

Rane

* 1/8 * APEAL-769-2001 (SR. 506)
Wednesday, 21.2.2018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 769 OF 2001

The State of Maharashtra

....Appellant
(Orig. Complainant)

V/s.

Tamanna Baburao Kurbetti,
Age-26 years.,
R/at. Malli Galli, Gadhinglaj,
Hebbal Jaldyal, Tal.,Gadhinglaj
Dist. Kolhapur.

....Respondent
(Orig. Accused)

* * * * *

Mr. K.V. Saste, Additional Public Prosecutor for the State,
appellant.

None for the respondent.

CORAM :- **SANDEEP K. SHINDE, J.**

DATE :- **21ST FEBRUARY, 2018.**

JUDGMENT :-

1. The State has preferred this Appeal against the order of acquittal dated 25th June, 2001 recorded by the Learned Additional Sessions Judge, Gadhinglaj in Criminal Appeal No. 3 of 2000, whereby the order of

conviction passed by the Judicial Magistrate First Class, Gadhinglaj in R.C.C. No. 17 of 1998 convicting the respondent of the offence punishable under Section 33(2) of the Maharashtra Medical Practitioners Act, 1961 was set aside.

2. Section 33(1) of the Maharashtra Medical Practitioners Act, prohibits practice in medicine by a person other than a Registered Medical Practitioner. Sub-Section 2 thereof, is a penal provision, which provides, any person who acts in contravention of any of the provisions of sub-section (1) of Section 3 shall on conviction, be punished for the first offence with a rigorous imprisonment which is not less than two years and for the subsequent offence for a term which may extend to 10 years with a fine.

3. Section 37 of the said Act reads as under :-

“Notwithstanding anything contained in this Chapter, a person may practise medicine in any rural area-

(i) If he has commenced practice in any

village in the said area prior to a date on which a practitioner registered under the Bombay Medical Act, 1912, or under the Bombay Medical Practitioners Act, 1938 (or any law corresponding thereto) or, under the Bombay Homeopathic Act, 1951 (or other law in relation to the qualifications and registration of Homeopathic or Biochemic Practitioners) for the time being in force, has commenced, and is in regular practice of medicine in that village, and

(ii) So long as he continues to practise in that village as his principal place of practice.”

(It may be stated, provisions of Section 37 now stands deleted by Mah.40 of 2005.s2)

4. Thus, the provisions of Section 37 permits a person to practice medicine in any rural area, if such practice he has commenced prior to the date on which a Registered Medical Practitioner has commenced practice in medicine in that Village.

5. In the case in hand, the respondent, accused has commenced his practice in Village- Hebbal, Taluka- Gadhinglaj, District- Kolhapur in 1993. It appears, the P.W.1 who is a Medical Practitioner in the adjoining

Village- Mungurwadi lodged a complaint with Nesari Police Station that the respondent, accused being not a Registered Medical Practitioner, is practising in the Medicine in contravention of the provisions of Section 33(1) of the Maharashtra Medical Practitioners Act. On this report, in March, 1996 by Dr. Chandrakant Patil, the offence came to be registered against the respondent and he was tried in R.C.C. No.17 of 1998.

6. The Learned Judicial Magistrate First Class, Gadhinglaj vide judgment and order dated 5th October, 2000 convicted the respondent of the offence punishable under Section 33(2) of the Maharashtra Medical Practitioners Act, 1961 and directed to suffer rigorous imprisonment for 2 years and pay fine of Rs.2,000/-.

7. Aggrieved by the conviction as aforesaid, the respondent had preferred Criminal Appeal No.3 of 2000 in the Court of Additional Sessions Judge, Gadhinglaj. The Appeal was allowed by the Learned Sessions Judge by judgment and order dated 25th June, 2001 and acquitted the respondent, accused against which the present Appeal

is preferred by the State.

8. Heard Learned APP for the State. None appears for the respondent, though served.

9. Perused the records and proceedings. Section 37 of the Maharashtra Medical Practitioners Act, 1961 had an overriding effect as could be seen from the terminology of the said Section. On the plain reading of Section 37, it is manifest that, a person was permitted to practice in Medicine in a Village, if there was no Registered Medical Practitioner in the said Village before he had commenced practice.

10. Here, it is the prosecution's case that, since before 1993, there was Registered Medical Practitioner in Village- Hebbal and thus accused deserves no protection in view of the provisions of Section 37 of the Act.

11. Mr. Saste, the Learned APP has taken me through the evidence of P.W.1 Dr. Chandrakant Patil, the complainant. His evidence shows that, he is a resident of Village- Mungurwadi and not of Village- Hebbal, where the accused was practising Medicine. The evidence of Dr. Patil

has not established a fact that, he was a Registered Medical Practitioner since prior to 1993 and further that he was practising in Village- Hebbal since before that. He has merely stated that, he holds a Degree from A.M. Shaikh Homeopathic Medical College, Belgaum having Registration No. 16797. His evidence certainly falls short of requirement to establish a fact that since prior to 1993 he was practising Medicine in Village-Hebbal. Thus, in my view, the evidence of Dr. Patil was of no assistance to the prosecution.

12. The prosecution has relied on the evidence of P.W.3, one Umajai Yemagekar. His evidence shows that, his son is a Practising Doctor and holds the degree of B.A.M.S at Village-Hebbal. His evidence was recorded in 1999 wherein, he has stated that his son had started practise in the Village-Hebbal, hardly six months before. In other words, the evidence of this witness did not establish a fact that, there was any other Registered Medical Practitioner practising in Medicine prior to 1993.

13. It appears from the record that, the

prosecution had placed on record a Certificate issued by the District Health Officer to prove that, Sub-Centre of Primary Health Centre was functional at Village- Hebbal. However, after going through the evidence, it appears that the Primary Health Center was functional not at Village- Hebbal but in Village- Mungurwadi as could be seen from the evidence of P.W.1. That even otherwise, the Certificate issued by the District Health Officer, has not been proved by the prosecution by examining either the said officer or any other said person from the said office.

14. Be that as it may, the fact remains that the prosecution has not proved a fact that, prior to 1993 there was any Registered Medical Practitioner in Village-Hebbal. On the other hand, defence Witness would depose that, since prior to 1993 the respondent was practising Medicine and no other Medical Practitioner was available in the said village. Infact, there is a Certificate issued by the Gram Panchayat at Exhibit-36, supporting the respondent herein.

15. Thus, after going through the evidence on

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record, in my view, no interference is called for in the order of acquittal recorded by the Learned Sessions Judge in the said Appeal whereby the order of conviction passed by the Judicial Magistrate First Class has been quashed and set aside. That for the reasons as stated hereinabove, the Appeal deserves no consideration. It is accordingly dismissed.

(SANDEEP K. SHINDE, J)