

(2004) 07 AP CK 0067
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 77 of 1997

The State of A.P.	Vs	APPELLANT
B.V. Muralidhar Rao and Others		RESPONDENT

Date of Decision : 21-07-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Drugs and Cosmetics Act, 1940 — Section 18A(1), 27
Penal Code, 1860 (IPC) — Section 120B, 415, 417, 420, 461

Citation : (2004) 2 ALD(Cri) 724

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Public Prosecutor, for the Appellant; Nandigam Krishna Rao, C. Praveen Kumar, for the Respondent Nos. 2 and 3 and E. Uma Maheswara Rao, for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Narayana, J.—This is an appeal against acquittal. The State has preferred the present appeal against the Judgment dated 19.06.1996 made by the IX Metropolitan Magistrate, Hyderabad in C.C. No. 244 of 1993 acquitting respondents 1 to 4/accused 1 to 4 for the offences punishable u/s 120-B and 420 of the Indian Penal Code (IPC).

2. The respondents/accused were charged with Section 120-B and Section 420 of IPC. It may be pertinent to note that Crime No. 30 of 1991 was registered by C.I.D. City Zone, Hyderabad u/s 120-B and 420 of IPC.

3. The case of the prosecution in brief, is as hereunder:

The parties are referred to as accused hereinafter as arrayed before the learned IX Metropolitan Magistrate, Hyderabad for the purpose of convenience.

A1 and A2 were representing Pharmaceuticals Company under the name and style of M/s Synthokem Pharmaceuticals. Nabad (Karnataka) and they had

conspired to make money by manufacturing spurious drugs without even establishing any manufacturing unit in this regard and they got the capsules of Kemicillian manufactured through A-3 and tablets of Kemitron through A-4 and circulated in the market and sold the drugs to the general public through P.Ws. 3, 6, 9, 11 and 12. It is the further case of the prosecution that P.W.1-the Assistant Drugs Controller of Madras Port had drawn the samples and on confirmation that no such firm is manufacturing drugs in the name and style of M/s Synthokem Pharmaceuticals, Nabad and being satisfied that the capsules sold in the name of Kemicillian are spurious drugs, submitted a complaint to the Additional Director General of Police, C.I.D., Hyderabad and on the basis of the same, a crime had been registered as specified supra and had been investigated. The investigation disclosed that A-1 and A-2 conspired and decided to manufacture spurious drugs 500 and 200 Mg Kemicillian capsules and Kemitron tablets without even establishing a drug manufacturing unit and they got the blocks prepared from P.W.13 and empty tablets cartoons through P.W.2 and P.W.7, and they were paid amounts under Ex.P.7 and P.14. It is the further case of the prosecution that the Director of Forensic Science Laboratory confirmed that the cheques Exs.P.7 and P.14 bear the signatures of A-1. Further it was revealed that A-3 and A-4 manufactured Kemicillian capsules and Kemitron tablets by accepting the manufacturing charges from A-1 and A-2. P.W.24-the Investigating Officer recovered Kemicillian capsules from A-3 under Ex.P.41 in the presence of P.W.21 and another. It is the further case of the prosecution that P.Ws 3, 6, 9, 11 and 12 had sold the said spurious drugs to various customers, having purchased the same from A-1 and A-2 and out of the witnesses examined certain turned hostile and some of the prosecution witnesses had supported the version of the prosecution. In support of the prosecution P.W.1 to 24 were examined and Exs.P.1 to P.49 were marked.

4. The learned Additional Public Prosecutor Sri. Niranjan Reddy after taking this Court thoroughly through the oral and documentary evidence available on record would contend that the prosecution was able to establish Section 120-B and Section 420 of I.P.C. The learned Additional Public Prosecutor pointed out that P.W.3, P.W.4, P.W.6, P.W.11, P.W.13 and P.W.18 had not supported the version of the prosecution. But the other witnesses had clearly deposed as against A-1 to A-4. The learned Additional Public Prosecutor would also maintain that the evidence of P.W.1 is clear and categorical. The learned Additional Public Prosecutor had also drawn the attention of the Court to Exs.P.2 to P.4, P.7 and P.11, P.12 and P.13, and, P.35, P.38 and P.41 recovery panchanamas and submitted that these facts had been well proved, but, however, having accepted that the prosecution had established certain facts, the learned Magistrate had recorded an acquittal on the ground that there are certain missing links. The learned Additional Public Prosecutor also would maintain that the learned Magistrate having observed that the prosecution established the fact that A-1 and A-2 had placed order and got empty cartoons prepared for spurious drugs from P.W.2 and P.W.7, recording an acquittal cannot be sustained. The learned

Additional Public Prosecutor had pointed out the relevant portions of the findings recorded at the commencement and also while summing up the conclusions. While elaborating and making further submissions, the learned Additional Public Prosecutor also pointed out that the defence version that inasmuch as the drugs were not distributed to the public, it will not amount to cheating, cannot be sustained, But however, in the light of the evidence of P.W.2, 9 and 12 and the non production of the bills, if this Court for any reason arrives at a conclusion that the ingredients of Section 420 IPC for committing the offence had not been established, the learned Additional Public Prosecutor would maintain that definitely clear attempt had been made out by the prosecution attracting Section 420 I.P.C. read with Section 511 I.P.C. The learned Additional Public Prosecutor had also explained that in the light of the ratio in T.S. Baliah Vs. T.S. Rengachari, , when the prosecution can be launched both under a special Enactment and the general provisions of the Indian Penal code, there cannot be any bar and in view of the same, ultimately the charge sheet was laid only u/s 120-B and 420 of IPC. The learned Additional Public Prosecutor also placed reliance in Abhayanand Mishra Vs. The State of Bihar, in this regard. The learned Additional Public Prosecutor also placed reliance on Tulsi Ram Vs. State of U.P., . While elaborating his further submissions, he had explained the ambit of conspiracy and the special nature of this provision and placed strong reliance on Firozuddin Basheeruddin V. State of Kerala (2001 (2) ALD (Cri) 536 (SC)). He had also explained Ex.P.6 certificate to the effect that no such firm was in existence, and when no such firm was inexistence how the cheque dated 12.11.1990 (Ex.P-14) was issued in the name of the firm. Ultimately while summing up, the learned Additional Public Prosecutor would maintain that this is a case concerned with spurious drugs where public interest is involved and even if the findings recorded by the learned Magistrate are taken into consideration, definitely it is a clear case of attempting to cheat and the same would fall u/s 511 of IPC.

