

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.12.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Cr1.O.P.No.21919 of 2008

1.M/s.Cipla Ltd

Ground Floor & 1st Floor

106.A Alapakkam Main Road,

Chennai 116,

Rep. by Thiru Narayanan Narasimhan Iyengar

2.Thiru Narayanan Narasimhan Iyengar

Person Incharge/P.A.Holder

Cipla Lt., Ground & 1st Floor,

106.A.Alapakkam Main Road,

Chennai 116.

3.S.S.Jetty

Factory Manager/Person incharge

Cipla Ltd

Plot No.L.139/2144 Verna Industrial Estate,

Verna, Goa

..Petitioners /Accused

vs

The Tamilnadu State -Rep. by

R.Kannan Drugs Inspector

Thiruvallur Range,

Office of Asst. Director of Drugs Control,

Thiruvallur Zone,

201, Jawaharlal Nehru Road,

Thiruvallur -602 001

.. Respondent/Complainant

Prayer: Criminal Original Petition is filed under under Section 482 of Criminal Procedure Code to call for the records in C.C.No.94 of 2008 now on the file of the Chief Judicial Magistrate, Thiruvallur and quash the same.

For Petitioner

: Mr.V.Karthic

Senior Counsel for

M/s.T.S.Gopalan & Co.

For Respondent

: Mr.C.Iyyapparaj

Addl.Public Prosecutor

ORDER

This Criminal Original Petition is filed seeking to quash C.C.No.94 of 2008 on the file of Chief Judicial Magistrate, Thiruvallur.

2.The case of the petitioner is that the petitioners are manufacturer of pharmaceuticals and Drugs. It has been in existence since 1937 and has factories all over India and warehouses, including Chennai. The first Petitioner has always been adhering to the various restrictions under the Drugs & Cosmetics Act and Magic Remedies (objectionable Advertisements) Act, 1954. The Petitioner is one of the Manufacturer of the drug 'LEVANORGESTRAL' Tablets which is used as an oral contraceptive. The Government of India is laying great emphasis on family planning and therefore, the Drug manufactured by the petitioner is also sold at a substantial subsidy. The petitioner has approached the Director General of Health Services, Government of India Seeking permission to advertise emergency contraceptive and by proceedings dated 09.03.2007, the Drugs Controller General of India, Government of India permitted the petitioner to advertise the drug Levanorgestral subject to restriction that the advertisement should be free from any obscenity, should follow the Code of Conduct and give information with respect to the manner in which the tablet should be taken.

3.The first petitioner states that, on the basis of the directions given by the Drugs Controller of India, it advertised its drug Levanorgestral under the brand name 'I-Pill'. As per the permission, the 'I Pill' was published vide newspapers and subsequent to the advertisement, the respondent issued a show cause notice on 01.10.2007 making a reference to the advertisement given by the first petitioner and alleged that it was in violation of Section 3(a) of the Drugs and Magic Remedies (Objectionable Advertisements) Act 1954. The petitioner, by its letter dated 24.10.2007 had given a detailed explanation to the respondent bringing to the notice of the respondent that exemption has been obtained from the Director of Health Services to advertise the product manufactured by the petitioner. Without considering the objection, the respondent filed private complaint before the Chief Judicial Magistrate, Thiruvallur, alleging violation of Section 3(a) of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. The said complaint has been taken on file in C.C.No.94 of 2008 Challenging the said complaint under C.C.No.94 of 2008, the Writ petition has been filed.

4.The learned Senior Counsel appearing for the petitioners would submit that the petitioner company is a leading manufacturer of Levonorgestral under the brand name ''I-Pill'' and the respondent failed to see that the Ministry of Health, New Delhi in SO 282 dated 24.01.1961, had in exercise of its power under Section 15 of the Drugs & Magic Remedies (Objectionable Advertisements) Act, 1954 had directed that the Provision of Clause (a) of Section 3 insofar as they relate to ''Prevention of conception in women'' and those of Section 6 of the said Act shall not apply to or in relation to any advertisement in respect of contraceptives, provided that the advertisement shall relate only to such contraceptives.

