

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1033 OF 2002

M/S. RPG LIFE SCIENCES LTD. & ANR.

Appellants

VERSUS

STATE OF TAMIL NADU

Respondent

WITH

CRIMINAL APPEAL NO. 1034 OF 2002

**M/S. SRI MAHAVEER PHARMA AGENCIES
& ORS.**

Appellants

VERSUS

STATE OF TAMIL NADU

Respondent

J U D G M E N T

Dalveer Bhandari, J.

1. These appeals have been preferred by the appellants against the judgment and order dated 7.6.2002 passed by the High Court of Judicature at Madras in Criminal Appeal No.149 of 1996 and Criminal R.C. No. 155 of 1996, whereby the High Court has confirmed the order of conviction and sentence of the appellants passed by the Trial Court.

2. We have heard the learned counsel for the parties.

3. We propose to dispose of both these appeals by this Judgment.

4. Brief facts which are necessary to dispose of these appeals are recapitulated as under:-

On 29.11.1985, the then Drugs Inspector, Park Town, II Range, Office of the Assistant State Drugs Controller Zone-1, inspected the premises of M/s. Sri Mahaveer Pharma Agencies (appellant no. 1 in CrI. A. No. 1034 of 2002) and found 68 bottles containing 100 Tablets each of Haloperidol, 5 Mg. Tablets, B.P. Lot 060, which was manufactured in March 1985 by M/s. Searle India Limited (now M/s. RPG Life Sciences Ltd.). He also found that the bottles do not contain the labels indicating the maximum retail price of the Drug as contemplated under the Drugs (Prices Control) Order, 1979 (hereinafter referred to as 'DPCO 1979'). The said bottles were frozen on 29.11.1985 and at the same time, he also found that there were no purchase details for the purchase of the said bottles. Acknowledging the same, Padamchand Chordia, partner of the firm M/s. Sri Mahaveer Pharma Agencies, submitted a letter (Ex.P1)

stating that the labels do not indicate the maximum retail price and they agreed to furnish the purchase and sale details of Haloperidol 5 Mg. Tablets. On 2.12.1985, the Drugs Inspector drew samples from the bottles under Form No.17, marked as Ex.P.-3 and attested by P.W.3. Based on the above, show cause notices were sent to the respective firms and on the replies from the accused and the reports from the analyst, a complaint was filed by the Drugs Inspector against seven accused persons.

5. First accused is M/s. Searle India Limited, Bombay which is the manufacturing firm of the Drug Heloperidol Tablet;

Second accused is Dr. K.K. Maheshwari, Production Manager of M/s. Searle India Limited, Bombay;

Third accused is the firm by name M/s. Sri Mahaveer Pharma Agencies, who had purchased, sold and stocked the drug Haloperidol Tablets manufactured by A-1 Company;

Fourth accused is the partner by name Padamchand Chordia representing the accused firm M/s. Sri Mahaveer Pharma Agencies;

Fifth accused is the firm by name M/s. Sri Mahaveer Pharma Distributors who purchased, sold and stocked Haloperidol Tablet;

Sixth accused is the partner by name Padamchand Chordia of M/s. Mahaveer Pharma Distributors (A-5) who purchased, sold and stocked the drug Haloperidol; and

Seventh accused by name, Raghavan, is the Proprietor of the firm M/s. Sripathy Distributors Madras, who purchased and sold Haloperidol Tablet.

6. The above seven accused were charged for violation of para 20 of the DPCO 1979 punishable under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 read with Section 3(2)(c) of the said Act. The Special Judge, Essential Commodities Act, Madras tried the charges and found the accused appellants guilty of the charges and convicted all of them under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 read with Section 3(2)(c) of the said Act and sentenced them as follows:

7. Accused No.1 - M/s. Searle India Limited was directed to pay a fine Rs.10,000/-. Accused No.2 - K.K. Maheshwari was sentenced to undergo rigorous imprisonment for three months. Accused No.3 was directed to pay fine of Rs.5,000/-. Accused No. 4 was

sentenced to rigorous imprisonment for three months and to pay a fine of Rs.3,000/-. Accused No.5 was directed to pay a fine of Rs.5,000/-. Accused No.6 was sentenced to rigorous imprisonment for three months and to a fine of Rs.3,000/-. Accused No.7 was sentenced to rigorous imprisonment for three months and to a fine of Rs.5,000/-. In default of payment of fine, they were directed to undergo further imprisonment for two months. Since accused Nos. 4 and 6 are the same, he has to undergo the punishment in the same period.

8. Against the order of conviction and sentence dated 31.1.1996 passed by the Special Judge, Essential Commodities Act, Madras, accused Nos. 1 & 2 preferred appeal before the High Court while accused Nos.3 to 7 preferred revisions against the said judgment. The High Court confirmed the conviction and sentence of the appellants and dismissed their appeal and revisions.

9. Six of the accused have preferred appeals, by special leave, before this Court. Mr. Raghavan, who was the proprietor of M/s. Sripathy Distributor, has not filed any appeal before this Court.

10. To establish the guilt of the accused, the prosecution had examined 4 witnesses on its side and mark Ex.P-1 to Ex.P-25. The evidence of the Drug Inspector, P.W.1 is that he visited the premises of A-3 on 29.11.1985 and found 68 bottles of Haloperidol 5 Mg. tablet containing about 100 Tablets each, without the label which indicates the maximum retail price. With regard to the same, a letter was given by A-4, the Partner of A-3 Firm, marked as Ex.P-1, admitting the fact that maximum retail price column has not been furnished on the label of the bottle and the details regarding the purchase of the bottles will be furnished. Hence, P.W.1 had frozen the articles and had given Ex.-2, giving out the details about the consignment. In continuation of his inspection made on 29.11.1985, he again inspected the premises of A-3 firm on 2.12.1985 at about 9.30 a.m. and after observing all the formalities, seized the samples of Haloperidol Tablet under Ex.P-3, attested by P.W.3, Ex.P-4 is the list detailing about the price of 4 bottles of Haloperidol obtained from A-3 firm. M.O.1 series (68 bottles of Haloperidol) had been recovered under Mahazar Ex.P-5, attested by P.W.4.

