

(2022) 06 TEL CK 0012

In the Telangana High Court

Case No : Criminal Petition No. 1154 Of 2020

M/S. USV Private Limited Formerly Usv Limited And Another	APPELLANT
Vs	
State Of Telangana And Another	RESPONDENT

Date of Decision : 07-06-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Drugs And Cosmetics Act, 1940 — Section 3(b), 18(a)(iv), 23(5)(b), 27(d), 32

Citation : (2022) 06 TEL CK 0012

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Advocate : Shireen Sethna Baria

Final Decision : Allowed

Judgement

1. The present Criminal Petition is filed under Section - 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), to quash the proceedings in C.C. No.16 of 2019 pending on the file of I Additional District and Sessions Judge, Karimnagar.
2. The petitioners herein are arraigned as accused Nos.1 and 2 in the said C.C. The offence alleged against them is under Section - 27 (d) of the Drugs and Cosmetics Act, 1940.
3. Heard Ms. Shireen Sethna Baria, learned counsel for the petitioners and learned Assistant Public Prosecutor appearing on behalf of respondent No.2. Despite service of notice, there was no representation on behalf of respondent No.1.
4. The allegations made against the petitioners herein in the complaint filed under Section - 32 of the Drugs and Cosmetics Act, 1940 (for short 'Act, 1940') are as under:
 - i) On 22.09.2015, the complainant (LW.1) - Drugs Inspector, Jagtial along with

Drugs Inspector, Adilabad (LW.2) and panch witnesses (LWs.3 and 4) inspected the premises of M/s. Gangothri Pharma Distributors, situated at D.No.5-4-21, Shutter Nos.3, 4, 5 and 6, Gunj Road, Jagtial.

ii) At that time, Mr. V. Satyanarayana, Partner - cum - Competitive Person of the aforesaid Firm was present and conducting the business.

iii) After introducing themselves to the aforesaid Partner, the complainant inspected the said premises in the presence of panch witnesses and found stocked ANOVATE Cream 20 gm. Batch No.15001423, manufactured date July-2015, Expiry date June-2017, manufactured by M/s. USV Limited, B.S.D. Marg, Govandi, Mumbai and violated the provisions of Section - 18 (a)

(iv) read with Rule 106 and Serial No.42 of the Schedule - J of the Act, 1940 and the Rules made there-under by mentioning on the label of the cream as 'for treatment of external and internal Piles'.

iv) Then, the complainant seized the stock of Anovate Cream 6 x 20 gm. By listing them in receipt of seizure of stock of drugs in the presences of the witnesses under a cover of panchanama and copies thereof were also served on LW.5 with a request to disclose the names and address of the persons or firm from whom he acquired the said batch drug, and also requested to furnish the details of purchase of the seized drugs along with self attested copies of invoices/bills.

v) On 23.09.2015, LW.1, as required under Section - 23 (5) (b) of the Act, 1940, informed the above seizure to the concerned Magistrate Court and deposited the seized property.

vi) On 03.10.2015, LW.1 received reply from LW.5 stating that he has purchased the said drug from petitioner No.1 vide invoice No.1009136421, dated 05.08.2015.

vii) On 13.10.2015, LW.1 addressed a letter to petitioner No.1 with a request to furnish the following information on the subject drug:

a) Confirmation of the sale of the drug to LW.5 and also to furnish the self attested copies of the invoices issued to the firm;

b) Self attested copy of the drug licenses held and constitution details of the firm;

c) Name and address of the person who is responsible for the day to day activities of the firm. Reminders on 13.11.2015 and 03.03.2016.

viii) On 28.10.2015, 07.12.2015 and 14.03.2016, LW.1 received reply letters from petitioner No.1 confirming the manufacture and sale of the said drug to LW.5 along with copy of drug license held by the firm and also stated that petitioner No.2 is the Executive Director and COO of the Company who is the responsible person for the manufacture of the said drug.

ix) Thus, it is evident that petitioner No.1 represented by petitioner No.2

manufactured the aforesaid cream and thereby violated the provisions of Section - 18 (a) (iv) read with Rule 106 and Serial No.42 of the Schedule - J of the Act, 1940 and Rules made there-under by mentioning on the label of the cream as 'for treatment of external and internal piles'. Thus, the petitioners herein have committed the aforesaid offences.

5. After filing the aforesaid complaint with the above allegations, the learned I Additional Sessions Judge, Karimnagar, has taken the cognizance for the offence under Section - 18 (a) (iv) read with Rule 106 and Serial No.42 of the Schedule - J of the Act, 1940 and Rules made there-under punishable under Section - 27 (d) of the Act, 1940 on 08.07.2019 in C.C. No.16 of 2019 and issued summons to the petitioners herein.

