
(1966) 10 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 315-D of 1966

K.S. Saini and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-10-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 561A

Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 — Section 3

Citation : AIR 1967 P&H 322 : (1967) CriLJ 917

Hon'ble Judges : S.K. Kapur, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : N.C. Chatterjee and A.K. Nag, for the Appellant; S.N. Shankar, C.G.C. and Srinivasa Rao, for the Respondent

Final Decision : Allowed

Judgement

S.K. Kapur, J.—By this petition under Articles 226 and 227 of the Constitution the petitioners have asked for the quashing of prosecution pending against them before an Additional Judicial Magistrate 1st Class, Delhi, u/s 7 read with Section 3 (b) and (d) of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. The prosecution against the petitioners is for violation of Section 3 (b) and (d) of the said Act by alleged publication of two pamphlets, Annexures Rule 1 and Rule 2 in Hindi and Urdu. According to the respondents those pamphlets suggest or are calculated to lead to the use of the drugs mentioned therein for the maintenance or improvement of the capacity of human beings for sexual pleasure and for the cure, mitigation or treatment of certain diseases, disorders or conditions specified in the Schedule to the said Act. Section 3 of the said Act before amendment by Act No. 42 of 1963 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 drug 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
- (c) the correction of menstrual disorder in women; or
- (d) the diagnosis, cure, mitigation, treatment or prevention of any venereal disease or any other disease or condition which may be specified in rules made under this Act."

By the amending Act the following clause was substituted for clause (d) of Section 3 of the principal Act:--

"(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 any 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."

2. The petitioners allege that the words "or any other disease or condition which may be specified in rules made under this Act" in clause (d) of Section 3 of the unamended Act were struck down by the Supreme Court in *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, and on the parity of reasoning the later part of the amended Section 3 (4 namely "or any other disease, disorder specified in the roles made under this Act" is also unconstitutional and in spite of the amendment the Legislature has failed to achieve a valid law. That question really does not arise before us because admittedly no rules have been framed and consequently no disease, disorder or condition has been specified by rules in exercise of power under the alleged unconstitutional part of clause (d) of Section 3 of the Act as amended.

The sole question therefore, is whether the pamphlets constitute an offence u/s 3(b) or the first part of Section 3(d) of the Act. Consequently, what we have to consider is whether the petitioners have been guilty of taking any part in the

publication of any advertisement referring to any drug in terms which suggests or is calculated to lead to the use of that drug for the maintenance or improvement of the capacity of human beings for sexual pleasure or for the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the Schedule. That takes us straight to the pamphlets. It is not disputed by Mr. Shanker that the pamphlets in Hindi and Urdu are substantially the same, except to the extent with which I shall deal a little later. According to Mr. Shanker, there are some additional words in the Urdu pamphlet at page 7 where the medicine "Sainimine "F"" is advertised. I will, therefore, take the Urdu pamphlet into consideration because if that does not offend any of the two provisions of the said Act, the Hindi Pamphlet can certainly not.

3. Before I deal with the pamphlets I would like to dispose of an objection on behalf of the respondents that since prosecution is pending we should not interfere at this stage and leave the parties to have recourse to the regular procedure prescribed by law. I am not inclined to accept this contention for, as laid down by the Supreme Court in *R.P. Kapur Vs. The State of Punjab*, , if the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged, it may be a fit case for quashing the proceedings. If, therefore, the pamphlets do not offend either Section 3(b) or Section 3(d), which are the only provisions alleged to have been violated, then it would, in my opinion, be a proper case for quashing the proceedings.

4. The first offending portion, according to Mr. Shankar, occurs at page 4 of the Urdu pamphlet. When translated the statement at page 4 is: "We have treated thousands of men and women for the last 15 years with the help of science which has resulted in their getting children and making their home a heaven. We undertake every treatment with the latest methods of science and we have got proof that those sisters who did not get any issue for 20/25 years have got children with our treatment. The addresses of those persons are given below. In our hospital the following diseases are treated with the latest methods of science and the aid of electricity." Thereafter certain diseases are mentioned and some of those do fall under the Schedule mentioned in Section 3(d) of the Act as amended.

