

PETITIONER:
BHARAT PRASAD GUPTA

Vs.

RESPONDENT:
STATE OF WEST BENGAL

DATE OF JUDGMENT 26/09/1995

BENCH:
ANAND, A.S. (J)
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ANAND, A.S. (J)
NANAVATI G.T. (J)

CITATION:
1996 AIR 1043 JT 1995 (7) 191
1995 SCALE (5) 541

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

DR. ANAND. J.
Leave granted.

According to the prosecution case, on 22.8.1977 Dr. A.K. Layek and Dr. Naresh Chandra Sen lodged a written complaint with the Officer Incharge of Andal Police Station to the effect that one lady, Ledu Ruidas, had come to the clinic of Dr. Layek at about 9.00 a.m. with septic abortion. She was three months pregnant and her treatment had been mishandled with instruments and medicines (injections, tablets etc.) by the appellant herein in his dispensary and since the patient was complaining of vaginal discharge and fever with lower abdominal pain, they had advised her to visit the hospital for proper treatment. On receipt of the complaint, investigation was taken in hand and from the dispensary of the appellant some instruments besides allopathic medicines which stood exhibited for sale were seized. The appellant is a practitioner of Ayurvedic system of medicine and did not possess any licence for the sale, storage or exhibition for sale of any allopathic medicine. The instruments and allopathic medicines (about 41 items) were taken into possession through a seizure memo and were secured in a parcel by the raiding party which comprised of the police officials and independent panches. The appellant was challaned for an offence under Section 27 of the Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Act') read with West Bengal Act of 1973. On the appellant pleading not guilty, the trial commenced before the learned Sessions Judge. After recording the prosecution evidence, the Trial Court found the case against the appellant to have been established and convicted the appellant for the said offence and sentenced him to suffer one year RI and to pay a fine of Rs.500/- and in default to suffer further RI for three months. The appellant unsuccessfully questioned his conviction and sentence through an appeal before the High

Court of Calcutta. Subsequently, even a Review Petition filed by the appellant for reconsideration of the judgment of the High Court dated 17.4.1990 was rejected. By special leave, the appellant is before us.

Mr. U.R. Lalit, learned Sr. counsel appearing for the appellant submitted that there was no proof available on the record to establish that the seized drugs were "allopathic" medicines falling within the definition of Section 2(b) of the Act in the absence of any expert opinion of the chemical examiner in that behalf. Learned counsel also submitted that the mere possession of the allopathic medicines, without a licence, would not be an offence, unless it is established that the medicines were meant either for sale or were stocked for exhibition or had been manufactured for sale.

The prosecution examined eight witnesses at the trial including the complainant. The appellant did not lead any evidence in defence. Though in an appeal by special leave, this court generally does not reappreciate the evidence, considered by two courts below, but to satisfy our judicial conscious we have examined the evidence to find out whether the findings recorded by both the courts below are based on proper appreciation of evidence. We find that PW-3 Kumat Kanti Roy who knew both Dr. Layek and Dr. Naresh Chandra Sen as well as the appellant desposed that the appellant had a dispensary at Ukhra and that he had been to the dispensary of the appellant and had joined the police party when they visited the dispensary of the appellant. In his presence some medicines which were exhibited and were lying in stock and some instruments were seized by the police. A seizure list was prepared which was signed by him. During the cross-examination he was only asked whether the appellant had a 'medicine shop' or not to which the witness replied 'that the appellant had no medicine shop'. This would be insignificant because during his examination-in-chief he had deposed that the appellant was running a dispensary. PW-4, Arun Kumar Majhi corroborated the evidence of PW-3 and went on to add that the appellant used to administer medicines to the patients and that seizure of the medicines and instruments had taken place in his presence. PW-5, Narayan Chandra Banerjee, a resident of Ukhra also deposed that he knew the appellant and had seen patients coming to his dispensary and that the police had seized the allopathic medicines and instruments from the same dispensary. He is also a witness to the seizure memo prepared at that time. PW-7, Sudhir Chandra Guria who had partly conducted the investigation, but had since retired, specifically deposed about the seizure of about 41 items of allopathic medicines and instruments from the dispensary of the appellant. He had prepared the seizure lists duly attested by panch witnesses. The appellant could not produce any licence or permit for those medicines and had no explanation to offer for the stock of those medicines which were exhibited for sale in his dispensary. Further investigation had been taken up by PW-8, Chittaranjan Debnath who deposed about the other steps taken by him during the investigation of the case. The Trial Court discussed the entire evidence with great details and repelled the submissions that in the facts and circumstances of this case the offence against the appellant was not made out. The High Court agreed with the findings recorded by the Trial Court and dismissed the appeal. The High Court also opined that by keeping in his possession the allopathic medicines and exhibiting the same for sale in his dispensary, the appellant had contravened the provisions of Section 18(c) of the Act and therefore had been rightly convicted by the trial court for the offence under Section

27 of the Act. On the basis of the material on the record and keeping in view the ingredients of the offence, we agree with the trial court and the High Court that the prosecution has established the case against the appellant beyond a reasonable doubt. We cannot persuade ourselves to agree with Mr. Lalit that the proof on the record does not show that the medicines seized from the appellant were allopathic medicines or that the same did not fall within the definition of drugs under Section 2(b) of the Act. The appellant did not offer any such explanation at any stage of the investigation/trial nor led any evidence in defence on that aspect.

Mr. Lalit then submitted that the sentence in this case is harsh and severe. We find force in that submission.

The appellant on the prosecution's own showing is an Ayurvedic practitioner running a dispensary. Both the High Court and the trial court did not find him guilty of causing the abortion of Ledu Ruidas by use of any injection or medicine or instruments for lack of sufficient evidence. He has been convicted for having in his possession for sale and exhibiting the stock of allopathic medicines in his dispensary without a licence. The mitigating circumstances for reduction of the sentence as pointed out by Mr. Lalit, the learned senior advocate, which have been stated on affidavit by the appellant himself also are :

"The prosecution has been continuing since 1977. The petitioner has already undergone severe mental agony. He is the only bread earner in the family. He has eight children - 3 daughters and five sons. The second and third daughter are of 21 years and 18 years of age respectively. The Petitioner has to arrange for their marriage. All the children except the first two daughter's are school going. His wife does not do any job.

He has to look after his widowed sister-in-law who has four children - all daughters. Her two daughters are to be married by the petitioner.

With such a huge family to be fended, the imprisonment of the petitioner would mean total collapse of the family."

After the conviction of the appellant was upheld by the High Court, he filed a special leave petition in this Court. He furnishing proof of surrender dated 10th July, 1990 and notice was thereafter issued in the SLP. The appellant was admitted to bail by an order of this Court dated 3rd August, 1990 but he was actually released on bail only after the modification of the bail order dated 3.8.1990 by an order dated 9.9.1990, made by this Court. The appellant had also remained for some period in custody during the trial and as an undertrial. During the period the appellant had remained on bail, it is not disputed before us, he has not in any way abused the concession of bail or indulged in any objectionable activity. The appellant has been on bail since 1990. He was on bail during the trial and during the pendency of the appeal in the High Court as well. Keeping in view the peculiar facts and circumstances of this case and the comparatively small quantity of the allopathic medicines recovered from his dispensary and the fact that the proceedings have continued for almost two decades, in our opinion, the interest of justice would be met by maintaining

his conviction as recorded by the Trial Court and upheld by the High Court but reducing the sentence of imprisonment to the period already undergone by him. We make an order accordingly. The bail bonds of the appellant shall stand discharged.

JUDIS