

(2002) 09 SC CK 0108
In the Supreme Court Of India
Case No : Criminal Appeal 920 of 2000

The State of Andhra Pradesh	Vs	APPELLANT
Venu Veterinary Division and Another		RESPONDENT

Date of Decision : 02-09-2002

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 17B, 18, 19, 19(1), 19(3)

Citation : (2003) 2 ACR 1191 : (2010) 257 ELT 322 : (2002) 8 JT 534 : (2002) 7 SCALE 392

Hon'ble Judges : M. B. Shah, J;D. M. Dharmadhikari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave to appeal is granted
2. The learned counsel appearing for the parties are heard finally on merits.
3. The respondents herein were prosecuted in criminal case No. 345 of 1999 in the court of the judicial magistrate, first class, Armoor (Andhra Pradesh) for alleged offences u/s 18(a)(vi), read with Sections 17B(a), 18(b) & (c) punishable u/s 27(c) of the Drugs and Cosmetics Act, 1940 (herein after referred to as the 'Act').
4. In exercise of the powers u/s 482 of the Code of Criminal Procedure by impugned order dated 5.9.2001 the learned single judge of the High Court of Andhra Pradesh has quashed the criminal proceedings instituted against the respondents. Aggrieved by the impugned order of quashing of the criminal proceeding the state of Andhra Pradesh has preferred this appeal.
5. The learned counsel appearing for the state of Andhra Pradesh submits that the learned single judge of the High Court has misunderstood the provisions of the Act under which the prosecution was initiated by the state and erroneously relied on a division bench decision of the same High Court delivered on 9.11.1996 in the case of Sri Venkata Raman (Medical Agencies) v. The Drugs

Inspector and State of Andhra Pradesh The copy of judgment of the division bench is placed for perusal on record as annexure P-5 to the special leave petition.

6. We have also heard learned counsel appearing for the respondents who supports the impugned order.

7. By the impugned order the learned single judge has held that the respondents who are merely dealers cannot be proceeded against and prosecuted under the provisions of the Act without the manufacturer of the drug being made an accused.

8. We have gone through the judgment of the division bench on which the learned single judge has placed reliance in quashing the criminal proceedings.

9. It is necessary to examine the relevant provisions of the Act on which the case of the prosecution is based. Section 8 defines the expression "standard of quality" of drug to mean that it must comply with the standards set out in the second schedule of the Act. Section 17B in its relevant part reads:

"17B. For the purposes of this chapter, a drug shall be deemed to be spurious

(a).....

(b) If it is an imitation of, or is a substitute for, another drug or resembles another drug in a manner likely to deceive or bears upon it or upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug."

Relevant part of Section 18 with Sub-clause (vi) of Clause (a), Clause (b) and (c) reads as under:

"18. Prohibition of manufacture and sale of certain drugs and cosmetics - from such date as may be fixed by the state government by notification in the official gazette in this behalf, no person shall himself or by any other person on his behalf

(a) manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute-

(i).....

(ii).....

(iii).....

(vi).....

(v).....

(vi) any drug or cosmetic in contravention of any of the provisions of this chapter or any rule made there under.

(b) sell or stock or exhibit or offer for sale or distribute any drug or cosmetic

which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder.

(c) Manufacture for sale or for distribution, or sell or stock or exhibit or offer for sale, or distribute any drug or cosmetic, except under, and in accordance with the conditions of a license issued for such purpose under this chapter.

....."

10. The learned single judge while placing reliance on the judgment of the division bench of the High Court of Andhra Pradesh (*supra*) held that the respondents being merely 'dealers' in drugs and not 'manufacturers' cannot be prosecuted. The division bench of the Andhra Pradesh High Court in the case before it had quashed the criminal proceeding on a finding that the accused therein were dealers only "and did not know and could not have ascertained, with reasonable diligence, that the drug contravened the provisions of the Act." The division bench went on further to hold if the tablet in question has been found to contravene any provisions of the Act either the distributor or the manufacturer is liable but not the dealer when the dealer purchased the said tablet from the valid distributor.

11. After perusing the impugned order of the learned single judge before us we find that the same overlooks the clear provisions of the Act.

12. In proceedings for prosecuting the accused under the provisions of the Act the only defence available to the accused is as provided in Section 19(1) read with Sub-section (3) of the said section. It reads thus :

" Section 19(1). Save as hereinafter provided in this section , it shall be no defence in a prosecution under this chapter to prove merely that the accused was ignorant of the nature , substance or quality of the drug or cosmetic in respect of which the offence has been committed or of the circumstances of its manufacture or import, or that a purchaser, having bought only for the purpose of test or analysis, has not been prejudiced by the sale."

(2).....

(3) A person , not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall not be liable for a contravention of Section 18 if he proves-

(a) that he acquired the drug or cosmetic from a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the drug or cosmetic in any way contravened the provisions of that section; and

(c) that the drug or cosmetic , while in his possession was properly stored and remained in the same state as and when he acquired it."

13. The High Court of Andhra Pradesh in its order totally overlooked the provisions contained in Sub-section (1) of the Section 19 of the Act which denies defence plea to the accused that 'he was ignorant of the nature, substance and quality of the drug or the circumstances of its manufacture'. The only defence available to him as set out in Clause (b) of Sub-section (3) is that 'he did not know and could not, with reasonable diligence have ascertained, that the drug or cosmetic in any way contravened the provisions of the Act.'. This defence plea, if at all available to the accused would be considered in accordance with Sub-section (1) read with Sub-section(3) of Section 19 of the Act only after the prosecution has led its evidence to prove its case. There is no prohibition in any of the provisions of the Act that a dealer cannot be prosecuted for sale of spurious drug or drug of below standard quality without manufacturer being made a co-accused. Such a conclusion by the High Court is not borne out from the provisions of the Act as discussed above.

14. For the aforesaid reason, we allow this appeal and set aside the impugned order dated 5.9.2001 of the High court and direct the judicial magistrate, first class, Armoor (Andhra Pradesh) to proceed in accordance with law with the trial of criminal case No. 345 of 1999, which is restored for trial.