
(1978) 01 KAR CK 0040
In the Karnataka High Court

The State of Karnataka

APPELLANT

Vs

R.M.K. Sivasubramanya Om

RESPONDENT

Date of Decision : 25-01-1978

Acts Referred:

Drugs and Magic Remedies (Objectionable Advertisements) Act, 1854 — Section 3, 3 (a), 3 (b), 3 (d), 7 (o)

Citation : (1978) CriLJ 853

Hon'ble Judges : C. Honniah, Acting C.J.; N.D. Venkatesh, J

Bench : Division Bench

Judgement

N.D. Venkatesh, J.—The State has preferred this appeal against the judgment of the Additional Metropolitan Magistrate, Bangalore City, in C. C. No. 2260 of 1974. The respondent was the accused in that case. He was prosecuted by the Drug Inspector, Bangalore, for offences Under Sections 3(b) and 3(a) read with Section 7(o) of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (hereinafter referred to as the Act) on the allegation that he had caused publication of an advertisement in respect of certain drugs stating that the same would increase sexual pleasure and cure Tuberculosis.

2. In support of its case the prosecution has examined four witnesses including the Drug Inspector (P.W. 1). The accused denied the accusation made against him. Though he has admitted of the seizure of certain drugs from his hotel room, he denied having got Ex. P-I (a) published in the newspaper.

3. The accused hails from a place called Palani in Tamil Nadu. He is a native Vaidya and will be visiting several places in the country. Sometimes he comes and stays in Bangalore also.

4. The learned Magistrate, after considering the entire evidence on record, came to the conclusion, that the prosecution had failed to make out the case alleged against the accused and acquitted him.

5. The learned State Public Prosecutor took us through the evidence. He places

reliance on the advertisement published in the Deccan Herald dated 14-8-1973 (Ex. P-la). This publication coupled with the seizure of certain drugs from the hotel room of the accused, according to the learned State Public Prosecutor, fully establish the allegations made against the accused,

6. The accused was staying in a room in a hotel. The Drug Inspector along with Panchas raided the said premises and seized several wrapped tins and bottles marked as M.Os. 1 to 12. Each of these tins and bottles contained drugs and had been pasted with labels indicating the name and type of drug it contained. All these 12 items, according to the Drug Inspector, formed part of one set of drugs of the group "Amazatone", which are meant to increase the capacity of human being for sexual pleasure. Exhibits P-3 and P-4 were also seized from the room. They contain the literature relating to these drugs. Another set of drugs were also seized as per M.Os. 13 to 17 and the name is said to be a sure cure for Tuberculosis. It is further stated in the evidence of the Drug Inspector that the accused had failed to produce, when demanded, his registration certificate and other testimonials.

7. The advertisement, Ex. P-I (a) reads as follows:

8th VISIT TO BANGALORE P Palani Siddha H R. M. K. Sivasubramania om O All diseases of any nature and T how-long-standing they may O be ate well attended to with utmost care To restore, regain and to retain Vim, Vigour and Vitality, use our 73 years very popular fully vitamin shed special invigorative nerviness tonic for all.

AMAZATONE WITH TON TON OIL

Cost per set Rs. 147/- (100 Doses) II Quality, TEMPER HALWA SET FINE

100 Doses per Set Rs. 65/- Medicines are available for all diseases. CONSULT THE SIDDHA HAKEEM ATi

Hotel Sujatha. Gandhinagar, Bangalore-9. From 14-8-73 to 20-8-73.

Apply for AMAZATONE CATALOGUE In English to:

Manager, R. M. K. Veluswamy, Siddha Vaidya Sala, Post Box 16, PALANI, Tamil Nadu.

8. The question for decision is whether the above advertisement and the subsequent seizure from the accused in the hotel room occupied by him of the medicines with the aforesaid labels on them would amount to an offence Under Sections 3(b) and 3(d) read with Section 7 of the Act. This was the accusation the Court below had called upon the accused to answer.

9. Section 3 of the Act reads as follows:

3. Prohibition Of Advertisement Of Certain drugs for treatment of certain diseases and Disorders

Subject to the provisions of this Act, no person shall take any part in the publication of any advertisement referring to any drug in terms which suggest or are calculated to lead to the use of that drug for

(a) the procurement of miscarriage in women or prevention of conception in women; or

(b) the maintenance or improvement of the capacity of human beings for sexual pleasure; or

(c) the correction of menstrual disorder in women; or

(d) the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the Schedule, or any other disease, disorder or condition (by whatsoever name called) which may be specified in the rules made under this Act:

Provided that no such rule shall be made except

(i) in respect of any disease, disorder or condition which requires timely treatment in consultation with a registered medical practitioner or for which there are normally no accepted remedies, and

(ii) after consultation with the Drugs Technical Advisory Board constituted under the Drugs and Cosmetics Act, 1940 and, if the Central Government considers necessary, with such other persons having special knowledge or practical experience in respect of Ayurvedic or Unani systems of medicines as that Government deems fit.

Section 7 which makes the contravention of any of the acts punishable reads as follows:

7. PENALTY: Whoever contravenes any of the provisions of this Act or the rules made thereunder shall, on conviction, be punishable

(a) in the case of a first conviction, with imprisonment which may extend to six months, or with fine, or with both;

(b) in the case of a subsequent conviction, with imprisonment which may extend to one year, or with fine, or with both.

