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**H.T. Media Ltd and ors Vs. State**

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**Court** : Delhi

**Decided On :** Apr-08-2013

**Judge** : G.P. Mittal

**Appellant** : H.T. Media Ltd and ors

**Respondent** : State

**Judgement** :
* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

6. h February, 2013 Pronounced on:

8. h April, 2013 + CRL.M.C. 3060/2010 H.T. MEDIA LTD & ORS Through: ..... Petitioners Mr.A.J.Bhambhani,Ms.Nisha Bhambhani & Mr.Apurv Chandoola, Advocates versus STATE ..... Respondent Through: + Ms.Rajdipa Behura, APP for the State CRL.M.C. 3922/2010 H.T. MEDIA LTD & ORS Through: ..... Petitioners Mr.A.J.Bhambhani,Ms.Nisha Bhambhani & Mr.Apurv Chandoola, Advocates versus STATE ..... Respondent Through: Crl. M.C. Nos. 3060/2010, 3922/2010, 3456/2011 & 837/2012 + CRL.M.C. 3456/2011 HINDUSTAN MEDIA VENTURES LTD AND ORS Through: ..... Petitioners Mr.A.J.Bhambhani,Ms.Nisha Bhambhani & Mr.Apurv Chandoola, Advocates versus STATE ..... Respondent Through: + Ms.Rajdipa Behura, APP for the State CRL.M.C. 837/2012 & Crl.M.A.3466/2012 H.T. MEDIA LTD & ORS Through: ..... Petitioners Mr.A.J.Bhambhani,Ms.Nisha Bhambhani & Mr.Apurv Chandoola, Advocates versus STATE ..... Respondent Through: Ms.Rajdipa Behura, APP for the State

CORAM: HON'BLE MR. JUSTICE G.P.MITTAL JUDGMENT G. P. MITTAL, J.

1. By virtue of these four Petitions (Crl. M.C.3060/2010, 3922/2010, 3456/2011 and 837/2012), the Petitioners who are the publisher/printer and local editors seek quashing of the four complaints and the summoning order dated 18.11.2010, 09.08.2010, 13.12.2010 and 08.08.2011 respectively.

2. Before proceeding further, let me in brief state about the advertisements which are alleged to be in violation of Section 3 of the Drugs and Magic Remedies(Objectionable Advertisement) Act, 1954 (the act of 1954). Crl.M.C.3060/2010

3. The Petition relates to an advertisement dated 22.08.2009 published in Hindustan(Hindi) whereby the advertiser claimed instant relief from diseases like high blood pressure, sugar through a fully Ayurvedic medicine which did not have any side effect. As per the advertisement, the patient was advised to contact Dr. Bengali(Kishan Malik) at the address as mentioned in the advertisement. CRL.M.C. 3922/2010

4. This Petition relates to an advertisement dated 19.11.2009 which was published in Hindustan(Hindi). As per this advertisement, a Blood Circulatory Machine (BCM) could be used for 15 minutes to get rid of obesity, diabetes, heart problem, arthritis and blood pressure. There was an offer of free gift with every purchase of BCM. Telephone Numbers were provided to get a free demo if somebody was interested and the address of the place of availability of this machine was also stated in the advertisement. CRL.M.C. 3456/2011

5. This Petition also relates to an advertisement dated 11.12.2009 published in the earlier said newspaper. The advertisement relates to two exercise machines Crazy Fit Massager and Leg Massager by the company M/s. Amazing Health Solution. In the advertisement, it was claimed that it was worlds No.1 trusted selling brand. It was stated that Crazy Fit Massager can be used to reduce fat, obesity and back pain, improve blood circulation, could be used in decreasing blood pressure, builds bone density and muscle strength, helps in constipation and diabetes control. It was stated that Leg Massager decreases diabetes, massages foot, ankles and

calves, increases the tone of skin and helps in relief from pain due to long drive. For placing an order for the machine, certain numbers were given. It was stated in the advertisement that the machine could be used for 15 minutes which would be equivalent to walking for 10,000 steps or 2.5 kms. CRL.M.C. 837/2012

