
(2009) 03 P&H CK 0066
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 5898 of 2007

Smt. Aarti

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 20-03-2009

Acts Referred:

Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 — Section 5
Penal Code, 1860 (IPC) — Section 302

Citation : (2009) 3 RCR(Civil) 843 : (2009) 3 RCR(Criminal) 785

Hon'ble Judges : T.S. Thakur, C.J.;Jasbir Singh, J

Bench : Division Bench

Advocate : H.S. Sirohi, for the Appellant; Amol Rattan Singh, Addl. A.G. Punjab for the Respondent Nos. 1, 3, 4, 5, 7 and 8, Ms. Alka Chatrath, Advocate for the Respondent No. 2 and 6, Mr. N.C. Sawhney, Advocate for the Respondent No. 11, Mr. R.K. Gautam, Advocate for the Respondent No. 17 and Mr. Dhirender Chopra, Advocate for the Respondent No. 12 to 14, for the Respondent

Judgement

T.S. Thakur, C.J.—The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 was enacted by the Parliament in view of an increasing number of objectionable advertisements being published in newspapers, magazines or otherwise relating to alleged cure for venereal diseases, sexual stimulants and alleged cure for diseases and conditions peculiar to women. The Statement of Objects and Reasons of the said legislation justified the need for enacting a law on the subject because of the tendency among the ignorant and the unwary sections of society to resort to self-medication with harmful drugs or appliances or resort to quacks who indulge in treatments which cause great harm. By enacting the law, the Parliament intended to stop such undesirable advertisements in public interest and to deal with the menace by making a uniform law for the entire country. The legislation is apparently referable to Entry No. 19 in the Concurrent List of the Seventh Schedule to the Constitution in so far as the same deals with undesirable advertisements relating to drugs and Entry No. 26 of List ____ in so far as the same deals with

advertisements relating to magic remedies by persons who practice the profession of administering such remedies. Section 3 of the Act inter alia provides that no person shall take any part in the publication of any advertisement referring to any drug calculated to lead to the use of that drug for the purposes enumerated in the said section. Section 4 of the Act forbids taking part in publication of any advertisement relating to any drug if the advertisement contains any matter which directly or indirectly gives a false impression regarding the true character of the drug or makes a false claim for the drug or is otherwise false or misleading in any material particular. Section 5 of the Act prohibits any person carrying on or purporting to carry on the profession of administering magic remedies from taking any part in publication of any advertisement referring to any magic remedy which directly or indirectly claims to be efficacious for any of the purposes specified in Section 3. Section 7 provides for penalties for the contravention of the provisions of the Act or the Rules made thereunder, while Section 8 empowers a Gazetted Officer authorised by the State Government to enter and search and to seize any advertisement which he has reason to believe to contravene any of the provisions of the Act. Section 9(A) makes the offences punishable under the provisions of the Act cognizable. Section 10A provides for the forfeiture in favour of the government of any document, article or thing in respect of which the contravention is made.

2. The present writ petition filed in public interest seeks a Mandamus directing respondents No. 1 to 7 to take action against different Tantriks who are publishing misleading advertisements in different newspapers and are advertising their expertise in black magic by fooling the people. It also prays for a direction against respondents No. 8 to 10 not to publish any advertisement of any magic cure, practice of Tantriks claiming to solve problems of the people by magic or Mantra. The petitioner's case as set out, in the petition is that various Tantriks operating in the States of Punjab, Haryana and Union Territory Chandigarh are making fortunes by swindling the innocent and the gullible who are made to believe that the magic cure provided by them is a panacea for all human problems including long and chronic illnesses and various other problems which people face in their lives, like unemployment, failure to pass examinations, failure to travel abroad etc. The petition refers to a large number of advertisements published in different newspapers by these Tantriks, a reading whereof gives an impression as though the person offering the cure does so by some sort of magic. The publication of these advertisements lead the innocent and unwary members of the public to these Tantriks, Babas and Jyotshis who then get cheated of their money by creating a false impression among them that whatever be the nature of the problem, the same will be cured by the Tantrik or the magic healer. The petitioner has in particular referred to the case of one Rakesh Kumar, a 20 year young man of Ahilisadar who died because of electrocution on Saturday, 31st of March, 2007 when he was trying to check an electric fault in his water pump. When the news of the death of the young man reached the parents-in-law of the young man, they came to Ahelisadar with a Tantrik from

