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It appears that cl. 3(2) may have been deliberately worded so as to raise a limited presumption in order to exclude cases of cultivators who may on occasions be in possession of more than 100 mds. of foodgrains grown in their fields. If a cultivator produces more than 100 mds. in his fields or otherwise comes into possession of such quantity of foodgrains once in a year and casually sells them or stores them, the Order apparently did not want to make such possession, sale or storage liable to be punished under cl. 3(1) read with s. 7 of the Essential Commodities Act. However that may be, having regard to the words used in cl. 3(2), we are unable to hold that the Judicial Commissioner was wrong in coming to the conclusion that cl. 3(2) by itself would not sustain the prosecution case that the respondent is a dealer under cl. 3(1); and that inevitably means that the charge under s. 7 of the Essential Commodities Act is not proved against him. That being so, we must hold that the order of acquittal passed by the Judicial Commissioner is right.

The appeal accordingly fails and is dismissed.

Appeal dismissed.

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November 29

DR. YASH PAL SAHI

v.

DELHI ADMINISTRATION

(P.B. GAJENDRAGADKAR AND K.C. DAS GUPTA, JJ.)

The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954 *ss.* 2(*d*), 3, 7, 14(1)(*c*)—"*Taking any part in the publication of any advertisement*"—*Meaning of—If includes sending within the territory of India—Burden of proof—Conditions to be satisfied to fall under s.* 14(1)(*c*).

The appellant is the proprietor of a Homoeopathic hospital in New Delhi. He runs a journal called the "Homoeopathic Doctor".

On the request of one Misri Singh the appellant sent copies of the said journal and a list of medicines by V.P.P. Misri Singh was neither a registered medical practitioner nor a wholesale or retail Chemist even though he was working with a registered medical practitioner as his clerk. The list of medicines sent by the appellant to Misri Singh bore in printed indelible ink the statement that it was meant for the use of medical practitioners alone. The appellant was prosecuted under s. 3 read with s. 7 of the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954. The trial Magistrate found him guilty of the offence charged and sentenced him to a fine of Rs. 1000. On appeal the Additional Sessions Judge confirmed the conviction but reduced the fine to Rs. 500. The appellant's revision petition was dismissed by the High Court The present appeal is on special leave granted by this Court.

On behalf of the appellant it was contended that s. 3 is subject to the other provisions of the Act and therefore it is subject to s. 14 which provides that any advertisement sent confidentially in the prescribed manner to a registered medical practitioner or wholesale or retail chemist is exempted from the other provisions of the Act. Relying on this section it was argued that since the appellant requested in writing to send the offending articles the appellant had no duty to enquire whether that person is a registered medical practitioner or chemist. Further the appellant relied on rule 6 of the Rules framed under the Act and contended that inasmuch as the list sent by him bore the words printed in indelible ink "For the use only of registered medical practitioners" he has complied with the provisions of law.

Held: (*i*) The definition ot "taking any part in the publication of any advertisement" contained in s. 2(*d*) of the Act is wide enough to include the printing of the advertisement and the sending of it in any part of India. Before a person is penalised it is not necessary to show that the contravention brought home to him is in the nature of habitual contravention. A single contravention will make a person guilty under s. 7.

(*ii*) Section 3 is subject to the provisions of s. 14 and if the appellant's case falls under s. 14, s. 3 cannot be invoked against him. The prosecution has to show that the person to whom the list was sent is not a medical practitioner. Once this is established it is for the appellant to satisfy the court that his case falls under s. 14(1)(c). The fact that the appellant has complied with one of the conditions prescribed under r. 6 will not bring the case of the appellant under s. 14(1)(c).

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 157 of 1962.

Appeal by special leave from the judgment and order dated February 9, 1962, of the Punjab

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High Court (Circuit Bench) at Delhi in Criminal Revision Application No. 281-D of 1961.

J.P. Goyal, for the appellant.

B.K. Khanna and *R.N. Sachthey*, for the respondent.

November 29, 1963. The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—The appellant, Dr. Yash Pal Sahi, and his wife Dr. Susheela Sahi, are the proprietors of a homoeopathic hospital at Jangpura in New Delhi. They also run a journal called the "Homoeopathic Doctor". It appears that on May 15, 1958 Misri Singh wrote to the appellant that the medicines manufactured by him were proving effective, and he therefore requested the appellant to send him his magazine "Homoeopathic Doctor" from January 15, 1958 up to the date of the letter. In this letter, Misri Singh also requested the doctor to send him a list of medicines that might have been printed by him and he promised to pay the requisite prices and suggested that the same should be sent by V.P.P. Thereupon, a packet containing Exhibits P-1 to P-6 which are copies of the "Homoeopathic Doctor" and Ex. P-7, which is a list of medicines was sent to Misri Singh on May, 24, 1958. Misri Singh had written to the appellant under the instructions of Mr. Seth, who is an officer in the Delhi Administration. That is why when the packet was received by Misri Singh it was opened by him in the presence of Mr. Seth and other witnesses and the packet was found to contain Exs. P-1 to P-7. The prosecution alleged that by sending this packet to Misri Singh both the appellant and his wife had committed an offence under s. 3 read with s. 7 of the Drugs and Magic Remedies (Objectionable Advertisement) Act of 1954. Later, the complaint against Dr. Susheela Sahi was withdrawn and the case proceeded only against the appellant.

