
(1971) 01 BOM CK 0005
In the Bombay High Court

The State of Maharashtra

APPELLANT

Vs

Joseph Anthony Pareira

RESPONDENT

Date of Decision : 16-01-1971

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18(a)(i), 18(c)

Citation : (1972) CriLJ 274

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Judgement

Vaidya, J.—This is an application in revision filed by the State of Maharashtra for enhancing the sentence passed against the respondent. Joseph Anthony Pareira. The respondent was tried along with three others in the Court of the Presidency Magistrate, 28th Court. Esplanade, Bombay, for the offences under Sections 18 (a) (i) and 18 (c), all read with Section 27 of the Drugs and Cosmetics Act, 1940 : " The respondent was the Director and Chief Chemist of M/s Edison's Continental-Laboratories Private Ltd. Among other products the said company produced certain tablets known as Prednisolone tablets Batch No. 8659. The officers of the Intelligence Branch drew several samples of the said tablets from 5 or 6 dealers in Bombay and on analysis the Government Analyst reported that the samples did not conform to the standard prescribed by law. It was also found that the company's licence for manufacturing drugs had expired on December 31, 1967 and had not been renewed. The case of the accused at the trial was that the tablet in question were produced by the company in his laboratory under his control and supervision and marketed to various dealers in Bombay between January 29, and February 5, 1968. He also admitted that the licence of the firm had expired on December 31, 1967 and was required to be renewed within one month's grace. The work of the renewal was entrusted to M. B. Jayakar and the " accused was under the belief that he had done the needful in the matter. With regard to the manufacture of the tablets he contended that accused No. 3 was his purchaser and sales representative. Accused No. 3 had brought some prednisolone powder for manufacturing prednisolone tablets on January 4, 1968.

The tablets were in due course manufactured by using the said powder brought by accused No. 3. But during the course of manufacture it was found that the powder brought by accused No. 3 was not genuine and, therefore, they stopped the production and did not market the stocks which was lying and produced in Court. On January 22, 1968 accused No. 3 again brought 2 1/2 kg. of prednisolone powder on credit. It was agreed to manufacture prednisolone tablets of 5 mg. each. The production was started on 22nd and the sample of the powder was submitted through accused No. 3 to a laboratory for testing. Accused No. 3 informed him and his subordinate in the tablet Department that the powder had passed the test. The production was therefore continued, On the 29th a report in writing certifying that the prednisolone powder was found 97% pure was received. On that day accused No. 3 again phoned the laboratory about the report with regard to tablets which were also earlier submitted for testing. Accused No. 3 informed accused No. 1 that the laboratory carried out the test in respect of the tablets also and has passed the same. Relying on this statement of accused No. 3 and hoping that the tablets also will be the same as that of the powder, he issued the tablets on 29th and on subsequent dates for sale through accused No. 3. Accused No. 3 sold about 3.75 lacs of tablets and paid accused No. 1 a sum of Rs. 3,000/- retaining the balance to be paid as the price of 2 1/2 kilos of prednisolone powder which he had brought on credit. Accused No. 1 received only Rs. 3,000/- for this batch. From 5th February 1968, accused No. 3 stopped attending the laboratory. On 7th reports reached accused No. 1 that prednisolone tablets manufactured by this laboratory under batch No. 8659 and sold to different merchants were being frozen and samples were being taken by the Drugs Control Office. The sale of this produce was stopped since after 5-2-1968. Accused No. 1 thereby contends that he relied on and trusted accused No. 3 who was his purchase Officer and Sales Representative and he has been deceived or cheated by accused No. 3 either by substituting a different sample on the way to laboratory or by substituting the whole powder in the laboratory in collusion with Mr, Pradhan who was in-charge of production. It is not necessary to set out the defence raised by the other accused or summarise the prosecution evidence, as the learned Magistrate convicted accused No. 1 observing as follows:

Therefore, it appears that it is accused No. 3 who had stopped selling from the 3rd; he took a writing from accused No. 1 on the 5th confirming the sales made by him upto that date and then perhaps he felt that it was prudent on his part not to go further and try to sell more.