Village Kalanwali who claimed that he could revive Rakesh as he had done the job earlier also. On the direction of the Tantrik, the family members buried the body of the deceased under a heap of cow dung in a manner that his torso remained under the garbage and head out of it. The Tantrik continued chanting Mantras throughout the night, while hundreds of villagers from the surrounding/ nearby villages started gathering outside to witness the miracle of a dead man coming alive because of the magic remedy of the Tantrik, the incident was reported in the daily Tribune in its issue dated 2nd April, 2007 in the following words :-

High drama by Tantrik to bring dead to life

SUSHIL MAN/VV

FATEHABAD APRIL 1. A superstitious family last night buried the torso of a youth, who had died due to electric shock, under the heap of cow dung for whole night in the hope that he will turn alive. Hundreds of people from nearby villages gathered at Ahelisadar to witness the drama. Rakesh Kumar (20), a resident of Ahelisadar village, near here, had died of electric shock on Saturday evening when he was trying check fault in the water pump.

When the news of his death reached the family of his inlaws, they came to Ahelisadar with a Tantrik from Kalanwali village, who claimed that he could revive Rakesh as he had done the job earlier also.

On the direction of the Tantrik, the family members buried the body of the deceased under a heap of cow dung in such a manner that his torso remained under the garbage and head above it.

The Tantrik continued chanting mantras throughout the night.

Meanwhile, hundreds of people from the surrounding villages started gathering there to witness the 'miracle'.

Noticing the crowd swelling in the wee hours today, the Tantrik sneaked out. The police also reached the scene after some time.

The body of the youth was cremated in the morning today.

3. The petitioner also refers to an incident in Rattak village of Assandha block in Karnal District on Tuesday 17th April, 2007 in which the father, a Tantrik, sacrificed the child to appease some supernatural power. It is alleged that the Tantrik lifted his child from the bed, laid him in the middle of the road outside his house and then sliced his neck with a spade (kassi) in the morning. The Tantrik was arrested and is presently in jail. The Times of India in its issue dated 18th April, 2007 carried the following news item in regard to the incident :-

Times of India 18th April, 2007

Tantrik kills 2-yr-old son

Panipat: Police have arrested a man, who hacked his twoyear - old son to death at Rattak village of Assandha block in Karnal district on Tuesday morning. The father, a tantrik, sacrificed his child to appease supernatural powers, villagers said.

Sources said 30-year-old Ratna lifted his kid off his bed and laid him in the middle of the road outside his house, and then sliced his neck with a spade (kassi) at about 4 a.m. His wife Prakasho and three other children - two girls and a boy - were sleeping inside the house at the time of the incident.

Asandha police station SHO Jai Singh said Ratna was also a drug addict. The accused appeared to be a schizophrenic and must have taken this step in a fit of rage. He had no criminal record, he said, ruling out the involvement of any other person in the crime. Sources said Ratna used to sacrifice animals like goat and sheep on certain occasions, and people used to invite him to scare away ghosts.

He will be produced in court on Wednesday, TNN

4. The petition then refers to advertisements which claim to solve all problems whether relating to service, business, love marriage, vashikaran or childlessness. A compilation of some of these advertisement have been produced and marked as Annexure P3 which makes the reading both interesting and shocking and shows the extent to which the people can go in befooling the gullible public by giving out such advertisements. Some of these advertisements are as under :-

OPEN CHALLENGE Durga Jotishi Kendra

Fee after work Prof. Amit Kumar Sharma

Special Pooja in Navratras with the power of worship of 9 devis solution of every problem in two hours.