At the trial, evidence was given by Mr. Seth, Misri Singh and Dr. Anant Parkash, with whom

Misri Singh works as a clerk. The appellant was questioned by the learned Magistrate, who tried the case, and he admitted that Exs. P-1 to P-7 had been sent to Misri Singh. On these facts, the learned Magistrate held that the appellant was guilty of the offence charged and sentenced him to pay a fine of Rs. 1,000. The appellant challenged the correctness of this order by an appeal before the Additional Sessions Judge at New Delhi. The learned additional Sessions Judge considered the evidence, and confirmed the findings recorded by the trial Magistrate. In the result, the order of conviction passed against the appellant was affirmed; but in regard to the sentence the learned Additional Sessions Judge took the view that a fine of Rs. 500 would meet the ends of justice. The findings made by the appellate Court show that the parcel containing Exs. P-1 to P-7 had been sent by the appellant to Misri Singh. Exhibits P-1 to P-6 which are the numbers of the publication "Homoeopathic Doctor" did not come within the mischief of the Act, but Ex. P-7, which is '*Fehrist-i-Mujarabat*' did come within the mischief of the Act. It is a list of medicines, and it purports to advertise the said medicines by describing their effect, and prices of the medicines are also printed. Inasmuch as it was found by the learned Additional Sessions Judge that the appellant had sent Ex. P-7 to Misri Singh, his conviction was held to be justified under s. 3 read with s. 7 of the Act. The appellant then took this matter before the High Court by a revisional application It was urged before the High Court on his behalf that in deciding the question as to whether the appellant was guilty under s. 3 read with s. 7 the effect of the provisions contained in s. 14(1)(c) had not been properly appreciated. The High Court was not impressed by this argument. Accordingly, the revisional application filed by the appellant was dismissed. It is against this order that the appellant has come to this Court by special leave.

On his behalf, Mr. Goyal has contended that the conviction of the appellant is not justified, because

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the case of the appellant falls under s. 14 (1)(c) of the Act. In deciding the merits of this argument it is necessary to refer to the relevant provisions of the Act. This Act has been passed to control the advertisment 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. Section 2 contains the definitions. Section 2(d) defines 'taking any part in the publication of any advertisement' as including (i) the printing of the advertisement, (ii) the publication of any advertisement outside the territories to which this Act extends by or at the instance of a person residing within the said territories. It would be noticed that the definition of the expression 'taking any part in the publication of any advertisement' is an inclusive definition, and the two clauses bring out clearly the main postulate of the definition that if the prohibited article is sent, it would amount to publication within the meaning of the Act. The printing of the prohibited article or advertisement is included in publication. But publication does not mean printing alone; publication means sending out the said advertisement outside India under cl. (ii), and so, if sending out the advertisement outside India is brought within the purview of the inclusive definition, it is difficult to resist the conclusion that sending out the same advertisement within the territories of India to which the Act applies would amount to publication. Therefore it seems to us that the definition prescribed by s. (2d) is wide enough to take in the printing of the advertisement and the sending of it to any part of India.

That takes us to s. 3 of the Act. Sections 3 (c) and (d) are the provisions with which we are concerned. They provide that:

> "3. 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—
>
> . . . . . .

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

(*d*) the diagnosis, cure, mitigation, treatment or prevention of any venereal disease or any other disease or condition which may be specified in rules made under this Act."

It has been found and cannot be now disputed that the list of advertisements (Ex. P-7) contains medicines which fall within the scope of ss. 3(c) and (d).

Section 7 provides for the penalty, and it lays down that:

"Whoever contravenes any of the provisions of this Act 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 both;

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

This section shows that before a person is penalised it is not necessary to show that the contravention brought home to him is in the nature of a habitual contravention. A single contravention proved against a person would make him guilty under s. 7. That is why the scheme adopted by the penal section is that it provides for a lesser punishment for the first offence and a relatively more serious penalty for subsequent offences.