5. Per Contra, Sri C. Praveen Kumar representing R2 and R3/ A2 and A3 had taken this Court through oral and documentary evidence and pointed out that P.W.1 himself deposed that for M/s Synthokem Pharmaceuticals, there is a licence under Drugs and Cosmetics Act. The learned Counsel also had pointed out that there is no material available as against the other accused since P.W.9 and P.W.12 also spoke about A1 only and the Kemicillian tablets alleged to have been recovered from A1 were also not sent for examination. Except recovery of cartoons, nothing relating to the medicines as such had been established and the L.Rs also do not tally so as to connect the accused and the evidence of P.W.5 and P.W.8 and also P.W.2 and P.W.7 is not trustworthy and the name of P.W.7 was not referred to even in charge sheet.

6. Sri Uma Maheswararao representing R4/A4 submitted that there is no evidence worth mentioning against R4/A4 and hence, as far as acquittal of A4 is concerned the same need not disturbed for want of material.

7. Sri Nandigam Krishna Rao with all emphasis made the following submissions. The learned Counsel had explained the scope and ambit of Section 415 I.P.C-the definition section of cheating and Section 420 I.P.C-dealing with punishment and would submit that definitely the ingredients are not satisfied. The learned Counsel placed reliance on Anil Kumar Bose Vs. State of Bihar, . The learned Counsel had also maintained that spurious drugs were not recovered from P.W.9 or P.W.12 and in the absence of material, merely because they deposed about A1, in the light of the reasons recorded by the learned Magistrate, an order of acquittal cannot be disturbed by the Appellate Court. The learned counsel had also pointed out that the very initiation of the prosecution is in pursuance of the identification of A1 by one Jain who was not examined and who was not arrayed as accused. Apart from this aspect of the matter, P.W.9 is a teacher and no doubt, he deposed that he knows A1. But, however, he is not the person concerned with the running of the shop as such. Several discrepancies also had been pointed out and the cheques were in personal name and not in the name of the firm and the said cheques were also dishonored. There was no chemical analysis and the spurious nature of the drugs had not been established and at any rate, there is no connecting material to link A1 with these transactions, and hence, the learned Magistrate had rightly recorded an order of acquittal. While concluding, the learned Counsel had also pointed out the limitations of this Court in interfering with the orders of acquittal and reappraisal of evidence. The learned Counsel would point out that the reasons recorded by the learned Magistrate are neither perverse nor unreasonable and hence, the said findings need not be disturbed by the Appellate Court.

8. Heard the Counsel at length and perused the oral and documentary evidence available on record and also the findings recorded by the learned Magistrate in this regard.

9. The charges are as hereunder:

FIRSTLY:- That you in February, 1990 hatched a plan and entered into agreement to manufacture spurious drugs, without any drug licence and in pursuance of agreement got manufactured four lakhs Kemitron D.S. Tablets and Kemicillin capsules and sold same in Calcutta, Nagpur, Sholapur, Chittoor, Kurnool, Vijayawada and Hyderabad and thereby committed offence U/S 120-B IPC and within my cognizance.

SECONDLY:- That you during said period without Drug licence got manufactured Kemicillin capsules and Kemitron Tablets and dishonestly induced M.V. Krishna Prasad (LW.14) Kankicherla Laxman Rao (LW.15), Kasturi Sambaiah (LW.13) to purchase same and in various other places at Calcutta, Madras, Nagpur, Sholapur, Chittoor, Kurnool, Vijayawada, Hyderabad which are spurious drugs and thereby cheated said persons and thereby committed offence punishable U/S 420 IPC and within my cognizance.

