

Ram Shanker Vs. State

Ram Shanker Vs. State

SooperKanoon Citation : sooperkanoon.com/474137

Court : Allahabad

Decided On : Mar-21-1972

Reported in : 1972CriLJ1544

Judge : S.D. Khare and ; Mohd. Hamid Hussain, JJ.

Appellant : Ram Shanker

Respondent : State

Judgement :

S.D. Khare, J.

1. This is an application under Section 561-A of the Code of Criminal Procedure. The facts leading to the presentation of this application. briefly stated, are as follows.

2. Four Packets of 100 Prednisone tablets were kept at the shop of M/s. Mishra Brothers Kanpur. when on 22nd February. 1966, Shri G. R. Jain Inspector of Drugs. Kanpur Region, collected all those four packets from the shop of M/s. Mishra Brothers and sent the same to the Central Drugs Laboratory, Calcutta, for analysis and report. The report received from the Director. Central Drugs Laboratory. Calcutta, was that the tablets were not of standard quality, Sri G. R. Jain, therefore, lodged a complaint against Ram Shanker. partner of M/s. Mishra Brothers. Kanpur. under Section 27 of the Drugs and Cosmetics Act Act XXIII of

1940 (hereinafter referred to as the Act). The City Magistrate, Kanpur, by his order dated 27-5-1959 convicted the applicant under Sections 18(a)(i)(a) and 18(a)(ii)(a) of the Act and sentenced him to one month's rigorous imprisonment and also to a fine of Rupees 500/- or in default to further one month's rigorous imprisonment. The appeal preferred by the applicant against the order of his conviction was dismissed by the Additional Sessions Judge, Kanpur, on 27th October, 1969. The applicant filed an application in revision against the order of the learned Additional Sessions Judge, dismissing his appeal. That revision application came up for consideration before a learned single Judge of this Court, who, by his order dated 30th April, 1971, dismissed the revision application.

3. The main contention of the applicant is that he has been prejudiced very much as a result of the act of the Drugs Inspector in sending the sample direct to the Director of Central Drugs Laboratory, Calcutta, for analysis and obtaining a report from the Director before the prosecution was launched. Sri K. L. Mishra for the applicant has invited our attention to the provisions of Sections 23 and 25 of the Act, Section 23 of the Act provides that after taking the sample and dividing it into four parts and sealing all the parts in the presence of the dealer from whom the sample was taken the Inspector should send one sealed portion to the Government Analyst for test or analysis and produce the second portion to the Court before which proceedings, if any, are instituted in respect of the drug. The learned Counsel has also invited our attention to the provisions of Sub-section (4) of Section 25 of the Act, which reads as follows:

Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under Sub-section (3) notified his intention of adducing evidence in contravention of a Government Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug or cosmetic produced before the Magistrate under Sub-section (4) of Section 23 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the fact stated therein.

4. It has been contended by Mr. Mishra that Section 25 of the Act clearly provides that the report of the Director of the Central Drugs Laboratory based on the analysis of the sample which had been produced before the Court under Sub-section (4) of Section 23 of the Act will alone be conclusive evidence of the facts stated therein after the accused person had challenged the report of the Public Analyst and succeeded in persuading the Court to send the sample produced before the Court to the Director.

5. It has further been contended that in the present case as the proper procedure as provided under Section 23 of the Act was not followed by the Inspector the accused person was very much prejudiced, because he could not obtain the report of the Director of the Central Drugs Laboratory, Calcutta, based on the sample produced before the Magistrate.

6. It is on the basis of this argument that it has been contended that in order to secure the ends of justice this Court should, in its inherent powers under Section 561-A, Criminal Procedure Code set aside the judgment of the learned single Judge of this Court and rehear the revision.

Section 561-A, Criminal Procedure Code reads as follows:

Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

It has been held in the Full Bench case of Mahesh v. State 1971 All LJ 668 : 1971 Cri LJ 1674. that:. The High Court is not possessed of a general power to review revise or reconsider the judgment, or order duly pronounced in a Criminal Appeal or a Criminal Revision, though the judgment or order can be so reviewed, revised or reconsidered in exceptional circumstances in exercise of the inherent power under S. 561-A. Criminal Procedure Code provided that the inherent power is so exercised for one of the three purposes detailed therein.

7. The three purposes detailed in Section 561-A. Criminal Procedure Code' are as follows:

(1) To give effect to any order under the Criminal Procedure Code:

(2) To prevent abuse of the process of any Court; or

(3) Otherwise to secure the ends of justice.

8. The submission of Mr. Mishra is that the present case would fall under the third category. The inherent power of the Court under Section 561-A, Cr. P.C. has to be exercised sparingly, carefully and with caution. An application under Section 561-A, Criminal Procedure Code has to be disposed of on its own merits, after taking into account the circumstances of the particular case.

9. The revision application of the applicant, heard and disposed of by a learned single Judge of this Court was argued before the learned single Judge by Mr, P.C. Chaturvedi. an eminent counsel of this Court. As will appear from the judgment of the learned single Judge, the argument of the learned Counsel before the Court was that:

(1) the sample having been sent to Director in the first instance and not through the Court, the report of Director received was inadmissible in evidence; and

(2) the applicant had been deprived of his right to challenge the report of the public Analyst as given to him under Sub-section (4) of Section 25 of the Act.

10. The learned Single Judge, after having considered the provisions of Sections 23 and 25 of the Act. arrived at the conclusion that although the sample had not been sent first to the Public Analyst and the prosecution of the applicant was not based on the report of the Public Analyst, the report obtained from the Director of the Central Drugs Laboratory, Calcutta, could form the basis of his conviction and that the applicant was in no way prejudiced.

11. The judgment delivered by the learned single Judge clearly shows that he took into consideration all the pleas raised by the learned Counsel for the applicant and also considered the question of prejudice to the applicant.

12. The Court, while deciding a law point, may decide it rightly or wrongly. An application under Section 561-A. Cr. P. C will not lie on the ground that the Court has decided a point of law in an incorrect manner and that had resulted in gross injustice to the applicant. The judgment of this Court once delivered. either in appeal or revision is final and cannot be set aside by this very Court unless the case falls within the ambit of Section 561-A. Criminal P.C.

13. There is no force in this application and it is dismissed.

14. The connected Supreme Court Criminal Misc. Application No. 257 of 1971 under Article 134(1)(c) of the Constitution of India for the grant of a certificate that the case is a fit one for appeal to the Supreme Court of India will now be listed for orders.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com