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Crl. Appeal No.518 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 518 of 2017

State rep. by
The Public Prosecutor,
High Court, Madras – 600 104.
(Drugs Inspector,
Thiruvotriyur Range,
Tiruvallur Zone)

.. Appellant

Versus

1.M/s.Shifa Hospital,
Represented by its Partner,
Dr.V.Parvez Ahamed,
No.2/38, Valayapathy Salai,
Mugappair East, Chennai – 600 037.

2.Dr.V.Parvez Ahamed
3.Dr.R.Mohamed Ibrahim

.. Respondent

Criminal Appeal is filed under Section 378 of the Criminal Procedure Code, 1973, seeking to set aside the Judgment of acquittal of the Respondents/Accused 1 to 3 passed in C.C.No.121 of 2007, dated 28.01.2014 on the file of the learned Chief Judicial Magistrate, Tiruvallur.

For Appellant	:	Mrs.G.V.Kasthuri Additional Public Prosecutor
For Respondents	:	Mr. P. Sesubalan Raja



JUDGMENT

WEB COPY This Criminal Appeal is filed to set aside the Judgment of acquittal passed in C.C.No.121 of 2007, dated 28.01.2014 on the file of the learned Chief Judicial Magistrate, Tiruvallur.

2. The Accused 2 and 3 herein are the Partners of the first Accused – Hospital functioning in the name and style of M/s. Shifa Hospital at Mogappair, Chennai. During the course of their Hospital business, on 10.10.2003, the Drugs Inspector, Tiruvallur accompanied by the Assistant Director of Drugs inspected the first Accused Hospital and seized the medicines stocked in the Hospital viz., (1) 35 x 100 ml of Ciprox – Ciprofloxacin Inj.IPO.2% W/v.; (2) 120 x 100 Curadex Ofloxacin Infusion 100 ml; (3) 25x100 ml of N.S.Sodium Chloride Injection I.P.0.9% W/v.; (4) 25 x 500 ml of DNS Sodium Chloride (0.9% W/v) and Dextrose 5% W/v Inj. and (5) 25 x 500 ml of 5D Dextrose Inj. I.P.5% W/v. According to the Complainant – Drugs Inspector, Thiruvallur, those drugs have been stocked for sale in the first Accused Hospital, without valid and proper drug license. Therefore, the Complainant seized those drugs on 10.10.2006 under form 16. The Complainant also prepared a Mahazar which was witnessed by two independent witnesses namely Tr. Malaichamy and Tr. N. Ramesh, in the presence of the second Accused. The seized drugs were produced before the



learned District Munsif-cum-Judicial Magistrate, Ambattur for safe custody as required under Section 23 (5) (b) of the Drugs and Cosmetics Act, 1940. On 11.10.2006, the original Complainant entrusted the files to Tmt.Vijayalakshmi, Drug Inspector for further interrogation. Subsequently, on 12.10.2006, a complaint was lodged against the Accused by Tmt.Vijayalakshmi, Drug Inspector, Thiruvottriyur. Based on such complaint, a case in Crime No. 121 of 2007 was registered against the Accused 1 to 3 for the offences under Section 18(c) r/w. Section 27(b)(ii), Section 18(a) r/s. Section 28 of the Drugs and Cosmetics Act, 1940. Subsequently, a show cause notice dated 30.10.2006 was issued to the Accused 1 to 3 calling for their explanation specifically to explain the contravention of Section 18 (c) of The Drugs and Cosmetics Act, 1940 for having purchased, stocked and indulged in sale of drug without proper license. By the said show cause, the Accused were also directed to disclose the name and address of the person from whom the drugs were procured. In response, the second Accused sent a reply dated 13.11.2003 disclosing the name and address of the supplier of the drugs. After examining the reply a proposal was submitted to the Director of Drugs Control, Chennai seeking sanction for prosecuting the Accused. Thereafter, the Drugs Inspector filed private complaint through Public Prosecutor attached to the Court of learned Chief Judicial Magistrate, Tiruvallur which was taken on file by the



learned Chief Judicial Magistrate, Tiruvallur, in C.C.No.121 of 2007. After taking the complaint on file, summons were issued to the Accused 1 to 3. On appearance of Accused 1 to 3 copies of the complaint were furnished and the Accused were questioned regarding the charges. The Accused 1 to 3 denied the charges and claimed to be tried. Therefore, the learned Chief Judicial Magistrate, Tiruvallur ordered trial.

