

(Judgment)

1 Reg. Cri. Case No.82/2009

(Old Reg. Cri. Case No. 246/2006)

Received On : 05.06.2006

Registered On : 05.06.2006

Decided on : 06.08.2012

Duration : Y. M. D.
06 02 02

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,
RAIGAD AT ALIBAG**

(Before P. B. Ghuge)

Regular Criminal Case No.82/2009.

Exhibit : /B.

Old Reg. Cri. Case No.246/2006.
in the Court of J.M.F.C. Karjat.

State at the instance of)..Complainant.
Matheran Police Station)

Versus

Indulal Bhogilal Shaha.).. Accused.
Age : 64 yrs.,)
R/o.: Mahatma Gandhi Rd.,)
Matheran, Tal.Karjat.)

CHARGES :Offences Under Section-18 (a)(c)(vi) r/w Rule 65(2),
65(3)(1), 65(4)(1), 65(4)(3) of Drugs and Cosmetics Acts
and Rules there under p/u/sec. 27(d) of the said Act.

Smt. Varsha Patil Ld. A. P. P. for the State.
Shri. D.B. Rane, Ld. Adv. for accused person.

J U D G M E N T
(on admission)

(Pronounced on 06.08.2012)

[1] Complainant Vijaykumar Sagamal Singhvi is Drug Inspector working since May 2005 in the office of Asstt. Commissioner Food & Drug Administration Pen Raigad (hereinafter referred to as 'the

competent authority'). Accused is owner of shop M/s. Jolly Medical Provision and General Stores situated at Kapadia Market, Shop No.3, Matheran, Tal. Karjat, Dist. Raigad. He has obtained license for sale of drugs on 12.04.94 from competent authority. He also appointed one Hareshkumar Ochalal Shah registered pharmacist for sale of scheduled 'H' drug. The competent authority permitted the appointment of registered pharmacist.

[2] On 19.01.2005 one Municipal Councilor (Nagar Sevak) Raghunath Bhagoji Kadam lodged one complaint against the accused with the Asstt. Commissioner F & D Admn. Pen alleging that drugs are sold in absence of registered pharmacist and also without issuing proper bills. Drug Inspector B.A. Mahanvar inspected the shop of accused on 10.02.2005. He found that drugs are sold in absence of registered pharmacist. Accordingly he submitted his inspection report in form No. 35 Sr. No.1123412 to 1123416. The competent authority thereupon issued show cause notice on 01.03.2005 to the accused. Both accused and registered pharmacist replied the notice. The competent authority on consideration of the reply issued orders on condition that permission of registered pharmacist Haresh Shah was canceled, accused not to sale any drug on prescription of doctor, accused to apply within one month for appointment of new registered pharmacist and on failure to abide by above conditions his license shall stand canceled.

[3] It is alleged that Dy. Collector Alibag Raigad also issued letter on 24.03.2005 to initiate action against the accused. The

competent authority again issued letter on 18.06.2005 to the accused and called his explanation about appointment of registered pharmacist. The accused failed to reply the letter. Therefore, the competent authority on 16.08.2005 permanently canceled the license of accused firm. It is contended that accused preferred appeal before State Minister Food & Drug Admn. Mumbai. The State Minister stayed the order of competent authority. It is communicated through letter from Mantralaya Mumbai on 14.10.2005. No further correspondence is received from Mantralaya after conclusion of hearing. The Municipal Councilor Raghunath Kadam again filed complaint on 01.10.2005 with the competent authority against the accused. In pursuance to this complaint, the complainant and Drug Inspector R.R. Dalal inspected the firm of accused. It was again found that drugs under scheduled 'H' were sold in absence of registered pharmacists. The Municipal Councilor again filed another complaint on 19.12.2005 and the complainant again inspected the firm and found the same result. The competent authority informed about the same to Jt. Commissioner Kokan Division F & D Admn. Thane who in turn informed the Commissioner F & D Admn. Maharashtra State Mumbai. The Commissioner directed to inquire the matter in detail and lodge F.I.R. as per his confidential report dtd.22.02.2007.

[4] In pursuance to the orders of the Commissioner, the complainant and Drug Inspector D.A. Jadhav visited the firm of accused on 23.03.2007. It was found that registered pharmacist is absent. It was also found that drugs under scheduled 'H' were sold and drugs of 30 various kinds were stocked for sale. The complainant

prohibited the said stock under form 15 and prepared the inspection report in form No.35 Sr. No.1123422 to 1123423. The complainant called explanation from accused for the stock and sale of scheduled drugs. Accused replied on 23.03.2006 and admitted to have sold the scheduled 'H' drugs in absence of registered pharmacist during last year. Thus during 10.02.2005 to 23.03.2006 the accused in absence of registered pharmacist sold drugs under scheduled 'H'. He also failed to issue bills to the customer for sale of drugs and thereby contravened the provisions under section 65(2), 65(3)(1), 65(4)(1), 65(4)(3), 18(c), 18(a) (vi) p/u/sec. 27(d) of the Drugs and Cosmetics Act.

