
(2023) 03 TEL CK 0009
In the Telangana High Court
Case No : Criminal Petition No. 2502 Of 2021

Swiss Gamier Life Sciences	Vs	APPELLANT
State Of Telangana		RESPONDENT

Date of Decision : 02-03-2023

Acts Referred:

Drugs and Cosmetics Rules, 1945 — Section 106, 106(1)
Drugs and Cosmetics Act, 1940 — Section 18(a)(iv), 27(d), 42, 51

Citation : (2023) 03 TEL CK 0009

Hon'ble Judges : K.Surender, J

Bench : Single Bench

Advocate : Karan Talwar

Final Decision : Allowed

Judgement

1. This Criminal Petition is filed to quash the proceedings against the petitioners/ A1 to A3 in C.C.No.210 of 2017 on the file of the VIII Metropolitan Magistrate, Cyberabad, now pending before Principal Junior Civil Judge-cum-XIV Additional Metropolitan Magistrate, Cyberabad at Rajendranagar according to the Counsel.
2. The petitioners are aggrieved by the complaint filed by the Drugs Inspector for the offences under Section 18(a)(iv) r/w Rule 106(1) r/w Sl.No.42 and 51 of Drugs & Cosmetics Act, 1940 & Rules 1945.
3. It is the case of the Drugs Inspector that the 1st petitioner is manufacturing firm and petitioners 2 and 3 are the partners. Company was selling the drug Pilorute cream (Troxeutin, Calcium Dobesilate, Zinc, Phenylephrine, Lignocaine with Hydrocortisone Cream), Batch No.B1CT0o17, Mfg. date 06/2015, Expiry Date 08/2016, Manufactured in India by Swiss Garnier Life Sciences, 21 to 23, Industrial Area, Mehatpur district, UNA (HP)-174315 labeled with indication of "Varicose veins and Haemorrhoids (Piles)", punishable under Section 27(d) of the Act.
4. The basis on which the prosecution is launched by the Drug Inspector is that

the said Drug Pilorute cream is labeled with an indication of "Varicose veins and Haemorrhoids (Piles)" and such indication would amount to violation of 18(a)(iv) r/w Rule 106(1) r/w Sl.No.42 and 51 of Drugs & Cosmetics Act, 1940 (for short 'the Act') & Rules 1945.

5. For the sake of convenience Section 18(a)(iv) of the Act and Rule 106 of Drugs Rules, 1945 are extracted hereunder:

"18. Prohibition of manufacture and sale of certain drugs and cosmetics: From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other on this behalf_

(a) manufacture for sale [or for distribution], or sell, or stock or exhibit [or offer] for sale, or distribute_____

(i) (ii)...

(iii) ...

(iv). Any drug which by means of any statement, design or devise accompanying it or by any other means, purports or claims [to prevent, cure or mitigate] any such disease or ailment, or to have any such other effect as may be prescribed;"

"106. Diseases which a drug may not purport to prevent or cure.(1) 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.

(2) 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. For the sake of convenience, the words in label is also extracted which is as follows:

"3way Action Active Treatment Vasoprotective

Local Anesthetic

Anti Inflammatory

Troxerutin, Calcium Dobesilate, Zinc, Phenylephrine, Lignocaine with Hydrocortisone Cream

Pilorute Mankind"

7. To attract an offence under Section 18(a)(iv) of the Act, a statement must have been made or designed in such manner or any devise accompanying the drug or by any other means, claims or purports to prevent, cure or mitigate (lessening pain etc) any disease or ailment, amounts to an offence, which is made punishable under Section 27(d) of the Act. It is necessary that either the labeling or in any manner manufacturer must have claimed that the drug

prevents or cures or mitigates any disease.

8. The basis for prosecution is 'indication' of varicose vein and piles. Indication means 'to point out' according to the dictionary. As seen from the label, there is nothing pointing to Varicose veins and Haemorrhoids (Piles) specifically. However the label gives the details of the contents of the drug and its trade name as 'Pilorute' and also states that 'three way action' and 'active treatment'. Such claims of either 'active treatment' or 'three way action, cannot be made on a drug, according to Public Prosecutor. A normal person cannot infer that the label claims to prevent, cure or mitigate/lessen the problem of either Varicose veins or Haemorrhoids (Piles).

8. It is not the case that the drug is of either sub-standard quality or there are contents which have any kind of adverse effect on the health of a person if used, the claims made on the label are prima-facie not violative of section 18(a)(iv) of Drugs Act.

9. Learned counsel appearing for the petitioners relying on the judgment of this Court in Criminal Petition No.1128 of 2018, dated 29.11.2018; ii) Chennakeshava Bandage and Gauge Cloth Manufacturing Unit, Tadiparthi v. State of Andhra Pradesh (2010) 1 ALD (CrI) 24; iii) judgment of this Court in Criminal Revision Case No.1121 of 2002 dated 06.04.2006; iv) State of Maharashtra v. R.A.Chandawarkar 1999 LawSuit(Bom) 116, argued that the drug Inspector has no authority to file the Complaint.

10. According to Schedule J of Drugs Rules 1945, a drug may not purport, or claim to prevent or cure or make false claim to prevent or cure or may convey to the intending user any idea that it may prevent or cure, one or more of the diseases or ailments specified therein.

11. As already discussed above, the label which is extracted above does not make a mention about either Piles, Haemorrhoids or Varicose veins. This Court in the case of USV Private Limited v. State of Telangana in Criminal Petition No.1128 of 2018 by order dated 29.11.2018 quashed the proceedings when the drug 'Anovate' claimed on the cover as 'for the treatment of external & internal piles'. In the present case no such mention of any disease or ailment is made on the label.

12. In the result, Criminal Petition is allowed. Consequently, miscellaneous applications pending, if any, shall stand disposed.