The State of Karnataka Vs. Vikram Chemical Laboratories and ors.

The State of Karnataka Vs. Vikram Chemical Laboratories and ors.

SooperKanoon Citation : sooperkanoon.com/372670

Court : Karnataka

Decided On : Aug-19-1974

Reported in : 1975CriLJ332

Judge : C. Honniah and; M.S. Nesargi, JJ.

Appellant : The State of Karnataka

Respondent : Vikram Chemical Laboratories and ors.

Judgement :

Nesargi, J.

1. The State has filed this appeal against the judgment of acquittal dated 29-9-1973 passed by the Judicial Magistrate, First Class (I Court), Bangalore City in C.C. No. 341 of 1971 acquitting the respondents of the offence punishable under Section 27 (b) of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as the 'Act').

2. P.W. 1, P. L. Narasimhan, the Drugs Inspector visited the Government Medical Stores, Bangalore, which is a licensed premises, on 10-2-1970. He took samples in four portions of the drug Potassium Bicarbonate I. P. Batch No, 116. P.W. 2 H. Abdul Rahim, Assistant Director and P.W. 3, K. Venkatarama lyengar, Secretary of the Government Medical Stores, who were in possession of this drug were present at that time. The seizure, according to the prosecution, was made under Section 22 (b) of the Act. P. Ws. 2 and 3 disclosed the name of M/s. Vikram Chemical Laboratories, Bangalore as the supplier as required under Section 18-A of the Act. P.W. 1 sent one of the samples to respondent-1 as required by Section 23 of the Act. He sent another sample to the Government Analyst who on examining it, sent his report as per Ex. P-3. On perusing the report, it was found that the drug was sub-standard and therefore, the respondents had committed an offence punishable under Section 27 (b) of the Act. A case was filed against the respondents.

3. Simple denial is the only defence of the respondents. They further contended that they received the drug in bulk quantities in gunny-bags from the manufacturer in Bombay and they were simply concerned with repacking and after repacking into small quantities they supplied to the Government Medical Stores and therefore, they have not committed any offence. Various technical contentions as against the applicability of Sections 22 and 23 of the Act and the admissibility of the report of the Government Analyst as per Ex. P-3 under the provisions of the Act were also raised. The remaining contention is that the drug might have become sub-standard in view of the climatic conditions.

4. The learned Magistrate held that taking of sample was not in accordance with the provisions of Section 22 of the Act and therefore, Section 23 would not be attracted and further that Rule 46 of the Drugs and Cosmetics Rules, 1945, (hereinafter referred to as the 'Rules') had not been complied with and hence Ex. P-3 is not conclusive evidence in this case. He, on this basis, acquitted the respondents. He also observed that the drug might have become sub-standard because of defective storage and for that the respondents were not

responsible.

5. The evidence of P. Ws. 1 to 3 is more than sufficient to establish that P.W. 1 the Drugs Inspector took samples of the said drug from the Government Medical Stores on 10-2-1970 and that the said drug had been supplied by the respondents to the Government Medical Stores. The very evidence establishes that four portions of the sample were taken and one portion of it was despatched by P.W. 1 to the respondents and further that after receipt of Ex. P-3 from the Government Analyst, P.W. 1 sent a copy of it to the respondents. It is an admitted fact that respondents held licence for repacking and they did repack the drug in question after receiving it from the manufacturer in Bombay and supplied the repacked drug in closed containers under their own label writing that it was repacked by them, to the Government Medical Stores.

6. Section 22 (1) (b) of the Act reads as follows:

(1) Subject to the provisions of Section 23 and of any rules made by the Central Government in this behalf, an Inspector may, within the local limits of the area for which he is appointed,-

(a) xx xx xx xx(b) take samples of any drug or cosmetic which is being manufactured, or being sold or is stocked or exhibited for sale, or is being distributed.

7. The learned Magistrate has concluded that the Drugs Inspector is not to take sample of a drug which was sold or was distributed several years earlier under the above provision. It is on this reasoning that the learned Magistrate has held that the taking of samples was not in accordance with the provisions of Section 22 of the Act. It is plain that the learned Magistrate has ignored the words 'is stocked' in Clause (b) of Section 22 (1) of the Act. The drug was found stocked in the Government Medical Stores and P.W. 1 took samples from that stock. We are convinced that Section 22 (1) (b) of the Act does apply to the facts and circumstances of the case and the learned Magistrate was wrong in the view taken by him.

