

Lissy Vs. State of Kerala

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Court : Kerala

Decided On : Sep-02-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Lissy

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE
HONOURABLE MR. JUSTICE P.UBAID TUESDAY, THE2D DAY OF
SEPTEMBER201411TH BHADRA, 1936 Crl.Rev.Pet.No. 646 of 2014 ()
----- AGAINST THE

ORDER

IN CC NO. 327/2012 of J.M.F.C.-I,THAMARASSERY REVISION
PETITIONER/ACCUSED NO.3:

----- LISSYAGED47YEARS
W/O.THANKACHAN, PULIYILAKKAD, PUTHUPPADY
ENGAPPUZHATHAMARASSERY,KOZHIKODE BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN RESPONDENT/COMPLAINANT/STATE:
----- STATE OF KERALA REP.BY PUBLIC
PROSECUTOR HIGH COURT OF KERALAERNAKULAM-682 031 (CRIME
NO.43/2012 OF THAMARASSERY POLICE STATION, KOZHIKODE) BY PUBLIC
PROSECUTOR SRI.R.GITHESH THIS CRIMINAL REVISION PETITION HAVING

BEEN FINALLY HEARD ON 0209- 2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: P.UBAID, J.

~~~~~ Crl.R.P No.646 of 2014 ~~~~~ Dated this the 2nd September, 2014

## ORDER

The petitioner herein is the 3rd accused in C.C No.327 of 2012 before the Judicial Magistrate of First Class Court-I, Thamarassery. She is a doctor by profession and she has her own hospital by name 'Alphonsa Hospital' at Puthuppady. On 1.2.2012, the police party led by the Sub Inspector of Police, Thamarassery conducted a raid in the said hospital on a complaint that the 3rd accused has appointed a quack in her hospital. The police found the 1st accused Shaji in the said hospital as a doctor, and on verification, the police could find that he does not have any qualification whatever to practice as doctor. In such a situation, the police registered a crime suo motu against the said Shaji. During investigation, the 2nd accused Firoskhan was arraigned as the person who introduced the 1st accused to the 3rd accused as the qualified doctor, and the 3rd accused (petitioner herein) was arraigned on the allegation that she appointed the 1st accused without Crl.R.P No.646 of 2014 2 verifying his qualifications or, she appointed him with the full knowledge that he is not a qualified doctor. After investigation, the police submitted final report in the Court of the Judicial Magistrate of the First Class-I, Thamarassery under Sections 120(B), 419 and 420 I.P.C under Sections 38 and 39 of Travancore Medical Practitioners Act, and under Sections 15(2) and 15 (3) of the Indian Medical Council Act. All the accused including the petitioner herein entered appearance and made arguments on the question of charge.

2. After hearing both sides, the learned Magistrate framed charge against the three accused under Sections 120(B), 419 and 420 I.P.C, under Sections 38 and 39 of the Travancore Cochin Medical Practitioners Act, and also under Sections 15 (2) and 15 (3) of the Indian Medical Council Act. All the three accused pleaded not guilty to the charge. Now the 3rd accused has brought this revision challenging the legality of the charge framed by the trial court.

3. On hearing the learned counsel and the learned Public Prosecutor, I find that charge in this case was not properly framed by the court below. I find that the matter CrI.R.P No.646 of 2014 3 requires reconsideration, for a proper and legal charge. Practice of medicine without qualification will not by itself attract the offence of cheating punishable under Section 419 or under Section 420 I.P.C. It is not known who was stated or whether any one had made complaint of cheating. Anyway, let the matter be properly and legally looked into by the trial court. No doubt, practice of medical profession without any qualification will attract the penal provisions containing the Indian Medical Council Act. The learned counsel submitted that such a prosecution can be there only as against the 1st accused because he is the person who actually practiced without qualification. Now it cannot be said or decided whether charge can be framed against the petitioner. If she appointed the 1st accused without verifying his qualifications or with the knowledge that he is not qualified, she will be constructively liable. This will have to be looked into by the trial court as to whether charge can be framed against the petitioner as principal offender, or as a conspirator as alleged by the prosecution. The offence alleged under the Travancore Cochin Medical practitioners CrI.R.P No.646 of 2014 4 Act is not in fact a serious one, but, the offence under Section 15 (2) of the Indian Medical Council Act is punishable imprisonment up to one year. A reading of the charge will show that charge was in fact framed by the court below without application of mind, or the trial court simply accepted what the police stated in the final report. This is not the function of the trial court in the matter of framing charge. Whatever is said by the police in the final report, and whatever Sections are quoted by the police in the final report, the trial court will have to find what exactly is the offence involved on the allegations made in the final report read along with the F.I.R and other material papers. The function of the Magistrate is not simply to accept what the police said or reported in the final report. When the offence of cheating is alleged, the court will have to look into the allegations and decide whether necessary elements of cheating are there. Here, the main allegation is that the 1st accused practiced as doctor without any qualification, the 3rd accused appointed him in her hospital with the knowledge that he is not qualified, and the 2nd accused CrI.R.P No.646 of 2014 5 introduced the 1st accused to the 3rd accused that he is qualified. If the 3rd accused believed the

words of the 2nd accused and appointed him as doctor in her hospital, the trial court will have to consider whether any charge can be framed against her. No doubt, proper charge will definitely have to be framed against the 2nd accused, who allegedly introduced the 1st accused as a qualified doctor. But the position of the 3rd accused cannot be as that of the 2nd accused. She can be prosecuted only when the materials would show that she appointed the first accused in her hospital with the knowledge that he is not qualified. Anyway, let all the legal aspects be considered by the trial court properly. The court will have to reconsider the matter, hear both sides in detail on the factual and legal aspects involved, and frame a proper and legal charge. In the result, this revision petition is allowed. The charge under challenge, framed by the court below is hereby set aside, and the court below is directed to consider the question of charge afresh and frame a proper and legal charge for the offences actually involved as per the CrI.R.P No.646 of 2014 6 allegations made in the final report, F.I.R and other admissible materials. If the petitioner makes application for exemption from personal appearance, it will have to be considered by the trial court on a practical approach. Sd/- P.UBAID JUDGE ma /True copy/ P.S to Judge

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