

(1989) 08 MP CK 0076

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 293 of 1987

State of Madhya Pradesh

APPELLANT

Vs

Asian Drugs and Others

RESPONDENT

Date of Decision : 23-08-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Drugs and Cosmetics Act, 1940 — Section 18, 19, 27, 27(1), 27(2)
Drugs and Cosmetics Rules, 1945 — Rule 74, 74(1)
Foreign Exchange Regulation Act, 1947 — Section 23C(1)

Citation : (1990) CriLJ 105

Hon'ble Judges : V.D. Gyani, J

Bench : Single Bench

Advocate : S.K. Pavnekar, P. Lawyer, for the Appellant; A.G. Bhojwani, for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani. J.

1. This is appeal against acquittal. The accused-respondents were prosecuted for offences punishable under Sections 18(c) read with Section 27(1) and (2) and Rule 74(1) read with Section 27(b) of the Drugs and Cosmetics Act (for short, the Act).

2. Respondents 2 to 6 are partners, while respondents 7 and 8 are Manager and Manufacturing Chemist respectively of the said Firm. Respondents were granted licence for manufacturing tablets of Chloroquine Phosphate of 75 mg. each (Paediatric dose), but they actually manufactured tablets containing 125 mgs. drug, thus violating the conditions of the licence.

3. The accused-respondents were charged with the following charges :

Firstly :-That from 12-6-75 to 3-5-76, they themselves or as a partner or manufacturing chemist of appellant No. 1 violated the provisions of Section 18(c)

of the D & C. Act by manufacturing and storing for sale and also selling Chloroquine phosphate tablets of 125 mg. without any licence for the same and, therefore, for having committed an offence punishable u/s 27(a)(II) of the D & C. Act,

Secondly :-- On 29-11-76 at Indore, as a partner or as manufacturer of M/s. Asian Drugs, having violated Rule 74(f) of D-C Act, by giving false information to the Drug Inspector, about the quantity of manufacture and store Chloroquine Phosphate tablets with the State Bank of Indore vide letter No. 394/26-77 and thereby for having committed offence punishable u/s 27(b) of the D & C Act."

The trial Court while acquitting the respondents of the second charge, found them guilty of the first charge, and convicted them and sentenced them to imprisonment till rising of the Court and to pay a fine of Rs. 1000/-each. On an appeal being preferred the lower appellate court acquitted the accused-respondents by judgment dated 2-2-1987, delivered in Criminal Appeal No. 19 of 1985.

4. The acquittal, as rightly urged by Shri Pavnekar, learned counsel for the appellant State, is based on a total misconception of law and procedure governing issuance of a licence.

5. The acquittal is based on the grounds that Ex. D/1 which is said to be the part of the original licence, permitted a manufacture of 125 mg. tablets, that there was no evidence to hold that all the partners were incharge of and responsible for the conduct of business of the Firm, that the burden was not discharged in the instant case and the mens rea on the part of accused-respondents was not proved.

6. So far as the element of mens rea as an essential ingredient of the offence charged is concerned, the lower, appellate Court was wrong in insisting for proof of it. Where a particular act is made statutorily penal, the question of mens rea does not arise, if the act is proved. In the instant case, manufacturing of drugs contrary to the terms of the licence granted to the manufacturer is not only prohibited, but also made penal. It is not open to the court to insist for any proof of guilty mind on the part of the accused contravening the terms of the licence. The acquittal is based on such erroneous assumptions of law, cannot, therefore, be sustained.

7. The charge against the accused respondents was that they manufactured chloroquine phosphate tablets 125 mgs, for which they had no licence, thus committing a breach of Section 18(c) of the Act. The accused-respondents were having a licence to manufacture Chloroquine tablets of 75 mgs. (paediatric dose). As against this they manufactured and stored for sale Chloroquine tablets of 125 mgs. which was sub-therapeutic. Reliance has been placed on Nathulal Vs. State of Madhya Pradesh, by the lower Court, to support its conclusion. If the scheme of the Drugs Act is viewed and considered in its totality, it would be seen that such violations do not admit of or require guilty mind. Section 19 of the Act

can also be referred to in this behalf.

8. The next ground relied upon by the lower appellate Court is that it was not proved that the accused-respondents were the persons incharge of and responsible to the Firm for its day to day business. Shri Bhojwani, learned counsel for the accused-respondents placed strong reliance on State of Karnataka Vs. Pratap Chand and Others, and urged that the finding recorded by the Court below is proper and does not call for any interference.

