

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.O.P.No.26427 of 2013

1.M/s.Creative Disgnostic Medicare Pvt. Ltd.,
Represented by Mr.Satish Sadanand Karekar,
Director.

2.Mr.Satish Sadanand Karekar

3.Mr.Vishwas Sadanand Karekar

4.Dr.Deoman Tripathi

.... Petitioners

Vs.

The State of Tamilnadu rep. by
M.Rani, Drugs Inspector, T Nagar Range
C/o The Assistant Director of Drugs Control
Zone IIID.M.S.Campus 259-261 Anna Salai
Teynampet, Chennai - 600 006.

.... Respondent

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to
call for the records and quash all the proceedings against the
petitioners in C.C.No.4399 of 2013 on the file of the IV
Metropolitan Magistrate, Saidapet, Chennai - 15.

For Petitioners : Mr.D.Selvaraju
for M/s.B.Vasudevan

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed seeking to
call for the records and to quash all the proceedings against
the petitioners in C.C.No.4399 of 2013 on the file of the
learned IV Metropolitan Magistrate, Saidapet, Chennai - 15.

2.The case of the petitioner is that the first petitioner is
the Company and the petitioners 2 to 4 are the Directors of the
first petitioner Company. Challenging the complaint filed under

Section 3 (d) of Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 read with Schedule (1) (Asthma) of Rule 6 of the Drugs and Magic Remedies Rules, 1955 which is punishable under Section 7(a) of Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954, this petition has been filed.

3.The case of the prosecution is that during the course of inspection by the Drugs Inspector on 03.09.2012 at one M/s.Raju Hospitals Private Limited / A5, they observed in the label of the carton of the drug CREDISOL Aqueous allergen extract, an objectionable advertisement, which is as follows:

'CREDISOL
Allergen extract for immunotherapy
The choice of treatment in management of allergic rhinitis,
allergic asthma etc.,
An individually prepared allergen vaccine.'

4.According to the prosecution, the said advertisement is prohibited as per Section 3 (d) of Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 read with Schedule (1) (Asthma) of Rule 6 of the Drugs and Magic Remedies Rules 1955. Hence, the complaint.

5.Mr.D.Selvaraju, the learned counsel appearing for the petitioners would submit that the first petitioner is the manufacturer of the drug and would further submit that the advertisement itself clearly shows that the drug is the choice of treatment in management of allergic rhinitis, allergic asthma etc., and hence it does not violate Section 3 (d) of Drugs and Magic Remedies (Objectionable Advertisement) Act. If the advertisement says that it is the choice of treatment in curing allergic rhinitis, allergic asthma etc., then it would have been in violation of Section 3 (d) of Drugs and Magic Remedies (Objectionable Advertisement) Act. Accordingly, he prayed for appropriate orders.

6.The learned Additional Public Prosecutor would submit that though the wordings in the advertisement is that the drug is The choice of treatment in management of allergic rhinitis, allergic asthma etc., it would create an impression in the minds of the consumer that if the drug is consumed, it would cure allergic rhinitis, allergic asthma etc. Hence, the advertisement is in violation of Section 3 (d) of Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 read with Schedule (1) (Asthma) of Rule 6 of the Drugs and Magic Remedies Rules 1955 which is punishable under Section 7(a) of Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954. Accordingly, he prayed for dismissal of the criminal original petition.

7. Heard the arguments advanced on either side and perused the materials placed on record.

8. It is useful to extract hereunder Section 3 (d) of The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954:

"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 -

(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"

9. This Court also perused the advertisement labelled in the carton of the drug CREDISOL Aqueous allergen extract, which is as follows:

'CREDISOL
Allergen extract for immunotherapy
The choice of treatment in management of allergic rhinitis,
allergic asthma etc.,
An individually prepared allergen vaccine.'

10. Perusal of the alleged advertisement clearly shows that the drug is the choice of treatment in management of allergic rhinitis, allergic asthma etc., and it did not say that the drug is the choice of treatment in curing allergic rhinitis, allergic asthma etc., if consumed. The object of the Act is that the advertisement in the label of the particular drug should not mis-direct the consumers/ patients. Only when the advertisement in the label of the drug mis-directs the consumers/ patients, it would attract the penal provision under the Act.

11. Hence in my considered view, the advertisement labelled in the carton of the drug CREDISOL Aqueous allergen extract did not violate Section 3 (d) of Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 read with Schedule (1) (Asthma) of Rule 6 of the Drugs and Magic Remedies Rules, 1955 as alleged by the Drugs Inspector and the complaint is a mis-conceived one.

12.This criminal original petition is accordingly allowed and the proceedings against the petitioners in C.C.No.4399 of 2013 on the file of the learned IV Metropolitan Magistrate, Saidapet, Chennai, is hereby quashed. Consequently, connected miscellaneous petitions, if any, are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The IV Metropolitan Magistrate,
Saidapet, Chennai.
- 2.-Do- Thro' The Chief Metropolitan Magistrate,
Chennai.
- 3.The Drugs Inspector,
T Nagar Range,
C/o The Assistant Director of Drugs Control,
Zone III, D.M.S.Campus 259-261,
Anna Salai, Teynampet,
Chennai - 600 006.
- 4.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1cc to Mr.B.Vasudevan, Advocate Sr.6658

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srg 27/02/2020