

ALLAHABAD HIGH COURT

R.K. Khandelwal

Vs.

State (Allahabad)

Criminal Revn. No. 1099 of 1963. against order of Addl. S.J., Kumaon, Dist. Nainital
(D.S. Mathur, J)

21.05.1963. 24.03.1964

JUDGMENT

Mathur, J.

1. This is an application in revision by R.K. Khandelwal and G.C. Khandelwal against the order of the Additional Sessions Judge of Kumaon, Naini Tal, setting aside the order of discharge and directing further inquiry.

2. Messrs. P. Cool and Co. Ltd., Lucknow, had supplied Olive Oil to G.B. Pant Hospital, Naini Tal. The Inspector of Drugs, Bareilly Region, Bareilly took a sample of this Olive Oil on 27.2.1960. One of the samples was sent to the Government Analyst for analysis and report who found that the drug (Olive Oil) was Sub-Standard. On receipt of the report the Inspector of Drugs filed a complaint against the applicants alleging that they had committed an offence punishable under Section 27 read with Section 18 of the Drugs Act, 1940 (to be referred hereinafter as the Act). The complainant led evidence as to the supply of the Olive Oil by Messrs. P. Cool and Co. Ltd., Lucknow, the taking of the sample and also the report of the Government Analyst. No attempt was made to prove who the partners or directors of the Firm were and to what extent the applicants were responsible to the Company. The applicants, however, made a statement as if they were the partners of this Company.

3. The Magistrate discharged the applicants of the offence, but this order was set aside in revision and the Additional Sessions Judge directed further inquiry.

4. The case having been started on the complaint of the Inspector of Drugs, and not on a police report, the evidence, which could be taken into consideration while framing a

charge or discharging the accused persons of the offence was the evidence actually adduced in the case, and not evidence which may be available but had not been adduced. In other words, there existed no judicial evidence on record to infer that the applicants were the partners or directors of Messrs. P. Cool and Co. Ltd., Lucknow. In view of the statement of the accused persons, it shall, however, be desirable to proceed with the assumption that they are partners of the above concern. "Director" as contemplated by Section 34 of the Act includes a partner. The point for consideration, therefore, is whether the applicants can be convicted of the offence under Section 27 of the Act simply because they are Directors of the Company.

5. Under Section 27 of the Act not only the person actually selling a drug in contravention of the provisions of the Act or the rules made thereunder is guilty, but also the person on whose behalf the Sub-Standard drug had been sold. Where the offence is committed by a Company Section 34 comes into operation and as provided in Sub-Section (1) not only the Company but also every person in charge or, and responsible to the Company for the conduct of the business of the Company shall be deemed to be guilty of the offence. Similarly, under Sub-Section (2) of Section 34. director, manager, secretary or other officer of the Company can also be deemed to be guilty if it is proved that the offence was committed with his consent or connivance or is attributable to any neglect on his part.

6. A reading of Sections 27 and 34 of the Act shall make it clear that the following category of persons can be convicted of the offence under Section 27 :

- (a) the actual seller;
- (b) the principal on whose behalf the Sub-Standard drug was sold;
- (c) in the case of a Company, the Company itself; and also
 - (i) every person in charge of, and responsible to the Company for the conduct of the business of the Company; and
 - (ii) director, manager, secretary or other officer of the Company if the offence is committed with his consent or connivance or is attributable to any neglect on his part.

7. The burden to prove the charge lies upon the prosecution unless under some provision of the law it is for the accused person to satisfy the Court that the offence was not committed with his consent or connivance, nor could it be attributed to any

neglect on his part.

8. In Companies there can be directors who are not in charge of, and responsible to the Company for the conduct of the business of the Company. There can be directors who merely lay down the policy and are not concerned with the day to day working of the Company. Consequently, the mere fact that the accused person is a partner or director of the Company, shall not make him criminally liable for the offences committed by the Company unless the other ingredients are established which make him criminally liable. To put it differently, no director or partner of a Company can be convicted of the offence under Section 27 of the Act unless it is proved that the Sub-Standard drug was sold with his consent or connivance or was attributable to any neglect on his part, or it is proved that he was a person in charge of, and responsible to the Company for the conduct of the business of the Company.

9. In the instant case no such evidence exists. The admission of the applicants, if admissible in evidence, will merely show that they were partners of the firm and not that they were in charge of, and responsible to the Company for the conduct of its business, or that the offence was the result of their negligence or was committed with their consent or connivance. For want of evidence no charge could be framed against the applicants and they deserved to be discharged of the offence as was done by the Magistrate. The order of the Sessions Judge directing further inquiry is thus against the law and deserves to be set aside. The Drugs Inspector would have been well advised to make the complaint after collecting the necessary evidence. Whether he can make another complaint after making a proper investigation is not in issue in the present revision and no opinion need be expressed on this point.

10. The revision is hereby allowed and the order dated 21.5.1963 of the Additional Sessions Judge directing further inquiry is set aside. The applicants shall be deemed to have been discharged of the offence.

Revision allowed.