Uday S/o Madhavrao Chandratre Vs State Of Maharashtra

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: Aug. 13, 2024

Acts Referred: Code of Criminal Procedure, 1973 â€" Section 313
Drugs and Cosmetics Act, 1940 â€" Section 33, 33EE(A), 33EEC(a), 33EEC(c), 33I(1)(a)(ii), 33I(1)(b)

Hon'ble Judges: S.G. Mehare, J

Bench: Single Bench

Advocate: C.C. Deshpande, C.R. Deshpande, M.N. Ghanekar

Final Decision: Partly Allowed

Judgement

S.G. Mehare, J

1. Heard learned counsel for the applicant and learned APP for the State.

2. The applicant/accused has impugned the judgment and order of the Chief Judicial Magistrate, Dhule in R.C.C. No.472/1994 dated 21.07.1999 as

well as the order of the 2nd Additional Sessions Judge, Dhule in Criminal Appeal No.30/1999 dated 06.11.2004.

3. The applicant was charged for the offences punishable under Sections 33 EEC (a) and 33 EEC (c) punishable under Sections 33 I (1) (a)(ii) and 33

I (1) (b) of the Drugs and Cosmetics Act, 1940.

4. It was alleged against the applicant that the applicant was manufacturing spurious Ã¢â‚¬Ëœ Gulvel SatvaÃ¢â‚¬â„¢. He was running the pharmaceutical firm

under the name M/s. Satpuda Pharmaceuticals. He had appointed the authorized agents for his product. The Drug Inspector visited one Madhura

Agency and found the bottles containing medicine without any label, and other requisite details. When the inquiry was made, it was learnt that the

applicant was manufacturing that medicine. The seized product was sent to the Chemical Analyzer. The Chemical Analyzer submitted the report that

the substance was spurious and substandard. The applicant addressed a letter Exhibit-28 to the authority admitting that the seized medicine was

manufactured in his company.

5. Both Courts, appreciating the evidence, believed that the seized medicine Ã¢â‚¬Ëœ Gulvel SatvaÃ¢â‚¬â„¢ was manufactured in the pharmaceutical company

run by the applicant, namely M/s. Satpuda Pharmaceuticals. Holding the accused guilty, the learned Chief Judicial Magistrate sentenced him to suffer

R.I. for one year and a fine of Rs.2000/- for the offence punishable under Section 33 I (1)(a) (ii) of the Drugs and Cosmetics Act and sentenced to

suffer R.I. for three years and fine of Rs.5000/- for the offence punishable under Section 33 I (1)(b) of the Drugs and Cosmetics Act. The learned

IInd Additional Sessions Judge, Dhule dismissed his appeal and maintained the conviction and sentence.

6. Learned counsel for the applicant has vehemently argued that the document Exhibit-28 was relied upon by the prosecution. However, no

opportunity was granted to the applicant to explain it by way of a question to the accused under Section 313 of the Criminal Procedure Code. He

vehemently argued that when the authorities visited the manufacturing unit, there was no stock or manufacturing process of the so-called Ã¢â‚¬ËœGulvel

SatvaÃ¢â‚¬â„¢. The medicine Ã¢â‚¬ËœGulvel SatvaÃ¢â‚¬â„¢ was not spurious. He has pressed into service that since the material evidence/ circumstance was not

brought to the notice of the applicant under Section 313 of the Criminal Procedure Code the entire trial was vitiated. In the alternative, he prayed that

Section 33 of the Drugs and Cosmetics Act provides for passing the order less than one year for special reasons. He would argue that the Court, by

way of adequate and special reasons, may impose a sentence of imprisonment for a term less than one year and a fine less than Rs.50,000/- or three

times whatever is more. In alternative, he prayed for extending the benefit of the Probation of Offenders Act. To bolster his argument, he relied on a

few case laws that would be referred in later part of the judgment.

