

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.1128 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C by the petitioners/ A1 and A2, seeking to quash the proceedings in C.C.No.934 of 2017 on the file of the X Additional Chief Metropolitan Magistrate, Criminal Courts at Secunderabad, where taken cognizance for the offences punishable under Sections 18(a)(iv) read with Schedule (J) (S.No.42) and Rule 106(1) of the Drugs and Cosmetics Act, 1940 (for short 'the Act') and Drugs and Cosmetics Rules, 1945 (for short 'the Rules').

2. The petitioners herein are USV Private Limited (formerly USV Limited), represented by its Authorized Signatory and Debabrata Atulchandra Bhadury. The 1st respondent herein i.e., the Drug Inspector, Marredpally Zone (Sales, Secunderabad, laid a private complaint against the petitioners for the offences supra, alleging that treatment of external and internal piles in the label of the medicine with other particulars in saying said contravention constitutes the offences supra in filing the complaint under Section 32 of the Act for the said contravention punishable under Section 27(d) of the Act.

3. The contentions in the quash petition are even taken on face value of the said allegation, no offence constituted to make any of the accused liable for prosecution and the cognizance order of the learned Magistrate is unsustainable.

4. Heard learned counsel for the petitioners and learned Public Prosecutor appearing for the Drugs Inspector/ 1st respondent and the State/ 2nd respondent and perused the material on record.

5. Undisputedly the ointment 'Anovate' mentions on the label and on the cover as 'for the treatment of external and internal piles'. Schedule 'J' as per Rule 106 of the Rules in the Act, 1945, item No.42 speaks all piles and fistulae. Rule 106(1) reads that no drug may purport or claim to prevent or cure or may convey to the intending user thereof any idea that it may prevent or cure, one or more of the diseases or ailments specified in Schedule 'J'. Sub-rule (2) speaks that no drug may purport or claim to procure or assist to procure, or may convey to the intending user thereof any idea that it may procure or assist to procure, miscarriage in women.

6. The core issue is whether the use of the words for the treatment of external and internal piles is covered by Rule 106(1) of the Rules in the statutory violation defined in Section 18 clause (a) (iv). For more clarity, the relevant portion of the section reads that from such date as may be fixed by the State Government by notification in the official Gazette in this behalf, (notified w.e.f. April, 1947) no person shall himself or by any other person on his behalf give any drug which by means of any statement design or device accompanying it or by any other means, purports or claims to prevent, cure or mitigate any such

disease or ailment, or to have any such other effect as may be prescribed.

7. Clause (iv) of sub-section (a) of 18 and clause (1) of Rule 106 no way used the word treatment conspicuously and undisputedly. The starting word of Section 18(a)(iv) uses any drug which by means..... Now coming to the definition of drug under Section 3 clause (b) it is an inclusive definition, which says drug includes all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes

8. The definition of drug supra provides as an inclusive one for use of human being or animal and all substances used for or in the either diagnosis or treatment or mitigation or prevention of any disease or disorder. It, itself clarifies though not by any specific words the difference between mitigation and treatment, which are different and not one and the same. From this what Section 18(a) clause (iv) r/w Rule 106(1) speaks is prohibition of any statement design or device accompanying it or by any other means, purports or claims either to prevent or to cure or to mitigate any such disease. Thus, once prevention cure mitigation and treatment are different, though the very definition of drug includes treatment, what is prohibited in the advertisement is not any statement of treatment but statement

of cure or mitigation. A treatment may mitigate, may not mitigate, may cure, may prevent some other disease being caused in future. Thereby, it is having a wider meaning and not confined to either cure or mitigation or prevention. In this context, if one refers to page No.4762 of P.Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edition, the definition of treatment, in relation to disease, includes anything done or provided for alleviating the effects of the disease, whether it is done or provided by way of cure or not. Thus, what is the contention of the learned Public Prosecutor on behalf of the Drug Inspector/ 1st respondent of the mitigation includes the treatment and it is prohibited by the statutory provision, liable for penal consequence and thereby there are no grounds to quash the post cognizance proceedings for the above reasons is not tenable to accept.

9. Having regard to the above, the cognizance order of the learned Magistrate is unsustainable and the Criminal Petition is allowed by quashing the proceedings against the petitioners/ A1 and A2 in C.C.No.934 of 2017 on the file of the X Additional Chief Metropolitan Magistrate, Criminal Courts at Secunderabad.

10. Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 29.11.2018
pab