9. There is overwhelming documentary evidence on record (which has been completely overlooked by the lower Court) that the accused-respondents were the persons, who were not merely responsible for the business of the Firm, but were also incharge of the same. Accused Krishnagopal was admittedly the Manager of the Firm, while accused Ishwarchand was the Manufacturing Chemist. How can they disown their liability to the Firm. After all the Firm has to carry out its business through its partners or servants. Rajendrakumar was not merely a manufacturing Chemist, but also a technical expert and partner of the Firm. It was he who was present at the time of inspection on 5-10-1976, vide Ex. P/6, and was instructed not to dispose of the Chloroquine tablets mentioned in Ex. P/6. He was handed over the drugs in presence of accused K. G. Kakani. Both of them were also present at the time of inspection on 27-10-1976, vide Ex. P/7, which clearly recites that Rajendrakumar Muchhal was seen working in the Factory. Instructions regarding non-disposal of drugs were received by accused Rajendrakumar again on 12-11-1976, vide Ex. P/10, which contains a reference to similar instructions having been issued by the Drug Inspector on 5-10-1976 and 20-10-76. Inspection dated 29-11-76 was carried out in presence of accused K. G. Kakani, as per Inspection-report, Ex. P/13, and by Ex. P/14, and it was he, who informed the Drug Inspector about pledging of drugs with the Bank and Ex. P/16 is the details of such pleadings furnished by the Bank. On 6-10-76 accused Rajendrakumar Muchhal in his capacity as partner informed the Drugs Inspector, that the statement of sale as desired could not be furnished as the Accountant had proceeded on leave. See Ex. P/23. Thereafter on 29-11-76, vide Ex. P/24, accused K. G. Kakani wrote to the Drugs Inspector that sales account would be submitted by 1st of December. Letter Exs. P/25 and P/26 of similar nature, written by accused Kakani, are also on record. It is accused Girish Mangri, the partner, who prepared the invoices, Exs. P/29, 30, 36 and 37, the rest Exs. 26, 32, 33, 34, 38 have been prepared and signed by K. G. Kakani. Quality control reports, Exs. P/39 and 40 are by accused Rajendrakumar Muchhal, where as the rest, Exs. P/41 to P/55, were submitted by accused I. C. Chopda.

10. It needs to be noted that the accused-respondents have not challenged any of the above referred documents, either in the statements recorded u/s 313, Cr. P.C. or in cross-examination of the witness.

11. Exhibit D/2 is the Inspection-report dated 14-5-1976. It is filed and relied upon by the accused. Rajendrakumar Muchhal was present at the time of inspection. Exhibit P/2 bears his signatures.

12. The involvement of accused Girish Mantri, Rajendrakumar Muchhal, K. G. Kakani, I. C. Chopda is abundantly clear from the documents on record. They are the persons who were involved in the process of manufacture and sale of the sub-therapeutic drug.

13. The learned Judge of the lower appellate Court has failed, to consider this overwhelming evidence on record and it appears was confused and lost in the smokescreen of corporate liability created by the accused.

14. Coming now to the case of State of Karnataka Vs. Pratap Chand and Others, , the case turns on its own facts. The accused in that case had taken the plea that the names, addresses and other particulars of the person from whom drugs had been acquired, had been disclosed by them to the Drugs Inspector. Enquiries were made. The firm's name "Mangilal Jayantilal and Co., Princes Street Bombay, was found to be fictitious. The Drugs Inspector making the inquiry was not examined as a witness. Prosecution rest content with filing his report. Obviously, therefore, the defence version remained unrebutted. Consequently, the violation of Section 18A of the Act also remained unestablished. This is not the position obtaining in the case at hand.

15. As far liability of a partner u/s 34(1), the Supreme Court relying on its earlier decision as reported in Girdhari Lal Gupta and Another Vs. D.N. Mehta, Assistant Collector of Customs and Another, , held that the second respondent could not be convicted merely because he had the right to participate in the business of the Firm under the terms of the partnership deed. In the instant case, it is not merely the legal right but actual participation, right from the manufacturing stage of the tablets in question up to their sale, is established, so far as the accused Girish Mangri, Rajendrakumar Muchhal, K. G. Kakani and I. C. Chopda are concerned.