6. The petitioners herein have filed the present Criminal Petition to quash the proceedings in the aforesaid C.C.

7. Learned counsel for the petitioners has made the following submissions to quash the proceedings against the petitioners:

i) The learned Judge without going through the material and in a routine manner and without application of mind has taken the cognizance against the petitioners herein;

ii) The proceedings in the aforesaid C.C. are illegal in the teeth of the Act, 1940 and the Rules framed there-under;

iii) The complaint is bereft of reasons for the delay in filing the complaint in the year 2019 in respect of an alleged offence committed in 2015;

iv) Prima facie, the complaint lacks the offences alleged against the petitioners herein;

v) The only allegation against the petitioners is that petitioner No.1 has violated the provisions of Section - 18 (a) (iv) of the Act, 1940 read with Rule 106 (1) of the Rules framed there-under, whereas the label contained on the seized Anovate Cream contains the words "for treatment of external and internal Piles". Thus, usage of the word "treatment" is not prohibited as such under Section - 18 (a) (iv) of the Act, 1940, and it only refers to the words "to prevent, cure or mitigate". The word 'treatment' means a method, a technique or a process and not a 'cure'. A "treatment" in relation to disease includes anything done or provided for alleviating the effects of the disease, whether it is done or provided by way of 'cure' or not. Therefore, the word 'treatment' has been left out by the Legislation from Section - 18 (a) (iv) of the Act, 1940. Even Rule - 106 denotes 'diseases which a drug may not purport to prevent or cure'. In view of the same, the use of word 'treatment' with the word 'piles' did not constitute any offence or violation of any prescribed provisions of law;

vi) Further, Petitioner No.1 Company held various licenses including the loan license bearing Nos.28-A/KD-1201KD1335-A on 07.09.2021 in the prescribed

Form 28A of the Rules for manufacturing of the drugs listed under Schedules C and C1 excluding the drugs listed under Schedule - X of the Act read with Rules framed there-under. The said loan license was renewed vide certificate of renewal of loan license dated 26.03.2013 from 01.01.2013 to 31.12.2017 and further renewed up to 01.11.2020 vide Certificate of renewal of loan license dated 10.02.2016 which is valid and in force as on the date of criminal case.

vii) Further, the complainant failed to observe that petitioner No.1 on the outer panel of artwork of product clearly stated that the product is to "used only under Medical Supervision". Therefore, it is not possible to misuse it for self-medication or self-treatment and there is no harm that could be perceived to public health;

viii) As far as petitioner No.2 is concerned, he is the former Executive Director and Chief Operating Officer of petitioner No.1 Company, and he left the services of the Company in the year 2016 itself;

ix) Petitioner No.1 Company has submitted detailed explanation to the notice issued by respondent No.1, but without considering the same, filed the complaint; and

x) In similar circumstances, this Court vide order dated 29.11.2018 in CrI.P. No.1128 of 2018, has quashed the proceedings in C.C. No.934 of 2017 on the file of the X Additional Chief Metropolitan Magistrate, Secunderabad, against petitioner No.1 Company and another for the very same offences and on the very same allegations. The petitioners herein are entitled for the same relief in the present petition also.

With the aforesaid grounds / submissions, learned counsel sought to quash the proceedings in the subject C.C. against the petitioners herein.

8. On the other hand, learned Assistant Public Prosecutor would contend that there are specific allegations against the petitioners herein. Petitioner No.1 company has violated the provisions of the Act, 1940 and, therefore, it is liable for punishment and so also petitioner No.2 being the In-charge of the said company during the relevant point of time. If at all the petitioner are innocent of the offences alleged, they can prove the same during trial, but it is not a stage to consider the same, that too in a petition under Section - 482 of the Cr.P.C. He would further submit that the learned Sessions Judge having gone through the entire material only has taken the cognizance against the petitioners herein and, therefore, there was no error in taking the cognizance. With the aforesaid contentions, he sought to dismiss the present petition.

9. In view of the above said rival submissions, the undisputed facts are that petitioner No.1 Company engages in the business of manufacturing of drugs and pharmaceutical products, and its Head Office is at Mumbai. Petitioner No.2 worked as Executive Director and Chief Operating Office of petitioner No.1 Company. Petitioner No.1 Company is the manufacturer and supplier of Anovate, Anti-haemorrhoidal Cream and that it is distributing the same in the State of

Telangana. The complainant (LW.1) inspected the premises of LW.5 and seized the stock of Anovate Cream with the help of another Drug Inspector in the presence of panch witnesses. Pursuant to the said inspection, the complainant has issued notice to petitioner No.1 Company and submitting reply by it. Having dissatisfied with the explanation offered by petitioner No.1, the complainant filed the complaint before the Court below who in turn has taken cognizance for the aforesaid offence on 08.07.2019 in C.C. No.16 of 2019.

