted. Thus before a person can be liable for prosecution or conviction u/s 27(a)(i)(ii) read with Section 18(c) of the Act, it must be proved by the prosecution affirmatively that he was manufacturing the drugs for sale or was selling the same or had stocked them or exhibited the articles for sale. The Supreme Court emphatically ruled that the possession simpliciter of the articles does not appear to be punishable under any of the provisions of the Act. If, therefore, the essential ingredients of Section 27 are not satisfied the plea of guilty cannot lead the Court to convict the accused. It appears in that case there was a plea of guilt. In respect of a firm or company the Supreme Court in the case of State of Karnataka Vs. Pratap Chand and Others, ruled that where the partnership firm was" charged for the offences u/s 18(a)(ii) and (c) the partner of the firm who was in the overall control of the day to day business of the firm would alone be liable to be convicted and the partner who was not in such control could not be proceeded against merely because he had the right to participate in the business of the firm under the terms of partnership deed. In the instant case the Partnership Deed is not produced to show how many partners the firm consisted of. The licence Ex. P-15 does not make mention of the partners of the firm but it only states that accused Nos. 2 and 3 were "qualified" persons incharge of the firm. Therefore, there is deficiency in evidence with regard to the actual participation of any of the partners and the control of the day to day work of the firm. Our attention was drawn by the State Prosecutor to the evidence in this behalf of P.W.1 and P.W.2 while P.W.1 the Drugs Inspector stated that both the accused were looking after the "wahivat", P.W.2 stated that it was accused No. 3 who was looking after the shop. Neither of them has at any stage given evidence that these two items were

stocked for sale. Accused No. 2 is said to be the medical practitioner and perhaps, according to him, he was not looking after the shop. As in our view the possession of item Nos.2 and 3 does not satisfy the requirement of the Decision of the Supreme Court in the case of Mohamad Shabbir cited supra, on this ground alone this Appeal should fail. We do not find any reasons or grounds to interfere with the Judgement of acquittal rendered by the trial Court. The appeal has to fail and the same is dismissed.