3. During trial, Mr. Dilipkumar, Drugs Inspector, was examined as P.W-1, Tmt. P. Vijayalakshmi, Drugs Inspector was examined as P.W-2, another Drugs Inspector Mr. Velmurugan was examined as P.W-3. The witnesses to the seizure of the Allopathy drugs were examined as P.W-4 and P.W-5. In the course of the trial, the Prosecution marked Ex.P-1 to Ex.P-11. Ex.P-1 is the seizure mahazar, Ex.P-2 is the explanation offered by the second Accused, Ex.P-3 is the copy of the documents received from Accused 2 by the Drugs Inspector after comparing the original documents, Ex.P-4 is the complaint given by P.W-2 Assistant Director of Drugs to the Police Station, Ex.P-5 is the CSR copy, Ex.P-6 is the show-cause notice dated 30.10.2006, Ex.P-7 is the explanation offered by the Accused 1 to 3 for the show-cause notice under Ex.P-6, Ex.P-8 is the requisition for sanction to prosecute the Accused, Ex.P-9 is the sanction granted by the Director of Drugs Control,



Ex.P-10 is the signature of P.W-4 mahazar witness on the seizure mahazar and

Ex.P-11 is the seizure mahazar.

4. After closing of the Prosecution evidence, the Accused were examined under 313 of Cr.P.C. regarding the incriminating evidence available before the Court. The Accused offered explanation denying the accusation. The second Accused examined himself as D.W-1 and in his evidence, he had marked documents Ex.D-1 to Ex.D-6. Ex.D-1 is the Degree Certificate regarding Bachelor of Unani Medicine and Surgery (BUMS) to D.W-1. Ex.D-2 is the Degree Certificate regarding Bachelor of Unani Medicine and Surgery (BUMS) issued to Accused-3. Ex.D-3 is the copy of bill issued to the Accused by Ramson Pharma along with certificate. Ex.D-4 is the bill and a certificate from Sree Sesha Pharma & Allied Products. Ex.D-5 is the series of letters addressed on the letter pad of Dr.S.Ramachandran. Ex.D-6 is the Death certificate of Dr.S.Ramachandran.

5. Upon analysing the oral and documentary evidence as also the rival submissions, the learned Chief Judicial Magistrate, Tiruvallur, by the judgment dated 28.01.2014, the Accused/Respondents were acquitted of all the charges.



6. The learned Additional Public Prosecutor further submitted that the Accused 2 and 3 offered explanation to the show cause notice admitting that they were not aware of the Drugs and Cosmetics Act and Rules. They also admitted that they will apply for proper permission as Unani Doctors. As Unani Doctors, they are not expected to administer Allopathy medicines to their patients. Therefore, their conduct is in violation of the provisions of Section 18(c) r/w. Section 27(b)(ii), Section 18(a) r/s. Section 28 of the Drugs and Cosmetics Act, 1940. After closing of the evidence by the Prosecution, when the Accused were questioned under Section 313 of Cr.P.C. they denied the incriminating evidence but offered written explanation. Accused 2 offered to examine himself as D.W-1 only on 12.12.2013 and as an after-thought had furnished the letter pad of one Dr. S. Ramachandran, M.D., as though he had placed orders for the same medicine and Dr. S. Ramachandran is visiting Doctor at the Shifa Hospital/first Accused. This is contradictory to the earlier statement by the Accused-2 that they were not aware of the provisions of Drugs and Cosmetics Act and Rules and they will apply for proper permission. Later, they had an after-thought and created documents as though one Dr. S. Ramachandran, Retired Professor of Medicine had prescribed the medicines for treatment to the patients of the Shifa Hospital/first Accused. However, Dr.S.Ramachandran was not examined as a witness by the Accused to



substantiate their case. By the time, the second Accused was examined as

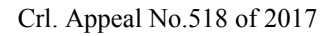
D.W-1 Dr. S. Ramachandran died. Thus, the learned Chief Judicial Magistrate, Tiruvallur failed to appreciate those facts and acquitted the Accused from the charges. In the light of the materials available in the trial, the learned Chief Judicial Magistrate ought to have convicted the Accused. The learned Additional Public Prosecutor submits that the judgment of the learned Chief Judicial Magistrate, Tiruvallur is perverse as the learned Chief Judicial Magistrate, Tiruvallur failed to appreciate the materials available in the cross-examination of P.W-1 to P.W-5.

