

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 3153 OF 2007

Babaji s/o Mahadu Shelar,
Age 32 years,
Occu : Electropathy and
Naturopathy Practitioner
R/o Aldapur, Tq. Sangamner, **... Applicant**
District Ahmednagar

VERSUS

1. The State of Maharashtra,
through the Principal
Secretary to Medical
Education, Medicines & Drugs
Department, Mantralaya,
Mumbai
2. The District Superintendent of
Police, Ahmednagar
3. The Officer in-charge,
Sangamner Taluka Police
Station, A/P & Tq. Sangamner
Dist. Ahmednagar **... Respondents**

ALONGWITH

CRIMINAL APPLICATION NO. 3154 OF 2007

Dnyaneshwar s/o Vitthal Kakad,
Age 46 years,
Occu : Electropathy and
Naturopathy Practitioner
R/o Aldapur, Tq. Sangamner, **... Applicant**
District Ahmednagar

VERSUS

1. The State of Maharashtra,
through the Principal
Secretary to Medical
Education, Medicines & Drugs

Department, Mantralaya,
Mumbai

2. The District Superintendent of
Police, Ahmednagar

3. The Officer in-charge,
Sangamner Taluka Police
Station, A/P & Tq. Sangamner
Dist. Ahmednagar

... Respondents

**ALONGWITH
CRIMINAL APPLICATION NO. 3155 OF 2007**

BHARAT s/o Vasant Jadhav,
Age 28 years,
Occu : Electropathy and
Naturopathy Practitioner
R/o Varudi Pathar,
Tq. Sangamner, District
Ahmednagar.

... Applicant

VERSUS

1. The State of Maharashtra,
through the Principal
Secretary to Medical
Education, Medicines & Drugs
Department, Mantralaya,
Mumbai

2. The District Superintendent of
Police, Ahmednagar

3. The Officer in-charge,
Sangamner Taluka Police
Station, A/P & Tq. Sangamner
Dist. Ahmednagar

... Respondents

...

Mr. S. T. Shelke h/f T. B. Adik for the Applicants in
all Applications.

Mr. M. M. Nerlikar, APP for Respondent Nos. 1 to 3 in
all Applications.

CORAM : **T. V. NALAWADE AND**
K. L. WADANE, JJ.

DATE: : **8th June, 2018**

JUDGMENT (Per K. L. Wadane,J.):

1. In all the three applications common and identical issues involved, therefore, they are taken together for its disposal.

2. We have heard Mr. S. T. Shelke the learned counsel appearing for applicants and the learned APP for respondent Nos. 1 to 3.

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

i) The applicants have completed the course in Electropathy and Electro Homeopathy. They have been awarded the Degree in Electropathy i.e. B.E.M.S. So also the applicants have completed diploma in Naturopathy Medical Science and have been awarded Diploma Certificate in Naturopathy and Yoga. However, there is no registration of the applicants as a Medical Practitioners either under the State Act or the Central Act.

ii) The first information reports were lodged against the applicants with the allegation that the applicants are doing medical practice. Concerned authority has called the relevant papers from the applicants in regards to their medical practice. On scrutiny of those documents there was no permission from the State or the Central Act authorizing the applicants to do the practice in medicine i.e. (Allopathy). Therefore, the offence under Section 33(2), 33(A) of Maharashtra Medical Practitioners Act, 1961 are registered against the applicants, alleging that the applicants are practicing without registration under the State Act or the Central Act. The applicants have challenged the said FIRs on the ground that in view of judicial pronouncement, it is not necessary to have a registration under the Maharashtra Medical Practitioners Act, 1961. When the applicants are practicing in Electropathy and Naturopathy, virtually, the FIR is a violation of an order of this

Court. Hence all the applicants have prayed to quash and set aside the First Information Reports registered against them.

4. Mr. S. T. Shelke the learned counsel appearing for the applicants submits that the applicants are practicing in Electropathy for which no permission or authorization is required either from the State Government or Central Government.

5. On perusal of the allegations in the first information reports and the affidavit in reply submitted by the investigating officer, it appears that all the applicants have submitted their undertakings to the effect that they will not practice in medicine. According to the prosecution, though the applicants are not entitled to practice in medicine they are doing so and same is also in contravention of their undertaking as well as provisions of the law. Therefore, the learned APP submits that there are no grounds to quash and set aside the first information reports.

6. We have gone through the relevant provisions of Section 2, Sub-section 2 of the Maharashtra Act as

well as provisions of Section 33 (2), 33 (A) of the Maharashtra Medical Practitioner Act. On perusal of relevant provision it is clear that a person shall be deemed to practice any system of medicines who holds himself out as a being able to diagnose, treat, operate or prescribe medicine or other remedy to give medicine for any ailment, disease, injury, deformity or a physical condition or who claims or indicates to diagnose, treat, operate or prescribe medicines or other remedy etc. for all these purposes unless a person is a registered medical practitioner, he shall not be allowed to practice in view of Section 33 which is part of Chapter VI. However, under the proviso to sub-section 2 there is a category of the persons who shall not be deemed to practice medicines and therefore, they are neither treated as a medical practitioner nor their practice as such is prohibited under Section 33. From the proviso it is clear that a person, who practices Physiotherapy or Electropathy, Chiropractic or Naturopathy or Hydrotherapy or Yogic healing shall not be deemed to practice medicine. As long as persons who claim to have a degree or diploma in Electrophysiotherapy or Electropathy and they practice as such they cannot come within the purview of Section 33.

However, if such person claim to practice medicine for the purpose of diagnosis, treatment etc. they will come within the definition of the Medical Practitioner and will be required to be registered under Section 33, failing which they are liable for prosecution by the State Government.

7. On scrutiny of the record and upon hearing both the side, it appears that admittedly, the applicants have not registered as medical practitioner under the provisions of Section 33 and in absence of such registration they are not allowed to do the practice in medicines. However, it is made clear that no registration is required under Section 33 for doing the practice in Electropathy or Naturopathy.

8. In view of the above and the fact that the applicants have not registered as a medical practitioner in view of the proviso of Section 33 they are not allowed to practice in medicines. Therefore, looking to the allegations, in the first information reports against all the applicants there are specific allegations against the applicants that they are doing medical practice in medicine. Therefore, there is

clear cut contravention of Section 33 (2) and 33 (A) of the Maharashtra Medical Practitioners Act, 1961. Therefore, the first information reports registered against the applicants cannot be said to be groundless. Therefore, there is no substance in the applications. Hence, all the applications are liable to be dismissed. Accordingly, those are dismissed. No costs.

(K. L. WADANE, J.)

(T. V. NALAWADE, J.)

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