

P.D. Puri Vs. State

P.D. Puri Vs. State

SooperKanoon Citation : sooperkanoon.com/684563

Court : Delhi

Decided On : Nov-21-1974

Reported in : 1975RLR12

Judge : P.S. Safer, J.

Acts : [Drugs and Cosmetics Act, 1940](#) - Sections 18; [Land Acquisition Act, 1894](#) - Sections 28

Appeal No. : Criminal Revision Appeal No. 181 of 1974

Appellant : P.D. Puri

Respondent : State

Advocate for Pet/Ap. : H.S. Marwah and; D.R. Sethi, Advs

Judgement :

P.S. Safer, J.

(1) This petition has arisen out of the complaint filed by the Drugs Inspector, Delhi Administration, under section 27(a) read with section 18(c) of the [Drugs and Cosmetics Act, 1940](#) (hereafter called 'the Act').

(2) The Drugs Inspector stated in the complaint that he had recovered items 1 to 23 mentioned in the recovery memo which were drugs within the meaning of

section 3(b) of the Act and that had been done on the 23rd of February, 1972. The Drugs were recovered from the premises of the petitioner. Certain bills and cash-memos were also recovered which disclosed the sources from which the drugs had been purchased by the petitioner. A recovery memo was prepared in respect thereof. The Drugs Inspector made inquiries from the firms from which the drugs had been purchased by the petitioner. In paragraph 6 the complaint alleged :-

'THAT the accused had no license to sell, stock and exhibit for sale and distribute drugs at his premises mentioned above and that he is not a Registered Medical Practitioner within the meaning of Rule 2 (ee) of Drugs and Cosmetics Rules, 1945.'

In paragraph 7 of the complaint it was stated that the petitioner had contravened the provisions of sections 18(c) of the Act and had thus incurred liability to punishment under section 27 of the same Act.

(3) The trial court after taking cognizance of the complaint issued process in consequence whereof the accused appeared on the 11th of September, 1972, and was ordered to be released on furnishing a bail-bond in the sum of Rs. 3,000.00 with one surety. After the prosecution closed its evidence the accused was examined under section 342 of the Old Code of Criminal Procedure, which was then in vogue. I have perused that statement. The accused i.e. the petitioner before me was very forthright and truthful in answering the questions put to him. He admitted that the drugs mentioned in the question put to him in that respect had been recovered from his premises and that he was practicing as a private medical practitioner. He also admitted that he did not have any license either to keep the drugs or to practice as a private medical practitioner. When he was asked why the case had been brought against him, he again made a significantly truthful statement. He stated :- 'The case has been made by the Department as I was dealing with the drugs without license.' He was asked whether he had anything else to say. In reply to that question the accused-petitioner stated that he was a member of the Private Medical Practitioners Association of India (Registered) and that some of the State Governments had recognized persons who had qualifications similar to his to practice as registered medical practitioner,

but that had been done in some of the States and in other States negotiations were going on for obtaining recognizance of persons of the petitioner's qualifications to practice as medical practitioners. He further stated (hat negotiations were going on with the Central Government and the Delhi Administration. That statement he made on the 22nd of December!, 1973. Thereafter an application was made on behalf of the petitioner for examining certain witnesses drawn from various States. The order which disposed of the said application mentions that the accused wanted to examine witnesses which were to come from Uttar Pradesh and Rajasthan. He wanted to examine the Joint Secretaries and Secretaries of the Governments of States. The petitioners wanted to prove that in those States persons of his qualifications had been given the right to practice as medical practitioners. By his order dated the 14th of March, 1974, the trial magistrate dismissed the application on the ground that the proof which the petitioners sought to render was irrelevant to the offence for which he was being tried. The trial magistrate depended upon the statement which the accused had made under section 342 of the Code in which he had admitted that he had purchased the drugs and had stocked them at his premises and although he was not otherwise selling them, the same were being sold out to his patients. He had also admitted that he was practicing without license.

(4) Aggrieved by the order passed by the trial magistrate the petitioner went up in revision and while dealing with it Shri N.L. Kakkar, Additional Sessions Judge, did not accept the contentions that the revision petition was maintainable under the Old Code. He took the view that an application moved on behalf of an accused person for producing witnesses in defense having been disposed of by an interlocutory order no revision petition was maintainable, in view of section 397(2) of the New Code of Criminal Procedure (Act No. 2 of 1974).