7. Per contra, the learned Counsel for the Respondents submitted that the first Respondent is the Hospital, Respondents 2 and 3 are the partners of the first Respondent Hospital. Respondents 1 to 3 were acquitted based on proper appreciation of the evidence. It is the further submission of the learned Counsel for the Respondents that the prescribed medical science are taught to students of MBBS as well as the students of Siddha, Homeopathy, Unani as a common syllabus. But later only the Doctors under the Indian System of Medicine – Siddha, Ayurvedha, Homeopathy and Unani continued their studies in the respective branch and as registered medical practitioners under the alternative Indian System of medicine. It is a recognised course, since they



are trained along with the Allopathy Doctors to attend the needs of the patients. They are administering modern medicine to their patients in the Hospital by Allopathy Doctors engaged by them in curing illness. Modern Medicines plays vital role and modern medicines are stocked in the Hospital for the use of Dr. S. Ramachandran, visiting Medical Practitioner. Those drugs were purchased on the instructions of Dr. S. Ramachandran. By the time the second Accused adduced evidence, Dr. S. Ramachandran, under whose instructions the drugs were procured by Accused 1 to Accused 3, died and he could not be examined.

8. It is the further submission of the learned Counsel for the Respondents that the judgment of the learned Chief Judicial Magistrate, Tiruvallur is on proper appreciation of evidence. When an order of acquittal is recorded, the Appellate authority may not disturb the findings arrived at by the trial Court, based on material facts. Thus, the Appellate Court must be slow in reversing the finding of the trial Court while re-appreciating the materials made available before the trial Court. Under those circumstances, the learned Counsel for the Respondents submitted that the State cannot seek reversal of acquittal recorded by the trial Court especially when the learned Chief Judicial Magistrate, Tiruvallur had, on proper appreciation of evidence and materials,



9. In support of his submissions, the learned Counsel for the Respondents relied on the following rulings:-

“49. The upshot of the above discussion is that Rule 2(ee)(iii) as effected from 14.05.1960 is valid and does not suffer from the vice of want of the legislative competence and the notifications issued by the State Governments thereunder are not ultra virus the said rule and are legal. However, after subsection (2) in Section 15 of the 1956 Act occupied the field vide Central Act 24 of 1964 with effect from June 16, 1964, the benefit of the said Rule and the notifications issued thereunder would be available only in those States where the privilege of such right to practise any system of medicine is conferred by the State Law under which practitioners of Indian Medicine are registered in the State, which is for the time being in force. The position with regard to Medical practitioners of Indian medicine holding degrees in integrated courses is on the same plain inasmuch as if any State Act recognizes their qualification as sufficient for registration in the State Medical register, the prohibition contained in Section 15(2)(b) of the 1956 Act will not apply.”

Relying on the above decision, the learned Counsel for the Respondents submitted that the Government of State of Punjab had issued Government Order by which the medical practitioners under the alternate system of



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medicines viz., Ayurvedha, Homeopathy and Unani system of medicines can also treat patients with Allopathic drugs. The controversy in these case was triggered off by the issuance of declarations by the State Governments under Clause (iii) of Rule 2(ee) of the Drugs and Cosmetics Rules, 1945 which defines “Registered Medical Practitioner”. Under such declarations, notified Vaidas/Hakims claim right to prescribe Allopathic drugs covered by the Indian Drugs and Cosmetics Act, 1940.

9.2. In an unreported decision of this Court in ***Crl.O.P.No.23128 of 2018 dated 22.07.2022 [Dr.R.Senthilkumar vs. The State and another]*** it has been observed as follows:

“5. My attention is drawn to the Circular dated 15.10.2010 issued by the Health and Family Welfare Department, Government of Tamil Nadu, wherein it has been already held that “the institutionally qualified Practitioners of Ayurveda, Siddha and Unani, who are registered in the Tamil Nadu Board of Indian Medicine, Chennai are eligible to practice in the respective system with Allopathy based on the training and teaching they had in the Course. But they cannot exclusively do the practice in Allopathy Medicine.”

9.3. In the Judgment of the Kerala High Court in ***MANU/KE/0498/2000 [A.N.Thomas and others vs. Union of India (UOI) and others]*** it is observed as follows:-

“However, we make it clear that the drugs stored in emergency/casualty/duty rooms attached to private Hospitals will



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stand exempted from the provisions of the Act relating to obtaining of licence”

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In the above decision, Writ Petitions were filed to quash the circular of the Drugs Controller directing the Petitioners who are running private Hospitals, to take out a licence under Section 18 of the Drugs and Cosmetics Act, 1940 for sale or storage of drugs and for the issuance of a Writ of Mandamus restraining the Drugs Controller from insisting on the private Hospitals to obtain a drug licence under Section 18 of the Act.

