Republic of the Philippines
SUPREME COURT
Manila

G.R. No. 149907 April 16, 2009

ROMA DRUG and ROMEO RODRIGUEZ, as Proprietor of ROMA DRUG, Petitioners,

vs.

THE REGIONAL TRIAL COURT OF GUAGUA, PAMPANGA, THE PROVINCIAL PROSECUTOR OF PAMPANGA, BUREAU OF FOOD & DRUGS (BFAD) and GLAXO SMITHKLINE, Respondents.

TINGA, *J.:*

On 14 August 2000, a team composed of the National Bureau of Investigation (NBI) operatives and inspectors of the Bureau of Food and Drugs (BFAD) conducted a raid on petitioner Roma Drug, a duly registered sole proprietorship of petitioner Romeo Rodriguez (Rodriguez) operating a drug store located at San Matias, Guagua, Pampanga. The raid was conducted pursuant to a search warrant[1] issued by the Regional Trial Court (RTC), Branch 57, Angeles City. The raiding team seized several imported medicines, including Augmentin (375mg.) tablets, Orbenin (500mg.) capsules, Amoxil (250mg.) capsules and Ampiclox (500mg.).[2] It appears that Roma Drug is one of six drug stores which were raided on or around the same time upon the request of SmithKline Beecham Research Limited (SmithKline), a duly registered corporation which is the local distributor of pharmaceutical products manufactured by its parent London-based corporation. The local SmithKline has since merged with Glaxo Wellcome Phil. Inc to form Glaxo SmithKline, private respondent in this case. The seized medicines, which were manufactured by SmithKline, were imported directly from abroad and not purchased through the local SmithKline, the authorized Philippine distributor of these products.

The NBI subsequently filed a complaint against Rodriguez for violation of Section 4 (in relation to Sections 3 and 5) of Republic Act No. 8203, also known as the Special Law on Counterfeit Drugs (SLCD), with the Office of the Provincial Prosecutor in San Fernando, Pampanga. The section prohibits the sale of counterfeit drugs, which under Section 3(b)(3), includes "an unregistered imported drug product." The term "unregistered" signifies the lack of registration with the Bureau of Patent, Trademark and Technology Transfer of a trademark, tradename or other identification mark of a drug in the name of a natural or juridical person, the process of which is governed under Part III of the Intellectual Property Code.

In this case, there is no doubt that the subject seized drugs are identical in content with their Philippine-registered counterparts. There is no claim that they were adulterated in any way or mislabeled at least. Their classification as "counterfeit" is based solely on the fact that they were imported from abroad and not purchased from the Philippine-registered owner of the patent or trademark of the drugs.

During preliminary investigation, Rodriguez challenged the constitutionality of the SLCD. However, Assistant Provincial Prosecutor Celerina C. Pineda skirted the challenge and issued a Resolution dated 17 August 2001 recommending that Rodriguez be charged with violation of Section 4(a) of the SLCD. The recommendation was approved by Provincial Prosecutor Jesus Y. Manarang approved the recommendation.[3]

Hence, the present Petition for Prohibition questing the RTC-Guagua Pampanga and the Provincial Prosecutor to desist from further prosecuting Rodriguez, and that Sections 3(b)(3), 4 and 5 of the SLCD be declared unconstitutional. In gist, Rodriguez asserts that the challenged provisions contravene three provisions of the Constitution. The first is the equal protection clause of the Bill of Rights. The two other provisions are Section 11, Article XIII, which mandates that

the State make "essential goods, health and other social services available to all the people at affordable cost;" and Section 15, Article II, which states that it is the policy of the State "to protect and promote the right to health of the people and instill health consciousness among them."

Through its Resolution dated 15 October 2001, the Court issued a temporary restraining order enjoining the RTC from proceeding with the trial against Rodriguez, and the BFAD, the NBI and Glaxo Smithkline from prosecuting the petitioners.[4]

Glaxo Smithkline and the Office of the Solicitor General (OSG) have opposed the petition, the latter in behalf of public respondents RTC, Provincial Prosecutor and Bureau of Food and Drugs (BFAD). On the constitutional issue, Glaxo Smithkline asserts the rule that the SLCD is presumed constitutional, arguing that both Section 15, Article II and Section 11, Article XIII "are not self-executing provisions, the disregard of which can give rise to a cause of action in the courts." It adds that Section 11, Article XIII in particular cannot be work "to the oppression and unlawful of the property rights of the legitimate manufacturers, importers or distributors, who take pains in having imported drug products registered before the BFAD." Glaxo Smithkline further claims that the SLCD does not in fact conflict with the aforementioned constitutional provisions and in fact are in accord with constitutional precepts in favor of the people's right to health.