7. Learned APP has strongly opposed the application. She would submit that the letter Exhibit-28 was never impugned. It was an admission letter of

the applicant that the so-called product seized was manufactured in his factory. Since it was admitted to the accused, no such question was required to

be asked to him under Section 313 of the Criminal Procedure Code. After seizing the manufacturing product from the medical shop, time was spent.

So, probably in the meantime, the applicant might have stopped manufacturing Ã¢â‚¬ËœGulvel SatwaÃ¢â‚¬â„¢. There were no substantial grounds to warrant or

interfere with the impugned judgment and order. There is no adequate or special reason to impose a penalty less than one year which was minimum

punishment for the offence punishable under Section 33 EE (A) of the Drugs and Cosmetics Act. She would submit that the case laws relied upon by

the applicant could not be applied as those are on different facts. She has vehement arguments that in no case to exercise the discretion to impose a

sentence of less than one year. Since the question, as alleged was not put to him under Section 313 of the Criminal Procedure Code, the proceeding is

not vitiated.

8. Perusal of document Exhibit-28 reveals that it was a letter addressed to the authority by the applicant. It was an explanation of the chemical

analysis report. The applicant has expressly admitted that the seized medicines were manufactured in his company. It was an admission of the

offence.

9. Section 313 of the Criminal Procedure Code provides for the power to examine the accused. To enable the accused personally, the Court should

explain the circumstances appearing in the evidence against the accused. His statement under Section 313 may be recorded at any stage without

previously warning the accused by putting the question to him or after the prosecution witnesses have been examined. It is a settled principle of law

that the circumstances which, according to the prosecution, lead to prove the guilt of the accused must be put to him in his examination of the accused

under Section 313. The purpose of examining the accused is to enable him personally to explain the circumstances appearing in the evidence against

him. The accused also has right to examine the defence witness. In the absence of admission of the accused when the prosecution led the evidence of

prove of guilt, such incriminating question should not be excluded from Section 313 statement. Reading the object of Section 313 of the Criminal

Procedure Code, this Court is of the view that the admission is the best evidence against the accused. Since the document Exhibit-28 shows the

admission of manufacturing of the Ã¢â‚¬Ëœ Gulvel SatvaÃ¢â‚¬â„¢ with chemical analysis report as it was spurious, the prosecution need not prove it. It was an

explanatory document. The applicant was well aware of the statement he made in Exhibit-28. Since the facts were admitted, the prosecution was not

required to prove it. The admission was within the knowledge of the applicant. Therefore, mere non-asking the question of those facts under Section

313, would not vitiate the proceeding.

10. Learned counsel for the applicant relied on the judgment of the HonÃ¢â‚¬â„¢ble Supreme Court in the case of Naresh Kumar Vs. State of Delhi,

Criminal Appeal No.1751 of 2017 dated 08.07.2024. The Court has discussed the object of Section 313 of the Criminal Procedure Code. The law is

also well settled that mere defective/improper examination under Section 313 of the Criminal Procedure Code would be no ground to set aside the

conviction of the accused unless it has resulted in prejudice to the accused. Based upon the fact discussing with Section 313 of the Criminal Procedure

Code, the HonÃ¢â‚¬â„¢ble Supreme Court held in para 15 that Ã¢â‚¬Ëœa bare perusal of the provisions under Section 313, Cr.PC, extracted above, would

undoubtedly reveal the irrecusable obligation coupled with duty on Court concerned to put the incriminating circumstances appearing in the prosecution

evidence against accused concerned facing the trial providing him an opportunity to explain.Ã¢â‚¬â„¢ Here, the facts of the case are different. Hence, the

said judgment would not assist the applicant.

11. Learned counsel for the applicant argued that soon after the incident, the applicant had closed down the manufacturing. He is now 66. His wife is

suffering from cancer. It was a solitary incident. Therefore, the benefit of the Probation of Offenders Act may be extended to him. He further argued

that there were circumstances to reduce the sentence below one year, which is a minimum conviction.