The question, however, is: does this passage refer to any drug and is its language such as suggests or is calculated to lead to the use of any drug for any of the diseases mentioned in the Schedule? No drug is mentioned in this part of the pamphlet and all it says is that "we undertake the treatment of various diseases by latest methods of science and with the aid of electricity." It cannot, therefore, be suggested that this part of the pamphlet refers to any drug or suggests to anyone the use of any drug. The object of the Act is to avoid self medication by people or their being misled by various advertisements. The necessary condition, therefore, is that the advertisement must induce others into using the drug advertised. If someone says that "I undertake the treatment of an

ailing person by scientific methods with the aid of electricity" it cannot amount to a suggestion for the use of any drug.

Mr. Shankar says that electricity is also a substance and, therefore, a drug within the meaning of Section 2(d) of the said Act. I have my own doubts whether electricity can be termed as a substance, but, apart from that, it does not suggest to any one the use of electricity. The suggestion must be to third persons. I can understand a case where the advertisement names a drug and says that the advertiser can cure certain specified diseases by administering that medicine. That may, in certain circumstances, amount to a suggestion and violate Section 3 of the Act, but here the mention is generally about the aid of electricity taken by the advertiser, It does not say how and in what form electricity is to be used.

I fail to see how such an advertisement can constitute a suggestion. Mr. Shankar also contended that the pamphlet must be read as a whole. The suggestion being that at some places the pamphlet does mention certain medicines. That, however, does not help Mr. Shankar because the question still remains, have those medicines, which are mentioned in the pamphlet, been so advertised as to suggest their use for any of the, purposes mentioned in Clause (a) or Clause (d) of Section 3 of the Act? If that be not so, the pamphlet, even when read as a whole, would also not constitute the offence. I must confess, I am unable to subscribe to the view suggested by Mr. Shankar that names of the medicines mentioned in the later part of the pamphlet should be read as suggesting cure for ailments specified at page four thereof.

5. The next offending portion, according to Mr. Shankar, is at page 7 of the pamphlet where the medicine "Sainimine "F"" has been advertised. So far as the pamphlet in Hindi is concerned, all that it says is that the medicine has been prepared from herbs and the use thereof for 2 or 3 months results in happiness in the family. It is also said there that the medicine serves as a tonic to the women. There is no suggestion that the medicine can be used for the maintenance or improvement of the capacity of human beings for sexual pleasure, or for any of the ailments mentioned in the Schedule. So far as the Urdu pamphlet is concerned, it is more or less to the same effect except that there is one line which is illegible, Mr. Shankar does not dispute that that line is illegible, but his suggestion is that the same appears to relate to disorder of menstrual flow, a disease specified at item 18 of the Schedule. The line being completely illegible, it is impossible to make out that it is so related. This part of the pamphlet also, therefore, does not offend Section 3 (b) or (d) of the said Act.

6. The last offending portion is at page 8 of the Urdu pamphlet where the medicine "Sainimine "M"" has been advertised. This, when translated, reads: "For those men who always feel restless and have lost vigor due to use of narcotics or by ill-practices during their young days or for those who feel pain in calves or back or experience darkness in sight due to weakness of the brain, this general tonic for men has been prepared in Santan Research Laboratory from 75

herbs collected from Himalayas and other fields in India by Ayurvedic System and scientific methods. Any type of weak male should for 2 or 3 months". The last paragraph does not appear to be complete but by reference to the English pamphlet, Annexure "A" to the petition, it appears that the substance of this paragraph is that the medicine is recommended to males suffering from weakness due to any of the factors mentioned hereinabove.

The suggestion of Mr. Shankar is that this part of the pamphlet violates Section 3(b). I am afraid, I cannot agree. The pamphlet does not suggest the use of the medicine for the maintenance or improvement of the capacity of human beings for sexual pleasure. To say that those males who have become weak due to the ill effects of using narcotics or ill practices during younger age, can benefit from this medicine as a general tonic does not have, in my opinion, any relation to its use for sexual pleasure. One cannot lose sight of the fact that it is a criminal prosecution and I cannot permit that unless the acts of the petitioners fall clearly within the prohibition of the criminal law. A penal law must be construed with such strictness as to carefully guard the rights of the persons charged with the offence as otherwise the zeal of the prosecutor may override the mandate of the Legislature. I am not prepared to accept that even the passage at page 8 offends Section 8(b) of the Act.

7. The result is that even accepting the allegations in the complaint at their face value, no offence is made out. The petition, therefore, must be allowed and prosecution of the petitioners u/s 3 (b) and (d) of the said Act pending before Additional Judicial Magistrate, Delhi, quashed. I order accordingly. Having regard, however, to the circumstances of the case, there will be no order as to costs.

D.K. Mahajan, J.

8. I agree.