

(1956) 02 BOM CK 0021

In the Bombay High Court

Case No : Criminal Appeal No. 1373 of 1955 with Criminal Revision Application No. 1403 of 1955

The State

APPELLANT

Vs

Pritamdas Khatumal Mancharamani

RESPONDENT

Date of Decision : 02-02-1956

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 275, 420, 511

Citation : AIR 1956 Bom 559 : (1956) CriLJ 984

Hon'ble Judges : Gokhale, J;Gajendragadkar, J

Bench : Division Bench

Advocate : A.A. Mandgi, Asst. Govt. Pleader, for the Appellant; A.C. Kotwal, for the Respondent

Judgement

Gajendkagahkar, J.—This criminal appeal & the criminal revisional application arise from proceedings taken against the respondent u/s 420 read with Ss. 511 and 275, Penal Code. The facts on which the prosecution of the respondent was based are very few and most of the material facts are not in dispute. The respondent is a resident of Kalyan Camp.

It appears that Sub-Inspector, Chaubal of the Anti-Corruption Branch, Thana, had received information that certain persons were selling spurious drugs in the market. That is why Chaubal contacted Ovalekar on 4-8-1953 and persuaded him to act as a bogus customer. Ovalekar was given Rs. 110/- by Mr. Chaubal and in pursuance of the agreement between him and Mr. Chaubal, he purchased 6 doze bottles of Seclophen and Procain Penicillin prepared by Glaxo and Dumex Laboratories from the accused. These bottles were sold by the accused at the rate of Rs. 9/- per dozen, when the standard price was Rs. 12/- to Rs. 15/- per dozen.

On 28-8-1953, Mr. Ovalekar again purchased 1 gross bottles from the accused at Thana. The samples were then taken from these bottles and were sent to Mr.

Rangnekar, a Drugs Inspector of Bombay. Mr. Rangnekar merely by visual inspection gave his opinion that the drugs were spurious. On 3-9-1953, Mr. Ovalekar was given Rs. 435/- to purchase some drugs from the accused in the presence of panchas. One of the panchas accompanied Mr. Ovalekar.

Mr. Choubal, Mr. Rangnekar and others waited near the Prabhat Cinema at 11 a.m. The accused, the panch and the bogus customer entered the Jai Hind Hotel and came out after about 30 minutes. Then a signal was made and the police stopped the accused. On being searched, marked currency notes worth Rs. 45/- and other articles were found with the accused. The balance of Rs. 390/- were found with Mr. Ovalekar, who also had 5 doz. bottles of Penicillin of Dumex Laboratories and Seclopen. These drugs were sent to the Chemical Analyser and it was found that they were spurious.

(2) The accused denied both the charges u/s 420 read with Section 511 and u/s 275, Penal Code. He admitted that he had sold the bottles. In question to Mr. Ovalekar, but he pleaded that he did not know whether the drugs were spurious or not. In his written statement he alleged that he had obtained these drugs from a person who had posed to be an agent of Dumex and Glaxo Laboratories, and that if he had known that they were spurious he would not have sold them.

The learned Magistrate rejected the defence believed the prosecution evidence and held that the accused was guilty of both the offences charged. For the offence u/s 420 read with Section 511, the learned Magistrate sentenced the accused to 18 months' rigorous imprisonment and to pay a fine of Rs. 500/- in default to undergo 2-1/2 months, rigorous imprisonment & for the offence u/s 275 the learned Magistrate sentenced the accused to undergo one month's rigorous imprisonment.

The two sentences were ordered to run concurrently. In the appeal preferred by the accused, the lower appellate Court came to the conclusion that the offence of an attempt to cheat had not been established. The principal reason which weighed with the lower appellate Court in coming to this conclusion was that the bogus customer knew that the drugs for which he asked and which were being sold to him were spurious drugs and so the essential element of cheating was lacking, and since the essential element of cheating u/s 420 was lacking, the offence u/s 420 read with Section 511 could not be said to be proved.

On this view the lower appellate Court set aside the order of conviction and sentence passed against the accused for the said offence. The lower appellate Court, however, held that the accused knew that the drugs were spurious and so he committed the offence u/s 275. On this view, the sentence of one month's rigorous imprisonment passed by the learned Magistrate against the accused: for this offence was confirmed.

