

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 116 OF 2019

- 1 Dheeraj S/o Kachrulal Patonda,
Age : 38 years, Occu.: Business,
R/o Plot No. 804, Apollo D.B. City Indore
(M.P.) Tal and District Indore.
- 2 Hitesh S/o Rajendra Sharma,
Age : 41 years, Occu. Business,
R/o: Sudama Nagar, Indore (M.P.), Tal.
And District Indore. ... APPLICANTS

VERSUS

- 1 The State of Maharashtra,
Through Police Station, Satara,
Taluka and Dist. Aurangabad.
- 2 Rajesh S/o Bhaurao Patil,
Age : 52 years, Occu.: Service,
R/o : Sunanda Niwas, Plot No. 51, ... RESPONDENTS
Sahyandri Nagar, High Court Colony,
Satara Parisar, Aurangabad, Ta. And
District Aurangabad.

...

Mr. A.P. Shejul, Advocate for Applicants
Mr. D.R. Kale, APP for Respondent No. 1.
Mr. N.K. Kakade, Advocate for Respondent No. 2.

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**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.**

DATED : 26th JUNE, 2019.

ORAL JUDGMENT :- (Per: K.K.SONAWANE, J.)

1. Rule. Rule made returnable forthwith. Heard finally, with the consent of learned counsel for parties.

2. The applicants preferred present application under Section 482 of the Code of Criminal Procedure ("Cr.P.C.") seeking relief to quash and set aside the First Information Report ("FIR") bearing No.I-328 of 2018 registered at Police Station, Satara, Aurangabad, District Aurangabad for the offence punishable under Section 420 of Indian Penal Code ("IPC") and under Section 3(B), 4 and 7 of Drugs and Magic Remedies (Objectionable Advertisements), 1954 (for short "Act of 1954") as well as criminal proceeding bearing RCC No. 1216 of 2019 initiated pursuant to aforesaid FIR.

3. It has been alleged on behalf of prosecution that the applicants are the businessman, indulged in the activities of marketing the various medicinal products under the name and style as "Indiyana Distribution Network LLP" at Indore (M.P.). According to prosecution, the first-informant - complainant Rajesh S/o Bhaurao Patil resident of Aurangabad came across with the advertisement of one Ayurvedic Medicine "Asthiyivik" displayed on the "You Tube" a commercial video showing website. In the advertisement, it was claimed that the medicine "Asthiyivik" containing oil and liniment (lep) would be an accurate treatment for joint and knee pains. The complainant, on seeing the advertisement, placed the on-line order and purchased four bottles of "Ashtiyivak" oil and liniment. But, after use of these Ayurvedic Medicine, there was no relief to the complainant for his joint pains. Thereafter the complainant again on 27-08-2018, watched the another advertisement of medicine known as "Veer Yog Ayurvedic" on Sudarshan T.V. Channel. It was an energy pills, and therefore, the complainant purchased the product by paying cost of Rs. 3,650/-. But

all his efforts found unavailing. It has been contended in the FIR that the complainant ones again placed *on-line* order of another Ayurvedic product namely "Zero Addiction" after watching the one more advertisement in the midnight on 10-08-2018. The product was meant to quit habit of smoking, drinking liquor etc. Unfortunately, at this juncture also the endeavour of complainant did not evoke result. Neither there was improvement in his joint pains nor there was any positive result from other two Ayurvedic products, which he has purchased from the applicants. Eventually, the complainant realized that the marketing company of applicants played mischief and committed fraud with him. Therefore, on 22-05-2018, he approached to the Police of Satara Police Station, Aurangabad and lodged the report for penal action against the miscreants.

4. Pursuant to FIR of the complainant Shri Rajesh Bhaurao Patil, the Police of Satara Police Station, Aurangabad registered the crime No. I-328 of 2018 and set the penal law in motion. Pending the investigation the applicants by invoking remedy under Section 482 of the Cr.P.C. moved present application to get themselves absolve from the charges pitted against them. The applicants prayed to quash and set aside FIR. Meanwhile, after due investigation Police also preferred the charge-sheet bearing RCC No. 1216 of 2019 in the present application. The applicant simultaneously claimed to quash and set aside the penal proceeding of RCC No. 1216 of 2019, pending before the learned Magistrate, Aurangabad.

5. The learned counsel for applicants submit that the applicants are

innocent of the charges pitted against them. They have not committed any crime. But, they are unnecessarily involved by making allegations under the Act of 1954. There was no cheating to the complainant on the part of applicants. Learned counsel submits that above mentioned Ayurvedic products were manufactured by Vyas Products in Uttarakhand State under valid licence issued from Government of Uttarakhand. The products are manufactured and sold world-wide and many patients get relief from this product. The positive result of Ayurvedic products is depend upon various factors including nature of disease, the age of the patient, etc. In case, the patient did not get relief, it does not mean that each and every patient would file the criminal complaint against the applicants. The Ayurvedic products purchased by the complainant may not given result as his body could not support for the medicine. It has already made clear on the advertisement and leaflet that, in case of no result, the company would refund money to the buyer within 15 days from its purchase. According to learned counsel, the present complaint is filed with ulterior motive to degrade the products or he may have evil motive. According to the learned counsel, the aforesaid products marketed by the applicants are genuine and no question arises of committing mischief on the part of applicants. Learned counsel for applicants explained the circumstances in detail and submits that the allegations nurtured against the applicants on behalf of complainant do not constitute any crime, therefore, it is imperative to quash and set aside the penal proceeding initiated against the applicants.

