
(1965) 07 AHC CK 0004

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No"s. 562 and 563 of 1964

Ishwar Singh Bindra and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 20-07-1965

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 561A
Drugs and Cosmetics Act, 1940 — Section 18, 18(2), 27, 3, 3(1)

Citation : AIR 1966 All 168 : (1966) CriLJ 379

Hon'ble Judges : H.C.P. Tripathi, J;C.B. Capoor, J

Bench : Division Bench

Advocate : J.N. Chaturvedi, V.K. Barman and S.S. Tewari, for the Appellant;
D.G.A., for the Respondent

Final Decision : Dismissed

Judgement

1. This is a petition u/s 561-A of Cr. P. C. Mutatis mutandis common questions of law and fact arise in this petition and petition No. 563 of 1964 and in order to facilitate matters, we propose to dispose of the petitions by this order.

2. The Bindra Chemical Corporation carries on the manufacture of medicines and substances in accordance with Ayurvedic and Unani systems at Delhi Shahdara. Ishwar Singh Bindra and Balbir Singh, two of the applicants of this petition are the partners and Harbans Singh, the third applicant is the manager of the aforesaid Corporation. The other petition has been filed by Harbans Singh Bindra. The aforesaid Corporation inter alia manufactures 1. Bindra's Autiphillogistic plaster, and 2. Bindra's Yabrooj plaster (Belladonna plaster). These articles purport to have been manufactured in accordance with the Ayurvedic and Unani systems of medicines and this fact appears on the printed labels. The Regional Inspector of Drugs, Agra Region, took sample of the aforesaid plaster from Messrs, Frontier Gupta Medical Stores, Mathura, and the Regional Inspector of Drugs, Aligarh Region took sample of the Yabrooj plaster from Sri Chintamani Vaidya of Messrs. Hansh Aushdhalaya, Sikandra Rao, District Aligarh and the

same were submitted to the public analyst for examination.

3. The sample of Antiphillogistic plaster was found to contain boric acid 1.97 percent Glycerine 17.67 per cent, ash 49.55. The public analyst was of the opinion that Glycerine and boric acid were pharmacopoeial drugs and were not exclusively Unani or Ayurvedic medicines. The sample of Yabrooj plaster did not contain any alkaloid. The minimum content of total alkaloids as laid down in B.P.C. (British Pharmaceutical Cadex) should have been of 0.23 per cent.

4. On the basis of the aforesaid reports, a complaint was filed against the petitioners of this petition for contravention of Sections 27(a) and 27(b) of the Drugs Act as amended by the Drugs (Amendment) Act, 1960 and another complaint was filed against the petitioners of petition No. 563 of 1964 for contravention of Sections 18(a)(ii) and 18(b) of the Drugs Act, 1940 as amended by the Drugs (Amendment) Act, 1960 read with Sections 27(a) and 27(b) of that Act.

5. The main contentions of the petitioners are that the aforesaid medicines are not drugs within the meaning of the word "Drug" as defined in the Drugs Act of 1940; that they were prepared in accordance with the Ayurvedic and Unani systems of medicines and that the complaints did not disclose a prima facie case under the Drugs Act. The petitions have been resisted on behalf of the State on the grounds that the aforesaid medicines and substances were not prepared exclusively in accordance with the Ayurvedic and Unani systems of medicines, that the sample of Belladonna plaster did not contain any alkaloid and that the Antiphillogistic plaster contained glycerine and boric acid which were official drugs in the British Pharmaceutical Cadex.

6. The main question that arises for decision is as to whether the aforesaid articles were drugs in accordance with Section 3 of the Drugs Act. The relevant portion of that Section as it stood on the relevant date reads as below:--

"Drug includes-

(1) 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 disease in human beings or animals other than medicines and substances exclusively used or prepared for use in accordance with Ayurvedic or Unani systems of medicine".

7. The portion of the aforesaid Section which needs to be interpreted is "other than medicines and substances exclusively used or prepared for use in accordance with Ayurvedic or Unani systems of medicine".