10. P.W.1-Assistant Drug Controller at Madras Port had deposed that he was

working as Drug Inspector in Central Drugs Standard of Government of India at South Zone, Madras and he notified as Drugs Inspector on 08.03.1991 and he lodged a complaint to Additional Director General, CID, on 08.3.1991 under Ex.P.1. P.W.1 further deposed that his investigation revealed that Kemicillin 500 mg and 250mg, Kemitron D.S. Drugs are manufactured in the name of Synthokem Pharmaceuticals, Nabad, Karnataka and they are spurious in nature and they do not contain ingredients declared on the lable cartoon. P.W.1 also deposed that M/s Synthokem Pharmaceuticals, Nabad is a fictitious one and does not exist and the Drug Controller of Karnataka informed that there is no such licence and in the month of November, at Madras he collected samples of Kemicillin 250 and 500 mg and Kemitron D.S. from Swastik Medicals, Nayiniappa Naika street, Madras-3 and they were reported to be spurious. P.W.1 also deposed that Mr.Suryakant Jain, Manager of Shops stated that drugs were supplied by Mr. Muralidhar Rao-A1 in the month of March, 1991 and Surya Kanth Jain came along with him to Hyderabad and identified A1 and the further investigation revealed that the transaction was being done through Vijaya Bank, Malakpet under the name of Synthokem Pharmaceuticals, and hence, he lodged a complaint. P.W.1 no doubt deposed that Synthokem Pharmaceuticals has got a licence under the Drugs and Cosmetics Act. P.W.1 also deposed that he had drawn samples of Kemicillin 500, Batch No. 215, Kemicillin 250, Batch No. 504, Kemitron D.S. Batch No. 20 from the seized stocks shown to him by Vasundhara Rao and he gave a receipt acknowledging the receipt of samples. He further deposed that he had received the report from Central Investigation, Calcutta wherein it is stated that Kemicillin 250 reported to be spurious for amplicin and Kemitron D.S. reported to be spurious for the reason it failed by identification and Kemicillin 500mg reported to be spurious for the reason it failed by identification for amplicilli. P.W.1 further deposed that he received Exs.P.2 to P.4 reports. Ex.P.5 is the forwarding letter and all the reports are signed by Government Analyst, Government of India and Ex.P.6 is the letter given by the Drug Controller. P.W.1 also deposed that M.Os 1 to 3 are valid papers of sample drawn from seized material by police and another sample portion had been sent to Government Analyst. Exs.P.2 to P.5 are the reports. P.W.1 deposed about M.O7 and also had stated that these drugs are life saving drugs. This witness was cross-examined at length. He had deposed in cross-examination that in Ex.P.1 he had stated that he received credible information from confidential informants. But he did not mention the details in Ex.P1 since it is a confidential. He also deposed that in Ex.P1 it is not stated that Suryakanth Jain accompanied him to Hyderabad. But, however, he had given it in his statement that when he lodged Ex.P1, Suryakantha Jain was not with him. On 2.3.1991 he came to Hyderabad relating to this matter and he went along with the Drug Inspector and Surya Kantha Jain to identify A1. P.W.1 also deposed that he had seized the material at Madras and reference case is filed on some information. The complaint had been lodged before X Metropolitan Magistrate for offence committed at Madras against A1 and P.W.1 also deposed that A1 did not appear and Non Bailable Warrants are pending against A1. P.W.1 further deposed that along with Drug Inspector, he

inspected Vijaya Bank, Malakpet. This witness further deposed that on information he had collected samples from Swastik Medicals, Madras and seized the material, and since 25 years he had been working as Drug Inspector and his statement was recorded and he did not hand over the documents regarding spurious drugs found by the Drug Inspector Ankada and he had detained it for the case at Madras. P.W.1 was also cross-examined at length relating to M.Os. P.W.1 no doubt admitted that except Suryakantha Jain, he did not have any information connecting A1 with the case identified by him in Ex.P1 and only Suryakantha Jain is capable of identifying Muralidhar Rao(A1) and he had no knowledge about the Muralidhar Rao prior to the identification by Suryakantha Jain and he had identified Muralidhar Rao in the presence of other Drug Inspectors. But he cannot give the date. With permission the learned Public Prosecutor had put certain questions and again P.W.1 was further cross-examined. P.W.1 also deposed that a complaint was given on white paper but not on Government letter-head and on the same day or the next day when he gave complaint, he was examined by police and he had not seized the stocks from which the samples were sent and he was not aware of who had seized the drugs and he was unable to say whether drugs were not seized as per the procedure under the Drugs and Cosmetics Act and the Rules made there under and no panchanama was drafted. No doubt P.W.1 admitted that when samples are drawn, the procedure prescribed under Drugs and Cosmetics Act will have to be followed. Certain questions were put to this witness in his further cross-examination relating to Ex.P1, P2, P5 and P6. P.W.1 also deposed that in Ex.P1 he did not mention that he had drawn samples and sent for analysis and in his 161 Cr.P.C. statement he had not mentioned that he sent samples for analysis. The other suggestions were denied. This witness is the crucial witness who had initiated the very prosecution on information given by one Suryakantha Jain.

11. P.W.2 is a printer of printing press by name Everest Printers at Esamiabazar and he deposed that he is doing printing for Pharmaceutical industries and he would be printing the matters on empty cartoons and blocks and blocks are generally by order by the parties. P.W.2 also deposed that he knows Muralidhar Rao (A1) and another person whose name he cannot say. But, however, P.W.2 identified both A1 and A2 in open Court. P.W.2 further deposed that in 1990, A1 and A2 came to him and ordered four blocks of printing cartoons and he had printed 2000 cartoons and he had supplied the same to A1 and A2 and he can identify them. M.Os 4 to 7 are the blocks and he had printed on plain board and he was given equally Rs.1200/- and Rs.1400/-. The cheques are bearer cheques and the cheques were drawn on Vijaya Bank. P.W.2 also deposed that he did not receive amount as cheque was dishonored since there was no money in the account. Ex.P.7 is the cheque dated 10.11.1990. P.W.2 further deposed that he printed Kemicillian 250 Mg and 500 Mg cartoons blocks. However, P.W.2 deposed that he is not aware whether they have licence or not, but, however, because blocks were brought, he believed them. P.W.2 was cross-examined and he had deposed that in his statement u/s 161 Cr.P.C. he stated that order was for 4000

cartoons and he had not stated the rate of each cartoon in his 161 Cr.P.C. statement. PW.2 also stated that in Ex.P.7 no firm name is mentioned and this witness also admitted in his 161 Cr.P.C. statement that he had not mentioned the name of Mallikarjunarao (A2) and no doubt such suggestions were put to P.W.2 so as to discredit this witness.

12. P.W.3 deposed that he knows A1 who was present in Court and A1 was staying at Malakpet and he does not know where A1 was staying at present and A1 was Medical representative and A1 opened account at Vijaya Bank and he requested him to introduce in Vijaya Bank, Malakpet Branch and that he had signed as introducer. However, this witness was declared hostile and he was cross-examined.

13. P.W. 4 is a resident of Himayat Nagar and a partner in M/s Kemi Drugs, Tilak Road, Hyderabad and he deposed that he cannot identify A1 and A2 who were present in Court and hence, this witness has also declared hostile.