12. To bolster the case of benefit of the Probation of Offenders Act, he relied on the judgment of the HonÃ¢â‚¬â„¢ble Supreme Court in the case of

Umrao Singh Vs. State of Haryana, Criminal Appeal No.404 of 1981 (Arising out of S.L.P. (Cri.) No.965 of 1981) dated 10.04.1981, Tarak Nath

Kesari Vs. State of West Bengal, Criminal Appeal No.1444 of 2023 (Arising out of SLP (Cri) D No.28476 of 2018) dated 10.05.202.3 In this case,

the HonÃ¢â‚¬â„¢ble Supreme Court held that even if there is a minimum sentence provided in Section 7 of the Essential Commodities Act, in our opinion,

the appellant is entitled to the benefit of probation, the EC Act, being of the year 1955 and the Probation of Offenders Act, 1958 being later. Even if a

minimum sentence is provided in the EC Act, 1955, the same will not be a hurdle for invoking the applicability of provisions of the Probation of

Offenders Act, 1958. The HonÃ¢â‚¬â„¢ble Supreme Court referred to the case ofL akhvir Singh Vs. The State of Punjab and Ors, (2021) 3 SCC

763. He further relied on the judgment of the High Court of Goa in the case of State of Goa Vs. Shri Laxmikant N. Vaidya, Criminal Appeal No.64 of

2003 dated 27th August/2nd September, 2004. It was a case under the Drugs and Cosmetics Act, 1940. Bearing in mind the facts of the case, the

Court held that the accused was entitled to the benefit of Section 4 of the Probation of Offenders Act. He also relied on the case of Indrakunwar Vs.

The State of Chattisgarh, 2023 LiveLaw (SC) 932. The applicant as argued before the Court has undergone one year S.I. and fine. The fine

amount has been deposited.

13. The HonÃ¢â‚¬â„¢ble Supreme Court in Umrao Singh (Supra) observed that the High Court itself felt bound to award the minimum sentence but on

merits, was satisfied that if the legal position warranted, the appellant could be given a lesser sentence. We, are in agreement with the view of the

High Court. The appellant/petitioner is aged about 70, and suffering from asthama illness and has a clean past record. Considering the percentage of

deficiency, the HonÃ¢â‚¬â„¢ble Supreme Court reduced the sentence of the period already undergone. There are two verdicts. One is on reducing the

sentence, and another is on extending the benefit of the Probation of Offenders Act. In view of the ratio laid down in the case of Tarak Nath Keshari

(supra), there is no impediment exercising the powers under the Probation of Offenders Act, though minimum sentence has been provided in the Act.

The age factor has been considered in the case. The post-incident conduct of the accused is also one of the grounds for thinking about the benefit of

the Probation of Offenders Act. The another fact that may be considered is non-involvement of the accused for the same offence after the crime was

registered against him.

14. Considering the age, closing down the business and no bad past of the applicant, though the learned APP is insisting on reducing the sentence

instead of granting Probation of Offenders Act, the Court is of the view that the view of the HonÃ¢â‚¬â„¢ble Supreme Court in the case of Tarak Nath

Keshari (supra) could be appropriately applied. She is right in pointing out that both Courts did not err in law in holding the accused guilty. Hence, the

following order :

ORDER

(i) Criminal Revision Application is partly allowed.

(ii) The judgment and order of the Chief Judicial Magistrate, Dhule, in R.C.C. No.472/1994 dated 21.07.1999 as well as the order of the 2nd

Additional Sessions Judge, Dhule in Criminal Appeal No.30/1999 dated 06.11.2004 stand maintained. However, instead of sentencing him at once to

the punishment, it is expedient to release him on probation of good conduct.

(iii) The applicant be released on executing the bond for one year of Rs.10,000/- (ten thousand only) with an undertaking to appear and receive the

sentence when called upon during the said period, and in the meantime, he should keep peace and good behaviour.

(iv) The fine amount, if any, deposited be returned to the applicant.

(v) Record and proceeding be returned to the learned Trial Court.

(vi) Rule is made partly absolute in the above terms.