
(1966) 02 AHC CK 0004
In the Allahabad High Court

State of Uttar Pradesh

APPELLANT

Vs

S.C. Sen Gupta

RESPONDENT

Date of Decision : 02-02-1966

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 18, 27, 3

Citation : AIR 1966 All 520

Hon'ble Judges : T. Ramabhadran, J;H.C.P. Tripathi, J

Bench : Division Bench

Judgement

H.C.P. Tripathi, J.—This appeal by the State of Uttar Pradesh is directed against an order of acquittal recorded by the Civil and Sessions Judge of Saharanpur in Criminal Appeal No. 454 of 1960 in a case under Sections 18(a)(1) and 18(c) read with Section 27 of the Drugs Act, 1940.

2. Respondent S.C. Sen Gupta is the proprietor of M/s. Research Institute of Herbal Products at Hardwar district, Saharanpur and deals in the manufacture and sale of Ayurvedic medicines.

3. On a complaint filed by the Drugs Inspector, Saharanpur in November, 1956 that the sample of "Arjuna Lot No. 2" an Ayurvedic injectible taken from his shop was found not of standard quality when analysed by the Government Analyst the respondent was prosecuted for offences under Sections 18(a)(1) and 18(c) of the Drugs Act read with Section 27 of the Drugs Act before a Magistrate at Hardwar who held him guilty and sentenced him to undergo rigorous imprisonment for one year each under the two counts and directed the sentences to run concurrently. The respondent's defence before the trial Court was that "Arjuna" is an Ayurvedic medicine which is not covered by the Drugs Act and as the injectibles were exclusively prepared from "Arjuna" in accordance with Ayurvedic system he had not committed any offence. On appeal the learned Sessions Judge held that "Arjuna Lot No. 2" of which a sample was taken on 17.10.1955 and analysed by the Government Analyst was a medicine exclusively prepared for use in accordance with Ayurvedic system of medicine and it did not fall within the

definition of the word "Drug" given in Clause (b) of Section 3. This finding was arrived at by the learned Sessions Judge because on an assessment of evidence he had reached a conclusion that the use of injections as a mode of administration of medicine was known to the Ayurvedic system and "Arjuna Lot No. 2" had been prepared in accordance with that system. He therefore allowed the appeal and set aside the conviction and sentences of the respondent.

4. The courts below proceeded mainly on the footing as to whether injection thereby was known or unknown to the Ayurvedic system of treatment, The trial Magistrate held that there was no mention of any process or method in the Ayurvedic about giving injections by a hollow needle and that there was no scientific method for preparing such injections. He, therefore, held that the injectibles in question were covered by the provisions of the Drugs Act. On the other hand the lower appellate court on the basis of the evidence furnished by Sri R.V. Dhulekar Ex. Chairman of the Legislative Council, Uttar Pradesh and Founder-President of the Ayurvedic University at Jhansi and from Exhibit 1 which purported to be a report on the experiments by the Research Department of the aforesaid University came to the conclusion that Ayurvedic injections could be prepared and used for the treatment of various diseases.

5. It may be mentioned here that Dr. D.A. Kulkarni Deputy Director of Medical and Health Services, Ayurved Lucknow Sri C. Pandey Assistant Drugs Controller, and Sri S.K. Borekar Drugs Controller to the Government of India have testified that the mode of administering medicines by way of injections by a hollow needle was not known to Ayurvedic system while Sri R.V. Dhulekar, Sri Niranjan Dubey Principal of Ayurvedic College, Gurukul Sri Bhikam Chand Joshi and Sri. B.P. Chaurasia Ayurvedic Practitioners of long standing, have stated that the principle of administering medicines by making them come in contact directly with the blood was known to Ayurved since earliest times and according to Sri R.V. Dhulekar "Arjuna" injections had been prepared according to Ayurvedic method.

6 Whether the method of administering medicine by injecting it in the human blood by a hollow needle was known to Ayurved or not is a debatable question and in our opinion not material for the decision of this appeal. It must, however, be observed that Ayurvedic Acharyas since the earliest times were conscious of the efficacy of the treatment of certain diseases by getting the medicines to come in direct contact with the blood.

7. Shushrut one of the oldest authority in Ayurved while providing treatment for a person who has lost consciousness under the effect of some toxic poison says that after practising surgery on the body of the victim when blood begins to flow then the particular medicine should be applied on the operated portion. See Sushrut Sanhita-Kalpasthan-Bish Chikitsa Shlokas-43 and 44).

