

MOHD. SHABIR

v.

STATE OF MAHARASHTRA

January 17, 1979

[S. MURTAZA FAZAL ALI AND A. D. KOSHAL, JJ.]

Drugs and Cosmetics Act, 1940, S. 27, "Stocks or exhibits for sale" interpretation—Possession simpliciter of drug, whether sufficient for conviction.

The appellant was apprehended at the Bhusawal railway station, and 17 containers with 17,000 white tablets were recovered from him. The tablets were tested by the public analyst, and found to be not in accordance with the standard specified under s. 18(a) of the Drugs and Cosmetics Act. The appellant was duly tried and convicted by the Trial Magistrate, under Sections 27(a)(ii) and 28 of the Act. The appellant pleaded guilty, and in view of his young age, and that it was his first offence, the Magistrate sentenced him only till the rising of the Court. But in revision, the High Court enhanced the sentence to one year's R.I.

It was contended that as there was no evidence to show that the tablets were "for sale", their possession simpliciter, of any quantity whatsoever, would not constitute an offence under s. 27.

Allowing the appeal as regards the conviction under s. 27, the Court,

HELD : 1. The absence of any comma after the word "stocks" clearly indicates that the clause "stocks or exhibits for sale" is one indivisible whole and it contemplates not mere stocking the drugs, but stocking the drugs for the purpose of sale, and unless all the ingredients of this category are satisfied, section 27 of the Act would not be satisfied. [199 F-G]

2. There is no evidence to show that the appellant had either got these tablets for sale, or was selling them or had stocked them for sale. Before a person can be liable for prosecution or conviction under s. 27(a)(i)(ii) read with s. 18(c) of the Act, it must be proved by the prosecution affirmatively that he was manufacturing the drugs for sale or was selling the same, or had stocked them or exhibited the articles for sale. The possession simpliciter of the articles does not appear to be punishable under any of the provisions of the Act. [199 G. 1000 B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 103 of 1975.

Appeal by Special Leave from the Judgment and Order dated 12-2-1973 of the Bombay High Court in Criminal Application No. 774/72.

U. P. Singh for the Appellant.

H. R. Khanna and *M. N. Shroff* for the Respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J.—In this appeal by special leave the appellant has been convicted under section 27 (a) (i) of the Drugs and Cosmetics

A Act, 1940 and sentenced to rigorous imprisonment for one year and a fine of Rs. 200/- as modified by the High Court. The trial court also convicted the appellant under section 27 (a) (ii) and section 28 of the Act but no separate sentence was awarded under these counts. The trial court had, in fact, imposed a sentence of imprisonment only till the rising

B of the Court but the High Court in its revisional jurisdiction enhanced the sentence to one year's rigorous imprisonment, and hence this appeal by special leave. According to the prosecution, on 5.5.1970 at about 11.30 a.m. the complainant Drugs Inspector, Jalagaon received a telephonic message from the Senior Railway Sub-Inspector Bhusawal to the effect that the appellant had been caught at the Bhusawal railway

C station with 17 plastic containers containing 17,000 white coloured tablets. On receiving this message the complainant went to Bhusawal railway station on the next day and after taking permission from the magistrate he took the sample of the tablets and sent it to the public analyst and after receiving his report, he filed a complaint against the appellant under the various sections of the Drugs and Cosmetics Act, 1940. The learned trial magistrate framed two charges against the appellant. One charge was under section 27 (a) (i) and 27 (a) (ii) of the Drugs and Cosmetics Act (hereinafter referred to as the "Act") and the other charge related to section 28 read with section 18A of the Act. The appellant pleaded guilty to the charge and admitted all the

D facts contained in the charge. The appellant, however, stated that as this was his first offence, he promised not to commit any offence again and as he was an agriculturist and a young man, he pleaded for mercy. The prosecution in support of the case examined the complainant to prove the facts leading to the prosecution of the appellant. The learned magistrate accepted the plea of guilty and convicted the appellant as indicated in the judgment. The High Court, however, enhanced the

E sentence as mentioned above.

F

Mr. U. P. Singh appearing in support of the appeal has raised a short point before us. He has submitted that taking the prosecution case at its face value, no offence can be said to have been committed under

G section 27 (a) (i) or (ii) of the Act. It was submitted that the ingredients required by section 27 have not been proved in this case and therefore, even if, the accused pleaded guilty, that will not enable the prosecution to convict him on his plea of guilty. Section 18 (c) runs thus :

H "manufacture for sale, or sell, or stock or exhibit for sale, or distribute any drug or cosmetic, except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter."