8. Sri C. B. Motaiya learned Counsel for the respondents-accused contended that the samples of the drug were not taken in the presence of the respondents and therefore. Section 23 (3) of the Act would not be called into play and as such the respondents could not be hauled up for such an offence. Sub-sections (3) and (41 of Section 23 of the Act read as follows:

23 (3): Where an Inspector takes a sample of a drug or cosmetic for the purpose of a test or analysis, he shall intimate such purpose, in writing in the prescribed form to the person from whom he takes it and in the presence of such person unless he wilfully absents himself, shall divide the sample into four portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked:

Provided that where the sample is taken from premises whereon the drug or cosmetic is being manufactured, it shall be necessary to divide the sample into three portions only:

Provided further that where the drug or cosmetic is made up of containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the drug or cosmetic be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three or four, as the case may be. of the said containers after suitably marking the same and where necessary, sealing them.

(4) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and disclose of the same as follows:

(i) one portion or container he shall forthwith send to the Government Analyst for test Or analysis;

(ii) the second he shall produce to the court before which proceedings, if any, are instituted in respect of the drug or cosmetic; and

(iii) the third, where taken, he shall send to the person, if any, whose name, address and other particulars

have been disclosed under Section 18-A.

A perusal of the above provision makes it clear that when the samples of drugs are taken from a premises where the drug is not being manufactured, the sample should be taken in four portions and one of such portions has to be sent to the person whose name, address and other particulars are disclosed to the Drugs Inspector under Section 18-A of the Act. Section 18-A of the Act reads as follows!

Every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetic.

It is in the evidence of P. Ws. 2 and 3 that they supplied the name, address and other particulars of respondents 1 and 2 to P.W. 1. It is hence manifest that when samples of drugs stocked are taken from the premises where they are not being manufactured, the provisions of Section 23 (4) and Section 18-A of the Act come into play. In view of the position in law being as above, the contention of Sri Motaiya, learned Counsel for the respondents that the respondents ought to have been present when the samples were taken and in view of the fact that they were not present, they could not be held liable for such an offence, is not sustainable.

9. Section 25 (2) of the Act provides that the inspector, shall on receipt of the report from the Government Analyst in regard to the analysis of the sample taken by him under Section 23 of the Act, send a copy of it to the person whose name, address and other particulars have been disclosed under Section 18-A of the Act. We have already shown that P.W. 1 has complied with this provision by sending a copy of Ex. P-3 to the respondents. We therefore, hold that the learned Magistrate was not right in holding that the provisions of Sections 22 and 23 of the Act had not been complied with.

10. Now it is to be seen, whether Ex. P-3 can, in view of Section 25 (3) of the Act, be considered as conclusive evidence of the fact disclosed in it. Rule 46 of the Rules reads as follows:

46. On receipt of a package from an Inspector containing a sample for test or analysis, the Government Analyst shall compare the seals on the packet with the specimen impression received separately and shall note the condition of the seals on the package. After the test or analysis has been completed, he shall forthwith supply to the Inspector a report in triplicate in Form 13 of the result of the test or anlaysis, together with full protocols of the tests or analysis applied; Explanation: It shall be deemed to be full and sufficient compliance with the requirement of the rule in respect of the supply of 'protocols of the tests or analysis applied', if-

(1) for pharmacopoeial drug, where the tests or methods of analysis prescribed in the official pharmacopoeia are followed, references to the specific tests or analysis in the pharmacopoeias are given in the report; (2) xx xx xx xx(3) xx xx xx xx(4) xx xx xx xx(5) xx xx xx xx