14. P.W.5 who is a clerk in Navata Transport, Bharkatpura had deposed that on 27.02.1991 from Tallapudi, physicians samples were received in their transport company and nobody came to receive till 13.03.1991 and on the same day, four C.I.D. Officers and Inspector came and asked him in respect of receipt No. 13418. Ex.P.10 is L.R. No. 13418. Inspector opened cartoon and saw them. He further deposed that he has no idea as to how many strips of tablets were in the cartoon and the cartoon was booked at Tallapudi by R.M. Pharma Private Ltd., Tallapudi and it was addressed to S.M. Rao. P.W.5 was cross-examined and he deposed in his cross-examination that the cartoon was taken on 13.03.1991 by C.I.D. Police and the receipt book containing Ex.P.10 belong to Tallapudi Office, and Barkatpura Office is not concerned with book which contains Ex.P.10. He also admitted that unless he looks into his office record, he cannot say whether the said transport was received in the office or not.

15. P.W.6 who is a medical shop owner was declared hostile.

16. P.W.7 is the witness on which strong reliance was placed and he deposed that he got printing press under the name and style of Sri Maruthi Ram Box Making Press, and Muralidhar Rao (A1) and Mallikarjunarao (A2) came to his press with printing blocks for box making purpose in three colours. M.Os 8 to 10 are the said blocks brought by Muralidhar Rao (A1) and Mallikarjunarao (A2) and they asked him to print 3000 Kemitron Tablet Boxes. Then he printed the matter on Card Board and handed over the same. Muralidhar Rao gave cheque in 1990 for Rs. 2,260/ payable at Vijaya Bank, Hyderabad. But, he could not collect the amount as the cheque was dishonored and he can identify Muralidhar Rao, and Mallikarjunarao was not present on the particular day. But Mallikarjunarao was present and witness identified Mallikarjunarao. Ex.P.11 is the cheque issued to him, which was dishonored. M.O12 is a box which he printed. He was cross-examined by the accused at length. No doubt, this witness deposed that Muralidhar Rao and Mallikarjunarao came together and placed the order. He had

spoken to all the details even during the course of cross-examination.

17. P.W.8 is a clerk in Navata Road Transport at Tallapudi. He speaks about Ex.P.12-L.R. But, however, this witness deposed that he cannot identify the said person in view of lapse of time. But it was booked in the name of S.M. Rao, Medical Representative to be delivered at Navata Transport, Barkatpura and his statement was recorded by C.I.D. Police. Ex.P.13 is the carbon copy of L.R. This witness deposed in his cross-examination that in L.R. it was written H.L.M. H.L.M. means Handloom Medicines and he had seen contents and therefore, he cannot say what was there exactly in box and he had not given names and other particulars in his statement that who booked the parcels. He also deposed that it is true that for booking consignment under Ex.P.12, it must accompany by Sales Tax Way bill and invoice of a consigner.

18. P.W.9 is yet another important witness on which strong reliance was placed. P.W.9 is a teacher and he had deposed that A1 approached him in 1990 that he is working as a medical representative and he can supply medicines. He also deposed that he purchased medicines Kemicillin 250 and 500 mg and each 40 boxes at the rate of Rs.100/- and Rs.65/- respectively. But he could not sell them after seeing in papers and he had returned them to Muralidhar Rao-A1. This witness in his cross-examination admitted that his son is doing the entire transaction regarding purchase and sales of medicines and he also deposed that there are two partners in the firm and both are managing partners and no doubt, certain questions were put to him relating to the other details.

19. P.W.10 is a clerk in ANL Parcel Services, Kurnool. He deposed about the consignment and the consigner's name as S.M. Rao and the consignment was booked at Hyderabad on 27.02.1991 and the L.R. discloses the consignment of HML (Harmless Medicines).

20. P.W.11 is a retail medical shop owner at Vijayawada who was also declared hostile.

21. P.W.12 is yet another witness and strong reliance was placed on the evidence of P.W.12. Apart from the evidence of P.W.9, P.W.12 had deposed that he is the proprietor of Vijaya Durga Medicals, Vijayawada and he knows Muralidhar Rao since he came to his shop in 1991 and the said Muralidhar Rao told him that they have products in Kemitron, Kemicillin and the said products should be marketed and on such request, he had placed an order for supply of Kemicillin, Kemitron in small quantities and they sold some portion of tablets to customers and on seeing in paper that the said medicines are spurious, he had destroyed the remaining portion of the medicines and he cannot give the said quantity ordered. A1 is the said Muralidhara Rao. In Cross-examination, this witness deposed that since 15 years he has been doing medical business and he is a proprietor of the said shop and he also deposed that he will not purchase any medicine without bill and he had not produce any bill showing purchase of medicine. But P.W.12 in cross-examination again asserted that A1 and A3 came to his shop thrice and

denied the suggestions that the accused did not sell any medicines at all to him and also the other suggestions.

22. P.W.13 is a partner of Swatantra Enterprises at Vijayawada dealing in manufacturing of Blocks for printing purpose and this witness was declared hostile.

23. P.W.14 is another important witness who had deposed that he is working as Scientific Officer in F.S.L. and after deposing about his qualifications, he had deposed relating to the signatures on Ex.P.7 and P.11 and also deposed about Exs.P.16 to P.34, P.35, P.36 and P.37. This evidence is only to show and connect the accused with the signatures on the cheques. P.W.14 was also cross-examined.

24. P.W.15 is panch witness. This witness identified A-3 as the person present at the time along with the C.I.D. Police and he had signed cheque Ex.P.11 and he deposed about the blocks M.O11. Ex.P.38 is the portion of the seizure panchanama under which M.O11 blocks were seized and also Cheque Ex.P.11 from possession of Rama Rao and he can identify the said Rama Rao.