6. The advertisement in this Petition is also dated 05.08.2010 published in Hindustan Times(English). The advertisement relates to a machine Vacurect which provides relief from certain diseases and dysfunctions of the male organ. The machine was stated to be approved by US-FDA and could be obtained from M/s Vacurect Erection Enhancement System by placing an order at the number given in the advertisement. The details of the advertisement is: ___ HIGLY RECOMMENDED FOR MEN WITH GET - Erectile Dysfunction (ED)/Impotence YOUR (DUE to Diabetes, Stress, Hypertension, BP, Age, SEX Prostate, Excessive Smoking and Drinking etc.) LIFE Premature Finish (Early Discharge) BACK /Less Confident (Build confidence and prolong Love making) ___ Micro Organ/Small Organ (Effective Penis Enhancer/developer)

7. The following contentions are raised on behalf of the Petitioner: (i) The Act of 1954 prohibits advertisement of certain drugs for treatment of certain diseases as mentioned in Section 3 or in the Schedule (under Section 3(d) ) to the Act so as to prevent any self medication by the patient. It is urged that in Crl.M.C.3060/2010, there was no such advertisement. Rather the patient was advised to contact Dr. Bengali. It is thus urged that in this Petition there is no violation of Section 3 read with Section 7 of the Act of 1954. Reliance is placed on Hamdard Dawakhana v. Union of India, 1960 AIR (SC) 554 and K.S. Saini & Anr. v. Union of India, AIR 196.Punjab

322. (ii) Section 9 of the Act of 1954 deals with the vicarious liability of the officers of the company or the directors of the company who are in-charge of and responsible for the conduct of the business of the company. Crl. M.C. Nos. 3060/2010, 3922/2010, 3456/2011 & 837/2012 respective complaint as to how Petitioners No.2 and 3 were incharge of and responsible for the conduct of the business of the First Petitioner, therefore, they cannot be made vicariously liable. (iii) The offences with which the Petitioners have been charged is punishable with

imprisonment which could extend to six months in the case of first offence and one year in case of second or subsequent offence. Thus, as per Section 468 of the Code of Criminal Procedure (Code), the Magistrate was obliged to take cognizance within one year of the commission of the offence which he failed to take and thus the cognizance having not been taken within the stipulated period of one year, the complaints are liable to be quashed. The learned counsel for the Petitioner presses into service the report of the Supreme Court in Krishna Pillai v. T.S. Rajendran & Anr., 1990 (Supp.) SCC 121.The learned counsel submits that although Krishna Pillai dealt with the bar to limitation under the Child Marriage Restraint Act, 1929(the Act of 1929) but the provisions of Section 9 of the Act of 1929 being para materia with Section 468 of the Code, the same fully applies to the facts of the instant case. The learned counsel submits that later judgments of the Supreme Court in Rashmi Kumar v. Mahesh Kumar Bhanda, (1997) 2 SCC 39.and Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 39.shall have to be treated per incuriam.

8. On the other hand, the learned APP for the State urges that the definition of drug as given in Section 2(b) is very wide so as to include 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. Thus, she contends that the advertisements in question offended Section 3 which is punishable under Section 7 of the Act of 1954. The learned APP relies on the judgment of the Supreme Court in Zaffar Mohammad @ Z.M. Sarkar v. The State of West Bengal, (1976) 1 SCC 428.The learned APP argues that every person who takes part in publication of any advertisement is liable to be punished irrespective of the fact whether he is an officer/director in-charge of the company or not. She submits that the judgment in Krishna Pillai which dealt with provision of Section 9 of the Act of 1929 would not be applicable to the instant case in view of the three Judge Bench decision of the Supreme Court in Rashmi Kumar which was relied on in the later judgment of the Supreme Court in Japani Sahoo.

9. Section 2(b) of the Act of 1954 defines drug as under: (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).

10. Section 3 of the Act of 1954 prohibits advertisement of certain drugs for treatment of diseases and disorders. It would be fruitful to extract Section 3 hereunder:

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 improvements 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 (23 of 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. CRL.M.C.3060/2010 11. Admittedly, the advertisement dated 22.08.2009 which was published in Hindustan(Hindi) relates to a general promotion/awareness about availability of an Ayurvedic Medicine for getting instant relief from high blood pressure, sugar, etc.etc. For this purpose, the patient was required to contact Dr. Bengali. Thus, it is evident that the offending advertisement did not advertise the use of any particular drug for the cure of these ailments. Rather it advised the patient to contact Dr. Bengali(Kishan Malik) at the

given address or at telephone numbers which were also mentioned in the advertisement.

