



Crl.R.C.(MD).No.81 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.03.2023

PRONOUNCED ON : 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.81 of 2020

and

Crl.M.P.(MD)No.3788 of 2023

Ravindrakumar

... Petitioner/Appellant/Sole Accused

Vs.

State through

The Sub-Inspector of Police,

Vanniampatti Police Station,

Virudhunagar District.

(Cr.No.96 of 2010)

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to judgment and sentence passed by the District and Sessions Court, Srivilliputhur at Virudhunagar, vide judgment in C.A.No.138 of 2012, dated 04.11.2019 and confirming the learned Judicial Magistrate No.II, Srivilliputhur, vide judgment in C.C.No.167 of 2011, dated 29.08.2012 and set aside the same.



WEB COPY



Crl.R.C.(MD).No.81 of 2020

For Petitioner : Mr.K.Muthumalai
For Respondent : Mr.S.S.Madhavan
Government Advocate(Crl.Side)

ORDER

This Criminal Revision is directed against the concurrent judgments of conviction passed in C.A.No.138 of 2012, dated 04.11.2019, on the file of the Additional District Court, Srivilliputhur, confirming the judgment made in C.C.No.167 of 2011, dated 29.08.2012, on the file of the Court of Judicial Magistrate No.II, Srivilliputhur.

2. The case of the prosecution is that the defacto complainant, who is the Block Medical Officer, Government Primary Health Centre, R.Reddiyapatty, preferred a complaint before the respondent police station stating that based on the complaint received from the general public about the petitioner that he is a bogus Doctor, the Director of Health, directed the defacto complainant to conduct inspection and accordingly, on 11.06.2010 at about 01.30p.m., the defacto complainant along with the Block Health Supervisor – Shanmugavel, Health Inspectors – Velu and Ramesh went to the clinic allegedly run by the petitioner at the upstairs of post office, Perumalthevanpatty Village and



Crl.R.C.(MD).No.81 of 2020

conducted an inspection, that they came to know that the petitioner, who studied plus two has been doing allopathy practice, that they have seized allopathy medicines and syringes from his clinic and that they came to know that the petitioner has been giving allopathy treatment to the villagers for the past ten years.

3. On the basis of the complaint lodged by the Block Medical Officer, F.I.R., came to be registered in Cr.No.96 of 2010, for the offences under Section 27(b)(2) of Drugs and Cosmetics Act and under Section 15(3) of Indian Medical Council Act against the petitioner. The respondent, after completing the investigation, has filed the final report for the alleged offences under Section 420 I.P.C., and Section 15(3) of Indian Medical Council Act against the petitioner and the same was taken on file in C.C.No.167 of 2011, on the file of the Judicial Magistrate Court No.II, Srivilliputhur.

4. During trial, the prosecution examined seven witnesses as P.W.1 to P.W. 7 and exhibited seven documents as Exs.P.1 to P.7 and marked six material objects as M.O.1 to M.O.6. The petitioner/accused has adduced neither oral nor documentary evidence. The learned Judicial Magistrate, upon considering the



Crl.R.C.(MD).No.81 of 2020

evidence both oral and documentary and on hearing the arguments of both sides, passed the judgment dated 29.08.2012, convicting the petitioner for the offence under Section 15(3) of Indian Medical Council Act and sentenced him to undergo six months Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months Simple Imprisonment and acquitted the petitioner for the offence under Section 420 I.P.C.

5. Aggrieved by the judgment of conviction and sentence, the accused has preferred an appeal in C.A.No.138 of 2012 and the learned Additional District and Sessions Judge, Srivilliputhur, upon perusing the records and on hearing the arguments of both sides, has passed the impugned judgment dated 04.11.2019, dismissing the appeal and thereby confirmed the judgment of the conviction and sentence passed by the trial Court in C.C.No.167 of 2011. Aggrieved by the said judgment of dismissal, the accused has come forward with the present Criminal Revision.

6. It is pertinent to note that there is a concurrent verdict of conviction and sentence against the revision petitioner. It is settled law that the revisional jurisdiction of this Court under Sections 379 and 401 Cr.P.C., is confined to



Crl.R.C.(MD).No.81 of 2020

legality, propriety and correctness of the concurrent findings of the conviction entered and sentence imposed on the accused. Moreover, the power and the jurisdiction of revisional Court cannot be equated with the power and the jurisdiction of the appellate Court nor the same can be treated as the second appellate jurisdiction. It is pertinent to mention that while exercising the revisional jurisdiction, there is absolutely no scope for re-appreciating the entire evidence again, but at the same time, if the appreciation of evidence is tainted with perversity, the same can be looked into and interfered with by the revisional Court.

7. The learned Counsel for the revision petitioner would submit that there is no evidence to prove that the accused is the person practicing as a allopathy Doctor, except upon the complaint given by P.W.1 – Medical Officer and the evidence of P.W.2 to P.W.4 – Health Officers, that P.W.1-defacto complainant has no locus standi to lodge the complaint against the petitioner, that the accused even though not an allopathy Doctor, had been using disposable syringe and needles and allopathy medicines, that the witnesses had not deposed about the actual qualification of the petitioner, that no independent witness was examined, that the prosecution has failed to prove the guilt of the accused beyond



Crl.R.C.(MD).No.81 of 2020

reasonable doubts. The learned Counsel would further contend that the very presence of P.W.4 on the place of occurrence is doubtful and P.W.4 herself had given an admission that she was not examined by the police, that neither the defacto complainant nor the police officials have taken any steps to get the actual qualification of the petitioner, that the petitioner underwent courses and obtained graduate certificates within the meaning of Indian Medicine Central Council Act, and that the petitioner is a Homeopathy Doctor having M.D.H., certificate issued by the competent University and he is a life member of Kamarajar District Homeopathy Doctors' Association in 1991 onwards. The learned Counsel would further submit that the Courts below failed to see that P.W.1 to P.W.4 were all official witnesses and no independent witness was examined, that there is no evidence to show that the public had given complaints against him, that the medicines recovered from him are absolutely available in the medical shops, that the prosecution has miserably failed to produce any evidence to show that the petitioner had practiced allopathy in the manner as alleged by the prosecution and that the Courts below had proceeded on presumptions and assumptions and failed to notice that there is no substantial proof for violation of Indian Medical Council Act by the petitioner.



