

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Criminal Revision Case No.1340 of 2012
and
M.P.No.1 of 2012

P.Subramani

... Petitioner

vs

State rep. by the
Sub-Inspector of Police,
Nagarasampatti Police Station,
Krishnagiri District.
(Crime No.277/2002)

... Respondent

Prayer : Criminal Revision Petition filed under Sections 397 and 401 of Code of Criminal Procedure, to call for the records and set aside the judgment in Criminal Appeal No.36 of 2010 dated 23.08.2012 on the file of the Additional Sessions Judge, Krishnagiri in confirming the judgment made in C.C.No.187 of 2002 dated 31.05.2010 on the file of the Chief Judicial Magistrate, Pochampalli and acquit the petitioner from all the charges.

For Petitioner : Mr.S.Ashok Kumar, Senior Counsel
for M/s.I.Abrar Md.Abdullah

For Respondents: Mr.B.Arulmozhimaran
Government Advocate (Crl.Side)

ORDER

The instant Criminal Revision Case has been filed by the Petitioner as against the judgment of conviction passed in Criminal Appeal No.36 of 2010 on the file of the learned Additional Sessions Judge, Krishnagiri by confirmed the judgment of learned Trial Court in C.C.No.187 of 2002 on the file of the learned District Cum Judicial Magistrate, Pochampalli, Krishnagiri District.

2.The charge against the revision petitioners is under section 15(2)(b) and 15(3) of Indian Medical Council Act r/w 354 of Indian Penal Code. Before the learned Trial Court PW's 1 to

11 were examined and Exhibits P1 to P11 were marked along with the production of MO's 1 to 11. At the conclusion of trial proceedings, the trial court found the Revision Petitioner as guilty under section 15(2)(b) and 15(3) of Indian Medical Council Act and convicted the Revision Petitioner/Accused by imposed 6 months of Rigorous imprisonment along with fine of Rs.1000/- in default the accused to undergo 3 months imprisonment. Further, the offence under section 354 of IPC 1 month of rigorous imprisonment was imposed along with a sum of Rs.4000/-, in default the Revision Petitioner/Accused has to undergo 3 months imprisonment. Moreover, the learned Trial Judge by invoked section 357(1) of Cr.P.C awarded a sum of Rs.2000/- as compensation out of the fine amount.

3. Feeling aggrieved over the conviction and sentence imposed by the learned Trial Court, the Revision Petitioner/Accused preferred Crl.A.No.36 of 2010 on the file of the Additional Sessions Judge, Krishnagiri. However, the Crl.A.No.36 of 2010 was dismissed by the judgment dated 23.08.2012. So, the Revision Petitioner has preferred the instant revision as against the judgment passed in the Crl.A.No.36 of 2010.

4. The learned Counsel appearing for the Revision Petitioner would submit that the judgment of the lower Appellate court and the learned Trial Court are contrary to law and without proper appreciation of evidence, so the recording of conviction is liable to be set-aside. He also pointed out that the police is not competent to file final report and the evidence of PW-1 is not been corroborated with any other independent witnesses. Further, it is pointed out by the learned counsel for the Revision Petitioner that the relatives of the PW-1 and PW-2 had previous motive with the revision petitioner and the complaint of PW-1 was registered in Crime No.393 of 2000 on the file of Sub-Inspector of Police, Nagarasampatti, which culminated into filing of final report in C.C.No.360 of 2000 on the file of District Munsif Cum Judicial Magistrate, Pochampalli. So, he prays this court to allow the Criminal Revision Case.

5. Per contra, the learned Government Advocate (Criminal side) would submit that the findings of the lower Appellate court are legally sustainable and the same cannot be disturbed or interfered with in the revision jurisdiction. He adds further that though it is argued by the Senior counsel for the revision petitioner on various aspects, no suggestions were put- forth during the cross examination of the prosecution witnesses. Apart from that he also pointed out that no suggestion was put-forth with any of prosecution witness to the effect that the Revision

Petitioner/Accused did not run a private clinic as charged by the prosecution, therefore he prays for the dismissal of criminal revision case.

6.I heard Mr.S.Ashok Kumar, learned senior counsel for M/s.I.Abrar Md.Abdullah, learned counsel for the petitioner and Mr.B.Arulmozhimaran, learned Government Advocate (Criminal Side) for the respondent and the materials available on records are perused.

7.It is the case that the prosecution has been launched as against the revision petitioner for the offence punishable under section 15(2)(b) and 15(3) of the Indian Medical Council Act and also section 354 of IPC. The learned counsel for the Revision Petitioner would submit that though it is alleged that the revision petitioner was running a hospital and provided treatment under the allopathic system without any prescribed educational qualification under the Indian Medical Council Act, but to substantiate these allegation no reliable evidence were let in by the prosecution.

8.However it is seen from the records that though it is the case of PW-1 that the Revision Petitioner/Accused was misbehaved with her and thereby outraged her modesty, but the evidence of PW-1 not corroborated with the evidence of Investigating Officer PW-11. It is interesting to note here that originally as against Revision Petitioner/Accused the case was taken cognizance in Calendar Case No.117 of 2002 and in the said case conviction was recorded without examined the Investigation Officer. Subsequently, the matter was taken up for appeal in Cr.Ap.No.5 of 2004 and by the judgment dated 19.09.2006 the matter was remanded back for a fresh disposal after the examination of the Investigation Officer.

