

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.646 OF 2010

Dharmendra & Anr. ...Appellants

VERSUS

State of Maharashtra ...Respondent

J U D G M E N T

R.Subhash Reddy, J.

1. This criminal appeal is filed, aggrieved by the judgment dated 22.01.2009 passed in Criminal Revision No.10 of 2009 by the High Court of Bombay, Nagpur Bench at Nagpur, whereby the High Court has upheld the orders in Criminal Appeal Nos.39 and 40 convicting the appellants for offences punishable under Sections 33 and 36 of the Maharashtra Medical Practitioners Act, 1961 [for short, 'the Act'].

2. The appellants herein were prosecuted for the offences punishable under Sections 33(2) and 36(2) of the Act and sentenced to suffer RI for two years and to pay a fine of Rs.2,000/-. It is the case of the prosecution that the appellants herein were doing medical practice in their clinic at Hansapuri Road at Nagpur. It is alleged that they were not holding any degree or diploma to do medical practice and they were also not having any certification for doing such practice under the provisions of the Act. It is alleged that on

receiving the information, Police Sub-inspector Kamalnayan attached to Tahsil Police Station on 16.04.2004 at about 5:00 p.m. sent the punter PW-6 Yamuna Prabhakar Dekate to the clinic of the appellants herein and they have treated the injuries suffered by the said punter and applied bandage by receiving an amount of Rs.50/- . The said Yamuna Prabhakar Dekate was examined as PW-6. Further, it is the case of the prosecution that PW-9 - Kamalnayan - along with the police staff raided the said clinic of the accused and the accused was found with PW-6 Yamuna Prabhakar Dekate. During the raid, one of the employees PW-8 - Sangita was found in the clinic. The prescription alleged to have been given by the appellants was seized under the seizure panchnama being Ex.32. Thereafter PW-9 - Kamalnayan - lodged a report under Ex.39 at Tahsil Police Station. On the basis of that report, FIR Ex.40 was prepared and Crime No.3143 of 2002 was registered against the appellants herein for offences punishable under Sections 33 and 36 of the Act.

3. For the aforesaid offences, the appellants were tried by the court of JMFC, Nagpur and on behalf of the prosecution, 9 witnesses were examined and documentary evidence was adduced. The trial court, i.e., Judicial Magistrate First Class, Court No.4, Nagpur, by judgment dated 16.04.2004, convicted both the accused and sentenced them to undergo RI for two years and also to pay a fine of Rs.2,000/- for the offence punishable under Section 33(2). They were further sentenced to pay a fine of

Rs.1000/- for the offence punishable under Section 36(2) of the Act.

4. Aggrieved by the above said conviction and sentence imposed, the appellants herein have filed appeals being Criminal Appeal Nos.39 and 40 of 2004 before the appellate court, i.e., Additional Sessions Judge, Nagpur, who, by judgment dated 24.12.2008, dismissed the appeals. As against the dismissal of the appeals, the appellants carried the matter by way of Criminal Revision No.10 of 2009 which also ended in dismissal by order dated 22.01.2009 passed by the High Court of Bombay, Nagpur Bench.

5. We have heard the learned counsel for the appellants and also the learned counsel appearing for the State of Maharashtra.

6. Among the other witnesses, the prosecution has examined Ramesh PW-1, occupant of a shop in front of the appellants' clinic; Deepika PW-3 - daughter of the landlord; Prashant PW-4 - son of the landlord; Mohd. Shafi PW-5, owner of the neighbouring shop and Sangita PW-8, employee engaged by the appellants in their clinic.

7. In their deposition, PW-5 Mohd. Shafi and PW-8 Sangita, have deposed that the appellants used to practice medicine in their clinic. The trial court, mainly relying upon the evidence of Yamuna Prabhakar Dekate (PW-6) and the documentary evidence, i.e., prescription chit being Ex.32, held that the

prosecution has proved the guilt of the appellant-accused on the practice of medicine without possessing valid degree or diploma or permission from the Maharashtra Government and held that they are liable for punishment for the sections they were charged with.