25. P.W.16 just deposed that he worked as Manager in Vijaya Bank, Malakpet from March, 1992 till June 1995 and M/s Synthokem Pharmaceuticals had current account bearing No. 1058 opened by B.V. Muralidhar Rao as Proprietor of M/s Synthokem Pharmaceuticals and he was introduced by J. Vishnuvardhana Prasad and the two cheques issued by Muralidhar Rao were dishonored and they are Exs.P.7 and P11 and the reason for dishonor was due to insufficient funds.

26. P.W.17 is a resident of Kurnool working as Hamali in Kurnool Bus Stand and he deposed that when he was at Vijayawada near ANL Transport Company, three persons came and opened cartoons bearing ANL Trnasport Office and checked the cartoons. He further deposed that another person was there and they were asked to sign at office and they saw checking of cartoons containing tablets, but he cannot identify the said persons in view of the lapse of time. The seizure panchanama Ex.P.39 contains his signature and M.O13 is cartoon, which contains small boxes of capsules. P.W.18 another Hamali who was declared hostile.

27. P.W.19 deposed about Ex.P.40 and this witness deposed that panchanama was written in respect of checking of a factory P.M. Pharma Factory and they were asked to sign and accordingly, they had signed and Ex.P.40 contains his signature.

28. P.W.20 who is the Upasarpach of the village deposed that constable of their police station called him and that P.W.19 stated that Sub-Inspector of Police called them and they had gone to the police station and they were asked to sign a written paper Ex.P.40 and he had signed in Ex.P.40.

29. P.W.21 is a cycle repairer and he had deposed that on 12.03.1991, C.I.D. Police called him to C.I.D. Office and another panch-Abdul Nabi was also called and police conducted panchanama in their presence stating that medicines were brought from Malakpet and the cartoons, blocks were brought from Esamia

Bazar. He further deposed that the Circle Inspector wrote panchanama and he cannot say about the contents of panchanama. Exs.P.41 and P.45 are panchanamas on which he had signed and M.O2 also contains his signature.

30. P.W.22 is the D.S.P., Sirpur Kagaznagar. Previously he worked as S.B.O., C.I.D. He had deposed that on 08.03.1991 at 17.00 hours, he received report from M. Vasundara Rao, Inspector of Police, C.I.D to register a case u/s 120-B and 420 IPC and u/s 18-A and (1) and 27(e) of Drugs and Cosmetics Act, 1940 and then he registered a case in Crime No. 30 of 1991 and handed over the First Information Report to M. Vasundara Rao and he had sent the F.I.R. to Court. Ex.P.46 is the First Information Report.

31. P.W23-Dr. S.K. Das is working as Senior Bio-Chemicals Central Drug Laboratory, located at Calcutta and he deposed that on 14.01.1991, he had received sample from the Drug Inspector, South Zone, Madras and the nature of the sample received are paper cartoons, in which some blister packets containing capsules were received and after receiving sample, he got it analysed and he gave it to an analyst by name V. Roy Chowdary and after some time analyst reported that he could not find any positive test for ampicillian and then he also checked data and analysed as per India Pharma Copiela. But he found ampicillin absent and he found samples spurious and gave opinion under Exs.P.3 and P.4. Ex.P.2 pertains to Kemicillin 250, Ex.P.4 pertains to Kemicillin 500 mg. No doubt, this witness was cross-examined.

32. Investigating Officer was examined as P.W.24 who had deposed as to how the crime was registered and how investigation was taken up and P.W.24 also deposed that he examined P.W.1 and on reliable information, he had affected the arrest of A1 and his confessional statement was recorded in the presence of panchas Abdul and Sardar Miya. In panchanama of confession, he had seized 90 empty Kemicillin 500 mg. Cartoons and 35 filled Kemitron tablets from the house of A1 in presence of the said panchas. P.W.24 also deposed that in pursuance of confession, on the same day, on 12.03.1991, he had affected arrest of A3 at 6.00 P.M and on his confession, he had seized 90 empty Kemicillin 500mg Cartoons from his factory Ethicare Pharmaceuticals at Tarnaka. He also deposed that in pursuance of confession of A1, he along with panchas went to Everest Printer situated at Esamia Bazar and seized four blocks, two red and two black colour and he also seized Kemicillin Duplex Board in the presence of panchas and he has examined P.W.3, L.W.4 M.A. Gafoor, P.W.6, P.W.4, P.W.2, P.W.5 and recorded their statements. On 13.03.1991 at 6.00 A.M. he affected arrest of A2 and his confessional statement was recorded before panchas Abdul Nabi and Sardar Miya and seized two invoices 13518, 384418 on confession of A-2. This witness also deposed that he along with panchas visited Navata Transport, Barkatpura and seized one box received from R.N. Pharma, Prakkilanka contained 32 filled Kemitron tablet cartoons on 13.03.1991. A1 and A2 were taken for police remand and A3 was remanded to Judicial custody and he had taken A1 and A2 as per their confessions to Prakkilanka and recorded statement

of P.W.4 and seized one L.R. Book, having numbers 134012 to 13550 along with goods forwarding note in presence of panchas Mulla Ratnaji Rao and Golla Mavullaiah. He also effected arrest of A4 and recorded his confessional statement before panchas on 15.03.1991. P.W.24 further deposed that on 16.03.1991 he visited Vijayawada and recorded statement of P.W.7 and seized two blocks and one dishonored cheque No. 321633 issued by A1 to P.W.7 for getting printed Kemitron tablet boxes in presence of panchas P.W.15 and L.W.24 G. Ramachandra Rao. He deposed that A4 was sent to judicial remand after his arrest. The Investigating Officer further deposed that on 18.03.1991 he had visited Kurnool, along with A1 and A2 and recorded statement of Abdul Wajid and also seized two parcels received from ANL Transport, Hyderabad and also a cartoon L.R. No. 384118 dated 27.02.1991. He further deposed that two parcels consist of 160 Kemicillin, 250 mg. Capsules cartoons and 25 Pencillin 500 mg. capsules cartoons and he had taken sample to send them for analysis. He deposed that the confession of seizure of samples was done before panchas P.W.17 and P.W.18. A1 and A2 were remanded to judicial custody on 18.03.1991 and he also recorded the statement of P.W.4, P.W.11, P.W.12, P.W.13, P.W.16 and he had sent the cheques and also documents written by A-1 to Forensic Science Laboratory for decision and accordingly, a charge sheet was filed. P.W.24 was cross-examined at length and the contradictions marked in 161 Cr.P.C. statements had been put to this witness and several suggestions were put relating to the investigation and it was also suggested that Sardar Miya and Abdul Nabi are the stock witnesses of CID Police and no doubt, an attempt was made in the course of cross-examination to show that the panchanamas and the seizures can not be believed.