12. In Hamdard Dawakhana, a Constitution Bench of the Supreme Court went into the history and object of the enactment of the Act of 1954 and observed that the Parliament wanted to control the indiscriminate use of drugs and its self medication. To bring an advertisement as punishable under Section 7 of the Act of 1954, the publication should have been regarding a drug and that drug should have suggested as a cure for certain ailments mentioned in clauses (a) to (d) of Section 3 of the Act of 1954 and the advertisement should be of such nature that an unaware patient may be misled into self medication or self treatment. Para 21 of the report in Hamdard Dawakhana is extracted hereunder:

21. It is not the form or incidental infringement that determines the constitutionality of a statute in reference to the rights guaranteed in Article 19(1), but the reality and substance. The Act read as a whole does not merely prohibit advertisements relating to drugs and medicines connected with diseases expressly mentioned in Section 3 of the Act but they cover all advertisements which are objectionable or unethical and are used to promote self-medication or self- treatment. This is the content of the Act. Viewed in this way, it does not select any of the elements or attributes of freedom of speech falling within Article 19(1)(a) of the Constitution.

13. In K.S. Saini relying on Hamdard Dawakhana, a Division Bench of the Punjab High Court held that the object of the Act is to avoid self medication by people on the basis of the advertisement.

14. In the instant case, admittedly no medicine is being advertised. What is stated by the advertiser is that cure for the high blood pressure and sugar is available by an Ayurvedic durg. Since the name of the drug has not been disclosed and rather the patient has been advised to contact Dr. Bengali(Kishan Malik), it cannot be said that the advertisement is for any drug to be used for diagnosis, cure, etc. etc. of any disease specified in the Schedule. Thus, even if the allegations made in the complaint are to be taken as gospel truth, the same would not amount to commission of an offence by the Petitioners.

15. The powers under Section 482 of the Code have to be invoked sparingly and with circumspection only (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of the Court and (iii) otherwise to secure the ends of justice.

16. In the case of State of Haryana & Ors. v. Ch. Bhajan Lal & Ors. AIR 199.SC 604.the Supreme Court laid down the guidelines which are extracted hereunder: (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

17. Since the allegations levelled do not constitute an offence in the instant case, the powers under Section 482 of the Code must be used to put an end to the

Petitioners unnecessary harassment as the same would amount to the misuse of the process of the Court. The Petition is accordingly allowed and the Criminal Complaint No.36/4 of 2010 titled State (through Drugs Inspector) v. Dr. Bengali @ Kishan Malik & Ors. and the proceedings arising therefrom are hereby quashed. CRL.M.C.3922/2010, 3456/2011 & 837/2012 18. The learned counsel for the Petitioner fairly conceded that the definition of drug as given in Section 2(b)(iii) is wide enough to include the machines in question. He, however, urges that in view of the contention (ii) and (iii) raised by him, the complaints cannot be proceeded and have to be quashed.

19. In abovesaid three Petitions apart from the publisher, its officers who have taken part in the publication have been prosecuted. It would be apposite to extract the relevant paras of the complaints to know the exact averments levelled against the Petitioners. In CRL.M.C.3922/2010 20. Paras 7 to 10 of the complaint read as under:

7. That M/s H.T.Media Ltd. (Accused No.

5) situated at 18-20, Kasturba Gandhi Marg, New Delhi-110001 is a company within the meaning of Section 9 of the Act who, as on 19.11.2009, were the publisher of Hindustan (Hindi), as per the declaration printed on page 21 of Hindustan (Hindi) dated 19.11.2009.

8. That as on 19.11.2009, Sh. Parmod Joshi (Accused No.

6) was the Local Editor of Hindustan (Hindi) as per the declaration printed on page 21 of Hindustan (Hindi) dated 19.11.2009, and in that capacity, was the person in charge and responsible for the publication of impugned advertisement.

