

Zaffar Mohammad Alias Z. M. Sarkar

Vs

The State of West Bengal

Criminal Appeal No. 162 of 1971

(Y. V. Chandrachud, A. C. Gupta JJ)

25.11.1975

JUDGMENT

CHANDRACHUD, J. -

1. The appellant, who is a homoeopathic practitioner, runs a dispensary at Harrison Road, Calcutta. In the issue of a Hindi newspaper, "Sanmarg", dated September 14, 1967 he had the following advertisement published :

New Life, New Vigour, New Spirit, New Wave. If you want a cure, see today well known world-famous experienced registered Physician. Special diseases such as oldness in youth, all sorts of defects in nerves, or weakness, laziness are treated with full responsibility, with new methods, new machines of science and electric treatment and are cured permanently . . .

In behalf of this advertisement, the appellant was prosecuted under Section 7 read with Section 3 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 21 of 1954. The learned Presidency Magistrate, 8th Court, Calcutta convicted the appellant of the aforesaid charge and sentenced him to pay a fine of Rs. 100. The order of conviction and sentence having been confirmed by the High Court of Calcutta, the appellant has filed this appeal by special leave.

2. The Drugs and Magic Remedies (Objectionable Advertisements) Act provides by Section 3, in so far as relevant, that no person shall take 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 the maintenance or improvement of the capacity of human beings for sexual pleasure or the diagnosis, cure or treatment of any disease or condition specified in the schedule to the Act. Item 14 of the schedule refers to "Disorders of the nervous system". Section 7 of the Act makes in penal to contravene any of the provisions of the Act.

3. The contention of the appellant was and before us is that the particular advertisement does not refer to any "drug" and therefore the provisions of the Act are not attracted. For appreciating this contention, it is necessary to refer to Section 2 (b) of the Act which runs thus :

2. In this Act, unless the context otherwise requires, -

#(a) * * * *##

(b) "drug" includes -

(i) a medicine for the internal or external use of human beings or animals;

(ii) any substance intended to be used for or in the diagnosis, cure, mitigation, treatment or prevention of disease in human beings or animals;

(iii) any article, other than food, intended to affect or influence in any way the structure or any organic function of the body of human beings or animals;

(iv) any article intended for use as a component of any medicine, substance or article, referred to in sub-clauses (i), (ii) and (iii).

The learned Magistrate as well as the High Court have taken the view that the advertisement in question refers to a drug as defined by Section 2(b)(ii) above as "machines of science" are a "substance" intended to be used in the diagnosis, cure or treatment of diseases in human beings. We do not propose to examine the correctness of this view because it seems to us clear that, in any event, the impugned part of the advertisement refers to a drug as defined by Section 2(b)(iii). Any article, other than food, which is intended to affect or influence in any way any organic function of the body of a human being is a drug within the meaning of that provision. The so-called "machines of science" or "electric treatment" whose magically curative properties were advertised by the appellant are articles intended to influence the organic function of the human body. Indeed, the very claim of the appellant is that by the use of these machines he could cure nervous diseases amongst other ailments. That a machine is an "article" requires no great learning either to expound or to understand. A machine is a tangible thing which can both be seen and felt and as such it answer the description of an 'article' within the meaning of Section 2(b)(iii) of the Act. The 'Shorter Oxford English Dictionary' (Ed. 1964, Vol. I, p. 102) says that 'article' means, inter alia, "a piece of goods or property". Webster's 'New World Dictionary' defines an 'article' as a "commodity" and 'commodity' as "any useful thing" or "any article of commerce". (See Ed. 1962. pp. 83 and 295). Putting it simply, a "machine" is a "thing" and is therefore an "article". Law may not be commonsense and logic may not be the life of law but commonsense is not taboo in law courts. A machine is after all intended to be and is conceived as a useful thing and is therefore an "article".

4. The statement of objects and reasons to the Act says that many an advertisement causes the ignorant and the unwary "to resort to quacks who indulge in such advertisements for treatments which cause great harm". The appellant may not be a quack, so will be assume, but this "machines of science" designed to confer on mankind the blessings of "New Life, New Vigour, New Spirit, New Wave" are most likely to trap the ignorant and the unwary. The articles of commerce which he has banefully advertised must, as far as possible and without doing violence to the language of the Act, be brought within the mischief of the Act. It does no violence either to commonsense or to rules of interpretation to say that a machine is an "article".

5. In the result, we confirm the judgment of the High Court though for a different reason, and dismiss this appeal.

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