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Court : Rajasthan

Decided On : Mar-18-1994

Reported in : 1994(1)WLN426

Judge : Rajesh Balia, J.

Appeal No. : S.B. Criminal Misc. Petition No. 272 of 1988

Appellant : Arjunlal

Respondent : State of Rajasthan

Disposition : Petition dismissed

Judgement :

Rajesh Balia, J.

1. This petition under Section 482 Cr.P.C. is to quash the charges framed against the petitioner under Section 18 & 27 of the Drugs and Cosmetics Act, 1940 by order dated 16.5.88 passed by Chief Judicial Magistrate, Bhilwara.

2. It was first contended by the learned Counsel for the petitioner that on the allegations levelled by the complainant, Drug Inspector. No offence is made out to have been committed by the petitioner.

3. As per the prosecution case the Drug Inspector, Bhilwara found the petitioner selling certain medicines at Medical Practitioners and Medical Store on 27.1.80. He was found selling drugs without licence and the some of the drugs sold by him were on analysis found to be of sub-standard. These are in the substance the charges levelled against the petitioner. It was the case of petitioner that he is not the manufacturer of the drugs but was merely selling the drugs found in his possession as an agent of Cash Medicos, Kota. According to the learned Counsel, in view of Section 19(3) of the Act the person who is not manufacturer is not liable for contravention of Section 18 if such person has acquired the Drug or Cosmetic from a duly licenced manufacturer, distributor or dealer thereof and that it did not know and could not with reasonable diligence have ascertained that the drug was of sub-standard quality and that the drug while in his possession was properly stored and remained in the same state as when he acquired it. Learned Counsel's contention is that as prosecution has not alleged that none of the conditions mentioned in Section 19(3) does not exist, it must be presumed that no case against the petitioner for contravention of Section 18 has been made out. In his connection, the learned Counsel also relied on *Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors.* 1983 Supreme Court 67.

4. In these circumstances he urges that the charges framed against the petitioner be quashed.

5. Learned Public Prosecutor contents the petition and prays for dismissal.

6. I have carefully considered the rival contentions and perused the record.

7. A perusal of Section 18 read with Section 27 leads one to conclude the existence of mensrea is not the graveman of the accusation to be levelled against the person found contravening, the provisions of the Act on the other hand under Section 19(3) in certa circumstances, absence of mensrea has been prescribed to be a valid defence to the charges levelled against the accused, if the accused is able to prove the conditions mentioned in Section 19(3) of the Act. Otherwise a general rule as provided under Section 19(1) makes it clear that it shall be no defence to a prosecution to prove merely that the accused was in ignorance of the nature of substance or quality of the drug in respect of which the offence has been

committed. The combined reading of Section 19(1) & 19(3) leads to irresistible conclusion that mere ignorance of the nature, substance or quality of the drug which the accused was found to be selling is no defence to the contraventions made of the provisions of the Act. It is only where in addition to that factor where the accused proves that he had acquired the concerned drug from a duly licenced manufacturer or distributor or dealer thereof, and that he did not know and further that he could not with reasonable diligence have ascertained that the drug which he was selling in any manner contravened the provisions of Section 18 and that the drug while in sellers possession was properly stored and remained in same state as when he acquired it. All the three conditions are to be satisfied cumulatively. The burden of proving existence if such state of affairs which absolves the accused other than manufacturer is to be proved by the accused. Therefore, in my opinion the absence of existence of defence is neither to be alleged nor to be proved by the prosecution in the context of the provisions of the Drugs and Cosmetics Act, keeping in view the objectives with which the Act has been framed.

8. The decision relied on by the learned Counsel is of little assistance to him, in as much as it is not on the issue of what allegations are required for framing a charge with reference to Provisions of Section 19 of Prevention of Food Adulteration Act which is in substance, a parallel provision of the Section 19 of the Drugs and Cosmetics Act. It was a case of framing charges under Prevention of Food Adulteration Act in respect of offence committed by the company. According to' the Section of the Prevention of Food Adulteration Act, a Manager or Director-in-charge can be prosecuted for the offence committed by the company. In the case before their Lordships of the Supreme Court the Director in-charge as well as all other members of the Board of Directors were prosecuted and charged with offence under the Prevention of Food Adulteration Act. It was in that context that the Supreme Court has observed that merely because a person is Director of the company, there is no presumption that he is Director in charge unless there is a specific allegation or by necessary implication a person can be presumed to be incharge of the affairs of the company. He cannot be considered liable and therefore except the Manager, who by very nature of the duties discharged by him, was considered to be person incharge liable to be prosecuted and charges framed

against other Directors were quashed. Here it is not a case of vicarious liability to prosecution in respect of offence committed by the company.

9. It is next contended by the learned Counsel for the petitioner that case is pending for a pretty long time and delay by itself is sufficient to quash the proceedings. Further continuance of the proceedings will be abuse of process of the Court. In the facts and circumstances of the present case, I am not inclined to accept this contention. It is not an inflexible rule that delay in all cases result in defeat of prosecution. In the present case it is to be observed that case has been kept pended here for almost 6 years on the application of the accused himself. When accused himself is responsible for much of the delay caused in the prosecution, no benefit can be obtained by him.

10. I, therefore, find no force in this petition and same is hereby dismissed. Record of the case may be returned forthwith to the trial court. The trial court is directed to complete the trial with all promptitude.