603 Phil. 141

SECOND DIVISION

[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.

D E C I S I O N

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:

"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;**

"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