In Criminal Appeal No. 1373 of 1955, the State challenges the correctness of the finding made by the lower appellate Court that the offence u/s 420 read with Section 511 was not proved. The learned Assistant Govt. Pleader, however, was

not in a position to press this appeal because on the findings of fact made by the lower appellate Court he felt that it would not be easy to persuade us to reverse the conclusion of the lower appellate Court that the offence of an attempt to cheat had not been proved. He, however, pressed his application for enhancement of the sentence u/s 275 and it is this application which, therefore, needs to be considered on the merits.

(3) Mr. Kotwal for the accused has strongly relied on the fact that after the sentence of one-month was imposed by the learned Magistrate on the accused in regard to the offence u/s 275 no attempt was made by the prosecution to apply for the enhancement of the said sentence. Besides, Mr. Kotwal argues that the sentence of one month imposed on the accused has already been run out by him and Mr. Kotwal "has invited us to consider sympathetically the affidavit made by the accused and forwarded to us in the present proceedings.

The plea that the failure of the prosecution to apply for enhancement of the sentence imposed on the accused u/s 275 should be treated" against the prosecution in their present application for enhancement cannot, in our opinion, be accepted. It is obvious that, since the learned Magistrate had sentenced the accused to 18 months" rigorous imprisonment for the offence u/s 420 read with Section 511, an application to enhance the sentence u/s 275, where the maximum award-able was six months, would have been purely academic.

Whatever sentence was imposed on the accused u/s 275, it would have run concurrently with the sentence for cheating imposed u/s 420 read with Section 511. That is why the State was perfectly justified in not pressing the question of enhancement of sentence u/s 275 at that stage.

When, however, the lower appellate Court acquitted the accused of the offence u/s 420 read with Section 511, the State had to consider whether the sentence of one month could be said to meet the ends of justice having regard to the gravity of the offence even u/s 275. That is why we are not impressed by the argument that the application for enhancement should be rejected on the preliminary ground that this has not been made at the proper stage.

(4) The second ground that the accused has run out his sentence of one month no doubt has to be considered. The fact that the accused has come out of jail does introduce humane considerations in his favour. But, on the other hand, we cannot dispose of the application for enhancement purely and solely on such humane grounds. If it appears to us that the sentence Imposed on the accused is grossly inadequate having regard to the gravity of the offence, we should not hesitate to impose an adequate sentence on the accused even though the effect of our order would be to send the accused back to jail once more;

Now, with regard to the gravity of the offence u/s 275, there cannot be two opinions. The accused sold spurious penicillin to the bogus customer. In regard to the sale of spurious drugs, it is well known that the task of bringing home the offence to the accused is very difficult.

In the present case, both the Courts have found that the accused knew the spurious character of the drugs which he was selling. That finding cannot be, and has not been, challenged before us on the merits. The conduct of the accused in selling these drugs to Mr. Ovalekar on three occasions, coupled with the other facts to which the Courts below have referred, irresistibly leads to the inference that he knew that the drugs were spurious and he was deliberately trafficking in spurious drugs. Persons who traffic in spurious drugs are indulging in activities of an extremely objectionable and anti-social character.

In a sense they are toying with the lives of citizens. That is why it is impossible to take a lenient view of offences u/s 275, particularly when the spurious drug in question happens to be a drug like penicillin. We must accordingly accept the learned Assistant Government pleader's plea that this is a case in which the maximum sentence must be imposed on the accused. We see no extenuating circumstances in the case, and in view of the fact that the case has been fully established against the accused, we cannot refuse to accept the application for enhancement merely on the humane consideration to which I have just referred.

(5) We would accordingly allow the application for enhancement and enhance the sentence passed upon the accused u/s 275 from one month to six months" rigorous imprisonment, which is the maximum permissible under this section. The result is, the application for enhancement is allowed and the sentence u/s 275 is enhanced from one month to six months" rigorous imprisonment, while the appeal against the order of acquittal u/s 420 read with Section 511 fails and is dismissed. Rule absolute. Warrant against the accused to Issue.

(6) Sentence enhanced.