HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

CRIMINAL REVISION PETITION NO. 1461 OF 2018

BETWEEN:

G K BHEEMAPPA
S/O KURAPPA,
R/O KUPPAGADDE VILLAGE,
SORABA TALUK,
SHIMOGGA DISTRICT - 577 429.

...PETITIONER

(BY SRI GOVINDARAJ K., ADVOCATE)

AND:

STATE OF KARNATAKA
BY THE SUB INSPECTOR OF POLICE,
ANAVATTI POLICE STATION,
SORABA TALUK,
SHIMOGGA DISTRICT - 577 429.

...RESPONDENT

(BY SMT. N. ANITHA GIRISH, HCGP)

Digitally signed by ANUSHA V
Location: High Court of Karnataka

THIS CRL.RP IS FILED U/S.397 R/W 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONORABLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDER IN CRL.APPEAL.NO.68/2017 DATED 06.12.2018 PASSED BY THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, SHIMOGGA SITTING AT SAGAR, AND THE JUDGMENT AND ORDER PASSED BY COURT OF THE SENIOR CIVIL JUDGE AND JMFC, SORABA, SHIMOGGA DISTRICT IN CRL.CASE NO.248/2014 DATED 03.10.2017.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL ORDER

Challenging judgment dated 06.12.2018 passed by V Addl. District & Sessions Judge, Shivamogga, in Crl.A.no.68/2017 confirming judgment of conviction and order of sentence dated 03.10.2017 passed by Senior Civil Judge & JMFC., Soraba, Shivamogga District, in C.C.no.248/2014, this revision petition is filed.

2. Sri K Govindaraj, learned counsel for petitioner submitted, a complaint was registered when complainant along with two others received information about accused practicing Allopathic medicine without qualification. And when they visited accused at his place of practice on 14.08.2013, at 7 p.m. they found him in possession of Allopathic medicine. On enquiry, accused failed to provide particulars of his educational qualification and for practicing medicine. Therefore, it was alleged that petitioner was a quack doctor and guilty of offence punishable under Section 19 of Karnataka Private Medical Establishment Act, 2007 ('Act' for short).

3. On conclusion of investigation they filed charge sheet for offence punishable under Section 19 of Act. To substantiate charges, prosecution relied upon 11 witnesses. It was submitted except PW5 - designated officer and his assistant examined as PW6, no other witnesses supported prosecution case. It was submitted as per charge sheet and deposition of PW5 only fact established was possession of certain Allopathic medicines. There were no statement about administering medicines or prescribing them to patients. Therefore it was not established beyond reasonable doubt that accused was practicing Allopathy at his residence. It was further submitted Section 21 of Act would not permit entry into residential building without having warrant issued by competent magistrate. Therefore search and seizure was illegal and accused would be entitled for acquittal.

4. It was further submitted while passing order of conviction, trial Court had referred to suggestion made on behalf of accused that he was practicing traditional Homeopathic medicine, which would not amount to admission of practice of Allopathy at his residence. Finding of trial Court that Section 34 of Act would prohibit operation of establishment

without registration under provisions of Act and order of conviction confirmed by first appellate Court would be contrary to law, especially, when such charge was not put to petitioner while recording his statement under Section 313 Cr.PC. On said ground sought for allowing revision.

5. Smt.N Anitha Girish, learned HCGP, on other hand, opposed revision. It was submitted at time of raid by designated officer, there were about 10 patients at his residence. In presence of panchas allopathic medicines were seized. On enquiry, accused was unable to produce any educational qualification or registration for administering allopathic medicine. Therefore, it was established that petitioner was practicing as quack and liable for prosecution under Section 19 of Act. It was submitted, PWs 1 and 2 were panch witnesses to Ex.P.1-spot panchanama; while PWs 3 and 4 were seizure Mahazar witnesses to Ex.P.2, PW5 is designated officer-cum-complainant, while PW6 was an attender and subordinate officer of PW5. It was further submitted, PWs 7 to 9 were villagers, wherein clinic was being run by petitioner; PWs 10 and 11 were police inspector and head constable. It was submitted though PWs 1 to 4 and 7 to 9 turned hostile,

complainant - PW5 and his attendor-PW6 , Police inspector and head constable PWs 10 and 11 had supported case of prosecution. Therefore order of conviction passed by trial Court and its confirmation by first appellate Court did not suffer from any error much less perversity calling for interference. On said ground sought for dismissal of revision petition.

6. Heard learned counsel and perused impugned judgment and record.

7. From above, it is seen this revision petition by accused is challenging against concurrent finding of his conviction for offence under Section 19 of Act. Since primary challenge is on failure to establish ingredients of charges, it would be appropriate to first refer to Section 19 of Act. Section 19 (1) to (6) reads as under:

> ***"19. Penalties**.- (1) Where any person establishes, runs or maintains a Private Medical Establishment without registration granted under section 7 he shall, on conviction, be punished with imprisonment for a term which may extend to three years and with fine which may extend upto [1][one lakh][1] rupees.*
>
> *(2) When a person is convicted under sub-section (1), the [1][Registration and Grievance Redressal Authority][1] shall direct immediate closure of the un-registered Private Medical Establishment, except where a registration is cancelled or*

suspended and an appeal filed against such cancellation or suspension is pending.

