

(2016) 01 GAU CK 0054
In the Gauhati High Court
Case No : Crl. Petn. No. 266 of 2015

Sri Bikash Saha

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Assam Homoeopathic Medicine Act, 1955 — Section 14
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 384, 420

Citation : (2016) 1 Crimes 582 : (2016) 4 GauLJ 29 : (2016) 2 GauLT 123 :
(2016) 2 NEJ 74

Hon'ble Judges : P.K. Saikia, J.

Bench : Single Bench

Advocate : B.B. Gogoi, Addl. P.P, for the Respondent

Final Decision : Allowed

Judgement

P.K. Saikia, J.(Oral) - This is an application under section 482 Criminal Procedure Code by petitioner, viz., Bikash Saha seeking quashment of CR Case No. 151/2014 under Sections 420/384 and all the actions, taken there-under by the learned Chief Judicial Magistrate, Tinsukia, Assam.

2. I have heard Mr. A.M. Bora, learned counsel appearing for the petitioner. Also heard Mr. B.B. Gogoi, learned Addl. Public Prosecutor appearing for the State.

3. Before proceeding further, I find it necessary to look at the complaint which gave rise to CR Case No. 151/2014 under Sections 420/384 as well as Section 14 of the Assam Homeopathic Medicine Act, 1955 (hereinafter would be referred to as the Act of 1955).

4. For ready reference, the complaint is reproduced below:-

To,

The CJM, Tinsukia, Assam.

Respected Sir,

We, the public in general would like to invite your kind attention with regard to the practice of Homeopathy carried on by Dr. B.C. Saha whose chamber is situated just opposite to Madhu Milan Hotel, New Market, Tinsukia town. The said Homeopathy Doctor does not used to issue the name of the ailment of the patient and also actual fee but used to charge lump sum rate say four hundred for one month course without any writing prescription and this is gong on since long back.

The said Doctor is not a qualified one having only Diploma in Homeopathy and he is charging excessive beyond the means of poor patience without showing his actual fees in his prescription report. He is carrying on his illegal business. This should be curbed and immediately action should be taken against him.

Aggrieved citizens.

5. The learned counsel for the petitioner, now, submits that such a complaint and all the actions taken there-under are unsustainable in law for reasons more than one. In that connection, it has been stated that the complaint in question on the basis of which the aforesaid case was registered does not satisfy the conditions necessary for an allegation to graduate to a complaint as defined in Section 2 (g) of the CrPC.

6. In that connection, it has been submitted that the complaint in question was not signed by the complainant nor does it disclose the identity of the complainant. More importantly, allegation in such a complaint does not disclose any offence having been committed by the petitioner, herein, much less his committing the offences under Sections 420/384 IPC.

7. The learned counsel for the petitioner further submits that the procedure adopted by the learned Magistrate before issuing process to the present petitioner is equally bizarre. In that regard, it has been stated that before issuing process against the present petitioner as accused person in such a case, the Magistrate chose to examine him as witness to the incident in question. Such a conduct, not only violates the provisions of law incorporated in Chapter XV CrPC, but it also violates the provisions of Article 20 of the Constitution of India.

8. In that connection, I have heard the learned Addl. P.P. appearing for the State/respondent.

9. In order to ascertain the aforesaid allegation, I have perused the alleged complaint and the connected documents. Before proceeding further, let us consider the order under which cognisance was taken under Sections 420/384 IPC as well as offence u/s 14 of the Act of 1955.

10. For ready reference the said order is reproduced below :-

21.03.2015

It has come to my knowledge that Dr. Arbinda Lal Roy and Dr. Snehashis Roy both of Sonamoni Homeo Hall, Rangagora Road (near Honuman Mandir), Tinsukia, are practising unethically and in violation of certain provision of law. They are treating and providing medicines to the patients without giving prescriptions. In one hand, they are giving the impression to the patients that they are not taking or charging any Doctor's fees, but on the other hand, the said Doctors are taking cost of medicines exorbitantly in every week by including their professional fees in a disguised and concealed manner. They are keeping the patients in dark as to what medicines are actually provided to them. Thus, having knowledge of the said facts, this court felt it expedient and necessary to enquire into the matter for the interest of justice. Accordingly, this court examined and recorded the statements on oath of Dr. Monoj Saha, Dr. Ujjal Bhattacharjee, Dr. Arabindalal Roy, Dr. Snehashis Roy, Dr. Bikash Saha and Smti Sadhana Das. From their statements, it has come to surface practice of lot of anomalies and unethical practice of Homeopathic Doctors which constitute criminal offences such as cheating and extortion of money etc. Dr. Arabindalal Roy and Dr. Snehashis Roy, who are practicing as a Homeopathic doctors under the name and style of Sonamoni Homeo Hall, Rangagora Road, Tinsukia, admittedly stated that they do not charge the doctor's professional fees but they taken the cost of the medicines only in every week. During the course of inquiry, it has also come to light that another Homeopath Dr. Bikash Saha does not have any institutional Diploma or Degree in Homeopathic but he is posing and practicing as a Homeopathic doctor on pretext of having experience under some doctor. Thus, I found the aforesaid Homeopaths are practicing unethically and thereby cheating and playing with the life of the people.

It's pertinent to mention that under Section 9 of Assam Homeopathic Medicine Act, 1955, unambiguously stated two categories of Homeopaths. There shall be two classes of Registered Homeopaths, viz: Class "A" and Class "B".

