
(2002) 12 BOM CK 0019
In the Bombay High Court
Case No : Criminal Application No. 902 of 1999

Dipankar and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-12-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 — Section 4, 5, 7, 8(1)

Citation : (2003) 2 ALD(Cri) 70 : (2003) CriLJ 3271

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : Gautam Chatterjee, for the Appellant; Dhote, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.T. Kharche, J.—Heard Shri Chattarjee, Advocate for the applicant and Shri Dhote, A.P.P., for the Respondent.

2. This petition is filed u/s 482 of Code of Criminal Procedure (for short Code) for quashing the criminal prosecution against the applicants inter alia first information report dated 17th January, 1997 in Crime No. 2 of 1997 and for setting aside the order passed by the 9th Judicial Magistrate First Class, Nagpur, who refused to stop the proceedings u/s 258 of Code.

3. Mr. Chattarji, the learned counsel for the applicants contended that the applicants are well-famed Astrologers and Astro-Palmists and have made a name in the said profession. The applicants Nos. 1 to 3 are Astrologers and Astro-palmist, applicant No. 4 runs a business of Gems under the name and style of Ratnamela. The applicants Nos. 5 and 6 are the servants of applicant No. 4. The applicants visited Nagpur in between 14-1-1997 and 18-1-1997 and took up residence and office at Sahakar Mandir Hall, Rana Pratap Nagar, Nagpur. The purpose of the visit of the applicants was to practice the profession of Astrology

and Astro-palmistry and only for helping the citizens and sorting out their problems. It is contended that the applicants had distributed pamphlets and they had filed an application to the P.S.O., Ranapratap Nagar, Nagpur dated 13-1-1997 and obtained permission for advertising about astrological meet during the aforesaid period.

4. Mr. Chatterjee, the learned counsel for the applicants contended that P.S.I. Chate on 18th January, 1997 entered premises of Sahakar Mandir Hall, Ranapratap Nagar, Nagpur and arrested all the persons, searched and seized their personal belongings and booked them for the offences punishable under Sections 4, 5 and 7 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (hereinafter reported as D.M.R. Act). He contended that the charge-sheet in the matter has been presented and the offences are triable as summons case and therefore the applicants had made application for stopping the said proceedings u/s 258 of Code of Criminal Procedure, which came to be rejected on 8-4-1999.

5. Mr. Chattarjee, the learned counsel further contended that entire investigation search and seizure carried out by the P.S.I. Chate was void-ab-initio and no prima facie has been made out under Sections 4, 5 and 7 of D.M.R. Act. He further contended that entry, search and seizure of the articles by P.S.I. Chate was not only without any basis, it was most high handed and he was not competent officer empowered in law to do any of the acts u/s 8 of the D.M.R. Act. He further contended that the advertisement i.e. Pamphlets do not contain any proposition so as to attract the aforesaid provisions of D.M.R. Act. The Pamphlets do not suggest either the drugs or magic remedy of cure for any disorder or disease mentioned in the Act or Rules. The prosecution is unwarranted, illegal and unjust and the same along with F.I.R. deserves to be quashed.

6. The learned Additional Public Prosecutor for respondent contended that on 13-1-1997 the applicants had filed an application for grant of permission for announcement to be published in the newspaper as astrological subject. In this application it was stated that the conference on astrological subject was to be held and for that local announcement permission was sought. In fact, conference on astrological subject was not held and all the applicants had started cheating the people. On the report of one Rakesh Shankarrao Khade the offence was registered and P.S.I. Chate along with other staff proceeded to the spot for the purpose of inquiry and investigation. One Sakharam Deshpande disclosed that one of the applicant had taken Rs. 14,000/- from him and gave him some stones and "Tavis" for this welfare. P.S.I. Chate carried out the inquiry, he took the search of applicant No. 1 Dipankar alias Shri Khanna putra and seized the amount of Rs. 14,000/-. Thereafter the investigation officer inspected the spot and prepared the spot and seized panchanama. He further contended that nothing is illegal in this act of investigating officer and even at this stage if it is said that the search and seizure was illegal, that would not be sufficient to quash

the criminal prosecution against the applicants especially when prima facie case has been made out,

7. In support of these submissions, he relied on the decision of Apex Court in the case of State of Punjab Vs. Jasbir Singh and Others, and in the case of State of Himachal Pradesh Vs. Shri Pirthi Chand and another, . He contended that ratio laid down by the Apex Court in these two decisions is that illegally committed during the course of investigation does not render the evidence obtained during that investigation inadmissible. In spite of illegal search property seized on the basis of said search, still would form basis for further investigation and prosecution against the accused. Every deviations from the details of the procedure prescribed for search does not necessarily lead to the conclusion that search by the police renders the recovery of articles pertains to the illegal search, irrelevant evidence nor the discovery of fact inadmissible at the trial. The evidence collected in breach of mandatory requirement does not become inadmissible and it is settled law that evidence collected thereof during the course of investigation in violation of statutory provision does not become inadmissible and the trial on the basis thereof does not get vitiated.

8. I have carefully considered the contentions canvassed by the respective counsel for the parties. Before I consider the question as to whether the prosecution against the applicants is liable to be quashed, I think it proper to reproduce Sections 4 and 5 of the D.M.R. Act, which contemplates as under :--

"Section 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 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.

"Section 5" Prohibition of advertisement of magic remedies for treatment of certain diseases and disorders -- No person carrying on or purporting to carry on the profession of administering magic remedies shall take any part in the publication of any advertisement referring to any magic remedy which directly or indirectly claims to be efficacious for any of the purposes specified in Section 3.

