

State Vs. Moti Lal

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Court : Delhi

Decided On : Jan-27-1969

Reported in : ILR1969Delhi286

Judge : S.K. Kapur and; Jagjit Singh, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 4; [Drugs and Cosmetics Act, 1940](#) - Sections 32

Appeal No. : Criminal Appeal No. 225 of 1967

Appellant : State

Respondent : Moti Lal

Advocate for Pet/Ap. : B. Dayal and; D.R. Sethi, Advs

Judgement :

Jagjit Singh, J.

(1) Motilal, proprietor of Rajasthani Ayurvedic Pharmacy, Subzimandi, Delhi, was tried and convicted by Shri M. M. Aggarwal, a Magistrate of the First Class, for contravention of the provisions of section 18(c), 18(a)(i) and 18(a)(iii), which is punishable under section 27(b) of the Drugs Act, 1940 (referred to hereafter for the sake of brevity as the Act). Under the first count he was sentenced to fine of Rs. 200.00. and under the later two counts to fine of Rs. 100.00 each. In default of the

payment of fine he was ordered to undergo rigorous imprisonment for certain periods. He filed an appeal to the Court of Session. The appeal was accepted, on September 7, 1967, by Shri K. S. Sidhu, Additional Sessions Judge, and the case was remanded with the following directions :-

'In case, there was any oral complaint made to the learned Magistrate against the accused, he shall have to deal with that complaint in accordance with the provisions of Chapter 16 Cr. P.C. If there was no such complaint made to him with a view to his taking action under the Cr.P. C., the learned Magistrate will have to treat the matter as closed.'

(2) By treating the order of the learned Additional Sessions Judge as that of acquittal the State preferred the present appeal.

(3) In order that the contentions raised in the case may be appreciated it is necessary to briefly state the facts. On April 19, 1963, Shri S. P. Luthra, Drugs Inspector, Delhi, inspected the godown of Rajasthani Ayurvedic Pharmacy and found stocks of drugs as under :- (i) Tincture Sarpentaria B.P.C. 34 Batch No. 219 bearing label of Pharma Drugs Manufacturing Co. Jammu (Kashmir). 15 bags each bag containing 50 bottles. (ii) Auristillae Rasorcinolis B.P.C. 1949, Batch No. 134, bearing label of New Pharma Laboratories Jammu (J & K) 4 bags each bag containing 50 bottles. (iii) Auristillae Resorcinolis B.P.C. 1949, Batch No. 132, bearing label of New Pharma Laboratories Jammu (J & K) one bag containing 50 bottles. (iv) Auristillae Resorcinolis B.P.C. 1949 Batch, No. 136, bearing label of New Pharma Laboratories Jammu (J & K) 109 bags each containing 50 bottles.

(4) As according to the Drugs Inspector the drugs had been stocked for sale without any license and even though the drugs were 'patent or proprietary medicines' the drugs referred to at Serial Nos. (i) and (iii) above did not have the formula displayed on the labels. The proprietor of the Pharmacy was, therefore, considered to have contravened the provisions of section 18(c), 18(a)(iii) and 18(a)(ii). He made a report to that effect, on April 20, 1963, to the Station House Officer Police Station, Roshan Ara Road, Delhi, for registration of a case. After investigation the police made a report for prosecution of Moti Lal. Amongst the papers attached to the police report was also a complaint, dated September 5,

1964, made by the Drugs Inspector. The complaint was addressed to the Magistrate and besides containing the allegations against the accused contained the prayer 'that the accused be tried according to law and suitably punished.'

(5) The learned Additional Sessions Judge held that the report which was sent by the Drugs Inspector to the Station House Officer could not be treated as a complaint as defined in section 4(h) of the Code of Criminal Procedure and that the provisions of section 32 of the Act, bearing institution of prosecution under Chapter IV except by an Inspector had not been complied with. He, therefore, remarked that the trial Magistrate had acted illegally in convicting the accused without any legal prosecution having been instituted. For that reason he accepted the appeal and set aside the conviction and the sentences of the accused and remanded the case.

(6) Before the learned Additional Sessions Judge, the Prosecutor had urged that the report (Exhibit PR) of the Drugs Inspector made to the Station House Officer should be treated as a complaint to the Magistrate. This contention, however, was not accepted. The complaint made by the Drugs Inspector to the Magistrate was not brought to the notice of the learned Additional Sessions Judge.