8. It is significant that the word "exclusively" finds place prior to the word "used" and not after it. It is again significant that the words "medicines and substances" are the subject not only of the expression "exclusively used" but also of the following expression "prepared for use". Another significant feature is that the words "in accordance with Ayurvedic or Unani systems of medicine" govern not

only the expression "prepared for use" but also the word "used". It has not been disputed that one part of the relevant portion of the Section would read as below:--

"Other than medicines and substances exclusively used in accordance with Ayurvedic or Unani systems of medicine".

9. Controversy has, however, centred as to whether the other part of the aforesaid clause would read as-

(a) Other than medicines and substances exclusively prepared for use in accordance with Ayurvedic or Unani systems of medicine or, as

(b) Other than medicines and substances prepared for use in accordance with Ayurvedic or Unani systems of medicine".

10. The contention advanced on behalf of the State is that the word "exclusively" governs the expression "prepared for use in accordance with Ayurvedic or Unani systems of medicine", whereas the contention advanced on behalf of the petitioners is that the word "exclusively" does not govern the aforesaid expression. The fact that the word "exclusively" has been placed prior to the word "used" lends support to the contention advanced on behalf of the State. If the intention of the legislature had been that the word "exclusively" would govern the word "used" only, it would have found place after the word "used" and not before it. The further facts that the words "other than medicines and substances" are part of the subsequent expression "prepared for use in accordance with Ayurvedic or Unani systems of medicine" and that the words "in accordance with Ayurvedic or Unani systems of medicine" are part of the earlier portion of the excepting clause also strengthen the conclusion reached above and go a long way to indicate that the word "exclusively" also governs the expression "prepared for use in accordance with Ayurvedic or Unani systems of medicine".

11. There does not appear to be any good reason for holding that the word exclusively does not govern the expression "prepared for use in accordance with Ayurvedic or Unani systems of medicine" particularly when the words "medicines and substances" are part and parcel of the subsequent expression "prepared for usesystems of medicine". At page 66 of the 6th Edition of Craies on Statute Law, the following observations have been made:--

"The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. The Tribunal that has to construe an Act of a legislature, or indeed any other document, has to determine the intention as expressed by the words used. And in order to understand these words it is natural to inquire what is the subject matter with respect to which they are used and the object in view. In *re Barnes Jarvis*, Lord Goddard, C. J. 1953-1 WR 649 said: A certain amount of commonsense must be applied in construing statutes. The object of the Act has

to be considered. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the law-giver.

Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case, the words of the statute speak the intention of the legislature".

12. The interpretation placed on the relevant portion of the Section is thus in accord with the established canons of interpretation. It has been contended on behalf of the petitioners that the intention of the legislature was to except from the definition of "Drug" medicines and substances which were common to the Ayurvedic or Unani systems of medicine and other systems of medicine. The contention, in our opinion, lacks merits. If the intention of the legislature had been as contended for on behalf of the petitioners, the legislature would not have used the word "exclusively" in the excepting portion of the section.

13. It has again been contended on behalf of the petitioners that the expression "exclusively prepared for use in accordance with the Ayurvedic or Unani systems of medicine" does not make good sense and as such the word "exclusively" should not be placed before the expression "prepared for use in accordance with the Ayurvedic or Unani systems of medicine". The use of the word "exclusively" prior to the word "used" also does not make good sense, for there cannot be exclusive user in accordance with a certain system of medicines. The intention of the legislature appears to have been to exclude from the definition of drug such medicines and substances which are used exclusively in accordance with the Ayurvedic or Unani systems of medicine, or which are prepared for use exclusively in accordance with the aforesaid systems of medicines and the proper place for the word "exclusively" is after the word "used". The legislature appears to have placed it before the word "used" so that it may govern the expression "prepared for use in accordance with the Ayurvedic or Unani systems of medicine" also and the word may not have to be used twice once after "used" and again after "prepared for use". While it is not competent to a Judge to modify the language of an Act of Parliament in order to bring it in accordance with his own views as to what is right or reasonable, it is permissible for him to modify the language so that the Section to be interpreted makes good sense and does not lead to absurdity or manifest injustice.

