

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

J U D G M E N T

Cr.Appeal No. 230-P/2019.

Date of hearing: 29.09.2020

Appellant: (S.M Wajeehuddin) By Syed Haziq Ali
Shah, Advocate.

Respondent: (State) By Mr. Arshad Ahmad, A.A.G.

S M ATTIQUE SHAH, J.- S.M Wajeehuddin,

Chief Executive Officer, M/s Pfizer Pakistan Limited, the

appellant, has filed instant Criminal Appeal, questioning

the legality/validity of judgment dated 12.02.2019

rendered by Chairman Drug Court, Khyber Pakhtunkhwa,

Peshawar, in complaint case No.53/2017, whereby the

appellant was convicted for violation of Rule-30 (4) (5) of

Drugs Registration, Licensing and Advertising Rules, 1976

and; sentenced him under section-27(4) of the Drugs Act,

1976, to imprisonment till rising of the Court with a fine of

Rs.50,000/- with publication fee of Rs.1000/- and; the

appellant deposited the amount of fine with publication fee

before the trial Court.

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2. Brief and essential facts of the case are that upon an allegation of short supply of various life saving drugs in the Market i.e Salazopyrin and Solucortef; the Provincial Drug Inspector, District Bannu, issued show cause notice to accused Afsar Mal Khan, Branch Manager of M/s Madina Enterprises Bannu; being authorized distributor of the Company with direction to explain their position, in response, they submitted their reply; whereafter, complainant issued show cause notice to M/s Pfizer Pakistan Ltd; Dr. Sadia Moazam, Head Regulatory Affairs of Pfizer Pak Ltd submitted reply to the show cause notice; thereafter, case was sent to the Provincial Quality Control Board Peshawar for necessary guidance; that the Board accorded sanction for prosecution of accused in Court under the relevant provisions of Drugs Act, 1976; followed by complaint against the accused.

3. On receipt of complaint, the learned trial Court summoned the accused, formal charge against them was framed, which they denied.

4. In order to bring home charge against the accused; prosecution examined complainant Aurangzeb Khan, Drug

Inspector District Bannu, as (PW-1) and closed its evidence. Statements of the accused under section-342 Cr.PC were recorded, wherein they denied the allegations leveled against them; neither, they wished to record their statements on Oath within the meaning of Section-340 (2) Cr.PC; nor, opted to produce evidence in defence.

5. Upon conclusion of trial, learned Chairman Drug Court, KPK, Peshawar, through the impugned judgment dated 12.02.2019, acquitted accused Afsar Mal Khan and Mrs. Sadia Moazam of the charges leveled against them; however, convicted the appellant Wajihuddin for violation of Rule-30 (4) (5) of Drugs Registration, Licensing and Advertising Rules, 1976, and sentenced him under section-27 (4) of the Drugs Act, 1976, to imprisonment till rising of the Court with a fine of Rs.50,000/- with publication fee of Rs.1000/-, the appellant deposited the amount of fine with publication fee before the trial Court. Feeling aggrieved from his conviction and sentence, the appellant filed the present appeal before this Court.

1/12/2019

6. We have heard arguments of the learned counsel for the parties and perused the record with their able assistance.

7. Prosecution in support of its case relied upon the solitary statement of PW-1 Aurangzeb Khan, Senior Drug Inspector (complainant), who reiterated, the story reflected in the show cause notice (EX PW 1/2) and (EX PW 1/4).

This PW in his cross examination stated that; *"Self stated that I had received verbal complaints from the patients as well as in markets and I, upon my own source, in the public interest, started the case. It is correct that none of these persons statement was recorded by me nor they have been arrayed as witnesses. I did not myself check the availability of drugs in question in general medicines market.It is correct that drugs having the same formula, manufactured by other companies are available in the market. The generic name of Solucortef is hydrocortisone while I do not know the generic name of salazopyrine."* The *ibid* statement clearly reflects that alternative drugs were available in the market. Therefore, it could not be said in the given circumstances that due to

non-supply of the ibid drugs, there was shortage in the market.

8. Besides, record further depicts that complainant vide letter No.156/District Bannu dated 22.F/2016 called explanation from Managing Director/Chief Executive M/s. Pfizer Pak Ltd, Karachi, for shortage of Salazopyrin and Solucortef 100,250 & 500mg in the market; in response, Dr. Sadia Moazam, Head Regulatory Affairs of M/s Pfizer Pakistan Limited, through letter No.PS/PDI/01/2016 dated April 05, 2016 responded that vide letter No.WD/REG/02/2015 dated May 19,2015 and WD/REG/03/2015 dated May, 19, 2015, they had requested for withdrawal of registration of Salazopyrin (Sulfasalazine) 500mg Tablets, Solu-Cortef (Hydrocortisone Sodium Succinate) 100mg, 250mg & 500mg injection. For ready reference her reply is reproduced as under;

"SALAZOPYRIN.

