

P.D. Puri Vs. the State

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Court : Delhi

Decided On : Nov-21-1974

Reported in : 1975CriLJ1075

Judge : P.S. Safer, J.

Appellant : P.D. Puri

Respondent : The State

Judgement :

ORDER

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 mean-ings of Section 3(b) of the Act and that had been 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 Section 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 Rupees 3,000/- 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 practitioners, but that had been done in some of the States and in other States negotiations were going on for obtaining recognition 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 those States. The petitioner wanted to prove that in these 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 th petitioner 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) in the Act is:

18. Prohibition of manufacture and sale of certain drugs.-From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf-

(a) - (b) ***

(c) manufacture for sale, or sell, or stock or exhibit for sale, or distribute any drug or cosmetic except under, and in accordance with the conditions of a license issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:

Provided further that the Central Government may, after, consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the manufacture for sale, sale or distribution of any drug or class of drugs not being of standard duality.

6. It is not the case of the petitioner that the Central Government had after consultation with the Board, by any notification in the Official Gazette permitted with or without conditions the sale of the drugs which the petitioner was admittedly having at his premises and which he was confessedly selling to his patients. Section 27 in the Act is:

27. Penalty for manufacture, sale, etc. of drugs in contravention of this Chapter.- Whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale or distributes-

(a) any drug-

(i) deemed .to be misbranded under Clause (a), Clause (b), Clause (c), Clause (d), Clause (f), or Clause (g) of Section 17 or adulterated under Section 17-B; or (ii) without a valid license as required under Clause (c) of Section 18. shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to ten years and shall also be liable to fine;

Provided that the Court may, for any special reasons to be recorded in writing, impose a sentence of imprisonment of less than one year;

(b) any drug other than a drug referred to in Clause (a) in contravention of any of the provisions of this Chapter or any rule made there under shall be punishable with imprisonment for a term which may extend to three years or with fine, or with both.

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 and the Petitioner is directed to appear before the trial Court on 7th

December. 1974.

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