

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.115 OF 2015

Shri Asit Biswas

.... Petitioner

V/s

The Investigating Officer,

Madgaon Town Police Station & Anr.

.... Respondents

Mr. Pavithran A.V., Advocate for the Petitioner.

Mr. S.R. Rivankar, Public Prosecutor for the Respondents.

CORAM : K.L. WADANE, J.

Reserved on : 21st OCTOBER, 2015

Pronounced on: 19th NOVEMBER, 2015

ORDER :

Present Writ Petition is filed by the petitioner challenging the criminal proceedings initiated by the respondent no.1.

2. The brief facts of the case may be stated as follows:

The petitioner is holding provisional certificate issued by Babasaheb Bhimrao Ambedkar Bihar University, certifying that the petitioner passed a Bachelor of Ayurvedic Medicines and Surgery. In the year 2003, petitioner started his clinic in the name of "TUKU CLINIC" and offered treatments for various ailments.

3. On 7/07/2015, the respondent no.1 filed a complaint for the

offences punishable under Sections 3,5 and 15 of the Goa Medical Practitioners Act, 2004 and Rules, 2011 and Section 420 of Indian Penal Code.

4. On the basis of the complaint lodged by the respondent no.1. The offence came to be registered against the petitioner bearing FIR No.293/2015.

5. On 8/07/2015, the petitioner was arrested and after completion of the investigation the respondent no.1 filed the charge sheet against the petitioner on 28/07/2015 bearing charge sheet no.245/2015 for the offences as referred earlier. On filing charge sheet the learned Magistrate took cognizance and ordered registration of the criminal case no.351/S/2015/I ADDL. Being aggrieved with the same, the petitioner has filed the present petition.

6. I have heard the arguments of Mr. Pavithran A.V., the learned Counsel appearing for the petitioner and Mr. S.R. Rivankar, the learned Public Prosecutor for the respondents.

7. Considering the arguments advanced by both the sides following

points arise for my determination:

Point for determination	Finding
(i) Whether the criminal proceedings initiated against the petitioner based on the complaint filed by the person/respondent no.1 who is not authorised to file the same.	Yes.
(ii) What order?	Writ Petition is allowed.

8. **Reasons :**

During the course of arguments Mr. Pavithran, the learned Counsel appearing for the petitioner has drawn my attention to the provisions of Section 2 as well as Section 16 of the Goa Medical Practitioners Act, 2004 and Rules 2011 (hereinafter will be referred as 'the Act'). By referring the above provisions, the learned Counsel has argued that the respondent no.1 is not a “competent authority” as referred in Section 2(d) of the Act. Therefore the Criminal Court/Trial Court is not authorised to take cognizance in view of the provisions of Section 16.

The provisions of Section 2(d) of the Act reads as follows:

- 2. Definitions** – In this Act, unless the context otherwise requires,-
- (a)
 - (b)
 - (c)
 - (d) “competent authority” means any person or persons

or authority appointed by the Government to perform the functions of the competent authority under this Act, and different persons or authorities may be appointed to perform different functions.

Section 16 of the said Act reads as follows:

16. Cognizance and trial of offence – No Court inferior to that of Judicial Magistrate First Class shall try any offence under this Act:

Provided that no such Court shall take cognizance of any offence under this Act except on a complaint made by the competent authority or any officer authorized by it, either generally or specially in writing.

9. In view of the above provisions of Section 2(d) and Section 16 of the Act, it is mandatory requirement to show that the respondent no.1 is a competent authority appointed by the State Government to perform the functions of the competent authority and the learned Trial Court/Criminal Court shall have no jurisdiction to take the cognizance unless and until the complaint is made by the competent authority or any officer authorised by it, either generally or specially in writing.

10. During the course of the arguments, Mr. S.R. Rivankar, the learned Public Prosecutor fairly stated that the respondent no.1 is not a competent authority as defined under Section 2(d) of the said Act. Obviously, the Criminal Court shall have no jurisdiction to take the

cognizance on the basis of the complaint filed by the respondent no.1 who is not a competent authority. Hence, in view of the specific bar created by the statute under the provisions of Section 16 the cognizance taken by the criminal courts is improper.

11. From the contents of the complaint/FIR it reveals that the offence is also registered against the petitioner punishable under Section 420 of the Indian Penal Code. On perusal of the entire contents there are no allegations against the petitioner regarding cheating or inducement in view of the provisions of Section 420 of the Indian Penal Code. Thus the cognizance taken by the Trial Court for the offences levelled against the petitioner appears to be improper and without any base, hence point no.1 is answered in the affirmative.

12. In view of the above, the petition is allowed. The criminal proceedings initiated against the petitioner and pending before the Judicial Magistrate First Class, Margao bearing FIR No.293/2015 and Criminal Case No.351/S/2015/I ADDL are hereby quashed and set aside.

K.L.WADANE, J.

NH/-