14. The following observations find place in Maxwell on Interpretation of Statutes, 11th Edition, page 221:--

"Where the language of a statute in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done

by departing from the rules of grammar by giving an unusual meaning to particular words, by altering their collocation or by rejecting them altogether, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what words signify and that the modifications that are made are mere corrections of careless language and really give the true meaning".

15. On behalf of the State our attention has been invited to the Drugs and Cosmetic (Amendment Act, 1964) Act XIII of 1964 whereby the words "other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani systems of medicine" were deleted from the definition of the word "Drug" and Ayurvedic (including Siddha) or Unani Drug was defined to include all medicines intended for internal or external use for or in the diagnosis, treatment, mitigation or prevention of disease in human beings, mentioned in and processed and manufactured exclusively in accordance with the formulae described in the authoritative books of Ayurvedic (including Siddha) and Unani (Tibb) systems of medicines, specified in the first schedule. It will be noticed that in accordance with the amended Act, Ayurvedic or Unani Drug includes all medicines processed and manufactured exclusively in accordance with the formulation described in the authoritative books of Ayurvedic and Unani systems of medicines and the intention of the legislature in defining the word "Drug" in the Act of 1940, as it stood prior to its amendment, might well have been to except those medicines and substances which were either used exclusively or prepared for use exclusively in accordance with the Ayurvedic or Unani systems of medicine. Since the provisions of the amendment Act are not retrospective in operation, no inference in favour of the State can be drawn on the basis of the amended provisions.

16. There is no doubt that the intention of the legislature in defining a drug was to except from the definition those medicines and substances which are exclusively used in accordance with Ayurvedic or Unani systems of medicine, and it is a matter requiring serious consideration as to why would the legislature make a distinction between medicines and substances used in accordance with the Ayurvedic or Unani systems of medicine and those which are prepared for use in accordance with either of those systems.

17. On a construction of the relevant portion of Section 3 of the Drugs Act 1940, we are satisfied that the intention of the legislature was to except from the definition of Drug all medicines and substances which were either used exclusively or prepared for use exclusively in accordance with the Ayurvedic or Unani systems of medicine and we have no hesitation in repelling the contention advanced on behalf of the petitioners.

18. The question as to whether a medicine or substance is used exclusively or prepared For use exclusively in accordance with the Ayurvedic or Unani systems of medicine is a question of fact and its decision would hinge inter alia on expert evidence. Such evidence has not so far been led by the parties. It is not usual for

this Court to go into disputed questions of fact in a petition u/s 561-A of Or. P. C. We, therefore, do not propose to go into the aforesaid question of fact.

19. It has lastly been contended on behalf of the petitioners that the complaints filed against them did not disclose a prima facie case in as much as it was not stated therein that Balladona plaster and the Antiphlogistic plaster in question were medicines and substances which were not exclusively used or prepared for use in accordance with the Ayurvedic or Unani systems of medicine. We have perused the complaints and we find ourselves unable to agree with the contention advanced on behalf of the petitioners. It has been stated in the complaint relating to Antiphlogistic plaster that glycerine and boric acid were drugs official in the Phara-copoeias prescribed under the Act and further on that the claim that it was a Unani preparation was false and misleading. It has also been stated in the aforesaid complaint that the accused persons were guilty of the offences under Sections 18(2) and 18(b) read with Sections 27A and 27B of the Drugs Act and that the Antiphlogistic plaster manufactured by the accused persons was a misbranded drug.

20. Similarly, in the other complaint, the claim that the Yabrooj (Belladonna plaster) was an Ayurvedic and Unani preparation has been disputed and it has been averred that the aforesaid preparation was a misbranded drug and the accused persons had contravened the provisions of the Drugs Act, 1940 and had committed the offence punishable under Sections 27A and 27B of that Act. It could not, therefore, be said that the complaints did not disclose a prima facie case.

21. In conclusion, the petitions fail and are hereby dismissed with costs.