



Roma Drug, et al. v. Glaxo SmithKline, et al.

G.R. No. 149907

Country: Philippines

Region: Asia

Year: 2009

Court: Supreme Court

Health Topics: Medicines, Poverty

Human Rights: Freedom from discrimination, Right to health, Right to property

Facts

The National Bureau of Investigation (NBI) and the Bureau of Food and Drugs (BFAD) raided Roma Drug and five other drug stores at the request of SmithKline Beecham Research Limited (SmithKline), the authorized local distributor for its London-based parent company. In the raid, the NBI and BFAD seized several imported medicines sold by the drug stores, alleging that the drug stores had violated section 3 of the Republic Act No. 8203 (Special Law on Counterfeit Drugs or SLCD), which prohibited the sale of counterfeit drugs, defined to include an "unregistered imported product." The seized medicines had been imported directly by the drug stores rather than purchased through SmithKline, who held the patents and trademarks for the drugs in the Philippines. However, in all other respects, the seized drugs were identical to their Philippine-registered counterparts and it was not suggested that they had been mislabeled or tampered with in any way.

The owner of Roma Drug challenged the constitutionality of the SLCD, alleging that it violated the right to health and the equal protection clause of the constitution.

Decision and Reasoning

The Court held that there was no issue to be resolved, as the relevant prohibitions in the SCLD had been implicitly repealed by the Republic Act No. 9502 (the Act) in 2008. This Act had amended the Intellectual Property Code so as to "unequivocally [grant] third persons the right to import drugs or medicines whose patent were registered in the Philippines by the owner of the product." While the Act had not expressly repealed any provision of the SCLD, the SCLD's definition of "counterfeit" to include "unregistered imported drugs" and the criminal penalties it imposed for selling "unregistered imported drugs" was clearly in conflict with the provisions of the Act.

However, the Court considered that had the relevant SCLD provisions been applicable, they may have violated the constitutional right to health. The law, as written, made it a crime to import any unregistered drug, regardless of purpose or whether the medicine was desperately needed by patients. It did not accommodate situations where the drug was out of stock domestically, or allow family and friends to bring necessary drugs from abroad for patients who were unable to travel and make use of the personal use exemption allowed under the SCLD. As such, it discriminated against citizens without the financial resources to travel abroad to purchase cheaper medicines. The law also deprived citizens of a plausible and safe means of purchasing medicines at a cheaper cost. Finally, it equated importers who were motivated by altruism or love with counterfeiters and purveyors of spurious medicines who sought to make a profit at the cost of public safety. As such, the Court welcomed the repeal of the SCLD by means of the Act.

Decision Excerpts

"It may be that Rep. Act No. 9502 did not expressly repeal any provision of the SLCD. However, it is clear that the SLCD's classification of 'unregistered imported drugs' as 'counterfeit drugs,' and of corresponding criminal penalties therefore are irreconcilably in conflict with Rep. Act No. 9502 since the latter indubitably grants private third persons the unqualified right to import or otherwise use such drugs."

"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.â€•

â€œEven 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*â€“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.â€•

â€œThe 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 peopleâ€™s constitutionally-recognized right to health.â€•

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