Aftab Ahmad Vs. the State

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Court : Allahabad

Decided On : Mar-08-1978

Reported in : 1978CriLJ1333

Judge : Mohd. M. Husain, J.

Appellant : Aftab Ahmad

Respondent : The State

Judgement :
ORDER

Mohd. M. Husain, J.

1. Aftab Ahmad Khan revisionist has been convicted under Section 27(b) and Section 28 of the Drugs & Cosmetics Act, 1940 by a Magistrate of the Ist Class at Lucknow. The learned Magistrate has sentenced the revisionist to pay a fine of Rs. 250 each on the aforesaid two counts. On appeal the learned Addl. Distrist and Sessions Judge, Lucknow refused to interfere with the revisionist's conviction and sentence. He has now come to this Court with this revision.

2. The undisputed facts of the case are that the revisionist is the managing proprietor of a Firm of Chemists and Druggists which carries on business in the market of Aminabad at Lucknow under the name and style of M/s. Siraj Ahmad and Vakil Ahmad. The said firm has a licence for selling drugs and chemicals. On

25-8-1973 Sri S. K. Vishnoi, Drug Inspector inspected the premises of the aforesaid firm. He found some expired date medicines and some medicines, which were physician's samples stocked in an Almirah which was kept in the aforesaid premises. The lists of those medicines prepared by Sri Vishnoi are Exts. Ka-2A and Ka-2B. The Almirah in which those medicines were kept bore an indication to the effect that it contained expired date goods which were not for sale. The Inspector issued notices to revisionist's firm as required by Section 22(c) of the Act. After the conclusion of prescribed formalities a report was submitted by the Inspector before the Drugs Controller of U. P. who sanctioned prosecution of the revisionist. A complaint was then filed against him and it gave rise to the case under revision.

3. The revisionist pleaded not guilty to the accusation levelled against him. He suggested that the expired date medicines were separately kept in an Almirah which bore a clear indication to the effect that the same were not for sale. Those medicines were kept in that Almirah because revisionist's firm wanted to claim rebate in income-tax and sales tax from the departments concerned. Regarding medicines meant for physicians' sample, the revisionist's case was that the same belonged to one Dr. Bhim Sen of Azamgarh who had temporarily left the same at revisionist's shop. The revisionist had kept those medicines also in an Almirah which bore an indication that the articles kept therein were not for sale. The prosecution examined only the Drugs Inspector whereas the revisionist examined a compounder of Dr. Bhim Sen named Kedar Nath Dube. Both the courts below disbelieved the revisionist's suggestions and held that by stocking expired-date-medicines and medicines meant for physician's samples, the revisionist had contravened the provisions of Rules 65 (17) and 65 (18) of the Rules framed under the Act and thereby he committed an offence punishable under Sections 27(b) and 28 of the Act,

4. It is the admitted fact in the case under revision that the medicines detailed by the Drugs Inspector in Exs. Ka-2A and Ka-2B were kept in an Almirah which bore an indication to the effect that its conterts were not for sale.

5. Rule 65 (17) of the Rules framed by the Govt. under the Provisions of the Drugs & Cosmetics Act, runs as follows:

No drug shall be sold or stocked by the licensee after the date of expiration of potency recorded on its container, label or wrapper, or in violation of any statement or direction recorded on such container, label or wrapper.:Provided that any such drugs in respect of which the licensee has taken steps with the manufacturer or his representative for the withdrawal, reimbursement or disposal of the same, may be stocked after the date of expiration of potency pending such withdrawal, reimbursement or disposal, as the case may be, subject to the condition that the same shall be stored separately from the trade stocks and all such drugs shall be kept in packages or cartons, the top of which shall display prominently the words 'Not for Sale'.

6. It was argued on behalf of the State that the above noted proviso to the Rule prohibits every stocking of expired date medicines by a licensee except for the purpose mentioned therein namely, for claiming withdrawal, reimbursement or disposal with the manufacturer. I am not prepared to accept this argument. The Drugs and Cosmetics Act, 1940 has been enacted to regulate the import, manufacture, distribution and sale of drugs and cosmetics. Its main object is to prevent low standard in drugs presumably for maintaining high standards of medicinal treatment. If expired date medicines are permitted to be sold to needy persons, they cannot have the desired effect as their efficacy is expected to have been lost through lapse of the period during which the same are expected to maintain their potency. In view of that purpose and object of the Act, the word 'stock' used in Rule 65 (17) obviously means 'stock for sale'. In Public Prosecutor v. Mahavir Prasad 1972 Cri LJ 1546 (Andh Pra) it has been held by the Andhra Pradesh High Court that the word 'stock' occurring in Rule 65 (17) means 'stock for sale'. I agree with that interpretation of the word 'stock' used in the aforesaid rule. While Interpreting Rule 110 of the Rules framed by the Government under the provisions of Drugs & Cosmetics Act 1940 it was held by this Court also in Virendra Singh v. State 1968 All WR (HC) 78 that mere stocking of a medicine is not an offence unless that stocking is for sale or the medicine concerned has been exhibited for sale.

The Proviso attached to Rule 65 (17) contemplates only one situation wherein licensee can retain expired date medicines with a clear indication that the same were not meant for sale. There is nothing in the rules to make obligatory upon a licensee to destroy or throw away the stock as soon as it becomes expired date, A licensee can claim rebate from income-tax and sales tax departments for the loss incurred by him through non-disposal of expired date medicines. If for that purpose a licensee keeps expired date medicines in his stock with due precaution that everybody should know that the same were not intended for sale then he cannot be said to have committed any offence. In the present case the revisionist has pleaded that he was keeping expired date medicines in his shop in order to claim rebate from income-tax and sales tax departments. It is prosecution's own case that the medicines detailed in Ex. Ka-2A were kept by the revisionist in a separate almirah which prominently displayed that its contents were not for sale. I am, therefore, of the opinion that the mere recovery of those medicines from the premises of the revisionist's firm cannot make him guilty for having contravened the provisions of Rule 65 (17) when undisputedly the almirah wherein those medicines were kept prominently displayed that the same were not meant for sale.

7. The medicines detailed in Ex. Ka-2B undoubtedly bore indication that they were meant for physician's sample but those medicines were also kept in the same Almirah whose stock was not meant for sale. The revisionist has suggested that the same were left by Dr. Bhim Sen of Azamgarh at his shop and he had separately kept those medicines in an Almirah wherein other medicines not meant for sale were kept. Kedar Nath Dube (D.W. 1) has supported that plea of the revisionist. There is no reasons for him to falsely support revisionist's case. There is nothing on record to show that the aforesaid medicines were stocked by the revisionist for sale. The explanation given by the revisionist for being in possession of those medicines is plausible and there is no reason for this Court to disbelieve it. If Dr. Bhim Sen had left those medicines at revisionist's shop and he had separately kept the same in an Almirah wherein other medicines not meant for sale were stocked it cannot be said that the revisionist has contravened the provisions of Rule 65 (18).

8. Under the circumstances I am of the opinion that the conviction of the revisionist ordered by the Courts below is wholly unjustified and cannot be allowed to stand.

9. This revision is consequently allowed and the revisionist's conviction and sentence ordered by the courts below are set aside. Fine, if already paid, shall be refunded to the revisionist.