

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.M.BABU

MONDAY, THE 29TH DAY OF JULY 2019 / 7TH SRAVANA, 1941

Cr1.MC.No.5867 of 2017

AGAINST THE ORDER/JUDGMENT IN ST 3782/2015 OF THE JUDICIAL FIRST
CLASS MAGISTRATE COURT, KALAMASSERY DATED 25.5.2013

PETITIONER/S:

- 1 VANITHA MALAYALAM FORTNIGHTLY
MM PUBLICATIONS LTD., POST BOX NO.226, KOTTAYAM-
686001, REPRESENTED BY MR.V.SAJEEV GEORGE, PRINTER
AND PUBLISHER.
- 2 V.SAJEEV GEORGE
PRINTER AND PUBLISHER, VANITHA MALAYALAM FORTNIGHTLY,
MM PUBLICATIONS POST BOX NO.226, KOTTAYAM-686001.
- 3 PREMA MAMMEN MATHEW
EDITOR, VANITHA MALAYALAM FORTNIGHTLY, MM
PUBLICATIONS, POST BOX NO.226, KOTTAYAM-686001.

BY ADVS.
SRI.K.P.DANDAPANI (SR.)
SRI.MILLU DANDAPANI

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, KOCHI-682031.
- 2 K.M.PRASAD
AGED 39 YEARS, S/O.LATE MADHAVAN, RESIDING AT
KALATHARA MANADATH HOUSE, ELOOR SOUTH, UDYOGAMANDAL
P.O., 683501.

BY ADVS.
SMT.ASHIRA MOHAMED ASHROF
SRI.K.K.ASHKAR
SRI.B.JAYASURYA, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 9.07.2019,
THE COURT ON 29.7.2019 PASSED THE FOLLOWING:

JUDGMENT

The petitioners publish a fortnightly called 'Vanitha'. An advertisement appeared in one issue of 'Vanitha'. It was an advertisement given for publication by one Vaidyaraj Aswani Kumar. He in the advertisement offered, inter alia, successful treatment for impotency and beautification of breasts. The second respondent filed annex-A1 complaint under Sec.190 of the Code of Criminal Procedure (for short Cr.P.C) against the petitioners alleging commission of an offence punishable under Sec.7 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (for short 'the Act') read with Sec.3 of the Act. The judicial magistrate, first class, Kalamassery took cognizance of the complaint. The case was numbered ST 3782/2015. Annex-A2 is the certified copy of the proceedings in ST 3782/2015 from 30.11.2013 to 17.7.2017. The petitioners seek to quash annex-A1 complaint under Sec.482 of Cr.P.C.

2. Heard Sri.K.P.Dandapani, the learned senior counsel for the petitioners and the learned public prosecutor.

3. The preamble of the Act shows that it was enacted to control the advertisement of drugs in certain cases, to prohibit the advertisement for certain purposes of remedies alleged to possess magic qualities and to provide for matters connected therewith.

The second respondent had no case in annex-A1 complaint that the advertisement in question offered any magic remedy as defined in Sec.2(c) of the Act. Sec.7 of the Act provides for the penalty to the offender who contravenes any of the provisions of the Act or the rules made under the Act. Contravention of Sec.3 of the Act is the precise allegation in annex-A1 complaint. Sec.3 of the Act prohibits advertisement of certain drugs for treatment of certain diseases and disorders. Sec.3 provides that subject to the provisions of the 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 whatever name called) which may be specified in the rules made under the Act. Sec.3 is clear that what it prohibits is the publication of any advertisement referring to any drug. The term 'drug' is defined in Sec.2(b) of the Act. As defined therein 'drug' includes (i) a medicine for the internal and 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; and (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 advertisement given for publication by Vaidyaraj Aswani Kumar and published in 'Vanitha' by the petitioners is produced by the petitioners. I read it. There is no reference in it to any drug. The advertisement only offers some mode of treatment without referring to any drug. Therefore Sec.3 of the Act is not attracted to take cognizance of an offence under Sec.7. The learned magistrate took cognizance of annex-A1 complaint under Sec.7 of the Act without any material in the complaint to attract Sec.3 of the Act. Therefore the proceedings of the learned magistrate are liable to be quashed.

4. The Crl M.C is allowed. Annex-A1 complaint and the proceedings in ST 3782/2015 on the file of the judicial magistrate, first class, Kalamassery are quashed.

Sd/-

A . M . BABU

JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

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| ANNEXURE A1- | TRUE COPY OF THE COMPLAINT ST
NO.3782/2015 PREFERRED BY THE 2ND
RESPONDENT BEFORE THE HON'BLE JUDICIAL
FIRST CLASS MAGISTRATE COURT,
KALAMASSERY. |
| ANNEXURE A2- | TRUE COPY OF THE B DIARY (PROCEEDINGS
SHEET) . |