5.The said Act granted permission to manufacture Levonorgestral tablet and the said tablet is for preventing the contraception and not for inducing miscarriage and it is ultimately to control the population. Further the Directorate General of Health Services, New Delhi, granted permission on 09.03.2007 to advertise the medicine and that expert group of Drug Controller of India, has considered the request of the petitioner in its meeting dated 23.02.2007 and decided to give permission to advertise emergency contraceptive Pills-Levonorgestrel tablets 0.75mg and 1.50mg with certain conditions, stated that advertisement should be free from any obscenity, should follow Code of Ethics and it should give information with respect to the followings:

- 1.When to take EC Pills,
- 2.How to take EC Pills and
- 3.Side effects of the EC Pills

6.In compliance of the conditions imposed on 09.03.2007, the said advertisement was issued impressing the said benefits in the minds of the people that the above contraceptive is to control population. There is no mens rea attached to the above said advertisement and the prosecution in this regard is unreasonable and, accordingly, prayed for quashment.

7.Learned Additional Public Prosecutor submits that the case of the prosecution is that, any advertisement notice, shall be as per Section 3 of the Drugs and Magic Remedies (Objectionable Advertisements) Act which is extracted here 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 drug in terms

which suggest or are calculated to lead to the use 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

(c) 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."

8. Section 3 of the Drugs and Magic Remedies (Objectionable Advertisements) Act relates to prohibition of advertisement of certain drugs for treatment of certain diseases and disorders. Failure to comply with the provisions as mandated under the specific provision of law, would be deemed to be a violation of the said provision of law. There is no quarrel with regard to the said provision of law or adherence to the same.

9. In the present case, it is an admitted fact that the petitioner had obtained permission from the Drugs Controller General of India for carrying out advertisement of the medicine used for the purpose of emergency contraception in women, which medicine is manufactured and marketed by the petitioner, viz., Cipla. While granting the said permission, certain conditions have been stipulated by the permitting authority relating to obscenity, which have been followed by the petitioner.

10. The petitioner having been permitted to advertise the said drug manufactured by it and on proper application of mind, the Drugs Controller having granted permission to the petitioner for causing advertisement of the drugs, however, with certain conditions, which have not been alleged to have been violated by the petitioner. The Drugs Controller, being the authority under the Act to decide as to causing of advertisement, has applied its mind and granted the said permission. The Act nowhere prohibits the Drugs Controller from granting such permission and exercising his right, the Drugs Controller has granted the permission for causing advertisement, more in the interest of the ever increasing population.

11. Though reliance is placed on Section 3, which prohibits advertisement of certain drugs of treatment of certain diseases and disorders, it is to be pointed out that the present drug for which the authority has granted permission for advertisement is not for treating any disease or disorder. The Drug manufactured by the petitioner, which has been advertised is not for the purpose of treating any disease or disorder. Therefore, bringing the said drug within the ambit of Section 3 is per se unreasonable and unsustainable. Further, the respondents are not able to point out any other provision of law or Government instruction barring the Drugs Controller from granting such permission. In the absence of any explicit bar on the Drugs Controller from granting permission, this Court has no hesitation to hold that the act of the petitioner would not attract the ingredients of Section 3 of the Act. Once the Drugs Controller has granted permission to the petitioner, it is open to the petitioner to advertise the commodity and in the absence of any bar for advertising, the act of the petitioner cannot be said to be illegal, whilst the act of the respondents in confiscating the drugs and initiating criminal prosecution, unmindful of the legal provisions, which definitely is illegal and is liable to be interfered with.

12. For the reasons aforesaid, this Criminal Original Petition deserves to be allowed and, accordingly, the same is

allowed. Consequent upon the allowing of this Petition, C.C.No.94 of 2008 on the file of the Chief Judicial Magistrate, Thiruvallur is quashed.

Sd/-

Assistant Registrar (C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate,
Thiruvallur.

2.The Drugs Inspector
Thiruvallur Range,
Office of Asst. Director of Drugs Control,
Thiruvallur Zone,
201, Jawaharlal Nehru Road,
Thiruvallur -602 001

+1 cc to M/s.T.S.Gopalan & Co., Advocate Sr.No.103435

AKM/20.03.2020/6P-4C /

Crl.O.P.No.21919 of 2008



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