

(1971) 01 BOM CK 0012

In the Bombay High Court

Case No : Criminal Revision Application No. 1073 of 1969 with Criminal Appeal
No. 1059 of 1969

The State of Maharashtra

APPELLANT

Vs

Joseph Anthony Pereira

RESPONDENT

Date of Decision : 16-01-1971

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18, 27, 34

Citation : (1971) 73 BOMLR 613 : (1972) MhLj 90

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Judgement

Vaidya, J.—[His Lordship after setting out the facts, proceeded]. 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 mis-branded 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 and 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. Jayakar, who is also a chemist, to make the application for renewal.

2. Now, Section 34 of the Act is as follows:

84. (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 due 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 "punished 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 month's 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 sentence, 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.

3. 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.

4. Rule, therefore, is discharged.