

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.979 of 2008

ORDER:

This Criminal Revision Case is filed by the revision petitioner/accused against the judgment in Crl.A.No.52/2007, dated 20.12.2007 on the file of the VII Additional District & Sessions Judge (Fast Track Court), Vijayawada, by and under which, the conviction and sentence as imposed by the trial Court against the petitioner/accused was modified, reducing the sentence of imposition of fine of Rs.10,000/- to that of Rs.4,000/- for the offence alleged.

2. Heard the learned counsel appearing for the revision petitioner/accused and the learned Additional Public Prosecutor, representing the State.

3. The case of the prosecution is that the petitioner/accused took part in publication of advertisement for the treatment of AIDS LEUCORRHOEA in contravention of Section 3(d) and 4 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (for short "the Act"). In response to the news item "IDO AIDS BHUTHAM" published in Eenadu Daily on 29.10.2002, PW 1-the Drugs Inspector along with PW 2, PW 5-SI of Police and two other witnesses i.e. PWs 3 and 4 went to the hospital premises of the accused, namely "Ramancha Yellaiah" to enquire about the drugs being given by him for the treatment of AIDS and diseases in human beings. During their visit, they learnt that the Machavaram Police Station House Officer-PW 5 inspected and investigated into the matter. During the inspection, PW 1 found LEUCOREX LEUCORRHOEA syrup purported to be manufactured by M/s.V.B.Singh and Sons, Kanpur without any manufacturing date and batch number or expiry date indicating that the medicine is for all types of LUCORRHOE which is a disease in human

being. As the label of the bottles is in contravention of the provisions of the Act, PW 1 seized the same in the presence of mediators under cover of mediators report. On 17.01.2003 PW 6 addressed a letter to PW 5-SI of Police, L & O, Machavaram P.S. to furnish copy of Mahazar and confession statement if any made by the accused for investigation. On 21.03.2003 PW 1 received copy of mediators report from PW 5 which shows that PW 5 seized some drugs along with the advertisement given by the accused for treatment of AIDS. On 12.03.2003 PW 1 addressed a letter to the accused directing him to submit purchase bills for LEUCOREX, LEUCORRHOEA syrup which was seized on 29.10.2002. The Drugs Inspector also addressed a letter to M/s.Dr.V.B.Singh and Sons, Kanpur to submit records of manufacturing and Drugs licenses, if any, distribution details and bills, but the said registered letter was returned unserved. Accused gave reply through his counsel giving the details of his qualification, but failed to submit the purchase bills for the seized drugs. Accused himself took part in labelling of LEUCOREX indicating that it is meant for all types of LUCORROHEA diseases in females, thereby contravened the sections of 3(d) r/w.Schedule and Section 4 of the Act.

4. On appearance of the accused before the trial Court, he was examined under section 251 Cr.P.C, and he pleaded not guilty.

5. During course of trail, the prosecution examined PWs 1 to 6 and got marked Exs.P1 to P12 and M.Os.1 to 3. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and no evidence was adduced on his behalf.

6. On appreciation of oral and documentary evidence, the trial Court found the petitioner/accused guilty of the offence under Section 3(d) and 4 of The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, convicted and sentenced him to pay a fine

of Rs.10,000/- in default to suffer simple imprisonment for 2 months.

7. Challenging the conviction and sentence passed by the trial Court, the petitioner/accused filed Crl.A.No.512/2007 before the lower appellate Court. The learned Sessions Judge on re-appreciation of oral and documentary evidence, vide judgment dated 20.12.2007 allowed the appeal in part and reduced the imposition of fine from Rs.10,000/- to Rs.4,000/-. Aggrieved by the same the petitioner/accused filed the present criminal revision case.

8. The point that arises for consideration in this revision is whether the conviction and sentence imposed by the Courts below against the revision petitioner/accused is sustainable, or whether it needs interference.

Point:

9. The allegation briefly stated against the petitioner/accused is that he made an advertisement in local news paper for treatment of a disease, which is known as AIDS LEUCORRHOEA. Without going into the factual allegations, the learned counsel appearing for the petitioner/accused at the outset submits that the material that is produced before the Court by no stretch of imagination can be said to attract the provisions of either Section 3(d) or Section 4 of the Act for which the accused was charged and found guilty by both the Courts below.

10. Section 3(d) and Section 4 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 reads as under:

Sec.3: Prohibition of advertisement of certain drugs for treatment of certain diseases and disorders:

Subject to the provisions of this Act, no person shall take any part in the publication of any advertisement referring to any drug in terms, which suggest or are calculated to lead to the use of that drug for—

(a)....

(b)....

(d). the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified

in the Schedule, or any other disease, disorder or condition (by whatsoever name called) which may be specified in the rules made under this Act;

Provided that no such rule shall be made except—

- (i) in respect of any disease, disorder or condition which requires timely treatment in consultation with a registered medical practitioner or for which there are normally no accepted remedies, and
- (ii) after consultation with the Drugs Technical Advisory Board constituted under the Drugs and Cosmetics Act, 1940 (23 of 1940), and, if the Central Government considers necessary, with such other persons having special knowledge or practical experience in respect of Ayurvedic or Unani systems of medicines as the Government deems fit.

4. Prohibition of misleading advertisements relating to drugs—

Subject to the provisions of this Act, no person shall take any part in the publication of any advertisement relating to a drug if the advertisement contains any matter which—

- (a) directly or indirectly gives a false impression regarding the true character of the drug; or
- (b) makes a false claim for the drug; or
- (c) is otherwise false or misleading in any material particular.

