
(1984) 09 DEL CK 0014

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 605 of 1984

Sablok Clinic

APPELLANT

Vs

The State of Delhi

RESPONDENT

Date of Decision : 19-09-1984

Acts Referred:

Citation : (1985) 27 DLT 171 : (1985) 2 RCR(Criminal) 319 : (1985) 1 RCR(Criminal) 418 : (1984) RLR 661

Hon'ble Judges : D.R. Khanna, J

Bench : Single Bench

Advocate : D.N. Sharma and N.K. Handa, for the Appellant;

Judgement

D.R. Khanna, J.

(1) A complaint at present stands filed by the Drug Inspector Delhi Administration, against Sablok Clinic and three of its doctors u/s 3/7(a) of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. It is mentioned therein that two advertisements were effected by the respondents on the front pages of the two issues of the Hindustan Times, dated 8-12-1982 and 15-12-1982, Which had a tendency to represent that the medicines prescribed by the clinic and its doctors could result in maintenance or improvement of the capacity of human beings for sexual pleasures. Such like advertisements, it has been contended are prohibited under Drugs and Magic Remedies (Objectionable advertisements) Act, 1954 and in the circumstances the respondents should be treated to have committed an offence u/s 3/7(a) of the Act.

(2) The present petition u/s 482 Cr.P.C. has been moved by the Sablok Clinic through its partner .Dr. H.S. Sablok for quashing of the notice issued by the trial Court in pursuance to the filing of the said complaint. Apart from assailing the merits of the existence of the prima facie case, it is pointed out that the complaint was filed, after the period of limitation prescribed by Section 468 of the Code of Criminal Procedure and, Therefore, on this short ground the

complaint should be thrown out.

(3) The offence u/s 3/7(a) of the said Act is punishable with imprisonment which can extend to six months or with fine or with both. u/s 468 of the Code of Criminal Procedure, the court could not have taken cognizance of this offence after the expiry of one year of its commission. There is thus a prohibition enjoined. The present complaint, however, was filed on 24-1-1984. It was thus on the face of it after the expiry of one year of the two advertisements effected on 8th and 15th December 1982. The reason for the delay given from the side of the complaint is that before the filing of the complaints a notice was served upon the accused persons to show cause why legal action against them be not taken for contravening the provisions of the Act as a result of the said advertisements. The period of the notice so given is sought to be excluded u/s 470(3) of the Code of Criminal Procedure. The same provides that where notices of prosecution for an offence has been given, the period of such notice should be excluded.

(4) Now a perusal of the notice which the Drugs Controller issued to one of the accused persons shows that he was required to explain within a period of 15 days why legal action should not be taken against him under the act. It was also clarified that on his failure to reply to the notice, legal action would be taken without further notice. This notice is addressed to one of the accused persons. It is not shown that similar notices were given to the other accused and how exclusion of time sought qua them. Be that as it may, this notice also does not improve the case of the complaint. In case the 15 days period mentioned in this notice, during which one of the accused was required to show cause why legal action be not taken against him, is taken into account for exclusion u/s 470(3) of the Code of Criminal Procedure, the complaint would still be and barred by time. It was filed after 13 months and 11 days of the last publication in the said newspaper. The complaint Therefore, should have been rejected on this short ground.

(5) Mr. Handa appearing from the side of the complaint, has contended that the Drugs Controller has come to know of the advertisements much later, and Therefore the time should start running from the date of that knowledge. I find that there is no such mention of the belated acquisition of knowledge in the notice, or even in the complaint. In the situation, no new case can be allowed to be set up.

(6) Having come to the conclusion that the complaint was barred by time, I need not go into the controversy on merits. The petition is allowed and the proceedings against the respondents quashed.

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