



IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 20TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRIMINAL REVISION PETITION NO. 200077 OF 2018

BETWEEN:

1. M/S. PADMA PHARMACEUTICAL'S
UPSTAIR, FORT ROAD, GULBARGA,
REPT BY PARTNERS PETITIONER NO.1 & 2.
2. ARUN KUMAR C. PATIL
AGE: 69 YEARS, OCC: BUSINESS PARTNER
PADMA PHARMACEUTICALS NO. 441/1A,
UPSTAIRS, FORT ROAD, GULBARGA,
R/O. H.NO.8/1193/1 PADMA RAKHS,
FAZALPUR, ASIF GUNJ, KALABURAGI.

...PETITIONERS

(BY SRI MAHADEV S. PATIL, ADV.)

AND:

THE STATE THROUGH
DRUG INSPECTOR
GULBARGA CIRCLE OFFICE,
THROUGH ASSISTANT DRUGS CONTROLLER,
S.B. COLLEGE ROAD, VIDYA NAGAR,
KALABURAGI-585102,
REPT BY , HIGH COURT ADDL. PUBLIC PROSECUTOR.

...RESPONDENT

(BY SRI VEERANAGOUDA MALIPATIL, HCGP)

THIS CRL.RP IS FILED U/S 397 OF CR.P.C PRAYING TO
SET ASIDE CONVICTION AND ORDER OF SENTENCE DATED
04.09.2018 PASSED BY THE I ADDL. SESSIONS JUDGE,





KALABURAGI IN CRIMINAL APPEAL NO.31/2012 WERE IN CONFIRMED THE CONVICTION AND ORDER OF SENTENCE DATED 22.02.2012 PASSED IN C.C.NO.185/2004 BY THE LEARNED JMFC COURT, AFZALPUR FOR SIMPLE IMPRISONMENT FOR PERIOD OF ONE YEAR EACH AND ALSO PAY FINE OF RS.5,000/- EACH FOR THE OFFENCE P/U/ SEC. 27(b)(ii) OF DRUGS AND CONSMETIC ACT-1940 BY ALLOWING THE REVISION PETITION.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 14.02.2025, COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CAV ORDER

(PER: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY)

1. This criminal revision petition under Sections 397 read with 401 of Cr.PC is filed by the accused assailing the judgment and order of conviction and sentence dated 22.02.2012 passed by the Court of JMFC, Afzalpur, in C.C.No.185/2012, and the judgment and order dated 04.09.2018 passed by the Court of I Addl. Sessions Judge, Kalaburagi, in CrI.A.No.31/2012.
2. Heard the learned Counsel for the parties.
3. The Inspector of Drugs, Kalaburagi, had filed a private complaint against the petitioners herein and another for the



offence punishable under Section 27(b)(ii) of the Drugs and Cosmetics Act, 1940 (for short, 'the Act'). The accused who appeared before the Trial Court in the said proceedings claimed to be tried, and therefore, the prosecution in order to prove its charges against the accused, had examined 11 charge-sheet witnesses as PWs-1 to 11, got marked 102 documents as Exs.P-1 to P-102 and 10 material objects were got marked as MOs-1 to 10. However, no defence evidence was led on behalf of the accused not was any document marked in support of their defence.

4. The Trial Court vide the judgment and order impugned, convicted the accused for the offence punishable under Section 27(b)(ii) of the Act and sentenced them to undergo simple imprisonment for a period of one year and pay fine of Rs.5,000/- each. The said judgment and order of conviction and sentence passed by the Trial Court was unsuccessfully challenged by the petitioners herein before the jurisdictional Sessions Court in Crl.A.No.31/2012 which was dismissed on 04.09.2018. Therefore, they are before this Court.



5. Learned Counsel for the petitioners submits that the impugned judgment and order of conviction and sentence passed by the courts below is one without jurisdiction and the oral and documentary evidence was not properly appreciated by the courts below which has resulted in illegally convicting the petitioners for the alleged offences. He submits that the petitioners, undisputedly held a valid license till 31.12.2001 and within the time prescribed for filing an application for renewal of the said license, the license was surrendered. The last date to file such a renewal application was 30.06.2002 and on 29.06.2002 itself, petitioners have surrendered their license as per Ex.P-14, and therefore, they could not have been prosecuted for the alleged offence. Accordingly, he prays to allow the petition.

