

In Re: R. Dayalan and ors.

In Re: R. Dayalan and ors.

SooperKanoon Citation : sooperkanoon.com/810144

Court : Chennai

Decided On : Jul-27-1978

Reported in : 1978CriLJ1852

Judge : Paul, J.

Appellant : In Re: R. Dayalan and ors.

Advocate for Pet/Ap. : Mr. Santhana Gopalan

Judgement :

ORDER

Paul, J.

1. This is a petition under Section 482 of the Cr. P.C. for sending one bottle of the M. Os. concerned in C. C. No. 17 of 1976 on the file of the Sub-Divisional Judicial Magistrate, Hosur to the Chemical Examiner, Tamil Nadu Prohibition and Excise Laboratory, Chepauk for analysis and report with regard to the nature of the contents of the bottle.

2. The petitioners stand convicted by the learned Judicial Sub-Divisional Magistrate, Hosur of an offence under Section 18 read with Section 27 (b) of the Drugs and Cosmetics Act and have been sentenced to undergo imprisonment for one year. The aforesaid conviction and sentence was confirmed on appeal. The petitioners have thereupon filed a Criminal Revision Case before this Court. The

facts are as follows : On 2-2-1975 P.W. 2 the Drugs Inspector of Dharmapuri inspected Sri Murugan Pharmacy at Hosur of which shop the first accused Chandriah Naidu was the proprietor and in which shop the second accused was an employee. Noticing that some of those medicines containing the label 'Manojan' in the shop, P.W. 2 purchased 4 such bottles from the second accused for Rs. 14 and obtained the cash receipt Ex. P-3. He sealed those 4 bottles, put on them sample No. 6, gave one bottle to the second accused and obtained his acknowledgment and subsequently sent one of the sample bottles to the Government Analyst, Guindy. The Government Analyst at Guindy examined the sample and found it to contain chloral hydrate, an allopathic medicine which was an hypnotic. P.W. 2 then seized the remaining 10 bottles of Manojan in the presence of P.W. 3, a private witness. Subsequently P.W. 2 issued a show cause notice on 8-5-1975 to accused 1 and 2 who then sent replies Exs. P-8 and P-11 respectively in which they have stated that they purchased the aforesaid drug from the third accused Dayalan. P.W. 2 thereupon sent a show cause notice to the third accused on 22-3-1975 and the third accused sent a reply enclosing with it a certificate issued by the sixth accused appointing the third accused as the sole agent for sale of the drugs for Salem and Dharmapuri Districts as well as bills for the sales to the third accused by the fourth accused firm. P.W. 2 thereupon sent a show cause notice to the fourth accused at Madurai and the fifth accused who is the manager of the firm sent a reply Ex. P-14. P.W. 2 subsequently laid the complaint before the Court under Section 32 of the Drugs and Cosmetics Act.

3. The learned Magistrate however eventually discharged the first and second accused. He framed a charge against the petitioners alone under Section 27 (a) (i) and 27 (b) of the Act on the ground that they had manufactured and stocked for sale the misbranded drug. The learned Magistrate eventually convicted the petitioners of an offence under Section 27 (a) (i) of the Act and sentenced them each to R. I. for one year. On appeal the learned Sessions Judge altered their conviction under Section 27 (a) (i) of the Act into one under Section 27 (b) of the Act but confirmed the sentence.

4. Now the petitioners have filed criminal revision petitions before this Court challenging the aforesaid convictions. Meanwhile, the petitioners have filed this

petition praying that one of the sample bottles may be sent to the Chemical Examiner, Tamil Nadu Prohibition and Excise Laboratory, Chepauk for the purpose of analysis and report. This petition is stoutly opposed by the respondent who contends that the petitioners cannot ask for the sample to be so sent for analysis after having failed to make use of such an opportunity during the trial.

5. Section 23 of the Drugs and Cosmetics Act deals with the procedure for taking samples of drugs for the purposes of test or analysis. The section enjoins the Food Inspector to divide the sample into four portions and effectively seal and suitably mark the same. Proviso to Sub-section

(3) states that where the sample is taken from premises whereon the drug is being manufactured, it shall be necessary to divide the sample into three portions only. Sub-section

(4) enjoins the Inspector to give one portion of the sample so divided to the person from whom he takes it and to send another portion to the Government Analyst for test or analysis and produce yet another portion into the Court before which the proceedings, if any, are instituted in respect of the drug and to send the third portion to the person, if any, whose name, address and other particulars have been disclosed under Section 18-A. Section 18-A casts a duty on every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof to disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetic. On a reading of Section 18-A and Sub-section

(4) of Section 23 together, it is clear that out of the four portions into which the sample has been divided one portion should be sent to the person, if any, whose name and address and other particulars have been disclosed under Section 18-A. Section 24 casts a duty on every person for the time being in charge of any premises whereon any drug is being manufactured or is kept for sale or distribution to disclose to the Inspector on being required to do so the place where the drug is being manufactured or is kept, as the case may be. Section 25 requires the Government Analyst to whom a sample has been submitted for test or analysis to deliver to the Inspector a signed report and the Inspector on receipt thereof has

to deliver one copy of the report to the person from whom the sample was taken and another copy to the person, if any, whose name, address and other particulars have been disclosed under Section 18-A and shall retain the third copy for use in any prosecution in respect of the sample. Sub-section