Crl.R.C.(MD).No.81 of 2020

WEB COPY

8. It is evident from the records that the Department of Public Health and Preventive Medicine, Sivakasi has issued a circular with regard to eradication of quackery in Sivakasi HUD. According to the prosecution, since the complaints were received against the petitioner from public, the Deputy Director of HUD services, Sivakasi, vide proceedings dated 10.06.2010, had directed P.W.1- Block Medical Officer, Primary Health Centre, R.Reddiyapatty, to conduct inspection and submit a report within three days and that in pursuance of the said direction, P.W.1 along with the Block Health Supervisor and Health Inspectors went to the clinic run by the petitioner at the upstairs of post office, Perumalthevanpatti Village and conducted inspection.

9. It is evident from the records that P.W.1 and his team had recovered Injection Paracetamol -1, injection dicyclomine -1 (used), injection cyanocobalamin (BEE 12) full viol -1, injection Vitamin B Complex viol used, tablet CPM-1 box, disposable syringe with needle in the clinic of the petitioner and the same were produced before the jurisdictional Court and the same were ordered to be received and remanded.



Crl.R.C.(MD).No.81 of 2020

WEB COPY

10. Though the petitioner has been alleging in the revisional ground that he has been practicing as Homeopathy Doctor from 1991 onwards and he is in possession of required certificates, he has not chosen to produce the same before P.W.1 and his team at the time of inspection, or before the police at the time of arrest or subsequently during the investigation. As already pointed out, the petitioner/accused has not adduced any evidence before the trial Court. It is pertinent to note that the petitioner has not chosen to produce the alleged certificates and the other evidence to show that he has been practicing as a Homeopathy Doctor at the trial before the learned Judicial Magistrate. As rightly contended by the learned Additional Public Prosecutor, the petitioner has not even offered any reason or explanation as to why he was possessing all the medicines in his clinic at the time of inspection. As rightly observed by the Courts below, the petitioner has not attributed any motive or previous enmity against P.W.1 and his team members.

11. A close perusal of the judgment of the appellant Court would reveal that the learned Additional District Judge has reassessed the evidence and gave his findings concurrent with the trial Court. Considering the evidence available



Crl.R.C.(MD).No.81 of 2020

WEB COPY

on record, this Court is not inclined to interfere with the findings of the Courts below.

12. The learned Counsel for the petitioner would submit that some indulgence can be shown in the matter of punishment. He would further submit that the inspection by P.W.1 was conducted on 11.06.2010, that the petitioner is now nearing 60 years, that the petitioner had no bad antecedents and that the petitioner was not involved in similar offence subsequently. The learned Counsel would further submit that this Court at the time of admitting the revision, in Crl.M.P.(MD)No.1203 of 2020, vide order dated 05.03.2020 suspended the sentence imposed on the petitioner and he was directed to be enlarged on bail, that subsequently the Criminal Revision was dismissed for non-prosecution on 04.11.2022, that the petitioner was apprehended by the respondent on 08.01.2023 and that he is in jail till now. He would further submit that the petitioner was in judicial custody for 18 days at the initial stage during investigation.



Crl.R.C.(MD).No.81 of 2020

WEB COPY

13. It is also brought to the notice of this Court that the petitioner has already undergone the period of 14 weeks. Taking note of all the above aspects, the sentence imposed by the Courts below is reduced to 14 weeks. The period already undergone by the petitioner is set off under Section 428 Cr.P.C. In all other aspects, the judgment of the appellate Court is confirmed.

14. In the result, this Criminal Revision Case is partly allowed and the conviction imposed by the learned Judicial Magistrate No.II, Srivilliputhur in C.C.No.167 of 2011, vide judgment dated 29.08.2012, which was confirmed by the learned Principal District and Sessions Judge, Srivilliputhur @ Virudhunagar vide impugned judgment, dated 04.11.2019, in C.A.No.138 of 2012 is confirmed and the sentence is reduced to the period already undergone by the petitioner/accused and therefore, the petitioner is directed to be released forthwith, unless his custody is required in connection with any other case. Consequently, the connected Miscellaneous Petition is closed.

05.04.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
SSL



Crl.R.C.(MD).No.81 of 2020

WEB COPY

- To
1. The District and Sessions Court, Srivilliputhur
at Virudhunagar.
 2. The Judicial Magistrate No.II, Srivilliputhur.
 3. The Sub-Inspector of Police,
Vanniampatti Police Station,
Virudhunagar District.
 4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.R.C.(MD).No.81 of 2020

K.MURALI SHANKAR, J.

SSL

Pre-Delivery order made in
Crl.R.C.(MD)No.81 of 2020
and
Crl.M.P.(MD)No.3788 of 2023

05 .04.2023