[5] The complainant lodged F.I.R. on 25.03.2006 at Police Station Matheran. P.S.O. Registered a crime 01/2006 against the accused for the contravention of the provisions under drugs and cosmetics Act. The investigation was handed over to A.P.I. Heremath who collected the entire record from the competent authority, recorded statements of witnesses, arrested the accused and on completion of investigation filed charge sheet against him.

[6] The complainant also filed complaint in the court at Karjat for contravention of the same provisions against the accused. The case instituted otherwise than on police report bearing Reg.Cri.Case No.160/2009. There were two proceedings pending against the accused arising out of same incident. In view of the provision under section 210 Cr.P.C. my predecessor merged the proceedings filed on complaint in the present case instituted on police report.

[7] My predecessor framed charge against the accused for contravention of provisions under section 18(a)(c)(vi) r/w Rule 65(2), 65(3)(1), 65(4)(1), 65(4)(3) of Drugs & Cosmetics Act and rules thereunder p/u/sec.27(d) of the said Act vide Exh.18.

[8] The contents of charge were read over and explained to the accused in vernacular to which he initially pleaded not guilty and claimed to be tried. The proceedings were thereafter fixed for hearing. However, before examination of any witness on behalf of prosecution, the accused submitted written application Exh.31 and admitted the guilt.

[9] It is submitted by the accused in his application Exh.31 that the place of incidence i.e. Matheran is situated on high altitude and no facilities of conveyance except the horses is available. He further submitted that registered pharmacist appointed by him was unable to stay at Matheran permanently due to high cost of living. It became impracticable for him to run the medical shop in absence of the registered pharmacist. It is in this background that he was compelled to sale the drugs in absence of registered pharmacist. The accused further submitted that he has closed the medical shop and now he is 70 years old. He is unable to attend the proceedings from Matheran which is at a far distance from Alibag Raigad. He therefore prayed to accept his voluntary admission of guilt and show leniency while imposing sentence.

[10] The complainant Drug Inspector filed his say and submitted that considering the facts mentioned in the application

suitable punishment may be imposed.

[11] Heard both the Drug Inspector and the Adv. for accused Shri. D.B. Rane. Admittedly no prosecution witness is examined. The accused has voluntarily pleaded guilty. The reason stated by the accused as regards his age needs to be consider in the light of the trials to be conducted on priority basis wherein senior citizens are involved. It is also to note that the accused has already stopped his medical shop and the firm against which the allegations are leveled is not run by him. The only allegation against the accused is selling drugs in absence of registered pharmacist. It is punishable under Section 27(d) of the Act. The punishment prescribed is imprisonment upto two years but shall not be less than one year. The proviso to this section permits to impose punishment less than one year for adequate reasons to be recorded. It also prescribes fine in addition to the imprisonment which shall not be less than Rs.20,000/- .

[12] Having considered the submissions of both sides, admittedly the trial will take long period to conclude. The accused is a senior citizen and suffering from ailment is required to attend the proceedings from far distance. The medical shop run by him is already closed. Therefore having regard to this reason leniency can be shown to the accused while imposing sentence on admission of his guilt. As regards the stock of drugs which is seized by police and prohibited by the complainant it is submitted by the Drug Inspector Shri. Singhvi that the maximum shelf life period of any drug is prescribed upto 5 years which is already lapsed and therefore those drugs needs to be

destroyed. Admittedly the drugs were prohibited in the year 2005. Even if the confiscation of those drugs is carried, the maximum shelf life period has already lapsed and those drugs are of no use to the public at large. In such premises those drugs are required to be destroyed after appeal period is over. In the result I proceed to pass following order :-

O R D E R

[1] Accused Indulal Bhogilal Shaha is convicted vide Section 241 of Cr.P.C. for the offences under section 18(a)(c)(vi) r/w Rule 65(2), 65(3)(1), 65(4)(1), 65(4)(3) of Drugs & Cosmetics Act and rules thereunder and sentenced to suffer imprisonment till rising of the Court and to pay fine of Rs.20,000/- (Rs. Twenty thousand only) i/d. to undergo simple imprisonment for period of 03 months.

[2] Accused to surrender his bail bond.

[3] The seized drugs at Sr. No.1 to 30 whose shelf life period has lapsed and article Nos. 1 to 3 being worthless be destroyed after appeal period is over.

Alibag.

(P.B.Ghuge)

Date : 06.08.2012.

Chief Judicial Magistrate, Raigad Alibag.