(5) The grievance that the Additional Sessions Judge did not deal with the matter by exercising his revisionary powers is of no avail before me. I have heard the counsel in exercise of the revisionary jurisdiction of this court, and that has been done without incurring any prejudice from any of the findings recorded by the Additional Sessions Judge. I have heard the petition as confined to the order passed by the Judicial Magistrate on the 14th of March, 1974. Having read the

complaint I was attracted to the concerned provisions in the Act. Section 18(c) and 27 in the Act are :- (...)

(6) It is not the case of the petitioner that Central Govt. had after consultation with the Board by any notification in the official gazette permitted with or without conditions sale of drugs which petitioner was admittedly having at his premises and which he confessedly sold to his patients. It is clear that the petitioner was having the concerned drugs at his premises and selling them admittedly to his patients without a valid license as required by clause (c) of section 18 of the Act. According to his admissions contained in the statement made under section 342 of the Old Code of Criminal Procedure, the petitioner had conceded his liability to punishment. His plea that the negotiations were going on with the Central Government and the Delhi Administration could not merit the permitting of the examination of witnesses from Uttar Pradesh and Rajasthan.

(7) Negotiations with any Government or authority would not expunge the statute.

(8) Where an offence has been committed under any provision of the law in vogue the fact that some negotiations are going on which may alter the liability of the accused would not turn back the wheel of time and obliterate the commission of the act constituting the offence. In a case where the Government desires to withdraw the prosecution it is always open to it to do so. As noted earlier, the accused had appeared for the first time before the trial court on 11th of September, 1972. Till today i.e. the 21st of November, 1974, the Delhi Administration or the Central Government has not issued any notification or accepted any terms of any alleged negotiations. This is not a case in which the trial court should have permitted the examination of witnesses from other States in order to prove that persons holding the same qualifications which the petitioner possesses have been allowed to store and sell the drugs and to practice as medical practitioners. There is no merit in this petition. While dismissing it I must observe that the petitioner took up a very truthful stand at the time of answering the questions put to him under section 342 of the old Code. The petition is dismissed. Hon'ble Mr. Justice B.C.Misra *Umrao Singh v. Union of India* Civil Revision No. 172 of 1974 D./

September 30, 1974 D.R.Dhamji [Land Acquisition Act, 1894](#), S. 28 A person whose land is acquired and symbolic possession is taken instead of actual physical possession, is entitled to interest on the amount of compensation awarded till actual payment, B.C.Misra

(9) This revision-petition raises a short but important question of law. It is this : Whether a person, whose property has been acquired under the Land Acquisition Act, is entitled to interest under section 28 of the Act on the amount of compensation awarded to him from the date of the dispossession, in case the authorities have taken only symbolic possession and not actual physical possession of the property from him. .

(10) The material facts of the case lie in a small compass. Some land including two fields in dispute were acquired by the Collector under the Land Acquisition Act, 1 of 1894 (hereinafter referred to as 'the Act') The Collector determined the compensation payable for the land including the two fields in dispute. On a reference made under section 18 of the Act, compensation of the land was enhanced from Rs. 800.00 per bigha to Rs. 4,250.00 per bigha and interest was awarded according to law. This was also payable in respect of the aforesaid two fields. Consequent upon the enhancement, the Collector remitted the requisite amount to the court which paid it to the claimant petitioner. The petitioner, however, complained that the interest in respect of the aforesaid two fields on the amount of compensation awarded by court had not been deposited and he applied to the District Court for calculation of the interest and requested the payment of the balance amount. Notice of the application was issued to the Union of India, which contended in reply that interest on the enhanced compensation in respect of the two fields in dispute could not be allowed, since the Government had not taken physical possession of the said fields On the trial of the application, the facts established on the record are that the Naib Tehsildar took symbolic possession of the two fields in dispute on 15th June, 1963 and then on 13th August, 1964 by a notification issued under sub-section (1) of section 22 of the Delhi Development Act, 1957, the Chief Commissioner of Delhi, by virtue of the powers of the Central Government vesting in him for the purpose placed the land including the two fields in dispute, which had vested in the Central Government, at the disposal of the

Delhi Development Authority for the purpose of development in accordance with the terms of the said Act. The Naib Tehsildar, who was examined as had thus incurred liability to punishment under section 27 of the same Act.