6. The learned APP and learned counsel for respondent No. 2

vociferously raised objection to the contentions propounded on behalf of applicants and submit that Ayurvedic products advertised by the applicants for the sake of marketing misled the complainant and goaded him to purchase the same. But, there was no any positive result for his knee pains etc. According to learned APP, there was prohibition on taking any part in the publication of any advertisement referring to any drug, which in term suggest or are calculated to lead to the use of that drug for the purpose specified in Clauses (a) to (d) of Section 3 of the said Act of 1954. Learned APP further added that the provisions of Act of 1954, applies to all categories of drugs whether they are licensed or not and whether they are prohibited or not. Therefore, advertisement referring to drug for treatment of stature of person is prohibited under Section 3 of the Act of 1954. The learned APP relied upon the exposition of law delineated by the Division Bench of this Court (Coram: A.S. Oka and Mrs. **Mridula** Bhatkar, JJ.) in the case of **GMT Teleshopping Private Limited Vs. Union of India and others** reported in **2013(5) ALL MR 41.**

7. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also delved into the relevant papers of the charge-sheet of RCC No. 1216 of 2019. It is not in dispute that the first informant Shri Rajesh Patil purchased the Ayurvedic products marketed by the applicants for the purpose of his physical infirmities. He purchased the Ayurvedic products for his knee pains as well as energy pills and the medicine known as "Zero Addiction" to quit habit of smoking, drinking liquor etc. It has been alleged on behalf of complainant that he purchased all these Ayurvedic products after

watching the advertisement on "You Tube" a commercial video sharing website as well as TV channels etc. The Investigating Officer during investigation also collected leaflet, pamphlets and document of advertisement displayed by the applicants for marketing their Ayurvedic products.

8. At this juncture, it is worth to mention that provisions of Section 3 of the Act of 1954 put an embargo on taking any part in the publication of any advertisement referring to any drugs, which are in term suggest or are calculated to lead to the use of that drug for the purposes specified in Clauses (a) to (d) of Section 3 of the Act of 1954. In view of prohibitory nature of the provisions of Act of 1954, it would apposite to make a reference of relevant provisions of Act of 1954. The clause (b) of Section 2 of the Act of 1954 defines expression "Drugs" as under :-

"2. **Definitions** – In this Act, unless the context otherwise requires-

(a)

(b) 'drug' includes-

(i) a medicine for the internal or external use of human beings or animals;

(ii) any substance intended to be used for or in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals;

(iii) any article, other than food, intended to affect or influence in any way and structure or any organic function of the body of human beings or animals;

(iv) any article intended for use as a component of any medicine, substance or article, referred to in sub-clauses (I), (ii) and (iii);”

9. The provisions of Sections 3 and 4 of the Act of 1954 would read as under:-

“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 drugs in terms which suggest or are calculated to lead to the use of that drug for-

(a) the procurement of miscarriage in women or prevention of conception in women; or

(b) the maintenance or improvement of the capacity of human beings for sexual pleasure; or

© the correction of menstrual disorder in women; or

[(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 that 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 matters 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
- © is otherwise false or misleading in any material particular."

10. It is evident from the aforesaid legal provisions that Ayurvedic products purchased by the complainant in this case were drugs as contemplated under definition of drug referred in clause Section 2 Sub-clause (b) of the Act of 1954. Moreover, Section 3 of the Act of 1954 prohibits advertisement of such drugs for treatment of certain diseases and disorders subject to provisions of the Act. It is also delineated that no person shall take any part in the publication of any advertisement referring to any drugs in terms, which suggest or are calculated to lead to the use of that drug for the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the schedule, or any other disease. The Division Bench of this Hon'ble

Court in the **GMT Teleshopping Private Limited's** case (*cited supra*) elaborately described the circumstances and held that the provisions of Section 3 of the Act of 1954 are made applicable to all categories of drugs whether licensed or not and whether they are prohibited or not. It has been held that the advertisement referring to products for treatment of stature of person is prohibited under Section 3 of the Act of 1954.

11. In the matter in hand, in view of aforesaid prohibition under the Act of 1954, it is unequivocally clear that applicants are not permitted to take part in publication of any advertisement of aforesaid Ayurvedic products by any manner or mode. It is to be seen that there are leaflets and pamphlets produced on record. The documents of advertisement for marketing purpose produced on record would show that there was violation of provisions of Act of 1954. The circumstances are sufficient *prima facie*, to draw inference that the applicants committed mischief to mislead the complainant for purchase of their Ayurvedic products with assurance of accurate result. There was no any legal infirmity for application of penal provision of Section 420 of the IPC and Sections 3(B), 4 and 7 of Drugs and Magic Remedies (Objectionable Advertisements), 1954 against the applicants in this case.

12. In the light of aforesaid discussion, we are not inclined to nod in favour of applicants. It is well settle rule of law from catena of Judgments of the Honourable Apex Court that for exercising powers under Section 482 of the Cr.P.C. the High Court has to proceed entirely

on the basis of allegations made in the complaint and documents accompanying the same, *per-se*. It is not permissible to examine correctness otherwise of the allegations. It is also mandate of law that powers under section 482 of the Cr.P.C. has to be exercised sparingly and with circumspection and that too in the rarest of rare cases. The High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. In the matter in hand, the allegations nurtured in the FIR categorically disclosed the commission of crime and therefore, there is no propriety to exercise the powers under Section 482 of the Cr.P.C. In the result, application being devoid of merits deserves to be dismissed. Accordingly, the Criminal Application stands dismissed. Rule stands discharged. No order as to costs.

Sd/-

[K. K. SONAWANE]
JUDGE

Sd/-

[T.V. NALAWADE]
JUDGE

MTK
