

Drugs Inspector, Palace Road, Bangalore

Vs

Dr. B. K. Krishnaiah and Another

Criminal Appeal No. 26 of 1976

(O. Chinnappa Reddy, Baharul Islam JJ)

20.02.1981

JUDGMENT

ISLAM, J. -

1. This appeal by special leave by the complainant, (the appellant before us) is directed against the judgment and order of the High court of Karnataka refusing to quash the complaint filed by the appellant against the respondents for prosecution for offences under Section 18(a) (vi) of the Drugs and cosmetics Act of 1940 (hereinafter "the Act") filed before the Chief Metropolitan Magistrate, Bangalore.

2. The petitioner's case was that the Drugs Inspector (the appellant before us) filed a criminal case against a fir, M/s. Ashok Sharma and three of its partners for violation of the Act. The first accused is a partnership firm. the two respondents and one T. Krishnamurty, since dead, were partners, of whom the third accused was a qualified medical practitioner and was the managing partner of the firm. The firm was ideal gin drugs. The allegation was that the accused had stocked drugs the potency of which had expired and had sold such drugs to the complainant. The complainant then lodged the complaint against the accused for the offence under Section 18(a) (vi) of the Act and the Rules there under, punishable under Section 28 and 27(b) of the Act. The magistrate took cognizance of the offence and issued process against all the accused persons. Meanwhile, as stated above, accused Krishnamurty, died on august 8, 1874.

3. It was then contended by the respondents before the magistrate, that the criminal case no longer survived against them as the only person who was managing the firm had expired. The magistrate overruled the contention. He held "further the partnership (meaning the partnership deed as the partnership deed was filed before hi, as it appears from Item 13, page 20 of the paper-book) shows that all the partners are responsible for carrying on the business." He fixed January 10, 1975 for evidence.

4. This order of the magistrate was challenged before the High Court. The High Court considered Section 34(1) of the Act and held that the complainant "has not complained against accused 2 and 4, the petitioners in this case making out that they were, in any manner, in charges of and responsible to the firm, namely accused 1 for the conduct of the business of the fir, namely, accused 1."

5. In a quashing proceeding, the High Court has to see whether the allegations made in the complaint petition, if proved, make out a prima facie offence and that the accused has prima facie committed the offence. In the instant case a perusal of the complaint petition shows that a prima facie case has been made out for an offence under Section 18(a) (vi) of the Act 1940 read with Rule

65(17) of Drugs rule, 1945 which reads as follows :

No drug shall be sold or stocked by the licensee after the date of expiration of potency recorded on its container, label or wrapper, or in violation of any statement or direction recorded on such container, label or wrapper.

6. The only question for consideration for the High Court in this case was whether the accused or any of them were liable. In paragraph 17 of the complaint petition the complainant quoted the provisions of the Act. In addition, he cited the names of witnesses, submitted a list of documents including a copy of the partnership deed at Item 13 of the list of documents. The learned Magistrate perused the partnership deed and prima facie found that the respondents as well as the deceased accused were liable for the offence and proceeded for trial. The learned High court committed an error in holding that there was no allegation that the respondents were not (sic) responsible for the management and conduct of the firm. The extent of their liability would be established by evidence during trial. In our opinion the judgment of the learned High Court is erroneous and is liable to be set aside.

7. In the result we allow the appeal and set aside the judgment of the High Court. The case is sent back to the magistrate for trial in accordance with law.

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