9.Now, the point for consideration is as to whether the prosecution has proved that the Revision Petitioner was running a private hospital and provided treatment to the Defacto-complainant. In this regard though PW's 1, 2 and other witness were examined they have not supported the charge in respect of the offence under section 15(2)(b) and 15(3) of Indian Medical Council Act. At the same time the evidence of Investigation Officer would reveal that he has not collected any evidence in respect of running of Private Hospital by the Revision Petitioner. Whereas, he has produced some photographs even in those photographs marked as MO's 5 & 6 series would not show the clinic was running by the Revision Petitioner/Accused.

10.As far as the offence under section the Indian Medical Council Act is concerned the basis for the recording of conviction must be based on the prosecution evidence pointing that the accused alone was running the Private Hospital. In this regard it is useful to refer the judgment of the Hon'ble Punjab and Haryana High Court in Ashok Kumar Vs State of Punjab represented in 2011 2 RCAR (Criminal 449) followed by the judgment rendered by the Hon'ble Division Bench of Punjab and Haryana High Court Dr.Pareendra Singh Lutheyana Medical Welfare Association Vs State of Punjab Report 2009 5 RCR Criminal 565:

"Section 15(3) of the Indian Medical Council Act, 1956 as it stands on the statute book prescribes a punishment of only one year for any one contravening the provisions of the said Act. Part (ii) of Schedule (I) of the Code of Criminal Procedure deals with the classification of offences against other laws and inter-alia provides that if the offence is punishable with imprisonment for a period of less than three years or with fine only, the same would be non-cognizable and can be tried by a Magistrate. This implies that a Magistrate taking cognizance of such an offence can do so on a complaint filed before him under Section 190(1)(a) read with Section 200 of the Code of Criminal Procedure. The expression 'Complaint' has been defined in Section 2(d) of the Code of Criminal Procedure to mean any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, Review Application No. 587 of 1999 [6] has committed an offence, but does not include a police report. This implies that no sooner the Magistrate receives a complaint containing an allegation orally or in writing, he can take cognizance under Section 190 and issue process under Section 204 of the Code of Criminal Procedure. The expression 'offence' as defined under Section 2(n) means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle-trespass Act, 1871.

Thus, it is evident that the present FIR bearing No. 111 dated 08.10.2009 u/s 420 IPC and Section 15 of the Indian Medical Council Act, 1956 is not maintainable. The fact that the Petitioner had a valid licence on the date of registration of the said FIR and the allegation that he was selling the medicines without licence or without the prescription of the Medical Practitioner is an offence which can be dealt with by the Drugs and

Cosmetics Act, 1940 or the Indian Medical Council Act, 1956 for which a procedure is prescribed i.e. Of filing a complaint in accordance with law.

20. Thus, in view of above discussion as well as the judgment rendered by the Division Bench of this Court in the case of Dr. Barinder Singh (supra), the present petition is allowed and FIR No. 111 dated 08.10.2009 registered at Police Station, Tal-wandi Sabo, District Bathinda u/s 420 of IPC and Section 15 of the Indian Medical Council Act, 1956 (Annexure P2) and all other consequential proceedings arising out of the same are hereby quashed. However, the same shall not come in the way of the competent authority i.e. Civil Surgeon as already referred in Dr. Barinder Singh's case (supra) as well as any other authority to launch prosecution against the present Petitioner, under the Special Act as discussed above and as permissible in law.

11. So, the duty of the prosecution is to secure not only ends of justice but ends of fair justice. Here in the instant case no reliable and cogent evidence are produced to substantiate the offence punishable under the Medical Council Act. Moreover the procedure adopted by the Investigation Officer that too under the Indian Medical Council Act is invalid and unsustainable instead the authorities concerned ought to have file complaint under the Indian Medical Council Act. Therefore, I cannot sustain the conviction recorded by the lower courts in the offence under the Indian Medical Council Act.

12. At the same time as far as the offence under section 354 of IPC is concerned the evidence of PW-1 has not been corroborated with any other independent witness. The manner and subsequent behavior of PW-1 immediately after the alleged occurrence appears not to be normal and in the considered opinion of this court, no trust worthy can be placed upon the evidence of PW-1. Moreover, when the PW-1 and PW-2 were not in a position to prove that PW-1 was treated by the Revision Petitioner/Accused then no question would arise in respect of offence punishable under section 354 of I.P.C.

13. In fine,

(a) the Criminal Revision case is deserved consideration and the same is allowed;

(b) the judgment in Crl.A.No.36 of 2010 dated 23.08.2012 on the file of the learned Additional Sessions Judge, Krishnagiri confirming the judgment made in C.C.No.187 of 2002 dated 31.05.2010 on the file of the learned Chief Judicial Magistrate, Pochampalli are set aside;

(c) the petitioner/accused is acquitted from the case and the fine amount and compensation amount paid by the accused shall be refunded by the trial Court. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Additional Sessions Judge,
Krishnagiri.

2.The Chief Judicial Magistrate,
Pochampalli.

+ 1 cc to Mr.I. Abrar Md. Abdullah, Advocate SR.23484

Criminal Revision Case No.1340 of 2012
and
M.P.No.1 of 2012

(CS-VIII)
EU(20/09/2018)

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