

**(1992) 06 KL CK 0025**

**In the High Court Of Kerala**

**Case No : Criminal M.C. No. 1076 of 1991**

Mohammed Sayeed Sarkar

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

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**Date of Decision : 18-06-1992**

**Acts Referred:**

Indian Medicine Central Council Act, 1970 — Section 17(2), 17(3), 17(4)

**Citation :** (1992) CriLJ 3542 : (1992) 2 KLJ 127

**Hon'ble Judges :** M.M. Pareed Pillay, J

**Bench :** Single Bench

**Advocate :** M.P. Krishnan Nair, for the Appellant; K. Usha, Public Prosecutor, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

M.M. Pareed Pillay, J.—Petitioner is the accused in C.C. 930 of 1989 pending before the Court of the Judicial Magistrate of the Second Class, Trivandrum. He seeks to quash the proceedings against him u/s 17(2) and (4) of the Indian Medicine Central Council Act, 1970 (hereinafter referred to as "the Act"). Petitioner's case is that he has registered his name as a Hakim with the Council of Ayurvedic and Unani Medicine, Bihar constituted under Bihar Development of Ayurvedic and Unani Systems of Medicine Act, 1951 and so no action can be taken against him under the Act. It is stated that he practised in Bihar till 1965 and thereafter he shifted his practice to Trivandrum where he has settled down with his family. Contention of the petitioner is that he cannot be made liable u/s 17(2) of the Act as he has obtained Registration Certificate under the Bihar Development of Ayurvedic and Unani Systems of Medicine Act, 1951 as Hakim on 15-6-1961.

2. The short point that arises for consideration is as to whether the petitioner who has been registered as Hakim under the Bihar Development of Ayurvedic and Unani Systems of Medicine Act, 1951 has committed any offence u/s 17(2) of the Act. Section 17(2) provides that no person other than a practitioner of

Indian Medicine who possesses a recognised medical qualification and is enrolled on a State Register or the Central Register of Indian Medicine shall hold office as Vaid, Siddha, Hakim or physician or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority and shall practise Indian Medicine in any State. A person not coming u/s 17(2) cannot practise Indian Medicine in any State. Nor is he entitled to sign or authenticate a medical or fitness certificate or any other certificate required by law to be signed or authenticated by a duly qualified medical practitioner. Section 17(4) is the penal provision. It states that any person who acts in contravention of any provision of Sub-section (2) shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to Rs. 1,000/- or with both.

3. Section 17(3) is an exception made to Section 17(2). The position is made clear that the right of a practitioner of Indian Medicine enrolled on a State Register of Indian Medicine to practise Indian medicine in any State is not affected merely on the ground that on the commencement of the Act he does not possess a recognised medical qualification. Section 17(3) protects the existing rights and privileges of the practitioners of Indian Medicine. The persons who have enrolled as practitioners of Indian Medicine are safe-guarded by Section 17(3). Those practitioners of Indian Medicine who did not possess recognised qualification as per the Act but who were already enrolled on a State Register of Indian Medicine on the date of commencement of the Act are allowed to practise Indian Medicine in any State. As the petitioner has been registered as Hakim under the Bihar Development of Ayurvedic and Unani Systems of Medicine Act, 1951, Section 17(3) would come to his aid. That being the position, no offence has been made out in the complaint.

4. As no offence has been made out u/s 17(2) and (4) of the Act, the trial Court has no jurisdiction to take cognizance of any offence against the petitioner. The proceedings in C.C. 930 of 1989 are quashed. The CrI. MC is allowed.