

(2018) 06 CHH CK 0166

Chhattisgarh High Court

Case No: WP227 No. 525 Of 2018

M/s K.K. Distributors And Ors

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision: June 27, 2018

Acts Referred:

- Drugs And Cosmetics Act, 1940 - Section 18(a)(vi), 18(B), 27(A), 27(d)
- Drugs & Cosmetics Rules, 1945 - Rule 65(3), 65(4)(4), 65(5)(3), 65(6)

Hon'ble Judges: Goutam Bhaduri, J

Bench: Single Bench

Advocate: Amrito Das, SRJ Jaiswal

Final Decision: Allowed

Judgement

Goutam Bhaduri, J

1. The present petition is against the order dated 09.09.2017 passed by the Lok Adalat, whereby an application for compounding was dismissed on

merits.

2. Learned counsel for the petitioners submits that the Lok Adalat could not have passed the order on merits and should have been referred the case

to the Regular Court for adjudication and if the orders are passed thereafter the substantial right of the petitioner would have been affected, therefore,

the impugned order dated 09.09.2017 be set aside and the case be referred to the regular Court for decision on merits.

3. Perused the order dated 09.09.2017. The facts as reflect that a complaint under Sections 18 (a) (vi), 18 (B), 27 (d) & 27 (A) of the Drugs and

Cosmetics Act, 1940 read with Rules 65 (3), 65 (4) (4), 65 (5) (3) & 65 (6) of Drugs & cosmetics Rules, 1945 was filed by the State. During the course of trial since compromise was effected in between the parties, the Court below by order dated 10.11.2016 directed the State to keep the concerned officer present before the Court who is competent to compound and thereafter the case was fixed for compromise. Certain dates thereafter were given and eventually on 09.09.2017 when the case was referred to Lok Adalat, the Lok Adalat Bench had passed the order on merit by holding that the offence so sought to be compounded are non-compoundable and passed the orders on merits by dismissing the application for compounding, the said order is under challenge before this Court.

4. Perusal of the impugned order dated 09.09.2017 would show that the Court while recording certain finding has dismissed the application for compounding by holding that it is not according to the law. Irrespective of the merit of the case, the fact remained that the Lok Adalat exercised jurisdiction on the merits on the application by holding it is not tenable.

5. The Supreme Court in the matter of B.P. Moideen Sevamandir and another Vs. A.M. Kutty Hassan {(2009) 2 SCC 198} while deciding the scope and power of the Lok Adalat has held that A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and put its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to ""hear"" parties to adjudicate cases as a court does. It discusses the subject matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by principles of justice, equity, fair play.

When the Legal Services Authorities Act refers to 'determination' by the Lok Adalat and 'award' by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The 'award' of the Lok Adalat does not mean any independent verdict or opinion

arrived at by any decision making process. The making of the award is merely an administrative act of incorporating the terms of settlement or

compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.

The Supreme Court has held thus in Para 8 of the B.P. Moideen Sevamandir (supra) which is reproduced hereunder:-

8. When a case is referred to the Lok Adalat for settlement, two courses are open to it : (a) if a compromise or a settlement is arrived at between the

parties, to make an award, incorporating such compromise or settlement (which when signed by the parties and countersigned by the members of the

Lok Adalat, has the force of a decree); or (b) if there is no compromise or settlement, to return the record with a failure report to the court. There can

be no third hybrid order by the Lok Adalat containing directions to the parties by way of final decision, with a further direction to the parties to settle

the case in terms of such directions. In fact, there cannot be an 'award' when there is no settlement. Nor can there be any 'directions' by the Lok

Adalat determining the rights/obligations/title of parties, when there is no settlement. The settlement should precede the award and not vice versa.

6. Perusal of the provisions laid down would show that the Lok Adalat do not have any power of adjudicatory function and if it is found that the

offence is not compoundable then it cannot have access on the merits to give any finding. In the instant case the order dated 09.09.2017 would show

that the Lok Adalat exceeded its jurisdiction by entering into merits by discussing the provisions of the act for which the complaint was filed and

accordingly held that offences are non-compoundable. Therefore, the Lok-Adalat has exercised adjudicatory function touching upon the merits of the

case. In such eventuality under the circumstances, the order dated 09.09.2017 cannot be sustained as *prima facie* it is found that the Lok Adalat has

exceeded its jurisdiction not vested in it by law by rendering dismissal and making observation on merits. In a result, the order dated 09.09.2017 is set

aside. It is further directed that the trial Court shall hear the application of compounding if any filed, on its own merits without being influenced by the

order dated 09.09.2017 passed by the Lok Adalat.

7. Accordingly, the writ petition stands allowed.