

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.138 OF 2004

The State of Maharashtra,
Through Shri. Ramrao Gangaram
Gavale, Age 50 years, Occ.
Medical Officer, Primary Health
Centre, Jaithane, Tq. Sakri,
Dist. Dhule ..Appellant

Versus

Sau. Chitra Vijay Relan,
Age 28 years, Occ. Medical
Practice (Private), r/o. Nizampur,
Tq. and Sakri. Dist. ..Respondent

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Mr.S.B.Pulkundwar, advocate for appellant

Mr.Joydeep Chatterji, advocate for respondent

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CORAM : M.T. JOSHI, J.
DATE : DECEMBER 02, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by acquittal of the respondent from
the offences punishable under Section 33(1)(2) and
36 of the Maharashtra Medical Practitioners Act by

learned Judicial Magistrate F.C. vide judgment and order dated 30th September, 2003 in R.C.C. No.39 of 2001, present appeal is preferred by the State of Maharashtra.

3] The prosecution case, in short, is as under :-

. That PW 1 – Dr.Ramrao Gawale, Medical Officer, had received an information from PSI – Bhadane that present respondent was carrying practice of Allopathy without authorization. Therefore, PW 1 – Dr. Ramrao, Medical Officer, made inquiry in this regard. He along with PSI – Bhadane and panch witnesses visited the dispensary of the respondent. There the respondent was found. Search of the dispensary was taken. Following allopathic medicines were found in that dispensary :-

- (I) Injection Endorlex;
- (II) Injection Gentamycin;
- (III) Injection Tetanus Toxoid;

Upon inquiry, the respondent had placed before them the certificate of registration issued by Registrar, Alternative Systems of Medicines, Bombay. Panchnama was prepared to that effect. The medicines were seized and the offence came to be registered.

4] The medicines were sent to the Assistant Commissioner of Food and Drugs Department, who, upon examination of the labels of containers, gave report at Exhibit 31, that the containers contained allopathic medicines.

5] Before the learned Judicial Magistrate F.C., five witnesses were examined. Except the police witnesses and the Medical Officer, other witnesses turned hostile to the prosecution case. Learned Judicial Magistrate F.C. acquitted the respondent on the ground that though the prosecution case is that list of bogus doctors was prepared by the

P.H.O., the same was not filed on record. Admittedly, neither the copy of the panchnama was supplied to the respondent nor her signature was obtained on the panchnama. PSI – Bhadane himself was not specific as to whether, the dispensary of the respondent was situated at Jaithane or at Nizampur. There is no evidence that allopathic medicines were contained in the said container, except the report of the Assistant Commissioner of Food and Drugs, which was given only on the basis of the label affixed on the said container.

6] Learned Judicial Magistrate F.C. further observed that there was no complaint from the villagers and whatever exercise was carried by the PSI and the Medical Officer, it was against the very Government Resolution, which was placed before him by the prosecution. Therefore, the respondent came to be acquitted.

7] Learned A.P.P. for the appellant – State submits that there is no provision that the complaint filed by the Medical Officer beyond the directions of the Government Resolution, would not be maintainable. There is no reason to the Medical Officer or the P.S.I. to make any false statement against the present respondent. He submits that the very labels on the containers would show that it contained allopathic medicines and therefore, he submits that the appeal may be allowed.

8] On the other hand, Mr.Chatterji, learned counsel for the respondent, submits that learned Judicial Magistrate F.C. has taken into consideration all the aspects and therefore, in the present appeal against the order of acquittal, no interference in the reasons forwarded by learned Judicial Magistrate F.C., is warranted.

9] On the basis of this material, following point arises for my determination :-

Whether the prosecution has proved that on 2nd February, 2001, present respondent was found running a dispensary and practicing as a medical practitioner at Nizampur without any proper certificate of registration ?

. My finding to the above point is in the negative. The appeal is therefore dismissed for the reasons to follow.

R E A S O N S

10] The reasons forwarded by learned Judicial Magistrate F.C., as detailed supra, are based on the record of the case. PSI Bhadane has deposed, as against the prosecution case, that the

dispensary was at Nizampur The contents of the containers were not analysed and only on the basis of the label on the container, the Assistant Commissioner of Food and Drugs Department has given his report. The name of the medicines could not be recollected by the witnesses in the witness box. It was admitted that villages Jaithane and Nizampur had different Grampanchayats despite PSI – Bhadane deposed that the dispensary was at Nizampurj, as against the prosecution case.

11] Considering all the material on record, I do not find it fit to interfere in the reasons forwarded by learned Judicial Magistrate F.C., which are based on the material on record.

12] The appeal is, therefore, dismissed.

[M.T. JOSHI, J.]

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