33. It is no doubt true that the learned IX Metropolitan Magistrate, Hyderabad observed that the prosecution could establish only a few facts like placing of order by A1 and A2 for Kemicillian capsules empty cartoons and Kemitron empty tablet cartoons, recovery of stocks from P.W.5, P.W.8 and P.W.10, the signatures of A1 on Ex.P.7 and P.14 and seizure from P.W.7 and P.W.10. On the strength of this finding, the learned Additional Public Prosecutor made a serious attempt to show that the acquittal recorded cannot be sustained and the same is liable to be interfered with. The charges, which were framed, had been referred to supra.

34. Now, in view of the evidence adduced by the prosecution, it has to be seen whether the ingredients relating to these offences had been satisfied and whether the reasons and the findings recorded by the trial Court in this regard are liable to be disturbed.

35. At the out set, it may be stated that P.W.13 was declared hostile and evidently, he had not supported the prosecution version regarding manufacturing of blocks by him. Except the evidence of P.W.13, which had been adduced by prosecution in relation to the manufacturing of blocks, there is no other evidence worth mentioning and hence, the prosecution had not established the aspect of manufacturing of blocks.

36. As already had been discussed supra P.W.7 deposed that he manufactured Kemitron empty tablet cartoons to A1 and A2. The discrepancies relating to cartoons prepared and the prices received in the evidence of P.W.2 and P.W.7 and the cheques issued to P.W.2 and P.W.7, which were recovered and marked Exs.P.7 and P.14 in fact, had been discussed at length by the learned Magistrate. It is no doubt true that the evidence of P.W.14 is available in relation to the signature of A1 in Ex.P.7 and P.14. P.W.15-the panch witness of Ex.P.38 deposed about the recovery at the instance of A1 from P.W.7. P.W.24-Investigating Officer also deposed about the recovery under Ex.P.38. On this material, the prosecution was able to show upto the extent that A1 and A2 placed an order for getting empty cartoons prepared and nothing more or nothing else. Regarding A1 and A2 approaching A4 and getting Kemitron D.S. Tablets manufactured by paying manufacturing charges, absolutely, there is no evidence worth mentioning. Hence, as far as A4 is concerned, this Court has no hesitation in holding that in view of the absence of material, the findings recorded in relation thereto need not be disturbed at all. No doubt, there is some serious controversy and the learned Counsel representing A2 and A3 pointed out that even if the material available on record is taken into consideration, the name of A1 alone had been spoken to and not the other accused A2 and A3. No doubt, the counsel representing A1 made serious attempt to convince that the acquittal recorded as against A1 also need not be disturbed by this Court. P.W.21 is the panch witness relating to Ex.P.41. P.W.24-the Investigating Officer also deposed about seizing of Kemicillin capsules from A3. But however, the evidence of P.W.21 if carefully scrutinized is of no consequence and recovery from A3 was not proved. Hence, the prosecution had not established the said aspect.

37. The most crucial aspect is in relation to proof of sale of spurious drugs by A1 and A2. P.W.3, P.W.6, P.W.9, P.W.11 and P.W.12 were examined in this aspect. But however, P.W.3, P.W.6 and P.W.11 had turned hostile. Hence, relating to this crucial aspect of sale, the evidence of P.W.9 and P.W.12 alone is available on record, and the same had been discussed at length supra, which need not be repeated again.

38. P.W.19 is a teacher and his evidence is that his son is running a whole sale business in the medicines. But his son was not examined. P.W.12 in his cross-examination stated that he would never purchase medicines from the unauthorized persons that too, without bills. In the light of his own statement in the cross-examination, the version of this witness that these Kemicillian Capsules and Kemitron tablets were purchased without bills would fall into doubt.

39. P.W.5 and P.W.8 are the clerks of Navata Transport and P.W.10 is the clerk of A.N.L. Parcel Service, Kurnool. P.W.5 no doubt submitted the receipts of parcels from Hyderabad in the name of A2. P.W.8 had partly supported and P.W.4 had not totally supported the prosecution version. P.W.19, P.W.20 and P.W.21 had not supported seizure from P.W.5 and P.W.8. In the light of this evidence, it is clear that the manufacture of spurious drugs by A1 and A2 with the help of A3 and A4

had not been established though the prosecution was able to establish only the crucial aspect, which had been already discussed supra.

40. Apart from all these aspects, the very evidence of P.W.1 is that A1 was arrested in pursuance of the identification made by one Jain and it is the subsequent development in the prosecution version and the said Jain for the reasons best known had not been examined. Strong reliance was placed on the evidence of P.W.9 and P.W.12 on the ground that these are crucial witnesses. It is no doubt true that the prosecution made serious attempt to prove the complete prosecution version. But however, definitely certain links are missing as can be reflected from the careful scrutiny of the whole evidence available on record. Be that as it may, in the light of the evidence available on record, the learned Additional Public Prosecutor in alternative had submitted that at least an attempt of cheating the public had been well established as this matter is concerned with the sale of spurious drugs. Initially, the crime was registered under certain provisions of Drugs and Cosmetics Act, 1940 and Sections 120-B and 420 IPC. The Drugs and Cosmetics Act 1940 is an act to regulate the import, manufacture, distribution and sale of Drugs and Cosmetics. Evidently the prosecution thought of laying down the charge sheet only under the general provisions of the Indian Penal Code. Section 415 of I.P.C. dealing with cheating reads as hereunder:

"Section 415-Cheating:- Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property, to any person or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to the person in body, mind, reputation or property, is said to "cheat".

