

(1990) 04 BOM CK 0027

In the Bombay High Court

Case No : Criminal Appeal No. 851 of 1982

The State of Maharashtra

APPELLANT

Vs

Mrs. Paulin P. Picardo

RESPONDENT

Date of Decision : 20-04-1990

Acts Referred:

Maharashtra Medical Practitioners Act, 1961 — Section 36, 36(1)

Citation : (1990) 2 BomCR 668 : (1991) CriLJ 239 : (1990) 1 MhLj 693 : (1990) MhLj 693

Hon'ble Judges : I.G. Shah, J

Bench : Single Bench

Advocate : Smt. S.S. Keluskar, P.P, for the Appellant; Herold D'Souza, for the Respondent

Judgement

1. The State has come in appeal to challenge the order of acquittal of the present respondent in Appeal No. 371 of 1980 on the file of learned Additional Sessions Judge, Bombay.

2. Briefly stated the facts giving rise to this appeal are as under.

The present respondent was prosecuted on the allegation that from 8-8-1977 to 2-11-1977 in the Central Poly-clinic opposite Central Cinema Girgaon, Bombay she had added to her name the title "Dr." without having the degree, diploma, licence or certificate or any other like award and she was practising as a Physio-Therapist and also in nature-cure and thereby she had committed offence punishable u/s 36 of the Maharashtra Medical Practitioners Act, 1961. On the strength of the evidence produced before the learned Metropolitan Magistrate, 18th Court, Girgaum, Bombay, he convicted the present respondent of the said offence u/s 36(2) of the Maharashtra Medical Practitioners Act, 1961 and sentenced her to pay a fine of Rs. 201/- in default S.I. for one month. It appears that two such criminal cases bearing C.C. No. 2274/P of 1977 and 2340/P of 1978 were lodged against the respondent, and she was convicted in both the cases and was also sentenced in both the cases as stated above. Being aggrieved

by the said order of conviction and sentence the present respondent preferred a criminal appeal against the said order of conviction and sentence being criminal appeal No. 371 of 1980 in the Court of Session at Bombay and the learned Additional Sessions Judge, Bombay reversing the order of conviction and sentence acquitted the respondent in both the cases. Being aggrieved by the said order of acquittal, the State has come in appeal.

3. Section 36 of the Maharashtra Medical Practitioners Act, 1961 so far as it is relevant for the purpose of this case runs as under :

"36(1) No person shall add to his name any title, description letters or abbreviations which imply that he holds a degree, diploma, licence or certificate or any other like award as his qualification to practice any system of medicine unless -

(a) he actually holds such degree, diploma, licence or certificate or any other like award; and

(b)

(i) to (iv)

(2) Any person who contravenes the provisions of sub-section (1) shall, on conviction, be punished.

(i) to (ii)

Similarly it is also necessary to consider the provisions of Section 2(2) of Chapter I of the said Act which provides as under :

"For the purposes of Chapter VI, a person shall be deemed to practise any system of medicine who holds himself out as being able to diagnose, treat, operate, or prescribe medicine or other remedy or to give medicine for any ailment, disease, injury, pain deformity or physical condition or who, by any advertisement, demonstration, exhibition or teaching offers or undertakes by any means or method whatsoever to diagnose, treat, operate or prescribe medicine or other remedy or to give medicine for any ailment, disease, injury, pain deformity or physical condition."

Proviso to the said sub-section further provides as under :

"Provided that, a person who -

(i) to (ii)

(iii) Practises physio-therapy or electro-therapy or chiropractic or naturopathy or hydrotherapy or yogic healing; or

(iv) to (vi)

shall not be deemed to practice medicine. Now, therefore, the learned Additional Sessions Judge on the facts assumed that the respondent was practising

naturopathy, and physio-therapy and in view of the proviso quoted above, of section 2(2) respondent was not practising any system of medicine and the said assumption was correct. Now, therefore, it is only necessary to consider as to whether a person who is not practising any system of medicine has used any title, description, letters or abbreviations which imply that he holds a degree, diploma, licence, certificate or any other life award, as his qualification would be covered by Section 36(1) and (2) of Maharashtra Medical Practitioners Act, 1961. It appears that the learned Metropolitan Magistrate before whom the trial proceeded concluded that adding title or description or abbreviation like "Dr." would create an impression in the mind of the person who would be going to that person for treatment even if of naturopathy or physio-therapy that the said person is qualified person to practise the said pathy and, therefore, would be taking undue advantage by applying such title before his name. It may be that such advantage may accrue to such a person but for the purpose of the offence u/s 36(2) of the Maharashtra Medical Practitioners Act, 1961 it is necessary to consider as to whether by adding the title "Dr.", a person who is not practising any system of medicine and is only practising naturopathy and physio-therapy could be said to have contravened the said provision. Once it is made clear that in view of the proviso to section 2(2) of the said Act, she was not practising any system of medicine then it does appear that the provision of Section 36(1) will not cover her. For the purpose of Section 36(1)(i) it is necessary that such a person must have added the title, description, letter or abbreviation which imply that he holds a degree, diploma, licence or certificate as his qualification and he must practise any system of medicine and if he is not practising any system of medicine and applies such abbreviation it may amount to some other offence but surely not the one u/s 36 of the Maharashtra Medical Practitioners Act, 1961. The learned Additional Sessions Judge has, therefore, rightly concluded that the respondent cannot be considered to be covered in the mischief of Section 36(1) and (2) of the Maharashtra Medical Practitioners Act and, therefore, was right in allowing the appeal of the respondent and acquitting her.

4. In this view of the matter the appeal preferred by the State has no substance and the same will have to be dismissed and is accordingly dismissed.

5. Appeal dismissed.