The Office of the Solicitor General casts the question as one of policy wisdom of the law that is, beyond the interference of the judiciary.[5] Again, the presumption of constitutionality of statutes is invoked, and the assertion is made that there is no clear and unequivocal breach of the Constitution presented by the SLCD.

II.

The constitutional aspect of this petition raises obviously interesting questions. However, such questions have in fact been mooted with the passage in 2008 of Republic Act No. 9502, also known as the "Universally Accessible Cheaper and Quality Medicines Act of 2008".[6]

Section 7 of Rep. Act No. 9502 amends Section 72 of the Intellectual Property Code in that the later law unequivocally grants third persons the right to import drugs or medicines whose patent were registered in the Philippines by the owner of the product:

Sec. 7. Section 72 of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, is hereby amended to read as follows:

> "Sec. 72. Limitations of Patent Rights. – The owner of a patent has no right to prevent third parties from performing, without his authorization, the acts referred to in Section 71 hereof in the following circumstances:
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> "72.1. Using a patented product which has been put on the market in the Philippines by the owner of the product, or with his express consent, insofar as such use is performed after that product has been so put on the said market: Provided, That, with regard to drugs and medicines, the limitation on patent rights shall apply after a drug or medicine has been introduced in the Philippines or anywhere else in the world by the patent owner, or by any party authorized to use the invention: Provided, further, That the right to import the drugs and medicines contemplated in this section shall be available to any government agency or any private third party;
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> "72.2. Where the act is done privately and on a non-commercial scale or for a non-commercial purpose: Provided, That it does not significantly prejudice the economic interests of the owner of the patent;
>
> "72.3. Where the act consists of making or using exclusively for experimental use of the invention for scientific purposes or educational purposes

and such other activities directly related to such scientific or educational experimental use;

"72.4. In the case of drugs and medicines, where the act includes testing, using, making or selling the invention including any data related thereto, solely for purposes reasonably related to the development and submission of information and issuance of approvals by government regulatory agencies required under any law of the Philippines or of another country that regulates the manufacture, construction, use or sale of any product: Provided, That, in order to protect the data submitted by the original patent holder from unfair commercial use provided in Article 39.3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), the Intellectual Property Office, in consultation with the appropriate government agencies, shall issue the appropriate rules and regulations necessary therein not later than one hundred twenty (120) days after the enactment of this law;

"72.5. Where the act consists of the preparation for individual cases, in a pharmacy or by a medical professional, of a medicine in accordance with a medical shall apply after a drug or medicine has been introduced in the Philippines or anywhere else in the world by the patent owner, or by any party authorized to use the invention: Provided, further, That the right to import the drugs and medicines contemplated in this section shall be available to any government agency or any private third party; xxx[7]

The unqualified right of private third parties such as petitioner to import or possess "unregistered imported drugs" in the Philippines is further confirmed by the "Implementing Rules to Republic Act No. 9502" promulgated on 4 November 2008.[8] The relevant provisions thereof read:

Rule 9. Limitations on Patent Rights. The owner of a patent has no right to prevent third parties from performing, without his authorization, the acts referred to in Section 71 of the IP Code as enumerated hereunder:

(i) Introduction in the Philippines or Anywhere Else in the World.

Using a patented product which has been put on the market in the Philippines by the owner of the product, or with his express consent, insofar as such use is performed after that product has been so put on the said market: Provided, That, with regard to drugs and medicines, the limitation on patent rights shall apply after a drug or medicine has been introduced in the Philippines or anywhere else in the world by the patent owner, or by any party authorized to use the invention: Provided, further, That the right to import the drugs and medicines contemplated in this section shall be available to any government agency or any private third party. (72.1)

The drugs and medicines are deemed introduced when they have been sold or offered for sale anywhere else in the world. (n)

It may be that Rep. Act No. 9502 did not expressly repeal any provision of the SLCD. However, it is clear that the SLCO's classification of "unregistered imported drugs" as "counterfeit drugs," and of corresponding criminal penalties therefore are irreconcilably in the imposition conflict with Rep. Act No. 9502 since the latter indubitably grants private third persons the unqualified right to import or otherwise use such drugs. Where a statute of later date, such as Rep. Act No. 9502, clearly reveals an intention on the part of the legislature to abrogate a prior act on the subject that intention must be given effect.[9] When a subsequent enactment covering a field of operation coterminus with a prior statute cannot by any reasonable construction be given effect while the prior law remains in operative existence because of irreconcilable conflict

between the two acts, the latest legislative expression prevails and the prior law yields to the extent of the conflict.[10] Irreconcilable inconsistency between two laws embracing the same subject may exist when the later law nullifies the reason or purpose of the earlier act, so that the latter loses all meaning and function.[11] Legis posteriors priores contrarias abrogant.