9. That as on 19.11.2009, Sh. Rakesh Sharma (Accused No.

7) was acting publisher and printed for M/s. H.T.Media Ltd. as per the declaration printed on page 21 of Hindustan (Hindi)dated 19.11.2009, and in that capacity, was the person in charge and responsible for the publication of impugned advertisement.

10. That on 19.11.2009 an advertisement appeared in the Hindustan (Hindi) claiming that by exercising with Deemark Blood Circulatory Machine you can get relief from Obesity, Diabetes, Arthritis, Heart Diseases and Blood Pressure. The said machine is a drug within the meaning of Section 2 (b) (iii) of the said Act. That the impugned advertisement was released by Accused No.

1. In CRL.M.C.3456/2011 21. Paras 8, 9, 10 and 11 of the complaint read as under:

8. That M/s. HMV Ltd. (accused no.

5) situated at 18-20, Kasturba Marg, New Delhi-110001, is a company within the meaning of Section 9 of the Act who as on 11/12/2009, were the publisher of Hindustan (Hindi) as per declaration printed on page 15 of Hindustan (Hindi) dated 11/12/2009 and took part in the publication of impugned advertisement.

9. That on 11/12/2009 Sh. Parmod Joshi (accused no. 6 ) Local editor of Hindustan (Hindi) as per the declaration printed on page 15 of Hindustan (Hindi) dated 11/12/2009 and in that capacity was the person Incharge and responsible for the conduct of day to day business of the firm M/s HMV Ltd, and took part in the publication of the impugned advertisement.

10. That on 11/12/2009 Sh. Rakesh Sharma (accused no.

7) was acting publisher and printed for M/s HMV Ltd. as per declaration printed on page 15 of Hindustan (Hindi) dated 11/12/2009 and in that capacity took part in the publication of impugned advertisement.

11. That on 11/12/2009 an advertisement appeared in the Hindustan (Hindi) claiming that by exercising with Crazy fit Massager and leg Massager you can get relief from Diabetes, Blood Pressure and Obesity, that the impugned advertisement was released by Accused no.

1. In CRL.M.C. 837/2012 22. Paras 7, 8, 9 and 14 of the complaint read as under:

7. That as on 05/08/2010, Mr. Sudeep Mukhia (Accused No.

4) was the Resident Editor (Delhi) of the Hindustan Times and was the person in charge and responsible for conduct of business of M/s HT Media Limited (Accused no3), who took part in the publication of impugned advertisement as per the declaration printed on page 19 of news paper the Hindustan Times dated 05.08.2010.

8. That as on 05.08.2010, Mr. M.Venkatesh (Accused no.

5) was Publisher & Printer for the Hindustan Times, was the person in charge and responsible for conduct of business of M/s HT Media Limited (Accused no 3, who took part in the publication of impugned advertisement as per the declaration printed on page 19 of news paper the Hindustan Times dated 05.08.2010.

9. That on 05.08.2010, an advertisement as detailed in Para 2 above, appeared in the Hindustan Times claims to be highly recommended for men with Erectile Dysfunctions/Impotence. xxx xxx xxx xxx xxx xxx 14. That by taking part in the publication of the Impugned advertisement, all the above mentioned accused No. 1 to 5 had contravened the provisions of Section 3(b) and 3(d) of the Act which are punishable under section 7 of the said Act, with imprisonment, which may extend to six months or with fine or with both in the case of first conviction and with imprisonment which may extend to one year or with fine, or both, in the case of subsequent conviction.

23. Thus, a perusal of the averments made in the complaint reveals that apart from the company H.T. Media Ltd., the persons have been prosecuted on the ground that they in their capacity as local editor/resident editor/publisher and printer, etc. etc. took part in the advertisement of the drug in the newspaper. Thus, it can be seen that a direct role has been attributed to the Petitioners and it cannot be said that they are being made vicariously liable only being an officer or director of the company. The second contention raised on behalf of the Petitioners is, therefore, unmerited and has to be rejected.