We have already communicated to the registration board on May 19, 2015 and requested for withdrawal of license. Due to introduction of new therapies, the product is less preferred by doctors and low in demand. Further as per our application it has been mentioned that product has been not into production since May 2013.

1/20/2015

SOLU-CORTEF:

Request has been submitted for withdrawal of license. Response is still awaited and we are following the matter with concerned authorities."

Which fact has also been admitted by PW-1 in his cross examination that alternative drugs having the same formula, manufactured by other companies are available in the market. He also admitted that in response to his show cause notice, M/s Pfizer Pakistan Ltd, informed him qua withdrawal of registration of the product in question.

9. Production of drugs and its regular and adequate supply in the market is governed by Rule-30 (4) & (5) of the Drugs Licensing Registration and Advertising Rules, 1976, which are reproduced below for ready reference;

"(4) Every drug shall be produced in sufficient quantity so as to ensure its regular and adequate supply in the market.

(5) The manufacturer of any drug shall not, without the prior approval of the Registration Board, be discontinued for a period which may result in its shortage.

Provided that in the circumstances beyond the control of manufacturer of a drug which may lead to reduction in the production of that drug, the circumstances may be intimated to the Registration Board."

10. Indeed, under the ibid rules, it is the responsibility of the manufacturer to produce and ensure

1/2/2011

supply of drugs in the market in sufficient quantity; albeit, in the circumstances beyond his control, causing reduction in production of a particular drug, then, the same may be intimated to the Registration Board.

11. It further depicts from record that Dr. Sadia Moazam, Head of Regulatory Affairs, of Pfizer Pakistan Limited, vide letter WD/REG/02/2015 and; WD/REG/03/2015 dated May 19, 2015 addressed to Chairman & Director Registration Pharmaceutical Evaluations and Registration Division Drug Regulatory Authority of Pakistan Ministry of National Health Services, Regulations and Coordination, Islamabad, made request for withdrawal of registration qua Solu-Cortef (Hydrocortisone Sodium Succinate) 100mg, 250mg & 500mg Injection with information that Pfizer manufactured sold last batch (No.5080263A) of Salazopyrin tablets 500mg in November, 2013 and; therefore, no further batches will be imported and marketed in future. Which clearly suggests that much prior to the alleged shortage, the company informed the authorities qua the non-supply of the drugs in question in the market; therefore, they could

not be charged for the alleged shortage if any under the law.

12. Record also reveals that in complaint Dr. Farid Khan, Managing Director/CEO M/s Pfizer Pakistan (Pvt) Ltd, was nominated as an accused; albeit, subsequently, name of present appellant S.M Wajeehuddin had been substituted as an accused on the ground that he replaced Dr. Farid Khan, who ceased to be the chief executive of the company; which clearly transpires that during the period of alleged shortage, appellant was not the Chief Executive Officer of the Company. Therefore, neither, he could be substituted against Dr. Farid Khan, nor, could he be held responsible for alleged shortage. Likewise his criminal culpability could not be shifted to the present appellant after his assuming charge of Chief Executive of the Company.

13. So far as, contention of learned AAG regarding Criminal Culpability of every member of the company qua the offence is concerned; true that under the provisions of Section 34 of Drug Act 1976; if a person guilty of an offence under ibid Act is a company, corporation or firm;

then, every director, partner or officer of the said company, corporation or firm, with whose knowledge and consent the offence is committed, shall be guilty of the offence. Albeit, the ibid provision has placed emphasis upon the knowledge and consent of the director, partner or officer of the said company, corporation or firm, qua the offence; which under the law shall be proved by the prosecution, howbeit, the same is not the case here. Therefore, the ibid provision is not attracted to the peculiar facts and circumstances of the instant case, as, neither, prosecution could establish its case against the company, nor, it could prove knowledge or consent of its directors or officers in the alleged offence.

In view of what has been discussed above, the instant appeal is allowed and; the convict/appellant is acquitted from the charge by setting aside the impugned judgment.

Announced:
Date.29.09.2020.


JUDGE


JUDGE

(D.B.)

Hon'ble Mr. Justice Lal Jan Khattak,
Hon'ble Mr. Justice S M Attique Shah

(K.Ali, PS)