

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CRM-M-37427-2019 (O&M)**

**Reserved on: May 22, 2023**

**Pronounced on: July 03, 2023**

Dr. Manish Kharab

...Petitioner

vs.

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. D.K.Tuteja, Advocate for the petitioner.  
Mr. Gaurav Bansal, AAG Haryana.

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**HARKESH MANUJA, J.**

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of FIR No.85 dated 08.02.2018 under Section 18(c) Drugs and Cosmetics Act, 1940, Section 15 (2) (B) Indian Medical Council Act, 1956 and Section 420, 120-B IPC, 1860 registered at Police Station Quilla Panipat, District Panipat (Annexure-P-1) and the final report (Annexure P-2), qua the petitioner.

2. Brief facts of the case are that on 08.02.2018, a team was constituted by Civil Surgeon, Panipat vide letter No.132 /CMPS/KNL dated 07.02.2018 to conduct a raid at the clinic of Dr. Manish Kharb, 5/7, Sanoli Road near Delhi Juice Corner, Panipat. Raiding team along with flying squad reached at the place and found that Mr. Karambir S/o Sunchro, R/o Jattal Road, Panipat was sitting who told that Chander Parkash @ Chintu S/o Om Parkash, R/o 514, HUDA, Phase-I, Section-1, runs the clinic. Dr. Chander Parkash was asked to reach at the spot, who accepted that he was running the clinic, but could not produce any degree and it was told that his daily OPD was of 20-30 cases and

that the clinic was in the name of Dr. Manish Kharb. On being called, Dr. Manish Kharb accepted that he was running the clinic in morning hours and was performing the night duty at IBM Hospital. He further informed that the property belonged to Chander Parkash and they were working on sharing basis and Chander Parkash was working as a compounder. During search, (18) types of medicines along with BP apparatus and seven injections (partially used) were found. So it came to knowledge that unregistered & unqualified doctors were working under the shadow of Manish Kharb, BAMS. Therefore, on the basis of a letter written from Deputy Civil Surgeon to SHO, PS Quilla Panipat, FIR No.85 dated 08/02/2018, under Section 18(c) Drugs and Cosmetics Act, 1940 and Section 15(2), 15(3) of Indian Medical Council Act, 1956 and Sections 420, 120B of Indian Penal Code was registered at P.S. Quilla, Panipat against the petitioner and co-accused Chander Parkash @ Chintu.

3. In pursuance of the aforementioned FIR, investigation was conducted by the police and final report under Section 173(2) Cr.P.C. was filed before learned JMJC Panipat and petitioner has been facing trial. By way of present petition, petitioner has prayed for quashing of FIR as well as the final report.

4. Learned counsel for the petitioner has made point wise submission qua each allegation mentioned in the FIR. With respect to offence U/s 18 (c) of Drugs & Cosmetics Act, (for short 'the Act'), Id counsel submits that offence alleged to have been committed by the petitioner is made punishable under Section 27 (b) (ii) of the Act, while as per Section 36-AC *ibid*, the offence punishable under Section 27 (b) (ii) of the Act has been specifically excluded from the category of

cognizable offence. He further submits that as per the mandate of Section 32 (1) of the Act, no FIR can be registered for an offence committed under the Act and Ld. Court can take cognizance only on the basis of a complaint filed by the authorized person specified under Section 32 of the Act and police has got no power to register FIR and to investigate the matter.

Learned counsel further submits that since the petitioner is a Medical Practitioner duly registered by virtue of Annexure-P-7, therefore, neither the offense U/s 15(2)(b) of Indian Medical Council Act is made out against him, nor he can be charged under Section 18 (c) of the Act on account of non-possessing of the license as required under the said provision. With respect to Section 420 IPC, Id. counsel submits that there has to be fraudulent and intentional inducement of a person by deceiving him, while in the present case, there is neither any complainant on record; nor allegation that anyone was induced to part with any property and therefore, he submits that invoking of Section 420 IPC is nothing, but an abuse of the process of law. In support of his contentions, he places reliance upon:-

- i. **"Dr. Barinder Singh, President, Ludhiana Medical Welfare Association v. State of Punjab"**, (P&H)(DB) : Law Finder Doc Id # 201779 reported as 2009 (5) RCR (Criminal) 565
- ii. **"Surendra vs State of Haryana"** by Punjab and Haryana High Court in case bearing No CRM-M-4627-2011 decided on 26.04.2013
- iii. **"Arvinder Singh vs State of Punjab & others"** by Punjab and Haryana High Court in case bearing No CRM-M-54032-2007 decided on 18.02.2009

