

S. K. Amir

Vs

The State of Maharashtra

Criminal Appeal No. 149 Of 1970

(M. H. Beg, Y. V. Chandrachud JJ)

09.01.1974

JUDGMENT

CHANDRACHUD, J. -

1. On March 19, 1966 the appellant was apprehended by a Railway Constable at the gate of the Malkapur railway station, immediately after he had obtained the delivery of a parcel. The parcel was found to contain 95,000 capsules of Seco Barbital Sodium which is a sedative agent and is commonly used for intoxication. The intoxicant is popularly called "Lal Pari".

2. The appellant was tried by the learned Judicial Magistrate, First Class Malkapur for offences under Sections 18 (a) (ii) and 18(c) read with Sections 27 (a)(ii) and 27(b) of the Drugs and Cosmetics Act, 23 of 1940, on the charge that he had stocked for sale a misbranded drug and that he had no licence for stocking the drug for sale. The appellant admitted that he was carrying the parcel at the time of his arrest but his defence was that he took delivery of the parcel on behalf of one Mahamood Jamadar who had represented to him that the parcel contained a 'science apparatus' meant for a school. The Magistrate rejected this defence as untrue, convicted the appellant and sentenced him to pay a fine of Rs. 1,200.

3. In appeal the learned Sessions Judge, Buldana acquitted the appellant on the view that though the facts raised a suspicion that the appellant or some other person on whose behalf the appellant had taken delivery of the parcel may have had the object of selling the capsules, the mere fact that the appellant was carrying the parcel would not justify the inference that the drug was stocked for sale.

4. That decision was set aside in appeal by the High Court of Bombay (Nagpur Bench) when held that the prosecution had proved conclusively that the accused had stocked the drug for sale. The High Court sentenced the appellant to the minimum sentence of one year's imprisonment, prescribed by the Act. This appeal by special leave is directed against the judgment of the High Court.

5. Under Section 3 (b)(i) of the Drugs and Cosmetics Act, 1940, 'drug' includes "all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of disease in human beings or animals". Section 17 by its seven clauses defines misbranded drugs and clause (e) thereof which is here relevant says that a drug shall be deemed to be misbranded if it is not labelled in the prescribed manner. Section 18 (a)(ii) provides that "no person shall himself or by any other person on his behalf manufacture for sale, or sell, or stock or exhibit for sale, or distribute any misbranded drug" ..... Section 18(c) provides that no person shall "manufacture for sale, or sell, or stock or exhibit for sale, or distribute any drug for cosmetic, except under, and in accordance with the conditions of, a licence issued for

such purpose" ..... Section 27(a) provides that whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale or distributes any drug (i) deemed to be misbranded under clauses (a), (b), (c), (d), (f) or (g) of Section 17, or (ii) without a valid licence as required under Section 189 (c), 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 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.

6. It is common ground that the substance which the appellant was found carrying is a 'drug', and a 'misbranded drug' and that he had no valid licence to stock it for sale. Before the High Court and the Lower Courts it was also common ground that the appellant had 'stocked' the drug. The controversy was limited to the question whether the appellant had stocked the drug 'for sale'. The trial Court and the High Court relied upon various circumstances, particularly the circumstance that the appellant was found in possession of as many as 95,000 capsules, in support of their conclusion that the appellant had stocked the drug for sale. The Sessions Court, on the other hand, thought that there was no reliable evidence to show that the appellant had stocked the drug for sale.

7. Before us, the argument has taken a different shape. It is urged that at the highest, the drug was found on the person of the appellant, which is not enough to establish that the appellant had stocked the drug.

8. We see no substance in this argument. Section 18(a) of the Act which lays down an injunction that no person shall 'stock' for sale a drug of certain description, Section 18(c) which that no person shall 'stock' for sale a drug except in accordance with the conditions of a licence issued for such purpose and Section 27(a) which prescribes a penalty, for a person who 'stocks' for sale a misbranded drug or a drug in respect of which no valid licence is held, do not use the word 'stock' in any technical sense. The plain meaning of the word 'stock' in these provisions of the Act is 'to keep' and the injunction of the law means no more than this that no person shall keep for sale a misbranded drug or a drug in respect of which a valid licence is not held. It is not necessary that the drug should be 'stored' in a place in order that it can be said to have been 'stocked' for sale. If anyone keeps or carries a drug on his person in contravention of the terms of the Act and it is proved that the drug is kept or carried for sale, the act must fall within the mischief of the law under consideration. In busy commercial cities, the streets are crowded with mobile hawkers who display their wares on their person. It is neither sound commonsense nor sound law to say that such wares are not stocked for sale. What is intended for sale can as much be stocked on one's person as in a shop or in a godown. 'Keeping' for sale is of the essence of the matter, not the mode and the manner of keeping. To keep for sale is to stock for sale. The Shorter Oxford English Dictionary (Third Edition p. 2025) gives the meaning of word 'stock' as "To lay up in store; to form a stock or supply of (a commodity) ..... To keep (goods) in stock for sale".

9. The judgment of the Allahabad High Court in *Dharam Deo Gupta v. State*, on which the appellant relies deals with a different point and lays down that mere stocking of goods, unless it is for the purpose of sale, does not amount to an offence within the meaning of Section 18 of the Drugs and Cosmetics Act. It was found in that case that the accused had to stock certain ampoules of injection under the terms of a contract between him and the Government of India.

10. The large quantity of 95,000 capsules found in the possession of the appellant leaves no doubt that he had stocked or kept the drug for sale. It could not have been meant for his personal use and his defence that he had received the parcel on behalf of another person, not knowing what is

contained, was rightly rejected by all the three Courts.

11. Accordingly we dismiss the appeal and confirm the order of conviction and sentence.

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