It is no doubt true that for proving conspiracy, direct evidence always may not be available. Relating to the prosecution under the general provisions of Indian Penal Code, the learned Additional Public Prosecutor placed reliance on T.S. Baliah Vs. T.S. Rengachari, and as far this aspect is concerned, there is no serious controversy between the parties.

41. (a) In Firozuddin Basheeruddin V. State of Kerala, 2001(2) ALD (CrI.)536 (SC) at paras 23 and 25, the Apex Court held that,

"Like most crimes, conspiracy requires an act (actus reus) and an accompanying mental state (mens rea) . The agreement constitutes the act, and the intention to achieve the unlawful objective of that agreement constitutes the required mental stage. In the face of modern organized crime, complex business arrangements in restraint of trade, and subversive political activity, conspiracy law has witnessed expansion in many forms. Conspiracy criminalizes an agreement to commit a crime. All conspirators are liable for crimes committed in furtherance of the conspiracy by any member of the group, regardless of whether liability would be established by the law of complicity. To put it differently, the

law punishes conduct that threatens to produce the harm, as well as conduct that has actually produced it. Contrary to the usual rule that an attempt to commit a crime merges with the completed offence, conspirators may be tried and punished for both the conspiracy and the completed crime. The rationale of conspiracy is that the required objective manifestation of disposition to criminality is provided by the act of agreement. Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators. Since an agreement of this kind can rarely be shown by direct proof, it must be inferred from circumstantial evidence of cooperation between the accused. What people do is, of course, evidence of what lies in their minds. To convict a person of conspiracy, the prosecution must show that he agreed with others that together they would accomplish the unlawful object of the conspiracy.

Conspiracy is not only a substantial crime. It also serves as a basis for holding one person liable for the crimes of others in cases where application of the usual doctrines of complicity would not render that person liable. Thus, one who enters into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission. The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependant upon the encouragement and support of the group as a whole to warrant treating each member as a casual agent to each act. Under this view, which of the conspirators committed the substantial offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts."

(b) In *State of M.P. Vs. S.B. Johari and Others*, the Apex Court held that "in relation to proof of conspiracy in most of the cases, it would be based on circumstantial evidence."

42. As far as the aspect of licence under the Drugs and Cosmetics Act is concerned, though in chief-examination P.W.1 deposed in the fashion as discussed earlier, in cross examination P.W.1 admitted as far as the possession of licence is concerned. Strong reliance was placed on Ex.P-6 and P-14 the certificate to the effect that no firm was in existence and the cheque dated 12.11.1990 and submissions were advanced. In the absence of proof relating to an understanding or agreement that may be inferred from the circumstances available, it cannot be said that offence of conspiracy in any way established. Apart from this aspect of the matter, the evidence in relation to the proof of conspiracy also made to be evaluated while appreciating the evidence in relation to the charge sheet u/s 420 of the Indian Penal Code. It being the main allegation against the accused, as already stated supra by me, there is absolutely no material as far as A4 is concerned.

(a) In Anil Kumar Bose Vs. State of Bihar, , it was held that

"For the purposes of holding the accused guilty u/s 420 IPC, the evidence adduced must establish beyond reasonable doubt mens rea on their part."

(b) Strong reliance was also placed on Tulsi Ram Vs. State of U.P., wherein the Apex Court at para No. 17 held that

"In an offence u/s 420 IPC a pecuniary question necessarily arises. The first part of S.464 IPC, provides that a person is said to make a false document who dishonestly or fraudulently makes, signs etc., a document with a particular intention and covers cases both of acts which are dishonest and acts which are fraudulent. Where no pecuniary question arises the element of dishonesty need not be established and it would be sufficient to establish that the act was fraudulent and, therefore, it may be, as the learned Judge has held, that where an act is fraudulent the intention to cause injury to the person defrauded must be established. But where the allegation is that a person has honestly induced another to part with property something different has to be considered and that is whether he has thereby caused a wrongful loss to the person who parted with property or has made a wrongful gain to himself. These are the two facets of the definition of dishonesty and it is enough to establish the existence of one of them. The law does not require that both should be established. The decision relied upon by learned counsel is, therefore, distinguishable. Learned Counsel then referred to the dissenting judgment of Subrahmanya Ayyar J., in Kotamaraju Venkatarayudu V. Emperor, ILR 28 Mad 90 (FB) to the effect that in regard to offences falling under Ss. 465 and 461 it must be established that the deception involved some loss or risk of loss to the individual and to the public and that it was not enough to show that the deception was intended to secure advantage to the deceived. This decision as well as some other decisions referred to by learned counsel are therefore, distinguishable for the same reason which distinguishes Sanjiv Ratnappa Ronad's case, ILR 56 Bom. 488: (AIR 1932 Bom 545) from the one before us. We are, therefore, of the view that the offence of cheating has been established."

