

Mugutrao Digambar Gorge

Vs

State of Maharashtra

Criminal Appeal No. 296 of 1992

(K. Jayachandra Reddy, R. C. Patnaik JJ)

05.05.1992

JUDGMENT

1. We have heard counsel for the parties.
2. Leave granted.
3. The appellant was tried for an offence under S. 18(c) read with S. 27 of the Drugs and Cosmetic Act, 1940. The trial Court acquitted him . The State preferred an appeal and the High Court set aside the order of acquittal and convicted the appellant for the said offence and sentenced him to suffer rigorous imprisonment for a period of one year, which is the minimum sentence, and to pay a fine of Rs. 2,500/-, in default of which to suffer imprisonment for a period of three months.
4. Questioning the same the special leave petition is filed in this Court. The prosecution case is as follows :

The appellant is the proprietor of Santosh Medical Stores having a licence to deal in medicines. On an information, the Drug Inspector visited the store. He did not notice any unauthorised drugs. Thereafter he along with the accused went to the residence of the accused and made a search and there he found Insulin and other items of the drugs. They were seized after completing necessary formalities and the complaint was filed.
5. The High Court has considered the evidence on record in detail and has held that the possession of the seized drugs was with the accused and also for and on his behalf and accordingly convicted him.
6. Section 18 deals with the prohibition of manufacture and sale of certain drugs and cosmetics.
7. Under S. 27 penalties are prescribed. The section lays down that any person either himself or by any person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes any drug without a valid licence as required under clause (c) of S. 18 shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than five thousand rupees. The High Court, however, awarded the minimum of sentence of one year rigorous imprisonment but imposed a fine of Rupees 2,500/- only. Having gone through the records, we see no grounds to differ with the finding and conclusion arrived at by the High Court that an offence under S. 18(c) read with S. 27 is made out.

8. Now coming to the question of sentence, proviso to S. 27 lays down that the Court may, for any adequate and special reason to be recorded in the judgment, impose a sentence of imprisonment for a term of less than one year and fine of less than five thousand rupees.

9. The offence is alleged to have been committed on February 14, 1982. The complaint was filed on December 18, 1985 and it is also noted that the trial Court acquitted the accused. Further in the medical stores PW 2 did not notice any unauthorised drug. It is only in the house he found Insulin and other items of drugs. According to the prosecution these amounted to unauthorised drugs which are perhaps meant for sale. The accused has come forward with an explanation that he was only storing and he was not in unauthorised possession. Be that as it may, there is no allegation to the effect that drug which was found in the house was for sale. These are some valid reasons, in our view, for giving the lesser sentence. The sentence of imprisonment is reduced to six weeks with a fine of Rs.2,500/-, in default of which to suffer imprisonment for a period of three months.

10. The appeal is disposed of accordingly. Order accordingly.

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