(3) of Section 25 states that any document purporting to be a report signed by a Government Analyst under this Chapter shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken or the person whose name, address and other particulars have been disclosed under Section 18-A has, within twenty-eight days of the receipt of a copy of the report, notified in writing the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report. Sub-section

(4) states that unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under Sub-section

(3) notified his intention of adducing evidence in controversion of a Government Analyst's report, the Court may, of its own motion or in the discretion at the request either of the complainant or the accused, cause the sample of the drug produced before the Magistrate under Sub-section

(4) of Section 23 to be sent for test or analysis to the said Laboratory which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein. Sub-section

(5) states that the cost of a test or analysis made by the Central Drugs Laboratory under Sub-section

(4) shall be paid by the complainant or accused as the Court shall direct.

6. The procedure under sub-sees. (2) to (4) of Section 25 is available only to the person from whom the sample was taken and to the person if any whose name, address and other particulars have been disclosed under Section 18-A. Further, Sub-section (3) clearly states that if one of those two persons wishes to challenge

the report of the Government Analyst he should within 28 days of the receipt of a copy of the report notify in writing that he intends to adduce evidence in contravention of the report; and he may under Sub-section (4) request the Court to send the sample to the Central Drugs Laboratory for analysis and report.

7. The petitioner in this case is not a person from whom the sample was taken; nor is he a person whose name, address and other particulars were disclosed under Section 18-A. Hence it is contended by the respondent that he cannot avail himself of the aforesaid provisions and moreover, in any event he cannot avail himself of these provisions at this stage when he has not applied within the time stipulated under Sub-section (3) or notified in writing the Inspector or the Court that he intended to adduce evidence in contravention of the report of the Government Analyst.

8. Mr. Santhana Gopalan, learned Counsel for the petitioner however contends that he is also entitled to make use of the provisions contained in Section 25. But the copies of the report of the Government Analyst to whom a sample of any drug or cosmetic had been submitted for test or analysis under Sub-section (4) of Section 23 shall be delivered only to the person from whom the sample was taken and the person, if any, whose name and address and other particulars have been disclosed under Section 18-A. Under Section 18-A every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required, disclose to the Inspector, the name, address and other particulars of the person from whom he acquired the drug.

9. The sample of the drug in this case was taken from Sri Murugan Pharmacy at Hosur of which the first accused is the proprietor and of which the second accused was the salesman. Therefore the first accused, the proprietor was issued with a show-cause notice and he, while submitting his explanation disclosed that he acquired the drugs from the third accused Dayalan who is the first petitioner herein. Therefore the third accused is the person who was disclosed under Section 18-A and accordingly the third sample as well as the analyst's report were sent to the third accused as required by Section 25; and the third accused is the sole agent for sale of the aforesaid drug. The third accused in his explanation

however implicated the fourth accused, Sri Murugan Pharmacy at Madurai of which the fifth accused is the Manager and at which the sixth accused, as ayurvedic practitioner is manufacturing Ayurvedic drugs. The certificate appointing the third accused as the sale agent has been signed by the fifth accused. Section 18-A, it must be remembered, does not refer to a manufacturer at all. It only refers to every person not being manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetic. The particulars to be given under Section 18-A are regarding the person from whom a person acquired the drug or cosmetic. The person from whom the drug or cosmetic was acquired might be different from the manufacturer of the drug in some cases and in some cases it may be the manufacturer of the drug.

10. In this case, accused 1 and 2 had acquired the drug from the third accused. Therefore the third accused is the only person disclosed under Section 18-A who would by reason of Sections 23 and 25 be entitled to a copy of the analyst's report as well as to the third sample as laid down in Section 23 and not accused 4 to 6.

11. The disclosure by the third accused of the names and addresses of accused 4 to 6 would not be a disclosure under Section 18-A, for Section 18-A casts a duty only on every person who is not a manufacturer of a drug or cosmetic or his agent for the distribution thereof. The third accused is the sole agent for the distribution of the drug in question. Therefore his disclosure of the names and addresses of accused 4 to 6 would not be a disclosure under Section 18-A and consequently neither Section 23 nor Section 25 would avail accused 4 to 6.

12. To the third accused, admittedly the third sample was given under Section 23 and a copy of the report was also given to him under Section 25. The third accused, as required by Sub-section (3) of Section 25 has not within 28 days of the receipt of the copy of the report notified in writing the Inspector or the Court before which the proceeding was pending that he intends to adduce evidence in contravention of the report; nor did he under Sub-section (4) of Section 25 request the sample produced before the Magistrate to be sent for test or analysis to the laboratory. Therefore, he cannot now at this stage when he has filed a revision

challenging his conviction after having failed in the appeal filed by him, ask for the sample to be sent for analysis. Accused 4 and 6, as I have already stated, are not entitled to make use of sub-sees. (3) and (4) of Section 25 inasmuch as they are not persons disclosed under Section 18-A. Hence this petition asking for one of the sample bottles to be sent to the Chemical Examiner, Tamil Nadu Prohibition and Excise Laboratory, Chepauk, has to be and is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com