

STATE REP. BY THE DRUGS INSPECTOR

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v.

MANIMARAN

(Criminal Appeal No. 1493 of 2018)

NOVEMBER 30, 2018

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**[R. BANUMATHI AND INDIRA BANERJEE, JJ.]**

*Drugs and Cosmetics Act, 1940 – ss. 18(c), 27(b)(ii), 28 and proviso to 27(b)(ii) – Prosecution case was that when drugs inspectors had inspected the respondent's medical shop, they had found certain drugs stored without a valid licence – Memo was issued to the respondent u/s.18(c) and afterwards chargesheet was filed u/ss. 27(b)(ii) and 28 – Trial Court convicted the respondent and sentenced him to undergo rigorous imprisonment for one year and imposed fine of Rs.5000/- u/s.27(b)(ii) of the Act and fine of Rs.500/- u/s.28 of the Act – Appeal was dismissed by the first appellate Court – In revision, the High Court reversed the conviction and acquitted the respondent holding that person in whose name pharmacy licence stood and the person in whose name the shop stood were not examined, and furthermore that signatures of the respondent were taken on blank papers and that Exs.P-4, P-7 and P-10 were made using the same – On appeal, held: The High Court did not keep in view that the respondent had admitted that he had purchased the shop from the erstwhile owner and that he had no licence for sale of drugs either in his name or in any other name – When both the trial Court as well as the first appellate Court held that non-examination of erstwhile owner of the shop and person in whose name the pharmacy licence stood was not fatal, the High Court in exercise of its revisional jurisdiction was not right in reversing the said finding – Insofar as signatures of the respondent on blank papers were concerned, the respondent did not lodge any police complaint or complaint before the higher officers of the Drug inspector or caused any legal notice to the complainant, thus, it was only an afterthought of the respondent to defend himself that his signature were obtained on blank papers – From the evidence of Drug inspector and the admission of the respondent, the prosecution had established that respondent did not have licence*

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- A *for sale of drugs – However, in instant case, the offence was committed ten years back and respondent was not having any prior conviction under the Act, further, he had stated in his statement that he was not aware that he had to obtain licence for sale of drugs – Therefore, in interest of justice proviso to s.27(b)(ii) of the Act invoked and the sentence of imprisonment of one year imposed upon the respondent reduced to three months, while maintaining the fine of Rs.5000/- – Jurisdiction – Revisional Jurisdiction.*
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*Evidence Act, 1872 – s.62 – Carbon copies – Held: Carbon copies can be taken into consideration as primary evidence.*

- C **Allowing the appeal, the Court**

- HELD: 1. Upon consideration of the evidence, both the trial court as well as the first appellate court convicted the respondent under Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act. When there is concurrent findings by the courts below, the High Court ought not to have interfered with the same in exercise of its revisional jurisdiction. The revisional jurisdiction of the High Court is different from the appellate jurisdiction. The High court will not normally interfere with the concurrent findings of fact, unless the findings of fact arrived at by the courts below is perverse or that the court has ignored the material evidence while arriving at that finding. Ordinarily it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions court in appeal. When the courts below recorded the concurrent findings of fact, the High Court was not right in interfering with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained. [Para 16][401-G-H; 402-A-B]**
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- 2. The offence under Section 18(c) of the Act is punishable under Section 27(b)(ii) of the Act which prescribes minimum sentence of imprisonment for one year and minimum fine of rupees five thousand. As per proviso to Section 27(b)(ii) of the Act, for any adequate and special reasons to be recorded in the judgment, court may impose the sentence of imprisonment for a term less than one year and a fine of less than five thousand only.**
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- H **In this case, the offence was committed in the year 2008, about**

ten years back. The respondent was not having any prior conviction under the Act. The respondent had stated in his statement, that he was not aware that he has to obtain a licence for sale of drugs. Considering the facts and circumstances of the case, in the interest of justice, proviso to Section 27(b)(ii) of the Act can be invoked and the sentence of imprisonment of one year imposed upon the respondent is reduced to three months. [Para 17][402-C-E]

*State of Kerala v. Puttumana Illath Jathavedan Namboodiri* (1999) 2 SCC 452 : [1999] 1 SCR 575 – relied on.