11. A bare reading of the above provision leaves no room for doubt that in order to attract the ingredients of penal provision what is that is essentially is required that there should be an advertisement referring to any drug in terms of which the disease mentioned in the schedule is sought to be cured.

12. In the instant case, Ex.P2 is said to be an advertisement/publication which result in attraction of Section 3 (d) and Section 4 of the Act.

13. A perusal of Ex.P2 shows that it cannot be looked into for more than one reason. First of all, it is not the original publication and it is only a Xerox copy of newspaper clipping said to have been made in

Eenadu Telugu local daily of Vijayawada edition. PW 1, the Drug Inspector, through whom Ex.P2 was marked, candidly admits that Ex.P2 is not an advertisement and that it is only a news item. PW 1 further admits that he has not examined the person who furnished the said clipping report to the editorial wing of Eenadu, which resulted in publication. When there is no advertisement, which is *sine quo non* for attracting the provisions of Section 3(d) and Section 4 of the Act, there is no question of there being any violation of provisions of Act alleged to have committed by the accused.

14. Coming to the facts, the petitioner is admittedly working as a plumber in BSNL and after intimating to his employers, he started a clinic under the name and style of "Ramancha Yellaiah" in Vijayawada and was treating the patients. In his absence, on 29.10.2002, acting upon Ex.P2 news item, published in Eenadu Telugu daily of Vijayawada edition, the police officer-PW 5 raided the said clinic and was in the process of conducting Panchanama. Simultaneously, the Drug Inspector-PW 1 and PW 2 went to the Nursing Home and they continued the proceedings thereafter. In pursuance of the Panchanama conducted by the police officer PW 5, a case in Cr.No.829/2002 was registered, but nothing is known what happened to that crime. Needless to say that once crime is registered, there should be filing of either charge sheet or final report by the concerned police, but no material is placed on record as to what happened to that crime which was registered against the same accused for the self-same offence or charge for which the Drug Inspector filed the complaint against the accused.

15. Be that as it may, according to the Drug Inspector, he along with his staff visited the clinic in the absence of the accused and found three bottles of medicines by name LUCCORROHAE syrup and there was inscription on the bottles that they were manufactured by Dr.V.B.Singh, Kanpur. The label affixed thereon did not contain the

date of manufacture or batch number, nor did it contain the ailment for which the said drug was intended to be used. A notice under Ex.P9 was sent to the accused requesting him to furnish the bills of the drugs seized. The accused gave reply through his counsel specifically stating his case that he is a qualified diploma holder in the subject of Electro Homeo Medicine and he also enclosed Xerox copy of diploma issued by NEHM of India, New Delhi, authorized by Ministry of Health and Family Welfare, Government of India, vide certificate No.975/1992, dated 08.01.1993. The Drug Inspector has not bothered to verify the genuineness or otherwise of the said certificate, which was enclosed by the petitioner/accused along with his reply notice.

16. That apart, the reply notice to which the petitioner/accused has enclosed the original bills under which he purchased the drugs was also not placed on record. The said bills and the diploma certificate, which was said to have been enclosed by the petitioner/accused along with his reply notice is conspicuously missing from the record. When there was any suspicion about the degree said to have possessed by the petitioner/accused, it is incumbent on the part of the Drug Inspector to get verified it from the issuing authority, and when the bill is produced with regard to purchase of drugs, it is obligatory on the part of the Drug Inspector to verify as to whether the drug purchased by the petitioner/accused is from the addressee that is mentioned in the bill. The Drug Inspector has merely sent a notice to the so-called manufacturer of drug and when it returned unserved, he kept quite without pursuing the matter thereafter.

17. It is further noticed from the record that on the same date i.e. on 29.10.2002, firstly, the S.I.of Police, Machavaram has raided the premises in the presence of two panch witnesses and conducted panchanama and also seized the medicines available there. Almost simultaneous thereto, the Drug Inspector-PW 1 and PW 2 have also

raided the clinic of the petitioner and conducted another panchanama and seized the medicines, as already stated above, but nothing is known what happened to the proceedings that were conducted by the police officer.

18. A perusal of the impugned judgment of the learned trial Magistrate shows that he found guilty of the accused for having been in possession of M.Os.1 to 3, but possession of any drug do not attract the provisions of Section 3(d) and Section 4 of the Act. In view of what is stated above, *sine quo non* for attracting the provisions of Section 3(d) or Section 4 of the Act is that there should be an advertisement with reference to any drug which is not permissible.

19. The learned Magistrate in para-17 observed that no convincing explanation from the accused for possession of M.Os.1 to 3 was forthcoming, therefore, he is found guilty, which in my opinion is irregular and improper. The learned appellate Judge also committed the same error and came to the conclusion that since the petitioner/accused was found in possession of M.Os.1 to 3, he should be hauled up for an offence punishable under Section 3(d) of the Act which in my opinion is improper.

20. For constituting an offence under Section 3(d) or Section 4 of the Act, there should be an advertisement and it should be properly proved by the prosecution so as to mulct the person behind the advertisement. In the instant case, no such advertisement has been produced. Ex.P2 by no stretch of imagination can be said to be an advertisement. Even Ex.P2 is looked into, it is only a news report, but not an advertisement issued by the petitioner/accused. In that view of the matter, both the Courts below have committed irregularity and illegality in convicting the petitioner/accused for the offence alleged and therefore, the same is liable to be set aside.

21. For the reasons stated above, the Criminal Revision Case is allowed, consequently, the judgments of both the Courts below are set

aside and the petitioner/accused is acquitted of the offence for which he was found guilty and convicted. The bail bonds of the petitioner/accused shall stand cancelled. The fine amount, if any paid, shall be refunded to the petitioner/accused.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date:21.01.2016

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