
(1977) 10 BOM CK 0011
In the Bombay High Court

The State of Maharashtra

APPELLANT

Vs

Sevantilal Jasanglal Shah

RESPONDENT

Date of Decision : 06-10-1977

Acts Referred:

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

Citation : (1978) CriLJ 1013

Hon'ble Judges : Apte, J

Bench : Single Bench

Judgement

Apte, J.—The respondent Sevantilal conducts and manages drugs and cosmetics shop styled as "C Mangla" situate at Shop No. 14, Jethabhai Building. 18-A, Bomanji Petit Road, Bombay-26; in the same building in Shop No. 19 they store drugs and other articles which are brought to the shop for sale as and when required.

2. The licence for running the drugs and cosmetic shop at Shop No. 14 stands in the name of respondent's wife Smt. Sarojben.

3. No separate licence was obtained either in the name of the respondent or his wife for storing the drugs and cosmetics in Shop No. 19.

4. On November 16, 1973 the Drugs Inspector, Tanaji Shankar Patil (P.W. 1), visited the shop. The respondent was present in the shop. The Inspector inspected the licence in respect of this shop.

5. He then went in company of the accused to the godown and it was found that drugs such as Waterbury's Compound, Vitehex, Bayers Tonic, Phosphoric etc. were stored in the said godown but there was no licence obtained under the Drugs and Cosmetics Act for storing these articles in the godown at Shop No. 19.

6. The respondent-accused was, therefore, prosecuted for storing for sale the drugs without a licence which is an offence punishable u/s 27 read with Section 18 (c) of the Drugs and Cosmetics Act, 1940.

7. The respondent-accused did not deny the allegation that he was dealing in all drugs by retail in the said shop and that Shop No. 19 was used as a go-down attached to this shop. The only contention raised on behalf of the respondent was that since the storing of drugs in the godown was not for the purpose of sale in the sense that no sale transaction was effected in the godown, no separate licence was required

8. However, the learned Magistrate rejected this contention mainly relying on the decision of the Supreme Court in *Swantraj and Others Vs. State of Maharashtra*, and found the accused guilty for storing for sale without a licence drugs in the godown at Shop No. 19. The learned Magistrate imposed a fine of Rs, 50/- and in default of payment of fine R.I. for 15 days.

9. The State has preferred this appeal (for enhancement of sentence.

10. On behalf of the respondent, however, the correctness of the order of conviction itself is challenged. The first ground was that separate licence for storing In godown any drugs or cosmetics was not at all necessary inasmuch as no sale was effected in the premises of the godown.

11. Section 18 (c) of the said Act provides that no person shall himself or by any other person on his behalf manufacture for sale, or sell, or stock or exhibit for sale, or distribute any drug or cosmetic, except under, and, in accordance with the conditions of, a licence issued for such purpose under Chap. IV. It is, therefore, clear from this provision that even for stocking or storing for sale any drug or cosmetic, a licence would be required.

12. Now, Section 33 (1) confers general power on the Central Government to make rules for the purpose of giving effect to the provisions of Chap. IV. Sub-section (2) of Section 33 says that without prejudice to the generality of the power conferred by Sub-section (1). such rules may provide for various purposes mentioned in Clauses (a) to (q). Clause (e) says that such rules may prescribe the forms of licences for the manufacture for sale, for the sale and for the distribution of drugs or any specific drug or class of drugs or of cosmetics or any specified cosmetic or class of cosmetics, the form of application for such licences, the conditions subject to which such licences may be issued, the authority empowered to issue the same and the fees payable therefor.

13. Rule 62 of the Drugs and Cosmetics Rules, 1945, framed by the Government in exercise of the power conferred by Section 33 of the said Act says that if drugs are sold or stocked for sale at more than one place, separate applications shall be made and a separate licence shall be issued In respect of each such place,

14. It is contended on behalf of the respondent that Clause (e) of Section 33 (2) of the Act does not make any provision for prescribing a form of licence for stocking or storing for sale any such drug or cosmetic and, therefore, it was not necessary to obtain any separate licence for storing these goods in the godown.