9.4. In the decision of this Court reported in ***MANU/TN/0345/2002***

[State vs. Anuradha Ramnath] it has been observed as under:

“12. As laid down in the decisions in (1) **LOGANATHAN v. STATE** (1992 M.L.J. (Crl.) 126); (2) **DRUG INSPECTOR v. ELIAS M. PALAL** (1987 M.L. J. (Crl.) 334); (3) **SANAT KUMAR BASU v. STATE OF WEST BENGAL** (1984 (Crl.L.J. 931); and (4) **MOHD. SHABBIR v. STATE OF MAHARASHTRA** (AIR 1979 S.C. 564), the mere possession of drugs without the evidence to show that they were stocked for sale or distribution may not attract the relevant penal Section.

13. As noted above, the prosecution has relied upon Ex.P-2 confession statement, which has been subsequently retracted by the Accused in Ex.P-7 reply.

14. Under those circumstances, merely on the basis of Ex.P-2 confession statement, it cannot be said that the offence alleged against the Accused is proved. Therefore, the acquittal is liable to be sustained.”

9.5. In the decision of the Hon'ble Supreme Court in

MANU/SC/0239/2023 [S.Athilakshmi vs. The State rep. By the Drugs



Inspector] a retired Professor of Dermatology was arrayed as Accused for stocking of medicines attracting Section 18 of the Drugs and Cosmetics Act,

1940. In the said case, the Hon'ble Supreme Court has observed as follows:

“6. Under [Section 18](#) of Drugs and Cosmetics Act 1940, a prohibition has been imposed as to the manufacture, sale etc. of certain drugs and cosmetics. [Section 18](#) reads as follows:

18. Prohibition of manufacture and sale of certain drugs and cosmetics. — From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf—

(a)

(b) [sell or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic] which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder;

(c) [manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug [or cosmetic], except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter:

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis:

Provided further that the [Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the [manufacture for sale or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.

The punishment for contravention of [Section 18\(c\)](#) is provided under [Section 27\(b\)\(ii\)](#) which reads as follows:

27. Penalty for manufacture, sale, etc., of drugs in contravention of this Chapter— Whoever, himself or by any other person on his behalf, manufactures for sale or for distribution, or sells, or stocks or exhibits or offers for sale or distributes—



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(a) xxxxxxxxxxxxxxxxxxxx

(b) any drug –

(i) xxxxxxxxxxxxxxxxxxxx

(ii) without a valid licence as required under clause (c) of [section 18](#), shall be punishable with imprisonment for a term which shall [not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees or three times the value of the drugs confiscated, whichever is more]:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of [less than three years and of fine of less than one lakh rupees];

15. The possession of the drugs is not disputed in this case by either side. However, this Court in the case of [Mohd. Shabir v. State of Maharashtra](#) while allowing an appeal in part and directing the release of an Appellant who had been prosecuted under the provision 18(c) of the 1940 Act, this Court observed that possession simpliciter would not itself be an offence but the prosecution had to prove the essential ingredient under [Section 2 \(1997\) 7 SCC 622 3 \(1979\) 1 SCC 568 27](#) which was that even a ‘stock’ of the medicine was for sale. It was observed as follows:

‘4. ...We, therefore, hold that before a person can be liable for prosecution or conviction under [Section 27\(a\)\(i\)\(ii\)](#) read with [Section 18\(c\)](#) of the Act, it must be proved by the prosecution affirmatively that he was manufacturing the drugs for sale or was selling the same or had stocked them or exhibited the articles for sale. The possession simpliciter of the articles does not appear to be punishable under any of the provisions of the Act. If, therefore, the essential ingredients of [Section 27](#) are not satisfied the plea of guilty cannot lead the Court to convict the appellant.’

16. The sanctioning authority had not examined at all whether a practising doctor could be prosecuted under the facts of the case, considering the small quantity of the drugs and the exception created in favour of medical practitioner under Rule 123, read with the Schedule “K”. All these factors ought to have been considered by the sanctioning authority. Under these circumstances we allow this appeal



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and set aside the order of the learned Single Judge of the Madras High Court and quash the criminal proceedings in Criminal Case No. 7315 of 2018 on the file of X Metropolitan Magistrate, Egmore, Chennai.”

9.6. The decision of the High Court of Punjab and Haryana in **CDJ 2017 PHC 015 [Nisha vs. The State of Haryana and another]** has been relied on by the learned Counsel for the Respondents for the proposition of law that the Appellate Court shall not disturb the finding of acquittal recorded by the trial Court, if the finding of the trial Court is based on proper appreciation of evidence.