(11) The trial court after taking cognizance of the complaint issued process in consequence whereof the accused appeared on the 11th of September, 1972, and was ordered to be released on furnishing a bail-bond in the sum of Rs. 3,000.00 with one surety. After the prosecution closed its evidence the accused was examined under section 342 of the Old Code of Criminal Procedure, which was then in vogue. I have perused that statement. The accused i.e. the petitioner before me was very forthright and truthful in answering the questions put to him. He admitted that the drugs mentioned in the question put to him in that respect had been recovered from his premises and that he was practicing as a private medical practitioner. He also admitted that he did not have any license either to keep the drugs or to practice as a private medical practitioner. When he was asked why the case had been brought against him, he again made a significantly truthful statement. He stated :-

'THE case has been made by the Department as I was dealing with the drugs without license.' He was asked whether he had anything else to say. In reply to that question the accused-petitioner stated that he was a member of the Private Medical Practitioners Association of India (Registered) and that some of the State Governments had recognized persons who had qualifications similar to his to practice as registered medical practitioner, but that had been done in some of the States and in other States negotiations were going on for obtaining recognizance of persons of the petitioner's qualifications to practice as medical practitioners. He further stated that negotiations were going on with the Central Government and the Delhi Administration. That statement he made on the 22nd of December, 1973. Thereafter an application was made on behalf of the petitioner for examining certain witnesses drawn from various States. The order which disposed of the said application mentions that the accused wanted to examine witnesses which were to come from Uttar Pradesh and Rajasthan. He wanted to examine the Joint Secretaries and Secretaries of the Governments of States. The petitioners wanted to prove that in those States persons of his qualifications had been given the right

to practice as medical practitioners. By his order dated the 14th of March, 1974, the trial magistrate dismissed the application on the ground that the proof which the petitioners sought to render was irrelevant to the offence for which he was being tried. The trial magistrate depended upon the statement which the accused had made under section 342 of the Code in which he had admitted that he had purchased the drugs and had stocked them at his premises and although he was not otherwise selling them, the same were being sold out to his patients. He had also admitted that he was practicing without license.

(12) Aggrieved by the order passed by the trial magistrate the petitioner went up in revision and while dealing with it Shri N.L. Kakkar, Additional Sessions Judge, did not accept the contentions that the revision petition was maintainable under the Old Code. He took the view that an application moved on behalf of an accused person for producing witnesses in defense having been disposed of by an interlocutory order no revision petition was maintainable, in view of section 397(2) of the New Code of Criminal Procedure (Act No. 2 of 1974).

(13) The grievance that the Additional Sessions Judge did not deal with the matter by exercising his revisionary powers is of no avail before me. I have heard the counsel in exercise of the revisionary jurisdiction of this court, and that has been done without incurring any prejudice from any of the findings recorded by the Additional Sessions Judge. I have heard the petition as confined to the order passed by the Judicial Magistrate on the 14th of March, 1974. Having read the complaint I was attracted to the concerned provisions in the Act. Section 18(c) and 27 in the Act are :- (...)

(14) It is not the case of the petitioner that Central Govt. had after consultation with the Board by any notification in the official gazette permitted with or without conditions sale of drugs which petitioner was admittedly having at his premises and which he confessedly sold to his patients. It is clear that the petitioner was having the concerned drugs at his premises and selling them admittedly to his patients without a valid license as Supreme Court, following the case of Manhor Lal (supra) observed that inherent powers are to be exercised by the court in very exceptional circumstances for which no procedure has been laid down. In that

case while dealing with the question of setting aside a decree under order xxxvii of the Code of Civil Procedure it was also observed that rule 4 of order xxxvii expressly gives power to the court to set aside a decree passed under the provisions of order xxxvii and thus express provisions having been made for setting aside a decree under order xxxvii, if a case does not come within the provisions of that rule there is no scope to resort to Section 151 of the Code of Civil Procedure for setting aside such a decree.

(15) The order of the learned Subordinate Judge in substance meant that the case was such which may justify invoking inherent powers for restoring the objection-petition dismissed in default. It seems to me that the order of the Subordinate Judge does not imply that possibly there cannot be any case where resort to the inherent powers would not be appropriate and in the interest of justice.

(16) The order of the learned Subordinate Judge was in my opinion legal and in making it he neither failed to exercise the jurisdiction vested in him nor acted in exercise of his jurisdiction illegally or with material irregularity. The nature of the case was not such which may have called for exercise of inherent powers in restoring the objection-petition dismissed in default. The petitioner ought to have instituted a suit as provided by rule 63 of order 21 of the Code. of Civil Procedure. There was limitation for filing the suit even when the application for restoration of the objection-petition was dismissed. If in spite of that the petitioner persisted in not filing such a suit then for the consequence which have ensued, she has to blame herself.