

**(1992) 12 KAR CK 0031**

**In the Karnataka High Court**

**Case No :** Criminal Appeal No. 615 of 1988 (Against order of Third Addl. Civil Judge and C.J.M. Mysore in C.C. No. 2157 of 1983, D/- 30-3-1988)

State of Karnataka

APPELLANT

Vs

M/s Kannika Stores, Mysore and others

RESPONDENT

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**Date of Decision :** 09-12-1992

**Acts Referred:**

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

**Citation :** (1993) 1 KarLJ 48

**Hon'ble Judges :** L. Sreenivasa Reddy, J; D.P. Hiremath, J

**Bench :** Division Bench

**Advocate :** T.S. Mohd. Ali, Spl. Public Prosecutor, for the Appellant; T.J. Chouta, for the Respondent

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**Judgement**

D.P. Hiremath, J.—The complainant Drugs Inspector prosecuted respondents herein under various provisions of the Drugs and Cosmetics Act of 1940, the most material among these provisions being Sections 18(a) and 18(c) of the Act. A-1 is the name of the shop whereas A-2 is the Proprietor. A-3 the father of A-2 was present when the complainant visited the shop. Business was being carried out in this shop at Mysore in provisions and other articles and not in drugs. On 4-4-1982 at about 11.30 a.m. the complainant is said to have inspected this shop along with two panchas P.Ws. 2 and 3 and he found huge stocks of drugs, stocked and exhibited for sale along with other saleable items on the racks. He took samples out of them of Penicillin Eye Ointment, Novalgin and Analgin drugs and not others. He subjected them for chemical analysis and got a report as per Ex. P.17. Copy of the report was sent to the accused within the time prescribed under the Act and thereafter complaint came to be filed. PW-2 did not support the complainant's case and therefore he was treated as hostile and cross-examined. PW-3 gave evidence as a panch witness. The trial Court relying on the decision of the Calcutta High Court in the case of Dr. Sanat Kumar Basu Vs. State of West Bengal, and also of the Supreme Court in the case of Mohd. Shabir Vs. State of Maharashtra, acquitted the accused holding that the complainant had

failed to prove that these drugs were offered for sale. The State has challenged their acquittal. It is urged for the appellant-State that the trial Court ought to have found that when they were kept in racks in the shop there was offer for sale.

2. S. 18(a) came to be amended in the year 1982 introducing "offer for sale" also being prohibited under S. 18(a) of the principal Act. Relying on this it is urged for the appellant that keeping of these drugs without licence in one of the racks of the shop was itself an offer for sale. The defence of the accused was that some person had brought them in a box, kept them and went away and even before he came back to take the box they were seized by PW 1. Apart from this defence we have to examine if there is evidence to show as a fact that there was offer for sale, meaning thereby that they were exhibited in the shop so as to attract the customers and make them know that they were being offered for sale to whosoever intended to purchase them. In the decision of the Supreme Court mere possession was held to be not sufficient to attract S. 18(a) of the Act. When that decision came to be rendered Section 18 stood without introducing the words "offer for sale". Similar was the situation when the decision came to be rendered by Calcutta High Court. In both these cases possession came up for consideration and it was held that mere possession was not sufficient to hold the accused guilty under S. 18(a) of the Act.

3. If we consider the general connotation of the words "offer for sale" and in the context it is understood by intending customers exhibiting them in a prominent manner in a shop, whether dealing in the same goods or some other goods, would amount to offer for sale. Therefore, ultimately the manner of keeping or exhibiting them in a shop would assume relevance and importance to see if they were really offered for sale. Admittedly in the shop in question the accused were dealing in provisions and other articles and at any rate that was not a drugshop. PW 3 one of the panch witnesses who was having his shop opposite to the shop of the accused stated that he had never seen the accused selling any drugs in their shop. PW 1 deposed that he had got credible information that morning that A-1's shop was stocking and selling all kinds of drugs and therefore he says that he raided the premises along with the panch witnesses at about 11.30 a.m. and found all types of drugs exhibited for sale with other saleable goods in the racks. There were 12 items including Vicks, Saridon, Neomycin, Chlorum phenical, Action 500, Analgin, Anacin etc. He however took for sample Analgin, Novalgin and Penicillin Eye Ointment. He is also said to have paid Rs. 65/- for the drugs taken from his shop. It only represents the actual quantity of these drugs because he is expected to pay for whatever samples he takes or seizes from the shop. He also stated in his cross-examination that A-3 was present when he visited the shop but he had no knowledge if these drugs were being sold in the shop. Therefore ultimately PW-1 relies only on the seizure of the drugs from his shop. As PW-2 was cross-examined by the Public Prosecutor in the court below we have the solid evidence of PW-3 for the prosecution whose evidence is as reliable as that of PW-1 according to the prosecution because he was not cross-examined. What he deposed was that when he was in his shop PW-1 had

prepared a mahazer in the shop of the accused and he signed the mahazer. Some drugs were kept in front of PW-1 when he went to that shop and he does not remember if any samples were taken from those drugs. He identifies his signature on Ex. P-7. Again he asserts that they were all in front of the complainant PW-1 and in the shop of the accused. He admitted in the cross-examination that he was not present when the list of articles seized was drawn by P.W. 1. He was not aware what was written in the mahazer. PW-1 was sitting on a chair in the shop and he was not aware from where these articles were brought. In the shop of the accused were kept for sale sweetmeats, biscuits and other articles including some provisions and he had not seen at any time the accused selling drugs in his shop. We have perused the mahazer drawn for the purpose for which it is stated that on taking a search of the shop these drugs were found. PW-1 could have done well to purchase some drugs incognito by himself or arranging for purchasing the same. Even otherwise there is no clinching evidence that they were exhibited in a manner to attract the customers so as to draw an inference that they were offered for sale. In view of the amendment to S. 18(a) we do not think the decisions referred to by the trial Court are applicable on all fours to the facts of the instant case as in those decisions the question was whether mere possession without proof of they being possessed for the purpose of sale was liable to be punished. No decision was brought to our notice attracting the provisions of S. 18(a) after amendment of the section in 1982. We have considered the facts of the case in the light of the meaning that could be attributed to the words "offer for sale", namely, that whether such articles are displayed in a shop so as to make a customer know that they were available for purchase. As this element in the facts of this case is not proved, we find no grounds to interfere with the judgment of the trial Court. Appeal is dismissed.

4. Appeal dismissed.