

(2022) 08 TEL CK 0011
In the Telangana High Court
Case No : Criminal Petition No. 9118 Of 2014

M.D., M/S Osmed Formulations Pvt. Ltd., M.P. 2 Othrs	APPELLANT
Vs	
State Of Telangana, Rep. By P.P., HYD Anr	RESPONDENT

Date of Decision : 02-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 468, 473, 482, 486
Drugs And Magic Remedies (Objectionable Advertisement) Act, 1954 — Section 3, 4, 7

Citation : (2022) 08 TEL CK 0011

Hon'ble Judges : A.Santhosh Reddy, J

Bench : Single Bench

Advocate : Sunil Gawasane

Final Decision : Allowed

Judgement

1. This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings against the petitioners/A-1 to A-3 in C.C.No.314 of 2014, on the file of the II-Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.
2. Heard learned counsel for the petitioners and learned Assistant Public Prosecutor appearing for the respondents/State. Perused the record.
3. The second respondent/Drug Inspector filed a complaint before police against the petitioners/A-1 to A-3 stating that on 18.01.2012 she along with Sri Yoganadam, Assistant Director, Vigilance, inspected the premises of M/s Goel Pharma, situated at D.No.4-4-230/FF (First Floor), Inderbagh, Hyderabad. On verification of height grow capsules B.No.HGC-02, Mfg.dt:10/2011, Exp.Dt:9/2014, Mfg. by M/s Osmed Formulations Pvt., Ltd., 56-57, Industrial Area, Nimanvasa, Dist: Ujjain (MP), Mfg.LIC.No.25-D/45/2001, it was found that the capsule strip and outer carton was printed with photo of giraffe (the tallest animal) and one tallest woman on the one side and tallest football player and coach on the other side. The said photographs on either side of the carton indicate the height of persons. It is stated that the name of the drug i.e., height

grow itself is misleading the gullible public of increasing their height. The first petitioner has printed indications on the capsule strip as "improves digestion and metabolism" which is helpful in the growth of the body.

4. It is stated that on enquiry, it is revealed that the said drug was purchased from M/s Grace Agencies, Hyderabad and the said M/s Grace Agencies purchased the said drug from Maa Chamunda Ayurvedic Shop, Ujjain, which is the marketing agency for the firm Osmed Formulations Pvt. Ltd, Ujjain. The sample of the said drug was drawn from M/s Goel Pharma, Inderbagh by issuing Form No.17 & 17-A and sent for analysis and the Government Analyst declared that the said sample does not contain corticosteroids. Later, the second respondent addressed a letter to A-1 firm to provide the constitution particulars for which she received a mail on 15.01.2012 and on 22.02.2013, she received a letter from A-1 firm stating that they will change the label design.

5. It is stated that based on the memo of the Director General, Drugs and Copyrights, Drugs Control Administration, Hyderabad to take action, the second respondent filed this complaint on 12.08.2013 against the A-1 firm, represented by A-2 and A-3, for violation of Sections 3 and 4 read with Section 7 of the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 (for short 'the Act') with delay condonation on administrative grounds. The seized property was deposited before the court on 10.07.2013. The learned Magistrate took cognizance of the same in C.C.No.314 of 2014 for the offences stated above. Aggrieved by the same, the present criminal petition is filed by petitioners/A-1 to A-3.

6. Learned counsel for the petitioners contends that the punishment prescribed under the Act for the offences alleged is six months or fine or with both. The date of offence is 18.01.2012 and the complaint was filed on 12.08.2013 i.e., after a lapse of one year seven months. Thus, it is barred by limitation as per Section 468 Cr.P.C. He prays to quash the proceedings against petitioners/ A-1 to A-3. In support of his contentions, he relied on the decisions of the Hon'ble Apex Court in BHARAT DAMODAR KALE AND ANOTHER v. STATE OF A.P. (2003) 8 SCC 559 and of this court in ASSISTANT COMMERCIAL TAX OFFICER, KASIBUGGA v. SRI KRISHNA PICTURE & OTHERS 2000(1) ALT (CrL.) 337.

7. Learned Assistant Public Prosecutor, while opposing the contentions of learned counsel for the petitioners, contends that the learned Magistrate has condoned the delay and registered the case and as such there are no factual grounds to allow the petition and prays to dismiss the same.

8. A perusal of the allegations in the complaint discloses that the petitioners printed misleading photographs on the capsule strip and outer carton. The outer carton was printed with a photo of giraffe and one tallest woman on the one side and a tallest football player and coach on the other side. The said two photographs indicate the height of the persons and the accused misled the gullible public for increasing their height and thereby violated Condition No.47 of

the Act.

9. Admittedly, the Government Analyst declared that the said sample does not contain corticosteroids. The date of offence in this case is 18.01.2012 and the complaint was filed on 12.08.2013 i.e., after a lapse of one year seven months. The punishment prescribed under the Act for the offences alleged is six months or fine or with both. The period of limitation for taking cognizance is only one year and the present complaint is filed on 12.08.2013 i.e., after a lapse of one year seven months. Thus, it is clear from the above that the complaint is barred by limitation.

10. Section 468 Cr.P.C is as under:

Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be -

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

The provisions of Section 468 make it amply clear that if a complaint is filed beyond the period of limitation, the Magistrate has no jurisdiction to take cognizance. In such cases, it is the duty of the Magistrate to see whether the complaint is made under Section 473 Cr.P.C. The complaint must necessarily be supported by an application under Section 473 Cr.P.C., by giving specific reasons explaining the delay and the Magistrate after considering the same, may condone the delay and he has to pass orders to that effect before taking cognizance. Admittedly, it appears that in the present case, no such orders have been passed. In fact, the complaint should also contain a clause that the same is filed beyond the period of limitation and supported by an application for condonation of delay under Section 473 Cr.P.C. The said aspect is also missing in the complaint. 11. For the foregoing reasons, I am of the view that the complaint is clearly barred by limitation under Section 468 Cr.P.C.

12. Accordingly, the criminal petition is allowed. The proceedings against the petitioners/A-1 to A-3 in C.C.No.314 of 2014, on the file of the II-Additional Chief

Metropolitan Magistrate, Nampally, Hyderabad, are hereby quashed.

13. Pending miscellaneous petitions, if any, stand closed.