Mr. Goyal contends that in considering the question as to whether the appellant is guilty under s. 3 and s. 7 read together it is necessary to consider whether this case falls under s. 14 or not. He argues that s. 3 begins with the clause "Subject to the provisions of this Act", and he urges that if the appellant's case can fall under the provisions of s. 14, s. 3 cannot be invoked against him. This contention is no doubt right. Section 14 provides for exceptions, and it lays down that nothing in the Act shall apply to the cases falling under the clauses prescribed by it. Mr. Goyal relies upon s. 14 (1)(c), which provides that:

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"Nothing in this Act shall apply to—

any advertisement relating to any drug sent confidentially in the prescribed manner only to a registered medical practitioner or to a wholesale or retail chemist for distribution among registered medical practitioners or to a hospital or laboratory;"

His argument is that if Misri Singh wrote to the appellant and invited him to send the list of medicines it was not expected that the appellant should make an enquiry as to whether Misri Singh was a registered medical practitioner or not. In this connection, he has invited our attention to the fact that Misri Singh is in fact working as a clerk with Dr. Anant Parkash, and this fact is pressed into service by Mr. Goyal to show that it may be that the appellant thought that Mr. Misri Singh was a registered medical practitioner. Such a plea has, however, not been made in any of the Courts below. In fact, the record does not show that the appellant knew any thing about Misri Singh or his employment. Therefore, the point sought to be made by Mr. Goyal for the first time before us that the appellant might have *bona fide* believed that Misri Singh was a registered medical practitioner cannot avail him. It has been proved as a fact that Mr. Misri Singh is not a registered medical practitioner, and so, the question arises whether the appellant can claim that his case falls under s. 14(1)(c) at all. It is true that in order to bring home to the appellant the offence charged the prosecution may have to show that the person to whom the list was sent was not a registered medical practitioner. Once that fact is established, it is for the appellant to satisfy the Court that his case falls under s. 14(1)(c). It is in that connection that Mr. Goyal relied upon r. 6 of the Rules framed under the Act. Rule 6 prescribes that:

"All documents containing advertisements relating to drugs, referred to in clause (c) of sub-

section (1) of section 14, shall be sent by post to a registered medical practitioner or to a wholesale or retail chemist".

The Rule further adds that "Such documents shall bear at the top, printed in indelible ink in a conspicuous manner, the words 'For the use only of registered medical practitioners or a hospital or a laboratory'." It is common ground that the list sent by the appellant to Misri Singh does bear printed in indelible ink the statement that it was meant for the use of registered medical practitioners alone. Mr. Goyal suggests that once it is shown that the list complied with this part of the requirement of R. 6 it should be held that the case of the appellant falls under s. 14(1)(c). We are not prepared to accept this argument. Rule 6 prescribes some conditions which have to be complied with by a person who sends lists of medicines to which the Act applies so as to bring his case within s. 14 (1)(c). One requirement is that the list should have printed in indelible ink the statement to which we have just referred. The other requirement to which it refers is that the list should be sent to a registered medical practitioner or wholesale or retail chemist. In relation to this requirement, we have the statutory provision prescribed by s. 14 (1)(c) itself that it must be sent confidentially to a registered medical practitioner. The fact that one of the conditions prescribed by R. 6 has been complied with does not lead to the inference that the other conditions prescribed either by s. 14(1)(c) or by R. 6 have also been complied with. Therefore, we do not think that Mr. Goyal is justified in contending that his case falls under s. 14(1)(c).

Mr. Goyal has also invited our attention to the fact that this was a case in which the appellant was virtually tempted to send Ex. P-7 to Misri Singh, and he argues that as soon as Mr. Misra Singh found that that list contained in indelible ink the statement that it was meant for registered medical practitioners he need not have bothered to look into it, and in fact should have sent it back to the appellant. This

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argument, in our opinion, is not well-conceived. 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. That is why the Act provides that lists of medicines describing the qualities and attributes of different medicines should be sent only to registered medical practitioners or hospitals. That being so, it would not be a fair argument to urge that even though the appellant might have sent the list to a person who was not a registered medical practitioner, the recipient of the list should have been out on his guard and should not have looked into the list. We are, therefore, satisfied that the High Court was right in holding that the offence charged against the appellant has been duly proved. In regard to the sentence, the learned Additional Sessions Judge has reduced the sentence of Rs. 1,000 fine imposed on the appellant by the learned trial Magistrate to Rs. 500 and that we think is a fair order to make.

In the result, the appeal fails, and is dismissed.

Appeal dismissed.

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COMMISSIONER OF INCOME-TAX, BOMBAY

v.

JAMES ANDERSON

(A.K. SARKAR, M. HIDAYATULLAH AND J.C. SHAH, JJ.)

Income tax Act (XI of 1922), s. 24B—Scope of—Death of Shareholder—Liability of legal representative—Extent of.

G, a holder of certain shares of a private limited company made a will disposing of his estate and died on May 13, 1945. The respondent obtained Letters of Administration "*durante absentia*" to the estate, and in pursuance of an agreement between himself, the company and one M to sell the shares to M, handed over the share certificates to M against payment of the price. M failed to present the share certificates for registration and the name