Prize of his choice to one who can reverse to done by me. I have a reverse of difficult to difficult ilam.

Service, Business, Love-Marriage, Vashikaran, Child (Santan), Family Problem, Foreign Travelling, Marriage etc. problems guaranteed solution in two hours. Man or woman is out of control meet us.

Love-Marriage, Vashikaran, Santan Sukh Specialist 98155-65578."

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FAITH IS YOUR GUARANTEE IS OUR

Special Pooja in Navratras, Guaranteed benefit in 24 hours.

First Time in Mohali famous Prof. M.L. Sharma

Prize of his choice to one who can reverse to done by me. I have a reverse of difficult to difficult ilam.

Late-Marriage, secret love, dispute in saas bahu, family problem, vashikaran of your choice, bodily ailment, lovemarriage specialist.

Girl or boy ditched in love meet

Note :- Specialist in getting marriage of your choice or to break marriage

Get guaranteed solution on phone from your house Kothi No. 1238, Phase 3B2, Mohali, Phone 9876132536."

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No use of wandring guaranteed

benefit by Gold medallist Jotish Samrat

Rahul Sharma (M.Com.) Handreading

(Horoscope, Photo Specialist for solution of all difficult problems immediately, Profit lose in Business, latemarriage, promotion in service, heirs not under control, get rid of sautan, Kia-Karaya, Manglik Dosh, Vashikarani, Family problem, be frauded by lover, eye sight problem, hurdle in visa, Foreign Travelling, Love-marriage, get rid of loan Muthkarni, Education Disturb etc. contact Daily 8 am to 7 pm.

Kothi 2610 (FF) Sec 70 Mohali (98151-28914)".

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Punjab Kesri Sunday 25.3.2007/21.3.07

Khabardar treatment of black knowledge (kala ilam) is with me.

Open offer of Mian Bharti Ji, solution in 11 minutes with guarantee. Get free consultation present from 21 years. Expert in service, business, family problem, jadu-tuna, kia-karaya, coming drops of blood, medicine does not effect, Childlessness, foreign travelling, get rid of sautan/enemy, vashikaran, muthkarni.

Note :- beware of unqualified, dicipals of small age, babas. Near chawla chicken, ferozpur road, aarti chowk, Ludhiana"

Mirja ji Bharti IF YOU HAVE lost your faith on the jotish, Tantric or chamatcari babas must meet once, service, business, family problem, enmity with some one, be frauded, bhoot prjt, jadu tuna, Muthkarni, Hypnotism (vashikaran), love affairs, childlessness, get of your choice, mustmeet for all problems get 100% gain in 71 hours. For 10 years on this address. SCO 1128-29, Sector 22-B, above tribune office on First Floor, Cabin No. 19, Chandigarh. 099153-32233, 0172-5024666."

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Famous Astrologer gold medallist Pt. K.L. Shastri. Your economic, family mental and social problems, immediately solved by Sidhi Kirya. Shri Tirupati Jyotish

5. A plain reading of the above would show that the remedies for practically every problem of life are being offered by persons who have issued the above advertisements and the like. The petitioner alleges that all these advertisements fall within the mischief of section 5 of The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 and are therefore punishable u/s 7 thereof. The police authorities have however, failed to take any action in the matter making the issue of a Mandamus against them necessary.