9.7. In a decision of this Court in **MANU/TN/6382/2018 [S.Singarayan vs. State]** in paragraphs 6 this Court cited earlier judgment of this Court reported in **2011 (2) MWN 9 Cr. 380 (Dr.S.Selvam vs. State)** wherein it is held as follows:-

“15. Therefore, the mere possession will not attract an offence under the Drugs and Cosmetics Act and the continuance of the proceedings is nothing but abuse of process of law, initiated with an intention to harass the petitioner, who is a practising Cardiologist. It is a fit case to interfere with the proceedings. Hence, the entire proceedings in C.C.No.269 of 2010 on the file of the learned Judicial Magistrate, Tenkasi, Tirunelveli District is quashed.”

Following the above decision, this Court had observed as follows:

“7. Considering the above said decision along with the present case, in this present case, as stated above, the petitioner and his son are



running a Hospital and they were in possession of drugs, which has been elicited by the Complainant. The possession of the drugs are not denied. When that being so, whether it was exhibited for sale has to be considered. Even according to the Complainant, he found stocks of various drugs in the Hospital. There is no allegation that stocks were exhibited for sale. Therefore, the offence under Section 18(c) of Drugs and Cosmetics Act is not at all attracted as against the petitioner. Therefore, continuance of the proceedings is nothing but an abuse of process of law initiated with an intention to harass the petitioner.”

10. The learned Counsel for the Respondents also relied on the Government Order in G.O.(Ms) No.248, Health and Family Welfare (IM 2-2) Department, dated 08.09.2010. The relevant portion is extracted as under:

“Now, therefore, under sub-clause (iii) of clause (ee) of Rule 2 of the Drugs and Cosmetics Rules, 1945 the Governor of Tamil Nadu hereby declares every registered medical practitioner holding the qualifications specified in the second, third or fourth schedule to the Indian Medicine Central Council Act, 1970 (Central Act 48 of 1970) and Part III of the Schedule to the Tamil Nadu Siddha System of Medicine (Development and Registration of Practitioners) Act, 1997 (Tamil Nadu Act 34 of 1997) and registered in the Medical Register of the State maintained under the aforesaid Acts, as a person practicing the modern scientific system of medicine for the purposes of the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940).

11. By placing reliance on the above decisions, the learned counsel for the Respondents submitted that when the conclusion reached by the trial court to acquit the Accused is reasonable and plausible, the appellate Court, need not upset such a conclusion reached on the basis of facts. Accordingly, the learned counsel for the Respondents prayed for dismissal of this appeal.



Point for consideration:

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Whether the judgment of acquittal recorded by the learned Chief Judicial Magistrate in C.C.No.121 of 2007, dated 28.01.2014 is to be set aside as perverse?

12. Heard Mrs. G.V. Kasthuri, learned Additional Public Prosecutor for the Appellant, Mr. P. Sesubalan Raja, the learned Counsel for the Respondents/Accused and perused the evidence of witnesses P.W-1 to P.W-5, documents Ex.P-1 to Ex.P-11 and the rulings relied by the learned Counsel for the Respondents.

13. On perusal of the evidence, it is found that P.W-1 and P.W-2 have deposed as though the Accused 1 to 3 had continued the offence attracting Section 18(c) r/w. Section 27(b)(ii), Section 18(a) r/s. Section 28 of the Drugs and Cosmetics Act, 1940. In the cross examination of P.W-1, P.W-2 and P.W-3 it was deposed that Unani medicine of practice is also a recognised qualification and they can use allopathic drugs in cases of emergency. Further, the learned Chief Judicial Magistrate, Tiruvallur had acquitted the Accused based on the fact that Dr. Ramachandran, Retired Professor of Medicine was attending the Hospital as a Visiting Practitioner and only on his instructions the drugs were procured and stocked as they are life saving drugs. This was



also admitted by P.W-1 to P.W-3 in their cross examination. When the Hospital-Accused No.1 Shifa Hospital has facilities to treat patients through allopathic Doctors like Dr.Ramachandran, under whose instruction the life saving drugs were stocked, nothing is found to incriminate against the Accused warranting interference by this Court to set aside the judgment of acquittal by the learned Chief Judicial Magistrate, Tiruvallur.