9. The definitions of Magic Remedies appears in Section 2, Sub-section (c), which is as under :--

"2(c)" -- "Magic remedy" includes a talisman, mantra, kavacha, and any other charm of any kind which is alleged to possess miraculous powers for or in the diagnosis, cure, mitigation, treatment or prevention of any disease in human beings or animals or for affecting or influencing in any way the structure or any

organic function of the body of human beings or animals."

10. It is not disputed that the applicants had been campaigning at Nagpur and took permission of publishing advertisement in the newspaper, Wherein the invocation is made to general public that the applicants who were astrologers, would predict with challenge and that all the applicants were well-famed and they would predict face and forehead Tantrick etc., leading this invocation to general public to believe indirectly that they would bring the welfare to the people by magic and by distribution of magic stones and Tavis.

11. The witness Sakharam Manohar Deshpande had stated before the Police that he was duped of Rs. 14,000/- by the applicants on making representation that he would get advantage or avoid any avail of temporal nature and that the applicants had actually sold the James and Tavis to the general public. It is also a fact that on the basis of first information report lodged by one Rakesh Shankarrao Khade on 17th January, 1997, the offences punishable under Sections 4, 5 and 7 of D.M.R. Act were registered against the applicants and subsequently after completion of investigation, charge-sheet was filed against all the six applicants. It has been mentioned in the F.I.R. that the applicants were indulged in selling Nagmani by chanting Mantra and Tantra and collecting money from the people in general and committed offences as stated above. The investigation officer appears to have recorded statements of as many as 11 persons including the persons who actually had visited the applicants and also paid some money for their Darshan. Therefore, prima facie the act of the applicants would be covered by definition of Magic Remedy and if that is so their prosecution under Sections 4, 5 and 7 of D.M.R. Act would not be illegal or unjust.

12. It would clearly reveal that the applicants had published advertisement in the inner pamphlets relating to the stone or drug, which prima facie appears to be false or misleading in any manner. In view of this situation, it is difficult to accept the submission of learned counsel for the applicants that prima facie, no offence has been made out under Sections 4, 5 read with 7 of D.M.R. Act.

13. The next contention of the learned counsel for the applicants is that the entire investigation is void ab initio in law, which has resulted in launching illegal prosecution in the Court and the investigation officer high-handedly arrested the applicants and seized their property and as such the very foundation of prosecution is in violation of statutory provisions and therefore, the said prosecution deserves to be quashed. Section 8 deals with power of entry and search etc., which contemplates as under :--

"Section 8(1). Subject to the provisions of any rules made in this behalf, any Gazetted Officer authorised by the State Government may, within the local limits of the area for which he is so authorised -

(a) enter and search at all reasonable times, with such assistants, if any, as he considers necessary, any place in which he has reason to believe that an offence

under this Act has been or is being committed;

(b) seize any advertisement which he has reason to believe contravene any of the provisions of this Act.

Provided that the power of seizure under this clause may be exercised in respect of any document, article or thing which contains any such advertisement, including the contents, if any, of such document, article or thing, if the advertisement cannot be separated by reason of its being embossed or otherwise, from such document, article or thing without affecting the integrity, utility or saleable value thereof;

(c) examine any record, register, document or any other material object found in any place mentioned in Clause (a) and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

Sub-section (2):-- "The provisions of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued u/s 98 of the said Code."

Sub-section (3) :-- "Where any person seizes anything under Clause (b) or Clause (c) of Sub-section (1), he shall as soon as may be, inform a Magistrate and take his orders as to the custody thereof.

14. In the present case, it is apparent that the P.S.I. Chate had carried out the search and seizure. He was not Gazetted Officer nor authorised by the State Government and therefore, search and seizure can be called in question but not at this stage but in the trial itself.

15. The ratio laid down by the Apex Court in decisions in the case of State of Punjab v. Jasbir Singh and in the case of State of Himachal Pradesh v. Shri Pirthi Chand and Anr. (cited supra) would be clearly applicable to the facts and circumstances of the present case and it is obvious that the evidence obtained by P.S.I. Chate for launching the prosecution against the petitioner would be admissible in evidence and at this stage, it is difficult to say that the entire search and seizure was illegal and contrary to the provisions of Code of Criminal Procedure, 1898. Hence, it is difficult to accept the contention of the learned counsel for the applicants that on this ground of illegal search and seizure, the prosecution of all the applicants is liable to be quashed.

16. What is significant to note that the applicants have invoked the jurisdiction of this Court u/s 482 of Code. The order passed by the learned Magistrate refusing to stop the proceedings has been assailed but then the quashing of proceedings against the applicants can be ordered only if it is shown that continuation of the prosecution would amount to an abuse of the process of Court. The allegations in the F.I.R. were not vague, the evidence collected by the investigation officer in the nature of seizure and search, prima facie discloses that the offences under

Sections 4, 5 and 7 of D.M.R. Act, have been committed, which is further corroborated in material particulars by the statements of the prosecution witnesses and in such circumstances, the inherent powers of this Court cannot be exercised especially when the said inherent power is to be exercised in the rarest of the rare case, in order to prevent the abuse of process of the law. Of course, the trial Court would decide the case according to law uninfluenced by the observations made hereinabove.

17. In the result, for the reasons mentioned above, I am of the considered view that there is no merit in this Criminal Application, which is liable to be dismissed and accordingly Criminal Application is dismissed.