6. The respondents have filed their respective counteraffidavits. While the affidavit filed by respondent No. 5 states that evil practices prevalent in the society should be curbed and the offending practices discouraged, the affidavit filed by respondent No. 7 Deputy Superintendent of Police, SAS Nagar, Mohali inter alia states that no questions of law have been raised in the petition nor is there any room for this Court to interfere in public interest. In the affidavit filed by respondent No. 8 it is inter alia stated that on 23rd March, 2007 Rajinder Singh resident of Rajpura had in blind faith murdered his son Aarsh Preet Singh in the premises of Gurdwara Sahib Dalima Vihar Rajpura in which connection, a case u/s 302 IPC stands registered on the statement of the priest of Gurdwara. The matter is now pending trial before the competent court. An affidavit has been filed even by respondent No. 20 in which it is inter alia stated that the said respondent has in the company of his forefathers and acquired sufficient knowledge in "Jyotish Vidya" (Astrology) based on which he started services for the general public such as 'Havan' and "Puja Paath" for marriages etc. and consultation of Horoscopes (Janam Patries), Karam Kundali, Grah Yog Nivaran and the like. It is denied that the said respondent has ever assured any one of guaranteed solution of their problems. A reply has been filed even by respondent No. 11 Punjab Kesri which inter alia alleges that the petition intends to gag the Press and negate the guarantee provided by the Constitution in the shape of "Freedom of Speech" under Article 19 of the Constitution. It is also stated that Astrology is a traditional Indian subject and forms a stream of traditional mathematics and science which is recognised world over. Students of ancient subjects like astrology cannot, therefore, be termed as cheats. There are, however, people who have little knowledge about the subject and yet claim to be the masters of the same. Such people can cause injury to the society. The existence of astrological influences has not been denied nor advertisement of astrology or astrologers banned in the country. It also alleges that advertisements which talk about cure or remedy falling out of the above Schedule cannot be regarded as offensive or violative of the Act. Reliance in support of that is placed upon the decision of this Court in K.S. Saini and Another Vs. Union of India (UOI) and Others, .

7. It is further alleged that even in the most civilised countries, people are prone to superstition and that a large number of superstitious people perform their activities in consultation with astrologers and Tantriks which promotes the

business of Tantriks and Astrologers. Reliance is also placed upon the decision of the Supreme Court in *Dr. Yash Pal Sahi Vs. Delhi Administration*, , in support of contention that the Act is intended to save ignorant people from being duped into purchasing medicines just because their effect is advertised in eloquent terms. Faith healing is not according to the respondent an offence which is what a Tantrik does according to respondent No. 11. Similarly, affidavits have also been filed by the remaining respondents in which also somewhat similar lines of reasoning has been taken. The affidavit filed by Senior Superintendent of Police, Chandigarh additionally states that no person has made a complaint against those who are getting the advertisements regarding magic remedies published in the newspapers.

8. We have heard learned counsel for the parties at some length and perused the record.

9. The question whether the advertisements forbidden by the provisions of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 are protected by the Right to Freedom of Speech guaranteed under Article 19(1)(a) of the Constitution is no longer *res integra*, the same having been authoritatively answered in the negative by the decision of Supreme Court in the case of *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*, . Their Lordships while repelling the contention that advertisements forbidden under the Act aforementioned are protected by Article 19(1)(a) observed :-

The Advertisements prohibited by S.3 of Act 21 of 1954 relate to commerce or trade and not to propagating of ideas; and advertising of prohibited drugs or commodities of which the sale is not in the interest of the general public cannot be speech within the meaning of freedom of speech and would not fall within Art.19(1)(a). As the main purpose and true intent and aim, object and scope of the Act is to prevent self medication or self treatment and for that purpose advertisements commending certain drugs and medicines have been prohibited it cannot be said that this is an abridgement of the petitioner's right of free speech.

10. That brings us to the question whether the advertisements referred to by the petitioner dealing with black magic are in violation of Section 3 of the Act. That provision as noticed earlier, forbids advertisement of drugs for treatment of certain diseases and disorders. The advertisements referred to by the petitioner do not, however, advertise the use of any `drug' for anyone of the diseases or purposes enumerated in Section 3 or specified in the Schedule to the Act. That doesn't however mean that wherever an advertisement is found published contrary to Section 3, the jurisdictional police shall not take action against those responsible for the same. It goes without saying that since the publication of the advertisement falling within the mischief of Section 3 of the Act itself is an offence, and since the offence is cognizable, notwithstanding anything contained in the Code of Criminal Procedure to the contrary, the police authorities are

expected to take cognizance of the commission of offence no sooner the same is noticed regardless whether a formal complaint is or is not filed before them. Having said that we must point out that the grievance of the petitioner in the present case is more pointed to advertisements contrary to section 5 of the Act which do not propagate the use of a medicine but advertise magic remedies for treatment of a disease or disorder. Section 5 reads as under :-

5. Prohibition of advertisement of magic remedies for treatment of certain diseases and disorders. - No person carrying on or purporting to carry on the profession of administering magic remedies shall take any part in the publication of any advertisement referring to any magic remedy which directly or indirectly claims to be efficacious for any of the purposes specified in section 3.