24. It would be appropriate to extract the date of the advertisement, date of filing of the complaint and the date of issuing the process hereunder: Case No./Title Date of Date of filing Date of Summoning Publication of Complaint Order/Cognizance

Crl.M.C.3060/2010 22/08/2009 09/08/2010 09/08/2010 M/s HT Media Ltd. & Ors. Vs. The State (Through the Drug Inspector) Crl.M.C.3922/2010 19/11/2009 16/11/2010 18/11/2010 M/s HT Media Ltd. & Ors. v. The State (Through the Drug Inspector) Crl.M.C.3456/2011 11/12/2009 08/12/2010 13/12/2010 M/s Hindustan Media Ventures Ltd & Ors. v. The State (Through the Drug Inspector) Crl.M.C.837/2012 05/08/2010 01/08/2011 08/08/2011 M/s HT Media Ltd. & Ors. Vs. The State (Through the Drug Inspector) 25. Thus a perusal of the four complaints would reveal that although all the four complaints were filed within the stipulated period of one year but the process was issued in Crl.M.C.3456/2011 and Crl.M.C.837/2012 after the expiry of the period of one year. In Krishna Pillai, the Supreme Court dealt with the period of limitation for taking cognizance under Section 9 of the Act of 1929. Relying on A.R. Antulay v. Ramdas Sriniwas Nayak, the three Judge Bench of the Supreme Court observed that filing of a complaint in Court is not taking cognizance and what exactly constitutes taking cognizance is different from filing a complaint. The last paragraph of the report in Krishna Pillai is extracted hereunder: The extract from the Constitution Bench judgment clearly indicates that filing of a complaint in court is not taking cognizance and what exactly constitutes taking cognizance is different from filing of a complaint. Since the magisterial action in this case was beyond the period of one year from the date of the commission of the offence the Magistrate was not competent to take cognizance when he did in view of the bar under Section 9 of the Act. We accordingly allow the appeal and quash the prosecution. The writ petition is permitted to be withdrawn as not pressed.

26. Relying on a three Judge Bench decision in Official Liquidator v. Dayanand & Ors., 2008 (10) SCC 1.the learned counsel for the Petitioner argues that the three Judge Bench decision in Krishna Pillai has to be held as a binding precedent and the judgment in Rashmi Kumar also decided by a three Judge Bench must be held as per incuriam as the earlier judgment in Krishna Pillai was not referred in Rashmi Kumar. The learned counsel argues that wherever there is divergence of opinion between two Benches of equal strength, then the subsequent Bench cannot take a different view but can only make a reference to a larger Bench. Para 78 of the report in Dayanand is extracted hereunder:

78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kanodia v. Administrator General of W.B. [AIR 196.SC 93.: (1960) 3 SCR 578.this Court observed: (AIR p. 941, para

19) 19. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court. (emphasis added) 27. Elaborating his argument, the learned counsel for the Petitioner argues that the provision of Section 9 of the Act of 1929 and Section 468 of the Code are para materia and, therefore, the decision in Krishna Pillai would equally apply for interpretation of Section 468 of the Code.

28. I have perused the provisions of Section 9 of the Act of 1929 which bars the Court to take cognizance of any offence under the Act of 1929 after the expiry of one year from the date of the offence alleged to have been committed. In Section 468 of the Code also almost similar words have been used by the Legislature for creating bar of limitation. It is also true that when the provisions of the two different Acts are para materia, the Court can rely on interpretation of one of the Act

rendered by the Superior Court to the provision in the other Act (State of Madras v. Vaidyanatha Iyer, AIR 195.SC 6.and Ahmedabad Pvt. Primary Teachers Assn. v. Administrative Officer & Ors., (2004) 1 SCC 755).

29. It is true that there are a large number of legislations which contain similar provisions and interpretation of a similar provision in one statute shall be a guiding factor with regard to a provision para materia in the other statute. However, when the provisions of two different Acts are differently interpreted by the Supreme Court, then the principle of para materia shall not be applicable. In this view of the matter, the interpretation by the Supreme Court with regard to the bar of cognizance in reference to Section 9 of the Act of 1929 cannot be made applicable to the bar created under Section 468 of the Code in view of the three Judge Bench decision in Rashmi Kumar. In Rashmi Kumar, the three Judge Bench of the Supreme Court held that the complaint can be filed within the stipulated period of limitation from the date of commission of the offence. In its later judgment in Japani Sahoo and Bharat Damodar Kale v. State of A.P., (2003) 3 JCC 183.while relying on the three Judge Bench decision in Rashmi Kumar, the Supreme Court dealt with the issue of the bar of limitation as provided under Section 468 of the Code in greater detail and held that the date of taking cognizance for the purpose of Section 468 would be date of the filing of the complaint by the prosecuting agency. The Supreme Court went into the statement of objects and reasons for introduction of the Chapter XXVI relating to limitation and into the divergent views taken by the various High Courts. Paras 47 to 52 of the report in Japani Sahoo are extracted hereunder:

47. We are in agreement with the law laid down in Bharat Damodar [(2003) 8 SCC 55.:

2004. SCC (Cri) 39 : JT 200.Supp (2) SC 569.. In our judgment, the High Court of Bombay was also right in taking into account certain circumstances, such as, filing of complaint by the complainant on the last date of limitation, non-availability of Magistrate, or he being busy with other work, paucity of time on the part of the Magistrate/court in applying mind to the allegations levelled in the complaint, postponement of issuance of process by ordering investigation under sub-section

(3) of Section 156 or Section 202 of the Code, no control of complainant or prosecuting agency on taking cognizance or issuing process, etc. To us, two things, namely, (1) filing of complaint or initiation of criminal proceedings; and (2) taking cognizance or issuing process are totally different, distinct and independent.

48. So far as the complainant is concerned, as soon as he files a complaint in a competent court of law, he has done everything which is required to be done by him at that stage. Thereafter, it is for the Magistrate to consider the matter, to apply his mind and to take an appropriate decision of taking cognizance, issuing process or any other action which the law contemplates. The complainant has no control over those proceedings.

49. Because of several reasons (some of them have been referred to in the aforesaid decisions, which are merely illustrative cases and not exhaustive in nature), it may not be possible for the court or the Magistrate to issue process or take cognizance. But a complainant cannot be penalised for such delay on the part of the court nor can he be non-suited because of failure or omission by the Magistrate in taking appropriate action under the Code. No criminal proceeding can be abruptly terminated when a complainant approaches the court well within the time prescribed by law. In such cases, the doctrine actus curiae neminem gravabit (an act of court shall prejudice none) would indeed apply. (Vide Alexander Rodger v. Comptoir D' Escompte [ (1871) LR 3 PC 46.:

17. ER 120..) One of the first and highest duties of all courts is to take care that an act of court does no harm to suitors.

50. The Code imposes an obligation on the aggrieved party to take recourse to appropriate forum within the period provided by law and once he takes such action, it would be wholly unreasonable and inequitable if he is told that his grievance would not be ventilated as the court had not taken an action within the period of limitation. Such interpretation of law, instead of promoting justice would lead to perpetuate injustice and defeat the primary object of procedural law.

51. The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or

prosecuting agency to take cognizance of an offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law, if that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalised because of the omission, default or inaction on the part of the court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can possibly be urged that such a provision is totally arbitrary, irrational and unreasonable. It is settled law that a court of law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of litera legis. Connecting the provision of limitation in Section 468 of the Code with issuing of process or taking of cognizance by the court may make it unsustainable and ultra vires Article 14 of the Constitution.

52. In view of the above, we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a court. We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/court and not of filing of complaint or initiation of criminal proceedings.

30. Therefore, in my humble opinion, the law laid down in Rashmi Kumar and reiterated in Bharat Damodar Kale and Japani Sahoo will govern the bar of limitation as given in Section 468 of the Code and the law laid down in Krishna Pillai will have to be held to apply to the provisions under the Act of 1929. Thus, it cannot be said that the three complaints in the above said Crl.M.Cs. are barred by limitation.

31. As a result, Crl.M.C.3060/2010 is hereby allowed and the Criminal Complaint No.36/4 of 2010 titled State (through Drugs Inspector) v. Dr. Bengali @ Kishan Malik & Ors. and the proceedings arising therefrom is hereby quashed.

32. Crl.M.Cs.3922/2010, 3456/2011 and 837/2012 are hereby dismissed and the trial shall proceed with the complaints in accordance with law.

33. Pending Applications stand disposed of. (G.P. MITTAL) JUDGE APRIL 0 , 2013 pst

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