10. To be liable u/s 3 the following ingredients are required to be present.

(i) the accused should have taken part in the publication of an advertisement;

ii) that advertisement should relate to or should have reference to a drug;

iii) that drug is suggested as a cure for (a) the procurement of miscarriage in women or prevention of conception in women; or (b) the maintenance or improvement of the capacity of human beings for sexual pleasure; or (c) the correction of menstrual disorder in women; for (a) the procurement of miscarriage treatment, or prevention of any disease, disorder or condition

specified in the Schedule, or any other disease, disorder or condition (by whatsoever name called) which may be specified in the rules made under this Act.

11. In the instant case, as already stated, the offence alleged to have been committed by the accused, according to the prosecution, comes within Clause (b) of Section 3 and items Nos. 45 and 50 of the Schedule.

12. The term "advertisement" is defined in Section 2 (a) of the Act. It is an inclusive definition. As defined in Chamber's 20th Century English Dictionary, the term "advertisement" means:

to give publication, information or announcement or commendation of certain thing.

Under Section 3 besides there being an advertisement there should be a publication of the same. The dictionary meaning of the word "Publication" is:

the act of publishing or making public: a proclamation: the act of sending out for sale, as a book: that which is published as a book.

13. So far as Ex. P-I (a) is concerned, the accused denies having got the same published. In this connection the complainant places reliance on the evidence of Krishnamoorthy (P.W. 4) who was an Advertisement Manager in the office of the newspaper called "Deccan Herald". He has deposed that Ex.-P.I (a) had been published on behalf of Palani Siddha R, M. K. Shivasubramania Om. But who had authorised him to publish on behalf of the accused is not clear. No doubt the Drug Inspector has obtained from the accused a statement as per Ex. P-5. In this statement there is an admission of the accused having got the advertisement published, but what the accused says before Court is that he had simply signed certain statement written by P.W..1. We have gone through the evidence carefully, and, in our opinion, the evidence regarding the publication of Ex, P-I (a) by the accused is not satisfactory. As argued by the learned counsel for the accused the possibility of some one else in his (the accused) entourage having got it published without the knowledge of the accused also cannot be ruled out.

14. Even if we assume that it was the accused who got Ex. P-I (a) published in the paper the same, in our opinion, does not amount to an offence as contemplated u/s 3 of the Act, the ingredients of which are given above. The publication of an advertisement, to amount to an offence, should have reference to a drug and that drug should have been suggested as a cure for certain ailments mentioned in Clause (a) to (d) of Section 3. Since the contravention of Section 3 is made punishable, it is necessary to construe the Section strictly. As stated in Dr. Yash Pal Sahi Vs. Delhi Administration,

the whole object of the Act is to save ignorant people from being duped to purchase medicines just because their effect is advertised in eloquent terms.

But while making that act punishable the law has laid down certain norms. To

bring the act of an accused within the mischief of law all the ingredients of that offence will have to be strictly proved by the prosecution. Our attention was drawn to a decision of the Supreme Court in Zaffar Mohammad alias Z.M. Sarkar Vs. The State of West Bengal, . In that case the accused was prosecuted for an advertisement which he had got published in a newspaper. A careful reading of that advertisement shows that, besides inviting people who desire new life, new vigour, new spirit, new wave, the advertisement had called upon the public to visit the advertiser to take treatment for special diseases such as "old-ness in youth¹ etc., assuring them of treatment by new methods, new machines of science and electric treatment. It is clear that there was an open invitation in the said advertisement holding out a cure for those who felt impotent even though in their youth, and further suggested that the advertiser would cure it by new machines of science and electric treatment etc. The said case is clearly distinguishable from the case on hand. Besides this the Supreme Court in that case was mainly dealing with the question as to whether "machines of science" and "electric treatment" would amount to articles within the meaning of Section 2(b) (iii) of the Act, and therefore "drug for purposes of the Act". The Supreme Court answering this question in the affirmative confirmed the conviction of the accused.

15. In Ex. P-I (a) though it "is advertised that "Amazatone" is a special invigorative nerviness tonic useful for all and will help to restore, regain, and retain vim, vigour, and vitality, it is nowhere even obliquely stated that it is a cure for impotence or that it helps the maintenance or improvement of the capacity of human beings for sexual pleasure. There is also no reference to Tuberculosis. In the circumstances, it is not possible to find the accused guilty of the offence merely on the basis of the publication of the advertisement, Ex. P-I (a).

16. But, what the learned State Public Prosecutor submits is that Ex. P-I (a) should be taken along with the M.Os., and the connected literature seized from the hotel room occupied by the accused. But the M.Os., seized in this case were from the hotel room exclusively in the occupation of the accused. There is no evidence to show that he had got them, outside his room for the public to see. There is also no evidence to show that the accused had sent the literature or bottles outside for distribution. The materials available on record merely point out to the fact that the Drug Inspector had seized the articles from the possession of the accused when he was in his room in a hotel. Therefore, it is not possible to say that by keeping these articles with him in his room, he had got any advertisement published as contemplated u/s 3 of the Act.

17. For the reasons stated above, we confirm the order of acquittal passed by the Court below.

18. In the result, this appeal stands dismissed.