43. As far as evidence of P.W.9 and P.W.12 is concerned, it is not in controversy that no bills in relation to these transactions had been produced and in this context, the learned Additional Public Prosecutor would contend that especially in the light of the finding recorded even by the trial Court, definitely Section 511 IPC is attracted. The learned Additional Public Prosecutor placed strong reliance on Abhayanand Mishra V. State of Bihar, AIR 1961 SC 1968 wherein the Apex Court at paragraphs 11 and 12 held that

"Another contention for the appellant is that the facts proved do not go beyond the stage of preparation for the commission of the offence of "cheating", and do not make out the offence of attempting to cheat. There is a thin line between the preparation for and an attempt to commit an offence. Undoubtedly, a culprit first intends to commit the offence, then makes preparation for committing it and

thereafter, attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence, therefore, can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. This is clear from the general expression "attempt to commit an offence" and is exactly what the provisions of Sec. 511 IPC require. The relevant portion of Sec. 511 IPC is:

"whoever attempts to commit an offence punishable by this Code or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence, shall , where no express provision is made by this Code for the punishment of such attempt, be punished. These provisions require that it is only when one, firstly, attempts to commit an offence and, secondly, in such attempt does any act towards the commission of the offence, that he is punishable for that attempt to commit the offence. It follows, therefore, that the act which would make the culprit's attempt to commit an offence punishable must be an act which, by itself or in combination with other acts, leads to the commission of the offence. The first step in the commission of the offence of cheating, therefore, must be an act which would lead to the deception of the person sought to be cheated. The moment a person takes some step to deceive the person sought to be cheated, he has embarked on a course of conduct which is nothing less than an attempt to commit the offence, as contemplated by S. 511. He does the act with the intention to commit the offence and the act is a step towards the commission of the offence."

It is to be borne in mind that the question whether a certain act amounts to an attempt to commit a particular offence is a question of fact dependent on the nature of the offence and the steps necessary to take in order to commit it. No exhaustive precise definition of what would amount to an attempt to commit an offence is possible. The cases referred to make this clear."

44. The charges which had been framed against the accused already had been referred to supra. Findings in detail had been recorded by the trial Court. It is no doubt true that some crucial aspect had been proved by the prosecution. But by itself, that it cannot be said that all the ingredients, which are to be satisfied to prove the offence, have been established by the prosecution. It is an appeal against an acquittal.

(a) In *Bhagwan Singh and Others Vs. State of M.P.*, at paragraph 35, the Apex Court held that

"For all the above reasons, our conclusion is that the High Court was not at all justified in reversing the verdict of acquittal passed by the trial Judge. In appeal against acquittal, the High Court is competent to reappraise the evidence to

find out whether the trial Judge has misappropriated any part of the evidence or not. Here, the appreciation of the evidence made by the trial Judge is proper and the conclusions drawn are reasonable. The High Court, therefore, erred in re-appreciating the evidence to substitute its own view for that of the trial Judge."

(b) In *Rajendra Rai and Others Vs. The State of Bihar and Another*, the Apex Court held that,

"It is well settled that in an appeal u/s 417 against acquittal, the High Court has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as the view of the trial Judge as to credibility of the witness, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any real and reasonable doubt, and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witness. The High Court should also taken into account the reasons given by the Court below in support of its order of acquittal and must express its reasons in the judgment which lead to hold that the acquittal is not justified. Further, if two conclusions can be based upon the evidence on record, the High Court should not disturb the finding of acquittal recorded by the trial Court."

(c) In *Bahal Singh Vs. The State of Haryana*, the Apex Court held that,

"The High Court has powers as full and wide in appeals against acquittal as in appeals against conviction. Whether the High Court is dealing with one class of appeals or the other, it must equally have regard to the fundamental principles of criminal jurisprudence that unless the statute provides to the contrary there is a presumption of innocence in favour of the accused and secondly, that the accused is entitled to the benefit of reasonable doubt. Due regard to the views of the trial Court as to the credibility of witness in matters resting on pure appreciation of evidence and the studied slowness of the appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing and hearing the witnesses, where such seeing and hearing can be useful aids to the assessment of evidence, are well known principles which generally inform the administration of justice and govern the exercise of all appellate jurisdiction. Such regard and slowness must find their reflection in the appellate judgment, which can only be if the appellate court deals with the principal reasons that influenced the order of acquittal and after examining the evidence with care gives its own reasons justifying a contrary view of the evidence. It is implicit in this judicial process that if two views of the evidence are reasonably possible, the finding of acquittal ought not to be disturbed."

(d) In *Antar Singh Vs. State of Madhya Pradesh*, the Apex Court held that,

"Although in an appeal against acquittal, the powers of the High Court in dealing with the case are as extensive as of the trial Court, before reversing the acquittal, the High Court should bear in mind that the initial presumption of the innocence of the accused is in no way weakened, if not reinforced, by his acquittal at the trial. The opinion of the trial Court which had the advantage of observing the demeanour of the witnesses, as to the value of their evidence should not be lightly discarded. Where two views of the evidence are reasonably possible, and the trial Court has opted for one favouring acquittal, the High Court should not disturb the same merely on the ground that if it were in the position of the trial Court, it would have taken the alternative view and convicted the accused accordingly."

45. The evidence recorded by the learned Magistrate cannot be said to be either perverse or unreasonable and in view of the limitations in interfering with such well considered findings in appeal against an order of acquittal, this Court is of the considered opinion that the said findings normally cannot be disturbed unless the findings are perverse or unreasonable or not in accordance with the evidence available on record or contrary to law. This Court is conscious of the fact that this is a matter concerned with spurious drugs and grave public interest is involved in the matter. But at the same time, this Court is bound by the well settled principles of criminal jurisprudence.

46. In the light of the findings recorded above, the well considered findings of the trial Court need no disturbance at the hands of this court and accordingly, the said findings are hereby confirmed. The faint attempt made by the learned Additional Public Prosecutor to bring home the guilt of the accused u/s 420 IPC read with Section 511 IPC also cannot be sustained in the light of the findings recorded by the learned Magistrate. Hence, no interference is warranted and accordingly, the appeal is liable to be dismissed.

Accordingly, the Criminal Appeal is dismissed.