#### Case Law Reference

[1999] 1 SCR 575                      relied on                      Para 16

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1493 of 2018.

From the Judgment and Order dated 12.09.2014 of the High Court of Judicature at Madras in Crl. R.C. No. 1493 of 2013.

M. Yogesh Kanna, S. Paratha Sarathi, Mrs.Sujatha Bagadhi, Raja Rajeshwaran S., Advs. for the Appellant.

Vimal Pani S.C.V, A. Lakshminarayanan., Advs. for the Respondent.

The Judgment of the Court was delivered by

**R. BANUMATHI, J.** 1. Leave granted.

2. This appeal arises out of the judgment dated 12.09.2014 passed by the High Court of Madras in Criminal R.C. No.1493 of 2013 in and by which the High Court set aside the conviction of the respondent-accused under Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act, 1940 and the sentence of imprisonment imposed upon the respondent-accused.

3. Briefly stated case of the prosecution is that the respondent was running a medical shop viz., M/s. Sri Balaji Medicals. On the directions issued by the Assistant Director of Drugs Control, Salem Zone, the Drugs Inspectors had inspected the respondent's medical shop on 17.12.2008. In the course of inspection, it was found that certain drugs

A were stored without a valid drug licence and the same were seized. A  
memo dated 22.12.2008 had been issued to the respondent-accused  
alleging contravention of Section 18(c) of the Drugs and Cosmetics Act,  
1940. The respondent had caused reply (Ex.-P4) to the said memo without  
furnishing details of purchase. The Drug Inspector has filed a charge  
B sheet against the respondent informing commission of offence punishable  
under Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act, 1940.  
Upon consideration of evidence, the trial court after referring to Ex.-P4  
held that the respondent has admitted that he has no licence to the  
premises for sale of drugs. The trial court further held that Exs.P-4 to P-  
7 though were carbon copies, as per Section 62 of the Indian Evidence  
C Act, they can also be considered as primary evidence. On those findings,  
the trial court convicted the respondent and sentenced him to undergo  
rigorous imprisonment for one year and imposed fine of Rs.5000/- under  
Section 27(b)(ii) of the Drugs and Cosmetics Act and fine of Rs.500/-  
under Section 28 of the Drugs and Cosmetics Act. Aggrieved by the  
D verdict of conviction and the sentence of imprisonment, respondent-  
accused preferred an appeal in Criminal Appeal No.18 of 2013 before  
the appellate court-Principal Sessions Judge, Krishnagiri which was  
dismissed vide order dated 29.08.2013.

4. In the revision petition filed before the High Court, the High  
E Court reversed the conviction and acquitted the respondent holding that  
non-examination of erstwhile owners namely Jayanthi and Kamalakannan  
in whose name pharmacy licence stood was fatal to the prosecution  
case. The High Court also referred to the defence that the signature of  
the respondent was obtained on blank papers in which Exs.P-4, P-7 and  
P-10 were prepared.

F 5. Learned counsel for the appellant-State has submitted that the  
High Court has failed to consider that the respondent without having a  
valid licence stocked and selling the drugs and that he did not disclose  
the name of the supplier of the drugs, which is a punishable offence  
under the provisions of the Drugs and Cosmetics Act. It was further  
G submitted that the High Court erred in allowing the revision on the ground  
that the signature in Exs.P-4, P-7 and P-10 were obtained on blank  
papers and that the respondent had failed to prove such fact. It was also  
submitted that in the light of the admission made by the respondent in  
Ex.-P4, non-examination of Kamalakannan in whose name the pharmacy  
H licence stood and one Jayanthi in whose name the shop stood was not

fatal and the High Court erred in reversing the conviction of the respondent. A

6. Per contra, the learned counsel for the respondent has submitted that the prosecution has failed to prove that the respondent is the owner of M/s Sri Balaji Medicals and the non-examination of Kamalakannan and Jayanthi was fatal to the prosecution case. Learned counsel further submitted that the alleged statement of the respondent in Exs.P-4, P-7 and P-10 relied upon by the prosecution were only carbon copies and the courts below could not have based the conviction upon Exs.P-4, P-7 and P-10 and that the High Court has rightly reversed the same. B