15. However, as has been pointed out above, under Clause (c) of Section 18,

stocking on storing for sale also cannot be done without a licence. In order to give effect to this provision, the Central Government in exercise of the general rule making power, framed the aforesaid rule requiring that a separate licence must be obtained for each place where such drugs are stored or stocked at more than one place. Although, therefore, no specific mention was made for a licence for stocking for sale in Clause (e) of Section 33 (2) of the Act, it was open to the Government to frame such a rule in exercise of the general rule making power conferred under Sub-section (1). It cannot therefore be said that the rule is ultra vires.

16. In the case of *Swantraj and Others Vs. State of Maharashtra*, the Supreme Court confirmed the order of conviction of the appellant-accused u/s 18 (c) read with Rule 62, The accused in that case possessed a whole-sale dealers' licence to stock drugs at Bombay and also possessed another licence to distribute the drugs through the motor van throughout the territory of the State of Maharashtra. Their motor van filled with drugs had gone to Vidarbha area and while going to Yeotmal, the motor van broke down. It appears that the petitioners had booked certain drugs by lorry to Yeotmal. The idea was that the motor van touring the Vidarbha area should reach Yeotmal by about the time when the goods were due to arrive and the person in-charge of the van would collect the drugs so booked from the lorry and distribute them as per instructions given by the firm.

17. But, as stated above, since the motor van was delayed due to break down by about 3 days, one of the partners of the firm of the accused who was moving with the van proceeded to Yeotmal, released the goods from the transport operator and temporarily kept them in the godown of a local drugs dealer with the intention of loading them in the van for the purpose of distribution.

18. They did not possess any licence for so storing the drugs nor did the local dealer with whom they stored, possess a licence to store them,

19. On these facts the accused were prosecuted for storing the drugs without a licence in a place at Yeotmal and they were also convicted by the Courts below of the offence under 8, 27 (b) read with 18 (c) and B, 62.

20. The present case stands on a stronger footing inasmuch as the respondent permanently stores such drugs in Shop No. 19 which he used admittedly as a godown for the purpose of sale of those drugs in Shop No. 14, Obviously, therefore, he was required to obtain a licence under Rule 62.

21. The next point urged on behalf of the respondent was that the accused, who is styled as Manager by the complainant Drugs Inspector, was not liable to prosecution. It is submitted that C. Mangla is a proprietary concern and, therefore, the proprietor of the shop should have been prosecuted,

22. This submission also does not possess any merit. It is true that formally the licence of the shop stands in the name of the wife of the respondent but for all

practical purposes the shop is run by the respondent himself, The Drugs Inspector gave evidence that the accused was dealing in all drugs retained in this shop. The accused also did not challenge this position. On the other hand, from his statement it would appear that he conceded the position that it was he who conducted the shop in the name of his wife, because he stated that he was holding a licence in respect of the shop and it was true that in respect of the godown he had no licence.

23. u/s 18 of the said Act, no person shall himself or by any other person on his behalf stock or exhibit for sale any such drugs without a licence. Although, therefore, the licence of the shop nominally stood in the name of the wife, since the accused was himself conducting the shop and he himself had stored the goods in Shop No. 19, he himself was liable for stocking them in the godown. He has, therefore, been rightly convicted for the aforesaid licence.

24. Now, turning to the State appeal, I find no merit in it, because obviously it is a technical offence, The offence does not fall within Clause (a) of Section 27 for which minimum sentence of one year has been prescribed; but it falls under Clause (b) for which no minimum sentence has been prescribed. The punishment prescribed for the offence falling under Clause (b) of Section 27 is imprisonment for a term which may extend to three years or with fine or with both. The learned Magistrate in his discretion has imposed a fine of Rs. 50/- and I see no reason to interfere with his discretion.

25. The appeal is, therefore, dismissed confirming the order of conviction and sentence.