16. The lower appellate Court while dealing with the liability of the accused-respondents has in para 12 of his judgment observed as follows :

"As per the decision of the Hon"ble Supreme Court in the case of State of Karnataka Vs. Pratap Chand and Others, this burden was not at all discharged in this case, in respect of at least the appellants Nos. 2 to 5."

So far as accused Girish is concerned, the lower appellate Court has not considered at all the invoice prepared by him. As for the other accused, 3, 4 and 5, Tansukhlal, Mangalal, and Ramkishan, reliance has been placed on decision in Pratap Chandra's case (supra). This case in its turn is based on Girdhari Lal Gupta and Another Vs. D.N. Mehta, Assistant Collector of Customs and Another, .

17. Section 34(1) of the Act relates to offences by a Company and "Company" is defined in Explanation to Section 34 of the Act as "a body corporate, and includes a firm or other association of individuals". Proviso to Sub-section (1) of Section 34 reads as follows :

"Provided that nothing contained in this Sub-section shall render any such person

liable to any punishment provided in this Act if he proves that the offence committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence."

A mere reading of this proviso would go to show that it is only when the accused proves that the offence was committed "without his knowledge or that he exercised all due diligence to prevent the commission of such offence". The Supreme Court in G. L. Gupta's case (supra) in para 22 has held as follows :

"Mr. Chagla, while arguing on behalf of the partners, said that there was evidence that one partner was not in Calcutta on the 24th or 25th October, 1958, as he was in Japan. But even if we take this fact into consideration, which fact was not brought to the notice of the Chief Presidency Magistrate-or the High Court, it does not help him at all. Entries were made in the account books and it was the firm's money which was spent and he being an active partner is clearly liable u/s 23C(1) of the Act."

After, quoting Section 23C(1) of the Foreign Exchange Regulations Act, 1947, the Supreme Court further held :

"This Sub-section deems the appellant Gridharilal Gupta guilty. The question is, Has he proved that the contravention took place without his knowledge and he exercised due diligence to prevent such contravention? What he said in his statement u/s 34, Criminal P.C. was that he alone looks after the affairs of the firm. There is also no evidence to show that the contravention took place without his knowledge, or that he exercised due diligence to prevent such contravention. The entries were there in his account books and the only thing that he had to say about these entries in his account books is that they pertain to the routine work of the firm. Under the circumstances we are unable to exonerate him of the charge."

18. In the case at hand, the accused-respondents, who are admittedly and undoubtedly partners (accused-respondents 3, 4 and 5) of the Firm have not discharged the burden cast on them by the proviso to Section 34(1) of the Act. The lower appellate Court dealing with the question of liability has also considered the question of law as framed by the trial Court and came to the conclusion that there was no material defect in the said charge and no prejudice could be said to have been caused to any of the accused. The charge as framed by the trial Court was u/s 27(1) of the Act. The opening clause of Section 27, reads as follows :

"Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or stocks or exhibits or offers for sale or distribution."

It makes it clear that whoever either himself or by any other person on his behalf, manufactures for sale or for distribution or stocks or exhibits or offers for sale or distribution any drug with a valid licence, as (required under Clause (c) of Section 18, shall be liable to punishment as per the law. Mere absence from the

place of manufacture by itself would not be enough to absolve oneself from the liability incurred on account of violation of the Drugs Act.

19. Viewed from any angle, whether Section 34(1) or Section 27 of the Act, the accused-respondents Nos. 3, 4 and 5, cannot absolve themselves of the charge, to loosen the law on its joints is to play with life and therefore anti-humanist, as pointed out by the Supreme Court in *Swantraj and Others Vs. State of Maharashtra*, .