8. According to the appellants, they are running a medical shop with valid licence in the premises. According to them there was a dispute between them and the landlord with regard to eviction of the appellants from the premises where they were running medical shop. It is the case of the appellants that at the behest of the landlord a false case has been foisted against the appellants in order to evict them.

9. Learned counsel for the appellants has contended that the evidence of the accused-appellants has not been properly appreciated by the courts below and the findings, recorded by the trial court as affirmed by the appellate court and the High Court, are perverse and run contrary to evidence on record.

10. On the other hand, learned counsel appearing for the respondent-State has submitted that, the appellants have been practicing in Medicine posing themselves as doctors, without possessing valid degree and/or licence, as contemplated under the provisions of the Act. As such, having regard to the oral and documentary evidence on record, the trial court has rightly convicted the appellants and imposed the sentence, same is confirmed by the appellate court and the High Court. It is

submitted that in view of the concurring findings, there is no good ground made out by the appellants warranting interference with the judgment of the trial court, as confirmed by the appellate court and the revisional court.

11. Having heard learned counsel for the parties, we have perused the judgment of the trial court, as confirmed by the appellate and the revisional court and other material placed on record.

12. Though the prosecution has examined number of witnesses, the key witness is Yamuna Prabhakar Dekate who was examined as PW-6 and who is the pointer witness. In her evidence, Yamuna Prabhakar Dekate has stated that when she was passing on the road of Gandhi Bagh, police called her to be a panch witness and also told her that they wanted to apprehend the bogus doctor. According to PW-6, the Police asked her to go into the said hospital/clinic of the appellants. She has further stated that she went to the clinic and found that Shweta appellant-accused no.2 was sitting there. She has further stated in her deposition that when she told appellant-accused no.2 that she has some injury, Shweta appellant-accused no.2 applied some medicine on her hand and also applied bandage to her injury by receiving an amount of Rs.50/- towards the fees and gave the prescription chit being Ex.32.

13. If we closely consider the deposition of PW-6, in her cross-examination, she has stated that she had no injury on her

hand. When she was not having any injury on her hand, it is unbelievable that the appellant-accused no.2 would still apply medicine on her and also put bandage. It is pertinent to note that even prescription chit Ex.32 which is stated to have been issued by the appellants has not been proved in accordance with law. In the seizure panchnama prepared for seizure of Ex.32 the seizure memo does not contain name of the medicine said to have been applied to the hand of PW-6 nor was the bandage seized.

14. In the cross-examination of Ramesh PW-1, a suggestion was put to him that he was deposing at the instance of his landlord, by name, Shobha Suryawanshi with whom appellants had a dispute with regard to their tenancy. Rajesh PW-2 is declared hostile. Deepika PW-3 is none other than the daughter of the landlord. Prashant PW-4 is none other than the son of the landlord. In the cross-examination, a suggestion was put to PW-3 and PW-4 that they are deposing against the accused in view of the dispute about the tenancy of the shop which the accused had taken on rent for running medical shop. Further, Deepika PW-3 stated in clear terms that the accused never told her that the appellants were practising as doctors. Further, Mohd. Shafi PW-5, in his cross-examination, has admitted that the board, put up by the accused-appellants, of the clinic was displayed as a bone setter.

15. In our considered view, the evidence of Yamuna Prabhakar Dekate PW-6 who was just a passerby and was called by the

police as a pointer witness, does not inspire confidence and the conviction of the appellants ought not have been based on such evidence. Further, in the depositions of other witnesses there are material contradictions. By considering the totality of the evidence and the material on record, we are of the view that, the guilt of the appellants has not been proved beyond reasonable doubt and they are entitled to benefit of doubt. As we are of the view that the findings recorded by the courts below run contrary to the evidence on record, the impugned judgment is liable to be set aside. Accordingly, the conviction recorded and sentence imposed on the accused-appellants is hereby set aside and this appeal is allowed. Bail bonds executed by the appellants stand discharged.

.....J.
[R. BANUMATHI]

.....J.
[R. SUBHASH REDDY]

New Delhi.
February 06, 2019.