10. While so, learned counsel for the petitioners drew the attention of this Court to the order dated 29.11.2018, passed by the High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh in CrI.P. No.1128 of 2018, and would submit that in similar circumstances, this Court quashed the proceedings against petitioner No.1 herein in C.C. No.934 of 2017 registered for the very same offence on the very same allegations and accordingly requested to quash the proceedings against the petitioners herein.

11. In view of the same, it is apposite to extract the relevant paragraphs of the said judgment which are as under:

"5. Undisputedly the ointment 'Anovate' mentions on the label and on the cover as 'for the treatment of external and internal piles'. Schedule 'J' as per Rule 106 of the Rules in the Act, 1945, item No.42 speaks all piles and fistulae. Rule 106(1) reads that no drug may purport or claim to prevent or cure or may convey to the intending user thereof any idea that it may prevent or cure, one or more of the diseases or ailments specified in Schedule 'J'. Sub-rule (2) speaks that no drug may purport or claim to procure or assist to procure, or may convey to the intending user thereof any idea that it may procure or assist to procure, miscarriage in women.

6. The core issue is whether the use of the words for the treatment of external and internal piles is covered by Rule 106(1) of the Rules in the statutory violation defined in Section 18 clause (a) (iv). For more clarity, the relevant portion of the section reads that from such date as may be fixed by the State Government by notification in the official Gazette in this behalf, (notified w.e.f. April, 1947) no person shall himself or by any other person on his behalf give any drug which by means of any statement design or device accompanying it or by any other means, purports or claims to prevent, cure or mitigate any such 3 disease or ailment, or to have any such other effect as may be prescribed.

7. Clause (iv) of sub-section (a) of 18 and clause (1) of Rule 106 no way used the word treatment conspicuously and undisputedly. The starting word of Section 18(a)(iv) uses any drug which by means..... Now coming to the definition of drug under Section 3 clause (b) it is an inclusive definition, which says drug includes 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 any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects

like mosquitoes

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8. The definition of drug supra provides as an inclusive one for use of human being or animal and all substances used for or in the either diagnosis or treatment or mitigation or prevention of any disease or disorder. It, itself clarifies though not by any specific words the difference between mitigation and treatment, which are different and not one and the same. From this what Section 18(a) clause (iv) r/w Rule 106(1) speaks is prohibition of any statement design or device accompanying it or by any other means, purports or claims either to prevent or to cure or to mitigate any such disease. Thus, once prevention cure mitigation and treatment are different, though the very definition of drug includes treatment, what is prohibited in the advertisement is not any statement of treatment but statement 4 of cure or mitigation. A treatment may mitigate, may not mitigate, may cure, may prevent some other disease being caused in future. Thereby, it is having a wider meaning and not confined to either cure or mitigation or prevention. In this context, if one refers to page No.4762 of P.Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edition, the definition of treatment, in relation to disease, includes anything done or provided for alleviating the effects of the disease, whether it is done or provided by way of cure or not. Thus, what is the contention of the learned Public Prosecutor on behalf of the Drug Inspector/1st respondent of the mitigation includes the treatment and it is prohibited by the statutory provision, liable for penal consequence and thereby there are no grounds to quash the post cognizance proceedings for the above reasons is not tenable to accept.

9. Having regard to the above, the cognizance order of the learned Magistrate is unsustainable and the Criminal Petition is allowed by quashing the proceedings against the petitioners/A1 and A2 in C.C.No.934 of 2017 on the file of the X Additional Chief Metropolitan Magistrate, Criminal Courts at Secunderabad."

12. In view of the observation made in the above judgment, nothing more requires to discuss herein. To maintain parity, the petitioners herein are also entitled for the very same relief. Thus, the proceedings in C.C. No.16 of 2019 are also liable to be quashed against the petitioners herein.

13. The present Criminal Petition is allowed and the proceedings in C.C. No.16 of 2019 pending on the file of I Additional District and Sessions Judge, Karimnagar, are hereby quashed against the petitioners herein - accused Nos.1 and 2 in terms of the order dated 29.11.2018 passed by this Court in CrI.P. No.1128 of 2018.

As a sequel, miscellaneous petitions, if any, pending in the criminal petition shall stand closed.