7. We have considered the rival submissions and perused the impugned judgment and materials placed on record. C

8. At the time of inspection of the medical shop of the respondent located at 191, Main Road, Bargur on 17.12.2008, it was found that the retail medical shop was functioning without a valid licence in violation of Section 18(c) of the Drugs and Cosmetics Act. It was also noticed that eighty-seven items of drugs were stocked without possessing a valid drug licence. The respondent was prosecuted for contravention of (i) Section 18(c) of the Drugs and Cosmetics Act for having stocked and sold drugs without a valid drug licence which is punishable under Section 27(b)(ii) of the Drugs and Cosmetics Act; and (ii) Section 18(a) of the Drugs and Cosmetics Act for not furnishing the name of the supplier of the drug which is punishable under Section 28 of the Drugs and Cosmetics Act. D E

9. The High Court has set aside the conviction mainly on the ground of non-examination of one Kamalakannan-the person in whose name the pharmacy licence stood and one Jayanthi in whose name the shop stood. The High Court did not keep in view that under Ex.-P4, the respondent has admitted that he had purchased the retail shop-M/s Sri Balaji Medicals from one Jayanthi and that he had shifted the shop from the old place to the current premises No.191, Main Road, Bargur and selling the drugs. Relevant portion of Ex.P4 reads as under:- F G

“I have purchased the retail Sri Balaji Medicals two years before from Mrs. Jayanthi, but there is no sale deed made. Further the licence of this concern was expired on 31.12.2007 and not applied for the renewal. Meanwhile I have shifted the said shop from the old place to the current premises No.191, Main Road, Bargur and H

- A        selling the drugs. There is no licence to this premises for sale of drugs either in my name or any other name. I have purchased the drugs against the old licence stood on the old address 226, Main Road, Bargur. I hereby inform you that there is no licence for the inspected premises that is 191, Main Road, Bargur. I was not aware of the Drugs and Cosmetics Act and its Rules since it is first time.”
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In Ex.-P4, the respondent thus admitted having purchased the shop from Jayanthi and that he had no licence for sale of drugs either in his name or in any other name.

- C        10. In Ex.-P7 also, the respondent had admitted that he had purchased the retail shop-M/s Sri Balaji Medicals from Kamalakannan and continually selling the drugs and that on the date of inspection i.e. on 17.12.2008, he did not have the valid licence. Both in Exs.P-4 and P-7, the respondent had stated that he was not aware that he has to obtain licence in his own name and apologising for the mistake and requesting for issuance of licence in his name. The High Court, in our considered view, did not keep in view Exs.P-4 and P-7.
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- E        11. Under Section 18(c) of the Drugs and Cosmetics Act, licence is required for sale of any drug. Under Section 18(c) of the Act, stocking or storing of drugs for sale cannot be done without a licence. Respondent is charged for having stored drugs for sale without licence. Before a person is convicted under Section 18(c) read with Section 27(b)(ii) of the Act, the prosecution must establish that the drugs are stocked or stored for sale without licence.

- F        12. On the date of inspection i.e. on 17.12.2008, when N. Banumathi, Drugs Inspector (PW-1) inspected the respondent’s shop, he did not have any licence. He only stated that he was not aware that he has to obtain the licence. When the respondent has stocked the drugs and was selling the same without licence, there was violation of Section 18(c) of the Act which is punishable under Section 27(b)(ii) of the Act.
- G        The Drugs and Cosmetics Act, 1940 is a social statute which provides for checks and balances so that drugs are sold strictly only by the licence-holder or that the adulterated drugs are not sold. From the evidence of PW-1 and from the admission of the respondent in Exs. P-4 and P-7, the prosecution has established that the respondent did not have licence for sale of the drugs.

