1962

September, 26.

CHIMANLAL JAGJIVANDAS SHETH

v.

STATE OF MAHARASHTRA

(JAFER IMAM, K. SUBBA RAO, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Drugs—Absorbent cotton wool, roller bandages and gauze—Whether drugs—Sentence, reduction of—Drugs Act, 1940 (23 of 1940), as amended by Drugs (Amendment) Act, 1955, ss. 3(b), 18.

The appellant was found in possession of large quantities of absorbent cotton wool, roller bandages and gauze which he had manufactured. On analysis these were found to be sub-standard and the appellant was prosecuted under s. 18 of the Drugs Act, 1940, for manufacturing sub-standard drugs. He was convicted and sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs. 500/. The appellant contended that these articles were not drugs as defined in s. 3(b) of the Act and that the sentence imposed was too severe.

Held, that absorbent cotton wool, roller bandages and gauze were "drugs" within the meaning of s. 3(b) and the appellant was rightly convicted. In the definition "drugs" "included substances intended to be used for or in treatment of diseases". "Substances" was something other than "medicines" and meant "things". The said articles were sterilized or otherwise treated to make them disinfectant; they were used for surgical dressings and were essential materials for treatment in surgical cases. The object of the Act of maintaining high standards of medical treatment would be defeated if the necessary concomitants of medical or surgical treatment were allowed to be diluted.

Held, further, that the sentence erred on the side of leniency rather than severity and could not be reduced. It was a case where large quantities of spurious and sub-standard drugs had been manufactured by the appellant. He was guilty of an anti-social act of a very serious nature.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 107 of 1961.

Appeal by special leave from the judgment and order dated June 16, 1961, of the Bombay High Court in Cr. A. No. 21 of 1961.

Rajni Patel, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain,* for the appellant.

H. R. Khanna, R. H. Dhebar and *R. N. Sachthey,* for the respondents.

1962. September 26. The Judgment of the Court was delivered by

Subba Rao, J.

SUBBA RAO, J.—This appeal by special leave against the judgment of the High Court of Judicature at Bombay raises the question of construction of s.3(b) of the Drugs Act, 1940, as amended by the Drugs (Amendment) Act, 1955, hereinafter called the Act.

This appeal has been argued on the basis of facts found by the High Court. The appellant was carrying on business in the name of Deepak Trading Corporation at Bulakhidas Building, Vithaldas Road, Bombay. On December 27, 1958, the Sub Inspector of Police, accompanied by the Drug Inspector, raided the said building and found large quantities of absorbent cotton wool, roller bandages, gauze and other things. It was found that the appellant was not only storing these goods in large quantities but was actually manufacturing them in Bombay and passing them off as though they were manufactured by a firm of repute in Secunderabad. The samples of the aforesaid articles and lint were sent to the Government Analyst, who reported that out of the samples sent to him only the lint was of standard quality and the other articles were not of standard quality. The appellant was prosecuted before the Presidency Magistrate, 16th Court, Bombay, for an offence under s. 18 of the Act, *inter alia,* for manufacturing drugs which were not of standard quality. The learned Presidency Magistrate acquitted the appellant on the ground that the prosecution had failed to prove that the articles were in the possession of the appellant. The High Court on a resurvey of the evidence came to a different conclusion and found that the said articles

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were not only found in the possession of the appellant but also were manufactured by him and that they were below the standard prescribed. On the finding, it convicted the appellant and sentenced him to undergo rigorous imprisonment for three months and to pay a fine of Rs. 500/- under each count. Hence the appeal.

Though an attempt was made to argue that the said articles had not been proved to be below the prescribed standard, it was subsequently given up. The only question that was argued is whether the said articles are drugs within the meaning of s. 3(b) of the Act. The said section reads :

> "drug" includes :—
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> (i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani systems of medicine, and
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> (ii) such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermins or insects which cause disease in human beings or animals as may be specified from time to time by the Central Government by notification in the Official Gazette.

The said definition of "drug" is comprehensive enough to take in not only medicines but also substances intended to be used for or in the treatment of diseases of human beings or animals. This artificial definition

introduces a distinction between medicines and substances which are not medicines strictly so-called. The expression "substances", therefore, must be something other than medicines but which are used for treatment. The part of the definition which is material for the present case is "substances intented to be used for or in the treatment". The appropriate meaning of the expression "substances" in the section is "things". It cannot be disputed, and indeed it is not disputed, that absorbent cotton wool, roller bandages and gauze are "substances" within the meaning of the said expression. If so, the next question is whether they are used for or in "treatment". The said articles are sterilized or otherwise treated to make them disinfectant and then used for surgical dressing; they are essential materials for treatment in surgical cases. Besides being aseptic these articles have to possess those qualities which are utilized in the treatment of diseases. Thus, for instance, in the case of gauze—one of the articles concerned in this appeal—it has to conform to a standard of absorbency in order that it might serve its purpose: otherwise the fluid which oozes is left to accumulate at the site of the wound or sore. The Legislature designedly extended the definition of "drug" so as to take in substances which are necessary aids for treating surgical or other cases. The main object of the Act is to prevent substandards in drugs, presumably for maintaining high standards of medical treatment. That would certainly be defeated if the necessary concomitants of medical or surgical treatment were allowed to be diluted: the very same evil which the Act intends to eradicate would continue to subsist. Learned counsel submitted that surgical instruments would not fall within the definition and that gauze and lint would fall within the same class. It is not necessary for the purpose of this appeal to definite exhaustively "the substances" falling within the definition of "drugs"; and we consider that whether or not surgical instruments are "drugs", the articles concerned in this case are.

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Learned counsel for the appellant sought to rely upon a report of a high powered committee consisting of expert doctors, who expressed the opinion in the report that as the surgical dressings did not come under the purview of the Drugs Act, no control on their quality was being exercised. Obviously, the opinion of the medical experts would not help us in construing a statutory provision. We, therefore, hold, agreeing with the High Court, that the said articles are substances used for or in the "treatment" within the meaning of s. 3(b) of the Act.

An impassioned appeal was made for reducing the sentences imposed upon the appellant. When a similar argument was advanced in the High Court, it pointed out that this was a gross case where large quantities of spurious drugs had been manufactured by the appellant and passed off as goods manufactured by a firm of repute. The appellant was guilty of an anti-social act of a very serious nature. In our view, the punishment of rigorous imprisonment for three months was more lenient than severe. There is no case for interference with the sentences. The appeal fails and is dismissed.

Appeal dismissed.