

State of Karnataka

Vs

Pratap Chand and Others

Criminal Appeal No. 91 of 1976

11.03.1981

JUDGMENT

1. This appeal by special leave has been preferred by the State of Karnataka.
2. The three respondents being the partners of the firm, M/s. Mafatlal and Co., and the firm itself were charged for offences under Section 18(c), 18(c) (ii) and 18-A of the Drugs and Cosmetics Act, 1940 read with Section 27(a) (ii), 27(a) (i) and Section 28 of the Drugs Control Act (hereinafter called 'the Act'). The defence was a plea of Not Guilty. The Chief Metropolitan Magistrate found respondents 1 and 3, that is, one of the partners and the firm, guilty under Section 18(a) (ii) and Section 18() of the Drugs and Cosmetics Act and sentenced respondent 1 to suffer rigorous imprisonment for one year (for offence) under Section 18(a) (ii) and to pay a fine of Rs. 500.00, in default, to suffer simple imprisonment for one month, and sentenced respondents 1 and 3 to pay a fine of Rs. 1,000.00, each, (for offence) under Section 18(c), in default, to suffer simple imprisonment for three months. The respondent 2 was acquitted of these two offences as the magistrate found that it was respondent 1 and not respondent 2 who was in charge of the business of the firm. All the respondents were acquitted of the offence under Section 18-A.
3. The appellant preferred an appeal before the High Court of Karnataka from the order of the acquittal of respondent 2 of the offence under Section 18(a) (ii) and 18(c) and of all the respondents under Section 18-A of the Act. The High Court summarily dismissed the appeal.
4. Section 18-A of the Act requires that every person who has acquired drug or cosmetic, if required, shall disclose to the inspector the name, address and other particulars of the persons from who the drug or cosmetic was acquired.
5. The respondents pleaded that they did disclose to the Drugs Inspectors, the name, address and other particulars of the person from whom the drugs were acquired, as required by Section 18-A of the Act and in support of their defence they rely on Ex. P-20, a letter dated July 17, 1971 addressed to the Drugs Controller. The learned Chief Metropolitan Magistrate has found that Ex. P-20 contained the name, address and other particulars of the person from whom the drugs were claimed to have been acquired as M/s. Mangilal Jayantilal & Company, 65 Princess Street, Second Floor, Bombay, which name and address, according to the prosecution, were fictitious. PW 3, the Assistant Commissioner, Food and Drug Administration, Bombay North Circle, has deposed that he got it verified by his Inspector who submitted a report that the above name and address were fictitious. But the Inspector has not been examined, nor his report proved. Obviously, therefore, the defence version remained un rebutted and violation of Section 18-A remained unestablished.
6. Regarding the acquittal of the second respondent of the offence under Section 18(a) (ii) and Section 18(c), the learned counsel for the State of Karnataka submitted that under Section 34 of the

Drugs and Cosmetics Act the firm, as well as its partners were liable to be convicted. Section 34 may be extracted here :

34. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section -

(a) "company" means a body corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

7. It is seen that the partner of a firm is also liable to be convicted for an offence committed by the firm if he was in charge of, and was responsible to, the firm for the conduct of the business of the firm or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the partner concerned. In the present case the second respondent was sought to be made liable on the ground that he along with the first respondent was in charge of the conduct of the business of the firm. Section 23-C of the Foreign Exchange Regulation Act, 1947 which was identically the same as Section 24 of the Drugs and Cosmetics Act came up for interpretation in *G. L. Gupta v. D. H. Mehta* where it was observed as follows : [SCC p. 190 : SCC (Cri) p. 280, para 6]

What then does the expression "a person in-charge and responsible for the conduct of the affairs of a company" means? It will be noticed that the word 'company' includes a firm or other association, and the same test must apply to a director in-charge and a partner of a firm in-charge of a business. It seems to us that in the context a person 'in-charge' must mean that the person should be in overall control of the day to day business of the company or firm. This inference follows from the wording of Section 23-C(2). It mentions director, who may be a party to the policy being followed by a company and yet not be in-charge of the business of the company. Further it mentions manager, who usually is in charge of the business but not in overall charge. Similarly the other officers may be in charge of only some part of business.

8. The evidence in the present case shows that it was respondent 1 and not respondent 2 who was in overall control of the day to day business of the firm. The second respondent is not liable to be

convicted merely because he had the right to participate in the business of the firm under the terms of the partnership deed.

9. This appeal has no merit and is dismissed.

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