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Court : Allahabad

Decided On : Jan-13-1956

Reported in : AIR1956All703; 1956CriLJ1380

Judge : Asthana, J.

Acts : Drugs Act, 1940 - Sections 18 and 27; Drugs Rules - Rule 65(2) and 65(9); Evidence Act, 1872 - Sections 114; Code of Criminal Procedure (CrPC) , 1898 - Sections 342

Appeal No. : Criminal Revn. No. 1229 of 1954

Appellant : Kasim Bhai

Respondent : State

Advocate for Def. : H.L. Kapoor, Adv.

Advocate for Pet/Ap. : Mukund Lal Agarwal, Adv.

Disposition : Revision partly allowed

Judgement :

Asthana, J.

1. The applicant Kasim Bhai is the proprietor of the firm Sattar Bhai Kasim Bhai Chemists and Druggists, in Bharthana, District Etawah. He was convicted by a first

class Magistrate of Etawah under Section 27 of the Drugs Act, 1940; for contravention of Sub-rules (2) and (9) of Rule 65 of the Drugs Rules and sentenced to a fine of Rs. 200/-, and also for contravention of Rule 110 to a fine of Rs. 50/-. His conviction was maintained by the learned Additional Sessions Judge of Etawah but the sentence of fine of Rs. 200/- for contravention of Sub-rules (2) and (9) of Rule 65 was reduced from Rs. 200/- to Rs. 100/-, The sentence of fine of Rs. 50/- for contravention of Rule 110 was, however, maintained. He has now come up in revision to this Court.

2. It appears that the applicant has got a licence for the sale of medicines. The shop was inspected twice by the District Medical Officer of Health, once on 19-5-1953 and again on 30-5-1953, It was found that the applicant was in possession of medicines described in Schedule H of the Act but he had not engaged any qualified person for the preparation and supply of such medicines as was required under the Act.

It was also found that he had in his shop for sale eight tubes of date-expired penicillin ointment in contravention of Rule 110 framed under the Act. He was, therefore, prosecuted for contravention of the above Rules.

3. The charges which were framed against him were as follows :

'(1) That you on or about the 19th day of May 1953 at Bharthana were found in possession of Schedule H Drugs stocked for the purpose of sale without having a qualified man under whose supervision sale of such drugs could be done, and thereby committed an offence punishable under Section 27 of the Drugs Act read With Rules 65(2) and 65 (9) framed thereunder.

'(2) That you on or about the 31st day of May 1953 at the same place were found in possession and exhibiting for sale eight tubes of date-expired penicillin ointment, and thereby committed an offence punishable under Section 7 of the Drugs-Act read with Rule 110 framed thereunder.'

4. The prosecution examined Sri V, N. Tiwari, District Medical Officer of Health, in support of the case. The accused admitted that he had a licence to deal in non-

biological medicines only and that he had in stock Schedule H drugs for the purpose of sale on 19-5-1953 without having any qualified person who could sell them. He also admitted that on 31-5-1953 date-expired penicillin ointment was recovered from his shop. On the above facts both the Courts below found the charges had been established against the applicant.

5. It was contended before me on behalf of the applicant that Sub-rules (2) and (9) of Rule 65 were not applicable to the present case and therefore the conviction of the applicant for the contravention of those Sub-rules was bad in law and could not be maintained. Sub-rule (2) provides that :

'the supply, otherwise than by way of wholesale dealing, of a drug specified in Schedule E or any preparation containing any such drug, and of any drug supplied on the prescription of a registered medical practitioner, shall be effected only by or under the personal supervision of a qualified person.' Sub-rule (9) provides that :

'substances specified in Schedule H, and preparations containing such substances, shall not be sold by retail except on and in accordance with a prescription of a registered medical practitioner. 'Provided that no prescription shall be required for sale or supply to a registered medical practitioner, hospital, infii'mafy, or an institution appoved by an order of a licensing authority,'

6. It will appear from the above provisions that what is prohibited by them is the supply or sale of particular kinds of medicines except under the direction and personal supervision of a qualified person. There is nothing in these Sub-rules which lays down that such medicines will not be stocked unless a qualified person is engaged in theshop. The charge against the applicant is not for the supply or sale of the medicines specified in Schedule H but for stocking such medicines.

As has already been pointed out above, Sub-rules (2) and (9) do not prohibit the stocking of Such medicines. What they prohibit is the supply or sale of such medicines except under the direct and personal supervision of a qualified person. In view of this fact the charge for contravention of Sub-rules (2) and (9) of Rule 65 against the accused on the acts alleged in the charge is not correct.

There is nothing on the record to show that the applicant supplied or sold such drugs to any person without the supervision of a qualified person. In the circumstances, I am of opinion that the charge against the applicant for contravention of Sub-rules (2) and (9) of Rule 65 has not been established and the applicant's conviction under Section 7 for contravention of these Sub-rules is not correct.

7. As regards the charge for contravention of Rule 110. I am of opinion that there is sufficient material on the record. It is an admitted fact that eight tubes of date-expired penicillin ointment were recovered from the shop of the applicant on the 31st May 1953. It was contended for the applicant that there was nothing on the 'record to show that these tubes were kept in the shop or were exhibited there for the purpose of sale.

In my opinion where a particular medicine is kept in the shop there will be a presumption that it is there for the purpose of sale unless that presumption is rebutted by the accused. There is nothing- in the statement of the accused or in the evidence produced by him that these tubes of penicillin ointment were kept in the shop not for the purpose of sale but for any other purpose. If these tubes were not meant for sale they should not have been kept in the shop at all.

It was also contended on behalf of the applicant that in his examination under Section 342 Cr. P. C, he was not questioned whether these tubes were kept there for the purpose of sale. It is true that no such question was put to the applicant during his examination. I do not think that merely on 'account of this irregularity the applicant has been prejudiced.

The charge against him clearly said that he was found in possession of eight tubes of date expired penicillin ointment for the purpose of sale. In view of this fact he had full knowledge what the case of the prosecution against him was and in view of this fact he could have produced evidence in rebuttal of it.

8. This revision is, therefore, allowed only tothis extent that the conviction and sentence ofthe applicant under Section 7 of the Drugs Act forcontravention of Sub-rules (2) and (9) of Rule 65are set aside, and the fine, if paid, shall be reiunded to

him. As regards his conviction and sentencefor contravention of Rule 110, I am of opinion thatit is correct. The revision against his convictionand sentence for contravention of this Rule is,therefore, dismissed.

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