- iv. **"Pawan Panchal vs State of Haryana & another"** by Punjab and Haryana High Court in case bearing No CRM-M-9001-2012 decided on 01.10.2013
- v. **"Rajendra vs State of Maharashtra & another"** by Bombay Bench at Aurangabad in case bearing No Criminal Writ Petition-846-2016 decided on 10.10.2016
- vi. **"Phul Singh v. State of Haryana"**, by Punjab and Haryana High Court : Law Finder Doc Id # 48391 reported as 1986 (1) RCR (Criminal) 532
- vii. **"State of Haryana vs Phul Singh"** (SC) : Law Finder Doc Id # 193779 reported as 1999 (7) SCALE 53

5. On the other hand, learned counsel for the respondent – State while opposing the prayer made on behalf of the petitioner, submits that FIR was registered on the basis of a complaint received from Deputy Civil Surgeon; petitioner was put to trial before the Id. JMIC Panipat and during investigation, he never produced any registration certificate as a medical practitioner and therefore, the present deserves dismissal.

6. I have heard learned counsel for the parties and gone through the paper-book of the case as well as the authorities cited at the bar. I find substance in the arguments raised on behalf of the petitioner. In the present case, there is no victim or complainant who has come forward to submit that he has been deceived by the petitioner. In **Arvinder**'s case (supra), it was observed by this Court that :-

*"Careful perusal of the complaint sent by Drug Inspector, which is reproduced hereinabove indicates that no offence under Section 420 IPC is made out. The necessary ingredients to attract punishment under Section 420 IPC are that there has to be fraudulent and intentional inducement of a person by deceiving*

*him. The person so deceived should be induced to deliver any property to any person or to consent that any person shall retain any property or that the person so deceived should be intentionally induced to do or omit to do anything which he would not continue or omit if he were not so deceived."*

In that circumstance, without there being any allegation to this effect, it cannot be said that offence under Section 420 IPC is *prima facie* made out.

7. With respect to offence U/s 18 (c) of the Act alleged to have been committed by the petitioner, the same is punishable under Section 27 (b) (ii) of the Act. It is admitted position of law that as per Section 36-AC *ibid*, the offence punishable under Section 27 (b) (ii) of the Act has been specifically excluded from the category of cognizable offence. In this context, it is necessary to have a look at the definition of Section 32 of this Act, which is reproduced hereunder:-

**"32. Cognizance of offences—**[(1) No prosecution under this Chapter shall be instituted except by—  
 (a) an Inspector; or  
 (b) any gazetted officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government or a State Government or by a general or special order made in this behalf by that Government; or  
 (c) the person aggrieved; or  
 (d) a recognised consumer association whether such person is a member of that association or not.  
 (2) Save as otherwise provided in this Act, no court inferior to that of a Court of Session shall try an offence punishable under this Chapter.]  
 (3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter."

8. From the perusal of above, it is apparent that proceedings in present case could not be initiated on the basis of a report under

a complaint filed by the person specified in that Section. Reliance in this regard can be placed upon **Rajendra's** case (supra ) wherein, Division Bench of Bombay High Court observed that:-

*"...From the above provisions, it is clear that the cognizance of the offences punishable under Chapter IV of the Act, which includes the offence under Section 27 (b) (ii), cannot be taken on the basis of the chargesheet filed by the police under section 173 of the Code of Criminal Procedure.*

*13. Indisputably, the cognizance of the offence punishable under section 27 (b) (ii) of the Act alleged Judicial Magistrate and others 1998 (1) Mh.L.J. 599 (S.C.), wherein also it has been held that though the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under section 482 of the Code or Article 227 of the Constitution to have the proceedings quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial."*

9. Similar position of law has been reiterated in other judgments as well, cited by the learned counsel for the petitioner. Thus, the FIR in question so far as it relates to offence u/s 18 (c) of the Act, is liable to be quashed as the same could not have been registered by the police with regard to commission of offence punishable under the Act.

10. Vide Annexure P-7, petitioner has also brought on record his enrollment certificate dated 14.05.2010 bearing registration number 23135 showing that he has been registered as medical practitioner having a Ayurvedacharya Degree (Bachelor of Ayurvedic Medicine and Surgery) since 14.05.2010. Though, the respondent has submitted that

this certificate was never shown to them during investigation, however, neither any question has been raised regarding its veracity while filing reply by the State; nor even during the arguments. In **Phul Singh's** case (supra), it was held by this Court that a person holding certificate of registration from State Ayurvedic and Unani Medical Council, Bihar comes within the definition of Registered Medical Practitioner and as such entitled him to keep medicines and this decision was upheld by Hon'ble Apex Court as well. In this view, it cannot also be held that no offence u/s 15(2)(b) of Indian Medical Council Act is made out against the petitioner.

11. In view of the discussion held above, the present petition is allowed. FIR No.85 dated 08.02.2018 registered at Police Station Quilla Panipat, District Panipat as well as the final report (P-2) is hereby quashed, qua the petitioner.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

**July 03, 2023**  
**sanjay**

**(HARKESH MANUJA)**  
**JUDGE**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No