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13. Further during investigation, PW-1 had asked the respondent through Ex.-P3 to disclose that from whom he had purchased the eighty-seven kinds of drugs. In his reply letter (Ex.-P4), he has not disclosed that from whom he had purchased the eighty-seven kinds of drugs and he had admitted the contraventions by stating that he was not aware of the procedure to obtain the licence. Respondent has only apologised for the mistake and requested to issue the licence. In the light of the admission of the respondent in Exs.P-4 and P-7, non-examination of licence holder Kamalakannan and shop owner Jayanthi was not fatal to the prosecution case. When both the trial court as well as the first appellate court held that non-examination of those two witnesses was not fatal, the High Court in exercise of its revisional jurisdiction was not right in reversing the said finding and held that non-examination of Kamalakannan and Jayanthi was fatal to the prosecution case.

14. Learned counsel for the respondent has submitted that Exs.P-4 and P-7, that is, the statements of respondent were only carbon copies and that admission of such carbon copies raises serious doubt about the prosecution case. As pointed out by the trial court as well as by the first appellate court, under Section 62 of the Indian Evidence Act, carbon copies can be taken into consideration as primary evidence and we find no infirmity in admitting carbon copies of those documents.

15. Yet another contention advanced by the respondent is that his signatures were obtained on blank papers and that Exs.P-4, P-7 and P-10 have been made using the signed blank papers. As pointed out by the courts below, if at all the signature of the respondent in Exs.P-4, P-7 and P-10 were obtained on blank papers, the respondent could have lodged a police complaint or a complaint before the higher officers of PW-1 or at least could have caused a legal notice to the complainant. But that was not to be so. There is no merit in the contention of the respondent that his signature in Exs.P-4, P-7 and P-10 were obtained on blank papers and is only an afterthought of the respondent.

16. Upon consideration of the evidence, both the trial court as well as the first appellate court convicted the respondent under Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act. When there is concurrent findings by the courts below, the High Court ought not to have interfered with the same in exercise of its revisional jurisdiction. The revisional jurisdiction of the High Court is different from the appellate jurisdiction. The High court will not normally interfere with the concurrent

- A findings of fact, unless the findings of fact arrived at by the courts below is perverse or that the court has ignored the material evidence while arriving at that finding. As held in ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri*** (1999) 2 SCC 452, ordinarily it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions court in appeal.
- B When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained.
- C 17. Insofar as the sentence of imprisonment, the offence under Section 18(c) of the Act punishable under Section 27(b)(ii) of the Act which prescribes minimum sentence of imprisonment for one year and minimum fine of rupees five thousand. As per proviso to Section 27(b)(ii) of the Act, for any adequate and special reasons to be recorded in the judgment, court may impose the sentence of imprisonment for a term less than one year and a fine of less than five thousand only. In this case, the offence was committed in the year 2008, about ten years back. The respondent was not having any prior conviction under the Act. As pointed out earlier, in his statement, respondent had stated that he was not aware that he has to obtain a licence for sale of drugs. Considering the facts and circumstances of the case, in our considered view, in the interest of justice proviso to Section 27(b)(ii) of the Act can be invoked and the sentence of imprisonment of one year imposed upon the respondent is reduced to three months.
- D 18. In the result, this appeal is allowed and the impugned judgment dated 12.09.2014 in Criminal R.C.No.1493 of 2013 passed by the High Court of Madras is set aside. The conviction of the respondent under Sections 27(b)(ii) and 28 of the Drugs and Cosmetics Act, 1940 is affirmed and the sentence of imprisonment imposed upon him is reduced to three months, while maintaining the fine of Rs.5,000/-. The respondent shall surrender within a period of four weeks to serve the remaining sentence, failing which he shall be taken into custody.
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