Class - A (i) One who is a registered medical practitioner under the Assam Medical Act, 1961 practicing exclusively Homeopathy.

(ii) one who is a Homeopathic medical practitioner holding degree from a foreign country which entitles him to practice medicine in his country subject to the condition that the institution is approved as suitable for the purpose by the Board of Homeopathic medicine.

(iii) One who is a Homeopathic medical practitioner who has successfully gone through at least four years' course in any Homeopathic institution recognised by the State in which the institution is situated and holding a Diploma or a certificate from the institution, subject to the condition that the standard of qualification is not lower than the standard which would be required for registration by the Assam Homeopathic Medicine Board.

Class "B" One who has been engaged in the practice of Homeopathic system of medicine as the principal occupation for a period of not less than five years

immediately before the date of coming into force of this Act.

Accordingly, this Assam Homeopathic Medicine Act, 1955, came into force from 01-10-1955 by Govt. Notification. In true sense, there cannot be class -B category Homeopaths presently, as the said class was recognised at the time of passing this Act for the benefit of practitioners who had completed not less than five years immediately before the date of coming into force of this Act, which must have expired by now. It's also been observed that the Homeopathic Doctor's practice is being inherited from their parents without any formal Diploma or Degree from recognised institution. The most irony is that the Board constituted under the Assam Homeopathic Medicine Act, 1955, has not taken care of it. Without formal verification, the said Board renewing their Registration even to the Class "B" Homeopaths. As a result, there is cheating and wrong treatment being done to the patients and public by the Psuedo Homeopathic Doctors. As the knowledge goes, some of the Homeopathic Medicines are very poisonous/sharp reacting and over dosage may taken human life and therefore, it is utmost necessary to have control and regulate them properly as per the provisions of law. In this aspect, the Civil Administration shall take extreme care of it within their domain, as some Homeopaths are committing cognisable offences. The statements/averments of Dr. Arabindalal Roy, Dr. Snehashis Roy and Dr. Bikash Saha are not at all satisfactory.

Having prima facie materials of the offences under Sections 420/384 of Indian Penal Code, 1860 read with Section 14 of Assam Homeopathic Medicine Act, 1955, against the accused Dr. Arabindalal Roy, Dr. Snehashis Roy and Dr. Bikash Saha, the cognisance is taken thereof.

The instant case is transferred to the Hon"ble Court of Ld. SDJM (s), Tinsukia, for trial/disposal.

Let a copy of this order be furnished to the Chief Secy. of Govt. of Assam, Dispur, Assam ; The Secy, Ministry of Health Services, Dispur, Assam ; The Director of Health Services, Dispur, Assam, the Chairman and Secy. of Board Homeopathic System of Medicine Assam, Guwahati - 781006; the Deputy Commissioner, Tinsukia, Joint Director of Health Services, Tinsukia and the Superintendent of Police, Tinsukia, for information and necessary action."-----

11. A bare perusal of the orders, more particularly, the order dated 21.03.2015, it is found that the learned Magistrate before issuing process u/s 420/384 IPC as well as under Section 14 of the Act of 1955 had associated the accused/petitioner, herein, as one of the witnesses, to support the allegation made in the complaint in question.

12. Such a procedure is unheard of which not only violates the dicta incorporated in Chapter XV of the CrPC but also violates the fundamental law of the land, same being Article 20(2) of the Constitution of India. Such violations of law in taking cognisance of the aforesaid offences as well as in issuing process against the present petitioner makes, in my considered opinion, the proceeding in

question totally unsustainable in law.

13. Coming to the allegation that the complaint does not disclose any offence having been committed by petitioner, herein, it is found on the perusal of record that such a contention is correct since a perusal of complaint reveals that such a complaint does not disclose any offence having been committed by present petitioner, much less his committing the offences aforementioned. On this count also, the complaint in question is liable to be quashed.

14. The proceeding in question comes under attack for other reasons as well. The learned counsel for the petitioner submits that no court can take cognisance of offence u/s 14 of the Act of 1955 unless a complaint in writing is filed by a police officer, not below the rank of Sub-Inspector of Police. Section 21 of the aforesaid Act makes it clear.

15. But it has also been submitted by the learned counsel for the petitioner that an unsigned and unnamed complaint has been filed to initiate a criminal proceeding u/s 14 of the aforesaid Act. Therefore, for violation of provisions of Section 21 of the Act of 1955, the proceeding in hand is liable to be quashed and set aside, more so, when offence u/s 14 of the Act of 1955 was allegedly committed in the course of same transaction which allegedly gave rise to offences u/s 420/384 IPC and when all those offences are not separable from one another without breaking the thread which binds them together.

16. The learned counsel appearing for the State of Assam has fairly conceded to the argument, so advanced by the learned counsel for the petitioner.

17. On going through the provisions of Sections 9, 11, 12 and 21 of the Act of 1955 in juxtaposition, I have found that such a contention, advanced by the learned counsel for the petitioner, merits acceptance since in filing the complaint in question, there is total violation of the provisions of Section 21 of the Act of 1955. This is yet another reason for which the present proceeding is liable to be quashed.

18. In view of above, I have no other way out but to quash the complaint in question as well as all the actions taken there-under allowing the present criminal petition under Section 482 CrPC.

19. This criminal petition stands disposed of accordingly.