The question now is whether it absolves accused No. 1. In my opinion it does not. Accused No. 1 is the Director and the Chief Chemist in E. C. L. and whatever is being done in the laboratory is ultimately his responsibility. If he has allowed such production to be undertaken even without his knowledge, his guilt still survives since his conduct amounts to negligence and u/s 34 (2) of the Drugs Act. the liability of accused No. 1 still continues for whatever breach of the Drugs Act was committed by his subordinates. Therefore, even in that view, though it appears that he was not a party to this fraud and though he was fooled or

deceived, his guilt still survives. The only question for consideration would be whether his offence is of the same magnitude as that of accused No. 3 and whether he should meet the same minimum punishment as is prescribed by law. In my opinion the circumstances are such that though accused No. 1 is guilty of all the three offences under Sections 18 (a) (i), 18 (a) (ii) and 18 (c). I think that he need not be sentenced to the minimum sentence of imprisonment or more which offences of this type call for. In my opinion, so far as he is concerned, a sentence of heavy fine would meet the ends of justice and put him on guard in future.

2. The conviction is not challenged by accused No. 1 before me. It is clear that the learned Magistrate was inclined to hold that the conviction of accused No. 1 is necessary in view of the provisions of Section 34 (2) of the Act. It is true that when awarding the sentence, which is less than the minimum sentence, the learned Magistrate has not done his duty of specifying the special reasons, which he ought to have stated u/s 27 of the Act. It is also true that the offence u/s 18 is a serious offence, as the drugs which are not of standard quality or misbranded are dangerous to public life and harmful to the community. So far as the offence of absence of licence was concerned, the offence charged against the accused is regarding failure to renew the licence. He originally had a licence; and it appears that he made an application for renewal after the time had expired, as he had obtained the licence in April 1968. Even in regard to the absence of licence, the plea of the accused was that he had relied on M. B. Jaykar, who is also a chemist, to make the application for renewal.

3. Now Section 34 of the Act is as follows:

34 (1) Where an offence under this Act has been committed by a company every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

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 was committed without his knowledge or that he exercised all the diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

...

It is clear from the section that clause 1 makes the company liable to be punished accordingly. The word "punish" with reference to a company would only

mean to be punished u/s 27, not with imprisonment as a company can in no case be punished with imprisonment. Clause 2 of Section 34 also says that in certain circumstances where the offence has been committed by the consent or connivance of the manager, secretary or other officer of the company, such director, manager or the secretary or the other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. In my judgment, the words "punish accordingly" in clause 2 mean that the guilty person is to be punished in the same way as the company would be punished under clause 1. Thus unless the director can be directly held to be liable for punishment u/s 27 read with Section 18 of the Act, the measure of punishment of such guilty person must be determined in accordance with Section 34 read with Section 27 of the Drugs and Cosmetics Act. He can be punished only with fine and not with imprisonment. In the present case the learned Magistrate convicted accused No. 1 as follows:

Accused No. 1 is convicted u/s 18 (a) (i) read with Section 27 of the Drugs Act and is sentenced to 1 day's S. I. and to pay fine of Rs. 25,000/- or in default to undergo one year's S. I. Accused No. 1 is also convicted u/s 18 (ii) read with Section 27 of the Drugs Act and is sentenced to one day's S. I. and to pay fine of Rs. 2,000/- or in default to undergo 3 months' R. I. Accused No. 1 is also convicted u/s 18 (c) read with Section 27 of the Drugs Act and is sentenced to 1 day's S. I. and to pay fine of Rs. 2,000/- or in default to suffer 3 months' R. I. Substantive sentence to run concurrently.

It is not disputed that the fine ordered to be paid has already been paid by him. In view of what I have stated above in regard to the provisions of Section 34 (1) it appears to me that the learned Magistrate erred in law in imposing even one day's simple imprisonment on accused No. 1. As the said one day's simple imprisonment is not challenged before me, it is unnecessary to set it aside but in view of the importance of the question and its relevance to the question of sentencing the accused. I must observe that the proviso to Section 27 which requires the court to impose minimum sentence of imprisonment of one year, unless there are special reasons to the contrary, would not apply to the case of a director, who is held responsible u/s 34 (2) of the Act.

4. Even assuming that this view is not correct, it appears to me that the learned Magistrate has taken into consideration the circumstances in which the offence was committed although he has not stated so while dealing with the question of sentence and has rightly held that it appeared that accused No. 1 was negligent in supervising the laboratory and was not directly responsible for the manufacture of the tablets. Sentence is in the discretion of the trial court and unless it can be said to be a sentence, which is grossly inadequate, this Court cannot interfere with the discretion exercised by the Magistrate. Having regard to all the facts and circumstances, it appears that accused No. 1 was negligent and had not tried his best to satisfy himself that the tablets, which were being produced in the laboratory, were up-to the pharmaceutical standards. He trusted

his subordinates and the staff of the company and thereby committed the offence by negligence. It cannot, therefore be said that the sentence imposed by the learned Magistrate is so inadequate as to justify interference by this Court.