The contention of the defence is that Ex. P-3 is not in conformity with this rule and therefore, Section 25 (3) of the Act would not be applicable end so Ex. P-3 would not be conclusive evidence without the examination of the concerned Government Analyst. The learned Magistrate has upheld this contention. A reading of Ex. P-3 shows that the analysis made by the Government Analyst has been described therein in a particular manner, A reference to the Pharmacopoeia of India discloses that Potassium Bicarbonate is a Pharmacopoeial drug, The requirements to make it accord to the standard of the Pharmacopoeia of India (I. P.) are mentioned in page 574 of Pharmacopoeia of India. 1966 (Second Edition). A reference to the said requirements shows that the very same things are mentioned in Ex. P-3. The Government Analyst has recorded his analysis against the particular heads. By taking into consideration Rule 46 of the Rules, it is clear to our mind that Ex. P-3 is in accordance with Rule 46 and the contention of the defence that failure of the Government Analyst to describe in Ex. P-3 the 'Protocol Tests' conducted by him makes Ex. P-3 not in conformity with Section 25 of the Act. has to fail. What the Government Analyst has done in Ex. P-3 is to refer to the tests or methods of analysis

prescribed for Potassium Bicarbonate in page 574 of the Book Pharmacopoeia of India, 1966 (Second Edition) and recorded his findings as against such methods or tests. It is exactly what is contemplated in Explanation (1) to Rule 46 of the Rules. Therefore, we are clearly of opinion that Ex. P-3 is conclusive evidence of the facts mentioned therein by the Government Analyst as laid down by Section 25 (3) of the Act. The view of the learned Magistrate that the drug was supplied by the manufacturer to the respondents according to the standard of the British Pharmacopoeia and therefore, the standard prescribed in Pharmacopoeia of India would not be applicable, is on the fact of it untenable in view of the Second Schedule to the Act.

11. On the basis of what is found in the preceding paragraphs, we hold that the drug Potassium Bicarbonate that was in stock in the Government Medical Stores had been supplied by the respondents as re-packers and it was sub-standard.

12. It was contended on behalf of the respondents that they are not manufacturers and hence they were not liable to be prosecuted in view of Section 19 (3) of the Act. Section 3 (f) of the Act her fines 'manufacture' as follows:

'Manufacture' in relation to any drug or cosmetic includes any process or part of a process for making, altering, ornamenting, finishing, packing, labelling, breaking up or otherwise treating or adopting any drug or cosmetic with a view to its sale and distribution but does not include the compounding or dispensing of any drug, or the packing of any drug or cosmetic, in the ordinary course of retail business; and 'to manufacture' shall be construed accordingly.

It is an admitted fact that the respondents received the drug in bulk from the manufacturers in Bombay and repacked the same in closed containers of smaller tins and supplied the drug to various customers including the Government Medical Stores. A reference to Rule 70 of the Rules shows that a licence is required for repacking of drug: such a licence is granted in Form No. 25. It is admitted that the respondents are such licence holders. The definition of 'manufacture' make it abundantly clear that it includes packing also. It therefore, follows that the respondents are in law considered as manufacturers. Hence the contention of Sri. C. B. Motaiya that the respondents are not manufacturers has to fail.

13. The observation of the learned Magistrate that the drug might have become sub-standard because of defective storage by P. Ws. 1 to 3 and therefore, the respondents could not be made liable for such defective storage cannot be accepted as it is clear from the evidence that the drug had been supplied to the Government Medical Stores in closed containers and the containers were intact. A reference to page 575 of the book Pharmacopoeia of India, 1966 (Second Edition) shows that the storage prescribed is in a well-closed container. It has been found that Potassium Bicarbonate had been stored in the closed containers in the Government Medical Stores. Moreover Ex. P-3 shows that it contained extraneous substances also. Hence it will have to be held that the drug had not become sub-standard because of the storage.

14. In view of the foregoing reasons we hold that the prosecution has satisfactorily established the charge against the respondents. We therefore, allow this appeal and set aside the order of acquittal passed by the Judicial Magistrate, First Class (I Court). Bangalore City in C.C. No. 341 of 1971. We convict the respondents for having committed an offence punishable under Section 27 (b) of the Drugs and Cosmetics Act, 1940 We sentence each one of them to pay a fine of Rs. 2,000/-. We direct that on failure of respondent 2 to pay the fine, he has to undergo simple imprisonment for one month.