6. Per contra, learned HCGP has opposed the petition. He submits that undisputedly after 31.12.2001, petitioners did not have a license and the prosecution has proved that after expiry of the license, petitioners had sold the drugs. Petitioners have not filed any application seeking renewal of their license which has expired on 31.12.2001 and in the absence of such an application, they cannot contend that in the event such an



application was filed, the license could have been renewed. He submits that an application filed seeking renewal of the expired license could be entertained only on payment of penalty, and undisputedly, penalty has not been paid in the present case by the petitioners. Therefore, he prays to dismiss the petition.

7. Petitioners have been prosecuted in the present case for having committed the offence punishable under Section 27(b)(ii) of the Act. The said provision of law falls under Chapter-IV of the Act which provides for manufacture, sale and distribution of drugs and cosmetics. Section 32 of the Act which also falls under Chapter-IV of the Act provides for cognizance of offences. Section 32 of the Act reads as under:

"32. Cognizance of offences— (1) No prosecution under this Chapter shall be instituted except by—

- (a) an Inspector; or
- (b) any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government or by a general or special order made in this behalf by that Government; or
- (c) the person aggrieved; or



- (d) a recognised consumer association whether such person is a member of that association or not.

(2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.”

8. From a reading of the aforesaid provision of law, it is very clear that prosecution for an offence punishable under Section 27(b)(ii) of the Act, shall be instituted only by persons as mentioned in clauses (a) to (d) of sub-section (1) of Section 32 of the Act. Sub-section (2) of Section 32 of the Act provides that no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.

9. In the present case, the private complaint has been filed by the Inspector of Drugs who was been duly authorized, and therefore, prosecution has been initiated against the petitioners in compliance of the requirement of sub-section (1) of Section 32 of the Act. Sub-section (2) of Section 32 of the Act provides



that no court inferior to that of a Court of Session shall try an offence punishable under Chapter-IV. Section 36AB of the Act provides for Special Courts for conducting the trial of offences under the provisions of the Act. Section 36AD of the Act provides that the Code of Criminal Procedure, 1973, shall be applicable to the proceedings before the Special Court. Section 193 of Cr.PC provides for cognizance of offences by the Sessions Court, which reads as under:

“193. Cognizance of offences by Courts of Session.- Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.”

10. Sub-section (2) of Section 32 of the Act which provides that no court inferior to that of a Court of Session shall try the offence punishable under Chapter-IV, does not provide that the Court of Sessions can directly take cognizance of the complaint without there being an order of committal by the Court of Magistrate.



11. In special enactments like Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'SC/ST Act') and the Prevention of Corruption Act, 1988 (for short, 'P.C.Act'), provision is found where special courts are provided to hold trial for the offences under the said Acts. Section 14 of the SC/ST Act and Section 5 of the P.C.Act provides for the power of such special courts.

12. Section 14 of the SC/ST Act reads as under:

"14. Special Court and Exclusive Special Court.- (1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.



(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing.

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet."

13. Section 5 of the P.C.Act reads as under:

"5. Procedure and powers of special Judge.-

(1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by the Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of



his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.



(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944)."

14. From a reading of second proviso to sub-section (1) of Section 14 of the SC/ST Act and from a reading of sub-section (1) of Section 5 of the P.C.Act, it is very clear that the court of Special Judge is also provided with the power to take cognizance of the offences under the said Acts without the accused being committed to the said Court for trial, and such a provision is not found in Section 32 of the Drugs and Cosmetics Act, 1940.

15. Under the circumstances, the complaint filed by a competent officer as provided under sub-section (1) of Section 32 of the Act before the Court of jurisdictional Magistrate is required to be committed to the Court of jurisdictional Sessions Judge for trial as provided under sub-section (2) of Section 32 of the Act. In the present case, the learned Magistrate himself has tried the accused persons for the alleged offence and has passed the impugned judgment and order of conviction and sentence convicting the accused for the offence punishable



under Section 27(b)(ii) of the Act, which is not permissible. The Appellate Court has failed to appreciate this aspect of the matter and has erred in confirming the impugned judgment and order of conviction and sentence passed by the learned Magistrate. Under the circumstances, the impugned judgment and order of conviction passed by the courts below cannot be sustained. Accordingly, the following order:

16. The revision petition is allowed. The judgment and order of conviction and sentence dated 22.02.2012 passed by the Court of JMFC, Afzalpur, in C.C.No.185/2012, and the judgment and order dated 04.09.2018 passed by the Court of I Addl. Sessions Judge, Kalaburagi, in Crl.A.No.31/2012, are hereby set aside. The petitioners are acquitted of the offence punishable under Section 27(b)(ii) of the Act. Fine amount, if any, deposited by the petitioners shall be refunded to them.

Sd/-
(S.VISHWAJITH SHETTY)
JUDGE

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