8. Bhaisajya Ratnawali another authoritative text on Ayurved speaks of Suchika Bharan Ras and Brihat Suchika Bharan Ras. Sarandhar Samhita also describes Laghu Sochika Bharan Ras. Those Rasas were to be administered to the patient

on the top of a needle for getting them assimilated with the blood.

9. It is, therefore, obvious that the principle underlying the treatment of certain diseases by injecting the medicine in the circulatory blood system of the human body was in some form well known to the ancient Acharyas. It is true that there had been no further researches in the field of Ayurved relating to injections for potential administration and the Ayurvedic literature remains where it was in the ancient times. It is also true that Ayurvedic literature does not mention injecting medicines in the human system by a hollow needle as in the case with this appeal, however, the question as to whether the mode of administering medicines by injections was known to the Ayurved or not is wholly irrelevant.

10. Section 18(a) prohibits a person from manufacturing for sale, or sell, or stock or exhibit for sale or distribute any drug which is not of standard quality and Section 18(c) prohibits him from indulging in any of the aforesaid action "except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter."

11. Section 27 provides the penalty for the breach of the provisions of Section 18.

12. In order to sustain the conviction of the respondent u/s 27 of the Act the prosecution must prove that "Arjuna Lot No. 2" an Ayurvedic injectible which was found on analysis by the Government Analyst to be of sub-standard as it did not comply with the test for sterility is a drug within the meaning of Drugs Act, 1940.

Section 3(b)(i) reads:

"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 disease in human being or animals other than medicines and substances exclusively used or prepared for use in accordance with the Ayurvedic or Unani systems of medicine.

13. In the case of Ishwar Singh Bindra and Others Vs. State of U.P., a Division Bench of this Court to which one of us was a party observed:

On a consideration of the relevant portion of Section 3 of the Drugs Act, 1940, we are satisfied that the intention of the Legislature was to except from the definition of Drug all medicines and substances which were either used exclusively or prepared for use exclusively in accordance with the Ayurvedic or Unani systems of medicine.

As we find ourselves in agreement with the dictum propounded in the aforesaid decision it must be held that a medicine which is exclusively used or exclusively prepared for use in accordance with the Ayurvedic system of medicine is not a "drug" within the meaning of the Act.

14. "Arjuna" as a medicinal plant is unknown to the allopathic system of treatment and it does not find any place in the British Pharmaceutical Codex. Learned Counsel for the State has conceded that in the allopathic system of treatment "Arjuna" is not used in any form as a medicine for oral or potential administration. He has, however, contended that item No. 12 of Schedule C appended to the Drugs Rules, 1945, applies to all preparations which are made for potential administration and any breach of the conditions mentioned therein shall be punishable under the provisions of the Drugs Act and as the injectibles recovered from the shop of the respondent did not conform to the standard prescribed under the rules he was liable to punishment. We do not find any force in this contention.

15. "Arjuna" which has its synonyms "Kuha" or "Kukut" in Sanskrit literature is a very well known medicinal herb in Ayurved¹ and all the recognised authorities in Ayurved speak of it as a medicinal plant of great efficacy. Charak, Shushrut, Sarandhar and Bhao Prakash prescribe preparations of "Arjuna" either in the form of powder or decoction for the treatment of serious diseases like heart trouble and other dissipating maladies like gonorrhea, syphilis etc.

16. It is, therefore, clear that "Arjuna" as a medicine had been exclusively used in accordance with Ayurvedic system since time immemorial either in the shape of a powder or decoction, singly or in conjunction with other medicinal herbs in the treatment, mitigation or prevention of diseases in human being while it is still unknown to the allopathic system of treatment. It must, therefore, be held that a preparation of "Arjuna" whether for oral or for potential use shall not come within the definition of "drug" as given in the Drugs Act, 1940. Once it is held that "Arjuna" is exclusively used as a medicine in accordance with Ayurvedic system none of the rules framed under the Drugs Act, 1940, shall govern its administration and Schedule C attached to those rules will be wholly inapplicable to the facts of the present case.

17. There is no evidence that on administration these injectibles had done harm to any patient. In case there is evidence to that effect the respondent can be prosecuted under the ordinary provisions of the Indian Penal Code but as the provisions of the Drugs Act, 1940, are wholly inapplicable to the facts of the present case it must be held that the prosecution of the respondent had been misconceived and the order of acquittal recorded by the learned Civil and Sessions Judge does not call for any interference.

18. Accordingly this appeal is dismissed.