Section 27 is the penal section under which the offence is punishable and this section runs thus :

“Whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale or distributes—(a) any drug—

(i) deemed to be misbranded under clause (a), clause (b), clause (e), clause (d), clause (f) or clause (g) of section 17 or adulterated under section 17B; or

(ii) without a valid licence as required under clause (c) of section 18.”

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to ten years and shall also be liable to fine;

Provided that the Court may, for any special reasons to be recorded in writing impose a sentence of imprisonment of less than one year;”

It was contended by Mr. Singh that in order to fall within the ambit of this section the accused must manufacture the drugs for sale or stock or exhibit for sale or distribute the same. There is no evidence in this case to show that the appellant had any shop or that he was a distributing agent. All that has been shown is that the tablets concerned were recovered from his possession. It was urged that possession simpliciter of the tablets of any quantity whatsoever would not fall within the mischief of section 27 of the Act. On an interpretation of section 27, it seems to us that the arguments of Mr. Singh is well founded and must prevail. The words used in section 27, namely, “manufacture for sale”, sells, have a comma after each clause but there is no comma after the clause “stocks or exhibits for sale”. Thus the section postulate three separate categories of cases and no other. (1) manufacture for sale; (2) actual sale; (3) stocking or exhibiting for sale or distribution of any drugs. The absence of any comma after the word “stocks” clearly indicates that the clause “stocks or exhibits for sale” is one indivisible whole and it contemplates not merely stocking the drugs but stocking the drugs for the purpose of sale and unless all the ingredients of this category are satisfied, section 27 of the Act would not be attracted. In the present case there is no evidence to show that the appellant had either got these tablets for sale or was selling them or had stocked them for sale. Mr. Khanna appearing for the State, however, contended that the word “stock” used in section is wide enough to include the possession

A of a person with the tablets and where such a person is in the possession of tablets of a very huge quantity, a presumption should be drawn that they were meant for sale or for distribution. In our opinion, the contention is wholly untenable and must be rejected. The interpretation sought to be placed by Shri Khanna does not flow from a true and proper interpretation of section 27. We, therefore, hold that before a person can be liable for prosecution or conviction under section 27 (a) (i) (ii) read with section 18 (c) of the Act, it must be proved by the prosecution affirmatively that he was manufacturing the drugs for sale or was selling the same or had stocked them or exhibited the articles for sale. The possession simpliciter of the articles does not appear to be punishable under any of the provisions of the Act. If, therefore, the essential ingredients of section 27 are not satisfied the plea of guilty cannot lead the Court to convict the appellant.

D As regards the second charge, it seems to us that the case of the appellant is clearly covered by the language contained in section 18A read with section 28. Section 18A runs thus :

E “Every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall, if so required, disclose to the Inspector the same, address and other particulars of the person from whom he acquired the drug or cosmetic.”

Section 28 which makes no disclosure of 18A punishable reads thus :

F “Whoever contravenes the provisions of section 18A shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.”

C In this case, there is unchallengeable evidence of the complainant that after recovering tablets from the possession of the appellant, he had served a registered notice to him to disclose the source from which he had acquired the tablets and despite this notice the appellant refused to disclose the source. Thus the act of the appellant clearly falls within the ambit of section 28 of the Act. The trial court further did not impose any separate sentence under this section. But that will not be a bar to imposing a proper sentence by this Court provided the sentence does not exceed the sentence already imposed under section 27 (a) (i). **H** When the High Court was moved for enhancing the sentence, it was moved only under section 27 (a) (ii) of the Act because under that

section the minimum sentence to be given was one year. As the High Court was not satisfied with the reasons given by the trial court for giving sentence less than one year it appears to have enhanced the sentence to one year. In view of our finding that section 27 (a) (i) have no application to this case, the charge on this count against the appellant must fail and the appellant must be acquitted of this charge. So far as section 28 is concerned the maximum punishment which can be imposed is only one year. The appellant is a young man and comes from a respectable family and had made a very candid confession before the Court in pleading guilty. In these circumstances, we therefore do not think that any deterrent sentence is called for. We would, therefore, uphold the conviction of the appellant under section 28 but give the sentence till the rising of the Court which he has already undergone. The appellant will now be released forthwith. The sentence of a fine of Rs. 200 will be maintained under section 28 and not under section 27 (a) (i). The fine if not paid shall be paid within a month from today. Accordingly, the appeal is allowed in part.

M.R.

Appeal allowed in part.