14. The submission of the learned Additional Public Prosecutor that the learned Chief Judicial Magistrate, Tiruvallur, misdirected himself and ignored the statement made by Accused 1 to 3 under Ex.P2 cannot be permitted as per the decision of this Court reported in ***MANU/TN/0345/2002 [State vs. Anuradha Ramnath]***. The learned Additional Public Prosecutor submitted that the Appeal had been filed on the ground that the explanation offered by the Accused 2 and 3 under Ex.P-2 was to be treated as confession statement and based on that, the learned Chief Judicial Magistrate, Tiruvallur, ought to have convicted the Accused cannot be countenanced. Further, she submitted that Dr.S.Ramachandran, Retired Professor of Medicine was not at all examined during trial as defence witness cannot be accepted, as by the time the trial commenced, Dr. S. Ramachandran passed away and therefore, he was not available for examination as a witness before the trial



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Court. In such circumstances, the Accused cannot be expected to examine the said Doctor as their defence witness.

15. The learned Counsel for the Respondents relied on the evidence of P.W-5 Ramesh who had in his cross-examination stated that he is running medical store near Shifa Hospital and he sells Allopathic drugs. The Allopathic drugs are used only for treating the patients in the Hospital by Allopathic Doctors who visits Shifa Hospital. In emergency cases, the life saving drugs are administered not by Accused 2 and 3 but by Allopathic Doctors who are engaged by Shifa Hospital. At the relevant point of time, Dr.S.Ramachandran, Retired Professor of Medicine was available and it is he who prescribed certain drugs. In the evidence of P.W-1 to P.W-3, who are Drug Inspectors, Assistant Director of Drugs etc., they were unable to state clearly from which place of the Hospital the drugs were seized. P.W-4 remained hostile. There is no evidence that Accused 2 and 3 treated patients. No statements of patient was recorded by P.W-1 to P.W-3 as witnesses before the Trial Court. In the light of those circumstances, the learned Chief Judicial Magistrate, Tiruvallur, had on proper appreciation of evidence, acquitted the Accused. This Court as Appellate Court cannot reverse the finding as there are two possible views. Therefore, the Appeal by the State is to be dismissed.



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16. Further, in the light of the decision of the Hon'ble Supreme Court in *MANU/SC/0239/2023 [S.Athilakshmi vs. The State rep. By the Drugs Inspector]*, the gazette notification relied by the learned Counsel for the Respondents, on the date of inspection the drugs stocked in the Shifa Hospital will not attract offence under Section 18(c) r/w. Section 27(b)(ii), Section 18(a) r/s. Section 28 of the Drugs and Cosmetics Act, 1940. As per the decision of this Court in *MANU/TN/6382/2018 [S.Singarayan vs. State]* and the decision of this Court reported in *MANU/TN/0345/2002 [State vs. Anuradha Ramnath]* merely being Unani system of Doctors does not mean that they are running the Hospital only for Unani system of medicines, they are partners of Shifa Hospital, the services of allopathic Doctor by name Dr.S.Ramachandran was utilised. It is an admitted fact that during trial, Dr. Ramachandran was not alive. Therefore, the said Dr. S. Ramachandran could not be examined. It is true that Ex.P-2 did not contain the specific name of Dr.S.Ramachandran or any other allopathic Doctor. At the same time, there is no statement recorded from the patients who were treated by Unani Doctors administering Allopathic drugs. The evidence in cross-examination of P.W-1 to P.W-3 who are qualified Drug Inspectors admits that the seized medicines are life saving drugs and in cases of emergency the Doctors at Shifa Hospital,



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not Unani Doctors, who practice allopathic available at Shifa Hospital treat the patients with allopathic drugs in emergency.

17. In the light of the above discussions and in the light of the decisions relied by the learned Counsel for the Respondents, particularly, the orders of this Court in *MANU/TN/6382/2018 [S.Singarayan vs. State]* and in *MANU/TN/0345/2002 [State vs. Anuradha Ramnath]* the judgment of acquittal is found to be well reasoned judgment and acceptable. The point for consideration is answered in favour of the Respondents and against the Appellant. The judgment of acquittal recorded by the learned Chief Judicial Magistrate in C.C.No.121 of 2007, dated 28.01.2014 is found to be not perverse and the same is to be confirmed.

In the result, **this Appeal is dismissed as having no merit.** The judgment of acquittal recorded by the learned Chief Judicial Magistrate in C.C.No.121 of 2007, dated 28.01.2014 acquitting the Respondents is confirmed.

21.12.2024

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Speaking/Non-speaking order

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To

1. The Chief Judicial Magistrate,
Tiruvallur .
2. The Public Prosecutor,
High Court, Madras.



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