(3) Every order made under sub-section (1) shall contain a direction that the inpatients of such unregistered Private Medical Establishment shall be transferred to such other Private Medical Establishment as may be specified in that order and it shall also contain such other provisions as to the care and custody of such inpatients pending such transfer.

(4) Where any person runs or maintains a Private Medical Establishment in contravention of the conditions of registration or contravenes the provisions of section 12 or 13, or fails to comply with the direction issued under sub-section (2). he shall, on conviction, be punished [2][XXX][2] [1][with a fine which may extend to twenty five thousand rupees][1] and in the case of a second or subsequent offence [2][XXX][2] [1][with a fine which may extend to fifty thousand rupees][1]

(5) Where a person contravenes any other provision of this Act or the rules made thereunder he shall, on conviction, be punishable with a fine which may extend to [1][one lakh rupees][1]

[3][(6) Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall be punishable by the Registration and Grievance Redressal Authority with a fine which may extend to ten thousand rupees.][3]"

8. It is seen that 19 of Act has six sub-Sections with sub-Sectios 1, 4 and 5 referring to specific offences. In order to attract offence under Section 19(1) or 19 (4) of Act, prosecution would primarily require to establish that accused was running or maintaining private medical establishment, either without registration or in contravention of conditions of

registration. As pointed out, admittedly, PWs 1 to 4 and 7 to 9 turned hostile. Though Mahazar witnesses turned hostile would not automatically render Mahazar drawn is unsubstantiated, as Mahazar could be spoken about by investigating officer also. It is seen PW5 deposed about receipt of credible information about accused running private medical establishment without qualification or registration, raid was conducted at place of resident. On enquiry, accused failed to produce any documents regarding his qualification as medical practitioner and in order to prescribe allopathic medicine practitioner would require to be passed MBBS and registered with Karnataka Medical Council. Even licenced medical practitioner or Government Course of Indian medicine person with qualification would be permitted to prescribe allopathic medicine.

9. Further PW5 deposed that accused did not have any such qualification about eight allopathic medicines were seized as MOs 1 to 8. In course of cross-examination, it is elicited that raid was conducted on residence of accused. Suggestion was made that accused had qualification to practice on Homeopathic medicines. But same was denied. It was further suggested that in WP no.36244/2011, it was held that those practicing

traditional homeopathic medicine could continue same. It is also elicited there was no enquiry conducted with persons present at time of raid. Investigating officer examined as PW10 stated that on complaint marked as Ex.P.3, he had visited spot, drawn seizure panchanama and spot panachanama. He got his signature on panchanama marked as Ex.P.1(c). In his cross-examination a suggestion was made that he had drawn panchanama without visiting site and without recording statement of witnesses. PW11 has deposed about transmission of charge sheet to Court.

10. From above, it is seen that necessary ingredients of offence under Sections 19, 6, 7 r/w Section 34 of Act are not established. Though, it is stated by PW5 that at time of raid there were about 10 patients at spot, none of their statements are recorded. Mahazar witnesses PWs 1 to 4 have turned hostile. Even PW 10 - investigating officer has not deposed Exs.P1 and 2 panchanamas were drawn by him. His only submission is that he has signed them.

11. As noted above, first and foremost circumstance required to be established by prosecution in order to sustain

conviction under Section 19 of Act would be to establish that petitioner was 'running or maintaining private medical establishment'. Same is sought to be established on seizure of Allopathic medicine, but, without establishing that petitioner was practicing medicine i.e., for which examination of patients would be necessary. Thus, charge under Section 19 of Act cannot be sustained.

12. While passing impugned judgment, trial Court has referred to suggestion by accused that there was no impediment for petitioner practicing traditional Homeopathic medicine. Even if prosecution wanted to sustain charge for running medical establishment without registration or accused had not registered himself, a statement to that effect from registering authority is not made part of prosecution record. For aforesaid reasons, order of conviction passed by trial Court would be without proper basis and contrary to provisions of Act.

13. In view of above and relying on decision of Hon'ble Supreme Court in **Amit Kapoor v. Ramesh Chander & Anr.** reported in **(2012) 9 SCC 460,** impugned judgment passed by trial Court as well as first appellate Court would be contrary to

provisions of law. Therefore, exercise of power of revision under Section 397 of Cr.P.C. would be justified.

Consequently, revision petition is allowed. Impugned judgments dated 06.12.2018 passed by V Addl. District & Sessions Judge, Shivamogga, in Crl.A.no.68/2017 and 03.10.2017 passed by Senior Civil Judge & JMFC., Soraba, Shivamogga District, in C.C.no.248/2014 are set aside. Petitioner is acquitted of offence punishable under Section 19 of Act.

Sd/-
(RAVI V HOSMANI)
JUDGE

Psg*
List No.: 1 Sl No.: 26