
(1975) 10 RAJ CK 0024
In the Rajasthan High Court
Case No : Criminal Appeal No. 575 of 1971

State of Rajasthan

APPELLANT

Vs

Topan Das

RESPONDENT

Date of Decision : 24-10-1975

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 27

Citation : (1975) WLN 459

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.L. Jain, J.—The facts of this appeal are that the Drugs Inspector, Ajmer, filed a complaint in the court of City Magistrate, Ajmer, that the, accused Topan Das, who is the proprietor of Messrs. Jaswani Medical Sire issued seven cash memos for the sale by him of medicines which were listed in the schedule "C" of the Drugs Rules, 1945. The case mainly centred round the medicines, namely; Penstrep, Achromycin Pied Drops, Neurabin and Bplex Forte, According to Rule 65 of the said Rules he was required to write the batch number and expiry date of these medicines in cash memos. The said Topan Das also failed to maintain the requisite registers prescribed by these Rules. He was thus, alleged to have committed an offence punishable u/s 27(b) of the Drugs Act, 1940.

2. The learned Magistrate examined Sardar Gurmukh Singh, Inspector Drugs Ajmer PW 1, Mithanlal FW2; Jagdish Prasad PW3, Tej Bahadur Singh PW4 and Keshavdas PW5. The accused did not lead any evidence in defence. The learned Magistrate however, held that the medicines entered in the cash memos were not covered by schedule "C" According to him they were covered by schedule "L" and "F". He therefore, acquitted the accused of the aforesaid offence. Hence, this appeal by the State.

3. I have heard the argument and perused the record. The judgment of the

learned lower court shows that the Public Prosecutor also agreed with the aforesaid ground of acquittal. It appears to me that no attempt was made seriously either by the prosecution or by the defence before the learned Magistrate whether the medicines were preparations of the drugs mentioned in Schedule "C" or "E". Some confusion appears to have prevailed in this respect in the lower court.

4. The learned Counsel for the respondent Topandas also submitted that acquittal cannot be set aside because the prosecution failed to prove their case. He contended that some of the medicines did not bear the batch number and expiry date upon their packages and compliance with Rule 65 was not possible. He also contended that the cash memos presented in the court were not the original ones. All these points obviously call for evidence and fresh determination.

5. I, therefore, accept this appeal, set aside the order of acquittal and direct that the case be remanded to the Chief Judicial Magistrate, Ajmer for retrial according to law. The accused is directed to appear before the learned Magistrate on 2nd December, 1975.