(7) It was not disputed before us that Shri S. P. Luthra is a duly appointed Inspector under section 21 of the Act and that cognizance could be taken of the alleged offences against the accused on his complaint. The controversy raised was whether cognizance had been taken on the Drugs Inspector's complaint or on the Police report. Shri Bishamber Dayal, learned counsel for the State, submitted that as there was a complaint addressed by the Inspector to the Magistrate so cognizance can be regarded to have been taken on that complaint. This was converted by Shri D. R. Sethi, on behalf of the respondent by stating that it is not free from doubt whether the complaint was one of the documents which were filed in the Court along with the report of the police or it was presented at a later date. According to him the complaint was, in all probability, produced for the first time on June, 28, 1965, statement of the Drugs Inspector was recorded and the complaint was marked as Exhibit PS. The second contention of the respondent's learned counsel was that the order of the Magistrate, dated February 19, 1965,

directing the accused to be summoned, clearly shows that cognizance was taken on the basis of the police report and that even if the complaint of the Inspector addressed to the Magistrate was one of the documents accompanying the said report that could not mean that the Magistrate had taken cognizance on the basis of the complaint.

(8) The record of the case clearly shows that the complaint of the Drugs Inspector was one of the documents attached to the police report. In that report particulars of its annexures were given. These referred not only to the 'original writing' of the Drugs Inspector comprising of one sheet but to the complaint which was described as having three sheets. The report made by the Drugs Inspector is hand-written and comprises of one sheet only while the complaint addressed to the Magistrate (Exhibit PS) is a typed document having three sheets. It is also signed by the Drugs Inspector. It cannot, therefore, be said that the complaint was not before the Magistrate when orders for summoning the accused were passed.

(9) It is true that in the order of the Magistrate, dated February 19, 1965, a reference was made to the challan and not to the complaint and the accused was ordered to be summoned. But when the accused appeared the case was proceeded with not under provisions of section 251-A of the Code of Criminal Procedure but under the provisions of section 252, which prescribed the procedure for trial of warrant cases instituted otherwise than on a police report. The learned Magistrate also wrote the judgment as if he was disposing of a complaint.

(10) In *Chunilal Vallabhji Gandhi v. State* a Drugs Inspector had made a report to a police station against a person for contravening the provisions of section 18(c) of the Act. On February 22, 1957 the police filed a charge sheet. When the charge sheet was lodged in the court a complaint addressed to the Magistrate and signed by the Drugs Inspector. The Presidency Magistrate took cognizance of the offence and framed a charge on the assumption that the offence was to be tried in the manner of a warrant case under the procedure prescribed by section 251A of the Code of Criminal Procedure. After the evidence of the witnesses for the prosecution was recorded, the Prosecutor appearing on behalf of the State applied that as the procedure followed by the Magistrate was inappropriate a new charge

be framed against the accused. The Magistrate acceded to the request and after considering the evidence which had been led by the prosecution, but ignoring the charge which was initially framed, framed a fresh charge and proceeded with the trial which ended in conviction. A Division Bench of the Bombay High Court took the view that as a complaint was filed by the Inspector under the Drugs Act the prosecution was competently entertained by the Presidency Magistrate and the fact that the complaint was accompanied by a charge sheet under the signature of the Inspector of Police did not render the prosecution instituted as otherwise than by an Inspector.

(11) In the present case not only the complaint by the Drugs Inspector was there before the Magistrate from the very beginning but he also adopted the procedure for trial of warrant case instituted otherwise than on a police report. The police report can be regarded as superfluous and it cannot be said that cognizance was not taken on the complaint of the Drugs Inspector. The view taken by the learned Additional Sessions Judge that prosecution had not been legally instituted and there was contravention of the provisions of section 32 of the Act does not appear to be correct. The appeal was accepted by him on the ground that there was 'no written complaint before the learned Magistrate made by a Drugs Inspector'. As a matter of fact there was such a complaint which was before the Magistrate.

(12) It has already been stated that the present appeal was preferred on the basis that the order passed by the Additional Sessions Judge was that of acquittal. The learned Additional Sessions Judge did not go into the merits of the case and did not acquit the respondent of the charges against him. The case was merely remanded to the Court of the Magistrate. There being no order of acquittal, there could be no appeal to this Court under section 417 of the Code of Criminal Procedure. The appeal can, however, be treated as a revision and the order passed by the learned Additional Sessions Judge can be set aside.

(13) For the reasons given above the order of the learned Additional Sessions Judge, dated September 7, 1967, is set aside. The appeal which had been filed by the respondent in the Court of Session shall now be heard afresh and shall be disposed of on merits. The respondent through his counsel, has been directed to

appear in the Court of Session on the 10th February 1969. The record of the case should be sent to that Court immediately.

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