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Court : Orissa

Decided On : Feb-15-1952

Reported in : AIR1952Ori214

Judge : Panigrahi, J.

Acts : Orissa Drugs (Control) Act, 1950 - Sections 10(1) and 13(1)

Appeal No. : Criminal Ref. No. 25 of 1951

Appellant : Narasingo Chaudhury

Respondent : State

Advocate for Def. : B.M. Patnaik, Adv.

Advocate for Pet/Ap. : V. Pasayat, Adv.

Disposition : Reference accepted

Judgement :

ORDER

Panigrahi, J.

1. The petitioner, Narasingo Chaudhury is the proprietor of a medical shop known as Jayabharat Pharmaceutical Industries at Balangir. On 1-9-1950, the Assistant Civil Supply Officer inspected the shop and found that a phial of Conozol did not

bear any price-mark and that this was in contravention of Notification No. 30487, S. T., dated 16-2-1950. The said notification was published in the Orissa Gazette, dated 25th August 1950 and the inspection of the shop was made, as stated above, on the 1st September 1950.

2. The plea of the petitioner was that he was not aware of the notification and that, in any case, he had no intention to commit the offence he was charged with.

3. The Magistrate who tried the case convicted him under Section 13 (1) of the Orissa Drugs Control Act, 1950, and sentenced him to pay a fine of Rs. 25/-, in default to undergo simple imprisonment for one week. The learned Sessions Judge has recommended to this Court that the conviction of the petitioner should be set aside. Section 10 (1) of the Orissa Drugs Control Act says that:

'the Provincial Government may direct dealers or producers in general or any dealer or producer in particular to mark any drug exposed, or intended for sale, with the sale price or to exhibit on the premises a price list of drugs held for sale, and may give directions as to the manner in which any such direction as aforesaid is to be carried out.'

It is under this sub-section that the notification referred to above was made by the State Government. It is not the case of the prosecution that any particular direction was given to the petitioner but that the general notification was published directing dealers to mark the prices of any drugs exposed or intended for sale. The prosecution has not established that the notification reached Balangir by the 1st September 1950 on which date the alleged contravention was noticed by the Assistant Civil Supply Officer. On this ground alone I would hold that the petitioner is not guilty of any violation of the notification as he was not aware of the same.

4. But quite apart from this ground, as has been pointed out by the learned Sessions Judge, it is difficult to hold that the petitioner had any criminal intent to violate the notification when he failed to mark the price as directed therein. As has been held by the Privy Council in 'SRINIVAS MALL V. EMPEROR', AIR 1947 P C 135, unless a statute expressly rules out 'mens rea' as a necessary ingredient of the offence it must be held that a person can be deemed guilty only if it can be

shown that he had the necessary criminal intention. The learned Assistant Government Advocate has drawn my attention to the case of 'RAULA HARIFRASADA v. THE STATE', 1951-14 S C J 296 (SO), where this rule has been referred to with approval.

In that case the question was whether the petitioner who owned a petrol pump was liable for the act of his servant in not having complied with the provisions of Motor Spirit Rationing Order, and their Lordships held that the use of the word 'supplier' in the Order laid the responsibility upon the master and therefore he was liable for contravention of the provisions of that Order. In the present case no such question arises, and the only point for determination is whether the petitioner in exposing a drug for sale without marking the sale price had the criminal intention to violate the provisions of the Orissa Drugs Control Act, 1950.

5. I am in entire agreement with the view taken by the learned Sessions Judge that there is no evidence on the side of the prosecution to indicate that the petitioner had any criminal intention. I would therefore accept the reference, set aside the conviction and sentence, and direct that the fine, if paid, shall be refunded.

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