11. The Delivery Challan/Invoice for the goods delivered from A-1 firm to A-3 firm containing the product namely Haloperidol was recovered under Ex.P.-6. The recovered articles were sent to the Court with the requisition under Ex.P-7 to keep them in safe custody. He also made arrangements to send the M.O.2 Series (2 bottles of Haloperidol Tablet) for analysis through Form No.18, marked as Ex.P-8. Show cause notices were sent to A-1 and A-3 firm under Ex.P-9 and Ex.P-10 respectively. A-4 on behalf of A-3 had sent a letter dated 3.12.1985 about the purchase details with regard to 30 bottles of Haloperidol Tablet, marked as Ex.P-11. Apart from the above, A-4 on behalf of A-3 had also sent a reply to the show cause notice, marked as Ex.P-12, wherein A-4 had stated that they expressed their regrets and that by mistake they have not noticed the label of the drug, which does not show the maximum retail price and requested P.W.1 to kindly condone the mistake and oblige. Thereafter, P.W.1 having come to know that A-5 firm was also involved in the purchase and sale of Haloperidol, issued a show cause notice under Ex.P-13 dated 10.1.1986 and A-5 sent a reply of which Ex.P-15 is the verbatim copy of Ex.P.12, admitting that they had not noticed the absence of maximum retail price in the bottle and requested him to

condone the mistake and oblige. He had also come to know by virtue of Ex.P-15 that 15 bottles had been sold to A-7 and on the basis of Ex.P-16, the copy of the bill, show cause notice was issued to A-7, marked as Ex.P-17. Ex.P-18 is the reply sent by A-7 and in addition to his notice, had also supplied the bills, on the basis of which he had purchased Haloperidol from A-3. After receiving the replies from the respective accused and after obtaining the sanction, P.W.1 had filed the complaint.

12. It is an undisputed fact that the recoveries have been made at the respective firms and hence it may not be necessary to dwell upon the issue. However, the specific case of the accused is that Haloperidol is available in its generic sense and when it is sealed, packed and distributed in the brand name, it is named as Serenas Tablets. In other words, according to the accused, it is not the case of the prosecution that the tablet was either misbranded or does not conform with the quality prescribed, but the only infringement is that the maximum retail price has not been printed on the bottle. They would further claim that the Drug had been marketed and sold in the generic name Haloperidol, exclusively for hospital supplies and the cost of it has been printed in the price list. The same product

is marked as Sarenas by its brand name for retailers in strips of 10 in Aluminium foil. Hence, in short, their claim is that the bottle need not contain the maximum retail price, if the Tablets in generic form, namely as Haloperidol had been supplied to hospitals and only in the case of the Drug being sold in the trade name Serenas, the maximum retail price should be mentioned. This appears to be the substratum of the argument of the learned counsel appearing for all the accused.

13. In order to substantiate the above, the learned counsel for the accused had drawn our attention to the answers given by P.W.1 in cross examination, wherein according to Pharmacopea, Haloperidol is the generic name and the Trade Name is Serenas. Ex.P-21-A is the price list in which the price of Seranas 5 Mg. has been marked. The price relates to 10 tables and the price of which is Rs.21.14.

14. Para 20 of the DPCO, 1979 reads as under:-

"Retail price to be displayed on label of containers. Every manufacturer or distributor of a formulation intended for sale shall display in indelible print mark on the label of the container of the formulation or the minimum pack thereof offered for retail sale, the maximum/retail price of that formulation with the words "retail price not to exceed" preceding it, and "local taxes extra" succeeding it."

15. According to para 20 of DPCO, 1979 either the manufacturer or the distributor of a specific medicine has to print that the medicine is for sale on the bottle and also the maximum retail price has to be mentioned. Hence in this case the accused come under punishable offence as per para 20 of DPCO 1979. Hence as per the arguments of the counsel for the accused that Haloperidol is not meant for retail sale and therefore not covered by para 20 of DPCO 1979, does not have any basis.

16. The accused appellants were convicted under para 20 of DPCO 1979 and were punished by the Special Judge under the Essential Commodities Act, 1955 sentencing them to three months' imprisonment and fine, as indicated in the preceding paragraphs.

17. In the present case, the incident is of 31.5.1985 and in the peculiar facts of this case it may not be desirable to send the appellants to jail after a lapse of about 25 years.

18. In the facts and circumstances of this case, we are of the considered view that ends of justice would meet if while maintaining the conviction of the appellants, instead of sending them to serve out three months of imprisonment, the sentence of fine is substantially increased.

19. We, therefore, direct Appellant No.1 Company to pay a fine Rs.2 lakhs, instead of Rs.10,000/-, as directed by the Trial Court and confirmed by the High court. Other appellants i.e accused Nos.2 to 6 are directed to pay a fine Rs.25,000/- each. We extend this order to one Mr. Raghavan (accused No.7) who has not filed an appeal before this Court. The accused are directed to pay the said amount of fine within a period of six weeks from today. In case the aforesaid amount of fine is not paid within six weeks, this order would not be of any avail to the accused and they will have to serve out the sentences as directed by the Trial Court and confirmed by the High Court.

20. With this modification of the Trial Court order as affirmed by the High Court, these appeals are disposed of in the aforementioned terms.

.....J.
(Dalveer Bhandari)

.....J.
(Aftab Alam)

New Delhi;
May 11, 2010.