For the reasons above-stated, the prosecution of petitioner is no longer warranted and the quested writ of prohibition should accordingly be issued.

III.

Had the Court proceeded to directly confront the constitutionality of the assailed provisions of the SLCD, it is apparent that it would have at least placed in doubt the validity of the provisions. As written, the law makes a criminal of any person who imports an unregistered drug regardless of the purpose, even if the medicine can spell life or death for someone in the Philippines. It does not accommodate the situation where the drug is out of stock in the Philippines, beyond the reach of a patient who urgently depends on it. It does not allow husbands, wives, children, siblings, parents to import the drug in behalf of their loved ones too physically ill to travel and avail of the meager personal use exemption allotted by the law. It discriminates, at the expense of health, against poor Filipinos without means to travel abroad to purchase less expensive medicines in favor of their wealthier brethren able to do so. Less urgently perhaps, but still within the range of constitutionally protected behavior, it deprives Filipinos to choose a less expensive regime for their health care by denying them a plausible and safe means of purchasing medicines at a cheaper cost.

The absurd results from this far-reaching ban extends to implications that deny the basic decencies of humanity. The law would make criminals of doctors from abroad on medical missions of such humanitarian organizations such as the International Red Cross, the International Red Crescent, Medicin Sans Frontieres, and other like-minded groups who necessarily bring their own pharmaceutical drugs when they embark on their missions of mercy. After all, they are disabled from invoking the bare "personal use" exemption afforded by the SLCD.

Even worse is the fact that the law is not content with simply banning, at civil costs, the importation of unregistered drugs. It equates the importers of such drugs, many of whom motivated to do so out of altruism or basic human love, with the malevolents who would alter or counterfeit pharmaceutical drugs for reasons of profit at the expense of public safety. Note that the SLCD is a special law, and the traditional treatment of penal provisions of special laws is that of malum prohibitum–or punishable regardless of motive or criminal intent. For a law that is intended to help save lives, the SLCD has revealed itself as a heartless, soulless legislative piece.

The challenged provisions of the SLCD apparently proscribe a range of constitutionally permissible behavior. It is laudable that with the passage of Rep. Act No. 9502, the State has reversed course and allowed for a sensible and compassionate approach with respect to the importation of pharmaceutical drugs urgently necessary for the people’s constitutionally-recognized right to health.

WHEREFORE, the petition is GRANTED in part. A writ of prohibition is hereby ISSUED commanding respondents from prosecuting petitioner Romeo Rodriguez for violation of Section 4 or Rep. Act No. 8203. The Temporary Restraining Order dated 15 October 2001 is hereby made PERMANENT. No pronouncements as to costs.

SO ORDERED.

DANTE O. TINGA
Associate Justice

WE CONCUR:

LEONARDO A. QUISUMBING
Associate Justice
Chairperson

CONCHITA CARPIO MORALES
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

ARTURO D. BRION
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LEONARDO A. QUISUMBING
Associate Justice
Chairperson, Second Division

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

REYNATO S. PUNO
Chief Justice

FOOTNOTES:

[1] Search Warrant No. 00-43
[2] *Rollo*, p. 7.
[3] Rollo, p. 56.
[4] Rollo, p. 134.
[5] Rollo, p. 711.
[6] See Rep. Act No. 9502, Sec. 1.
[7] Rep. Act No. 9502, Section 7.
[8] Available from the website of the Intellectual Property Office (http://www.ipophil.gov.ph/)
[9] R. Agpalo, Statutory Construction (1995 ed.), at 315.
[10] Sutherland, Statutes and Statutory Construction 463, 464; cited in Ramirez v. Court of Appeals, G.R. No. 23984, 24 January 1974, 55 SCRA 261.
[11] Agpalo, supra note 9 at 317.