It is evident from the plain reading of the above that publication of an advertisement of a magic remedy for treatment of diseases and disorders referred to in Section 3 is also forbidden & contravention of the same declared an offence. The term "magic remedy" used in Section 5 has been defined in Section 2(c) which is as under :-

2(c) "Magic remedy" includes a talisman, mantra, kavacha, and any other charm of any kind which is alleged to possess miraculous powers for or in the diagnosis, cure, mitigation, treatment or prevention of any disease in human beings or animals or for affecting or influencing in any way the structure or any organic function of the body of human beings or animals;

From the above, it is evident that so long as the publication relates to a magic remedy whether in the form of a talisman, mantra or kavacha or in any other charm of any kind which is alleged to possess miraculous powers for or in the diagnosis, cure, mitigation, treatment or prevention of any diseases in human beings or animals or for affecting or influencing in any way the structure or any organic functions of the body of human beings or animals, the same would constitute a cognizable offence. In none of the publications referred to by the petitioner except in 3, is there a claim that a magic remedy would heal a disease. In most of the advertisements the magic remedy relates to service, business, foreign travel, marriage, education, successes or failure in politics etc. None of these claims, howsoever bogus they may be, can be said to fall within the mischief of Section 5 of the Act. In cases, however, where advertisements claim to be providing a magic remedy for physical conditions like eyesight problem, childlessness or other body ailments as is evident from the advertisements extracted earlier, the advertisement would fall foul of the law and constitute a cognizable offence. We must, however, hasten to add that the tendency among the people to resort to magic remedies whether by way of cures for diseases or for other problems of life, is out of ignorance and at times deep and abiding faith in the efficacy of such remedies. As to how far would the law permit these advertisements of magic remedies for solving problems other than medical problems, is a matter that can, in our opinion, be left to be examined by the Law Commission and eventually by the Parliament. All that we need to say is that

there are enough number of gullible people in the country who take every printed word to be Gospel truth and who in the process get fleeced by quacks whether in the name of magic drugs and medicines or magic remedies. We need not be understood to be deprecating Astrology which is an ancient subject recognised and followed in the entire sub-continent and believed by millions in this country. What we need to mention is that once people who claim themselves to be Astrologers and who make their knowledge about the Divine scheme regarding human lives a source of income or livelihood or business the problem of deception and fraud arise. The manner in which some of the advertisements claim to provide a cure for every problem which a human may face in life is more often than not goes beyond what can be supported by even the most ardent supporters of Astrology as a science. Larger public interest, therefore, demands that before the unscrupulous among the Astrologers bring a bad name to the subject and the science, the law must intervene, to regulate the advertisements even in regard to matters that do not directly touch diseases referred to in Section 3 of the Act. As to how far and to what extent can the legislation be reviewed, modified or enlarged in its sweep by a suitable amendment to bring such advertisements also within the purview of Section 5 is a matter which we would leave to the Law Commission of India.

11. In the result, we dispose of this writ petition with the observation that the police authorities in the States of Punjab, Haryana and UT of Chandigarh shall take suitable action wherever any violation of Section 3 or Section 5 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 comes to their notice. We further direct that a copy of this order be forwarded to the Chairman of Law Commission of India for his kind perusal and examination whether there is any scope for reviewing and/or suitably modifying the scheme of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 so as to bring advertisements that are assuring magic remedies for problems other than medical, are also brought within the purview of the said legislation. No costs.