20. The accused-respondents by producing the licence, Ex. D/1, have claimed that the tablets chloroquine phosphate were in accordance with the terms of the licence. This defence plea taken by the accused-respondents clearly indicates their mind. It is not the case of any of the accused-respondents that the offence was committed without his knowledge or that he exercised all due diligence to prevent commission of such offence. It is also not the case of any of the accused partners that he was a sleeping partner in the Firm. It is also not the case of accused-respondents 3, 4 and 5 that the sub-therapeutic tablets were not manufactured on their behalf. Production of Ex. D/1 by the accused-respondents is their umbrella of protection, It is this document which has considerably weighed with the lower appellate Court in acquitting the accused-respondents. The learned Judge overlooked the fact that a Drug Inspector has no right under the law to make any correction in the licence issued by the Drugs Controller. The very fact that the Drugs Inspector appeared as a witness for defence goes to show that he was in collusion with the accused. This correction was also noticed at the time of inspection by Manaklal Tavri (P.W. 1), the Drugs Inspector, vide his Inspection report, Ex. D/2. The trial Court has failed to consider a very significant fact which has appeared in the evidence of Manaklal Tavri. On 14-6-1976, though he was not incharge of the area of the Factory, yet he visited it, inspected and prepared his report, Ex. D/2. He did not file his report along with the complaint. According to him he was directed by the Assistant Drugs Controller to bring this report. No such direction of the Asstt. Drugs Controller has been placed on record. Correction in Ex. D/1 is on a very significant aspect. The figure "75" mg. is scratched out and in its place figure "125" is written.

21. Another. Drugs Inspector Rajendra Shukla was examined by the accused-respondents as a defence witness No. 1. He has proved the correction made in the licence, Ex. D/1, at items No. 6, where the figure "75" is scratched out and altered to figure "125" mg/This witness Rajendra Shukla admits that the Inspection report/note and list of items checked are sent in triplicate, after such list is checked and signed by the Inspector and if there is any correction made, it is required to be made in all the three lists of items. He has denied the suggestion that the correction was made by him after the list was received from the Drugs Controller. Rajendra Shukla was posted as a Drugs Inspector at Indore from the year 1975-76 and the Factory in question was under his jurisdiction. He has admitted his signatures at place A to A in Ex. D/1. By making this fraudulent alteration in the list appended to the licence, the Drugs Inspector of the area,

Rajendra Shukla, was simply paving the way for acquittal of the accused. Item No. 6, in Ex. D/1, does not tally with the carbon impression of the original, which is produced and proved as Ex. P/12A. As admitted by the witness, the necessary correction, if made, should have been found in Ex. P/12A, as well.

22. The learned Judge of the lower appellate Court ignored these collusive practices indulged in by both, Manaklal Tavri (P.W. 1) and the Drugs Inspector Rajendra Shukla (D.W. 1), though not incharge of the Factory, he went for inspection just to oblige the accused and noted the fact that correction in item 6 was there on the date of inspection, i.e. 14-5-1976. He takes shelter behind instructions by the Drugs Controller. No such instruction or order is placed on record. The question arises, are these Inspectors of the Drugs Department true to their salt? Are not they playing in the hands of the accused and can their evidence be given that credit and credence which the learned Judge of the lower appellate Court has given while acquitting the accused-respondents? It is this document, Ex. D/1, produced and relied upon by the accused-respondents, which not only exposes the falsity of their defence plea, but also exposes the Inspectors named above to criminal prosecution for fabricating false evidence to help the accused. The observations made by the Supreme Court in *Swantraj and Others Vs. State of Maharashtra*, in para 11 reproduced below, aptly apply to the present case :

"We need hardly say that a law is effective not by making it perfect on paper, but by providing a sufficient and conscientious cadre of officers."

23. The collective working of mind of all the accused is further reflected by the fact that despite instructions not to dispose of the drug in question, they pledged it with the Bank, as is evident from the Bank letter, Ex. P/16, and Instructions Exs. P/13, P/14. A huge stock of sub-therapeutic drug was not only manufactured, but despite instructions, it was pledged with the Bank, and their repeated demands for its release to the Court. Such drugs are liable to confiscation u/s 31 of the Act.

24. Notices to show cause be issued against both, Manaklal Tavri (P.W. 1) and Rajendra Shukla (D.W. 1) Drugs Inspector, calling upon them to show cause as to why they should not be prosecuted for fabricating false evidence.

25. In view of the foregoing reasons, this appeal deserves to be allowed. It is accordingly allowed and the order of acquittal as recorded by the lower appellate Court is set aside and the accused-respondents conviction and sentence as recorded by the trial Court is maintained.

26. A glaring fact has come to light during the course of hearing of this appeal. Drugs Inspector Rajendra Shukla interpolated the licence and another Drugs Inspector Manaklal Tavri has endorsed the interpolation by inspecting the Factory, although it was not within his area, thus paving the way for acquittal of the accused. The conduct of both these Officers is highly reprehensible and it calls for an inquiry by their employers. A copy of this judgment be also sent to

the Drugs Controller of the State to take suitable action against the erring Drugs Inspectors.