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Alladi Krishna Murthy Vs. the State of A.P.

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Court : Andhra Pradesh

Decided On : Aug-18-2006

Reported in : 2006CriLJ4418

Judge : G. Yethirajulu, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 320; Drugs and Cosmetics Act, 1940 - Sections 17A, 17B, 18, 27, 27A and 28

Appeal No. : Crl. Revn. Case No. 1191 of 2002

Appellant : Alladi Krishna Murthy

Respondent : The State of A.P.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Venkatesham Gampa, Adv.

Disposition : Petition allowed

Judgement :
ORDER

G. Yethirajulu, J.

1. This Criminal Revision Case has been preferred by A-2 in C.C. No. 190 of 1995 on the file of the Judicial Magistrate of First Class, Siddipet, Medak District.

2. A-1 and himself were prosecuted for the offences punishable under Sections 27(b) and 28 of the Drugs and Cosmetics Act, 1940 (for short 'the Act'). After recording the evidence, the trial Court came to a conclusion that the alleged offences against both the accused are proved. Accordingly, they were convicted for the offence under Section 27(b) of the Act and sentenced each of them to undergo rigorous imprisonment for one year and to pay a fine of Rs. 10,000/-and they were also convicted for the offence under Section 28 of the Act. and sentenced each of them to undergo R.I. for one year and to pay a fine of Rs. 500/-, in default to suffer S.I. for two months under each count. The accused, being aggrieved by the Judgment of the trial Court dated 28-3-1998, preferred Criminal Appeal No. 43 of 1998 on the file of the II Additional District and Sessions Judge (Fast Track Court), Medak at Sangareddy. The learned Additional Sessions Judge, after hearing the appeal, acquitted A-1 and confirmed the conviction of A-2 and the sentence Imposed thereon by the trial Court for the alleged offences. A-2, being aggrieved by the Judgment of the appellate Court, preferred the present revision challenging Its validity and legality.

3. The learned Counsel for the revision petitioner /A-2 submitted that a drug licence, which was not in force, was seized from the house of A-2 and the licence was in the name of A-1, who Is no other than his brother. The house does not belong to him and the drugs also belong to his brother. He is not indulging in any sale of any of the drugs kept In his house. His brother, A-1 Is also residing in the same house. There was no board exhibited to Indicate that the drugs were sold at that house. Therefore, the appellate Court barred In holding that A-2 along with A-1 was responsible for the commission of offence and the appellate Court while acquitting A-1, erroneously confirmed the conviction of A-2. Therefore, the conviction of A-2 Is liable to be set aside.

4. Section 27 of the Act reads as follows:

27. Penalty for manufacture, sale etc. of drugs in contravention of this Chapter. - Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sell, or stocks or exhibits or offers for sale or distributes,-

(a) any drug deemed to be adulterated under Section 17A or spurious under Section 17-B or which when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of Section 320 of the Indian Penal Code (45 of 1860), solely on account of such drug being adulterated or spurious or not standard quality, as the case may be, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to a term of life and with fine which shall not be less than ten thousand rupees;

(b)any drug -

(i) deemed to be adulterated under Section 17-A, but not being a drug referred to in clause (a), or

(ii) without a valid licence as required under clause (c) of Section 18,

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than five thousand rupees:

Provided that the Court may for any adequate and special reasons to be recorded in the Judgment, impose a sentence of imprisonment for a term of less than one year and of fine of less than five thousand rupees;

(c)any drug deemed to be spurious under Section 17-B, but not being a drug referred to in clause (a) shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than five thousand rupees:

Provided that the Court may, for any adequate and special reasons, to be recorded in the judgment, impose a sentence of imprisonment for a term of less than three years but not less than one year;

(d)any drug, other than a drug referred to in clause (a) or clause (b), clause (c), in contravention of any other provision of this Chapter or any rule made thereunder,

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to two years and with fine:

Provided that the court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year.

5. According to the said Section, the learned Counsel for the revision petitioner submitted that mere possession of the drugs is not sufficient unless there is evidence to show that they are intended for sale. The evidence adduced by the prosecution was to the effect that the drugs were seized from the house of A-2 under the mediators report, and as the accused failed to produce the licence, they were prosecuted for the alleged offences. Ex. P-2 seizure panchanama discloses that at the time of seizure of drugs, when the Drug Inspector questioned A-2 and his wife, as to whom the drugs belonging, they stated that the drugs belonging to A-1 and the books covered by Exs. P-5 and P-6 who contain the hand writing of A-1. Therefore, the learned Counsel for the petitioner submitted that A-2 has nothing to do with the drugs and they might have been kept by A-1 after closing the shop due to expiry of licence.

6. There is no evidence adduced by the prosecution that A-2 was indulging In selling the drugs at his house. There is no mention by any of the witnesses that they are intended for sale. As A-l disowned the responsibility, the appellate Court came to a conclusion that as he was not in possession of the drugs, he was not liable for conviction. The trial Court on the simple ground that A-2 was in possession of the drugs came to a conclusion that he committed the offence and the appellate Court confirmed the same.

7. The learned Counsel for the revision petitioner/A-2 further submitted that the mere possession of the drugs is not sufficient to attract the provisions of Section 27 of the Act and thus, A-2 is not liable for conviction. In support of his contention, the learned Counsel for the revision petitioner relied on a judgment of the Supreme Court in Mohd. Shabir v. State of Maharashtra : 1979 CriLJ466 wherein the Supreme Court held as follows:

Section 27 postulates three separate categories of cases and no other (1) manufacture for sale; (2) actual sale; (3) stocking or exhibiting for sale or distribution of any drugs. The absence of any comma after the word 'stocks' clearly indicates that the clause 'stocks or exhibits for sale' is one indivisible whole and it contemplates not merely stocking the drugs but stocking the drugs for the purpose of sale and unless all the ingredients of this category are satisfied, Section 27 of the Act would not be attracted.

8. From the above judgment, it is made clear that unless all the ingredients of Section 27 of the Act are satisfied, it would not be attracted.

9. In the present case, there is no evidence to show that the petitioner had any shop or he was selling the drugs as proved by the prosecution that the tablets were recovered from his possession. Under Section 27-A(i)(ii) read with 18(c) of the Act it must be proved by the prosecution affirmatively that he was selling the drugs stocked with him. The possession of drugs does not appear to be punishable under any of the provisions of the Act. If the essential ingredients of Section 27 of the Act are not satisfied, the petitioner has to be given the benefit of doubt and acquitted. As there is no evidence to show that the petitioner kept the stocks for sale without licence, the proving of mere possession is not sufficient to convict him for the said offence.

10. In the light of the above circumstances, the Courts below committed illegality in arriving at a conclusion that the petitioner was responsible for the commission of offence and therefore, he is liable to be convicted. When the case is against A-1 and A-2, when they failed to specifically prove that A-2 alone was responsible for the commission of offence, and when once A-l is acquitted, A-2 is also entitled for the same benefit.

11. In the result, the Criminal Revision Case is allowed and the conviction of the petitioner/A-2 for the offences Under Sections 27(b) and 28 of the Act and the sentence imposed on him are set aside.

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