

Ajith Vs. State of Kerala

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Court : Kerala

Decided On : Nov-07-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Ajith

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 7TH DAY OF NOVEMBER 2014 16TH KARTHIKA, 1936 CrI.Rev.Pet.No. 2456 of 2013 ()
----- AGAINST THE

ORDER

IN C.C.NO. 127/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT, NO-V, KOZHIKODE DATED 08-10-2013 CRIME NO. 505/2010 OF FEROKE POLICE STATION , KOZHIKODE REVISION PETITIONER/ACCUSED:
----- AJITH, AGED 31 YEARS, S/O.VELAYUDHAN, KOTTUPARAMBIL HOUSE, PARAPPUR. P.O, MALAPPURAM DISTRICT. BY ADV. SRI.P.V.KUNHIKRISHNAN
RESPONDENT(S)/COMPLAINANT & STATE:
----- STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM, KOCHI 682031 BY PUBLIC PROSECUTOR SRI. N.SURESH THIS

CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07 11-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
Crl.Rev.Pet.No. 2456 of 2013 () ----- APPENDIX
PETITIONER'S ANNEXURES ANNEXURE A : COPY OF THE FIR IN CRIME NO.505/10 ON THE FILE OF FEROKE POLICE STATION ANNEXURE B : A COPY OF THE FINAL REPORT IN CRIME NO50510 ALONG WITH THE SECTION - 161 CRIMINAL PROCEDURE CODE STATEMENT OF THE CHARGE WITNESS ANNEXURE C : A COPY OF THE SEIZURE MAHAZAR PREPARED ON 16/07.2010 AT 600 A.M ANNEXURE D : A COPY OF THE SEIZURE MAHAZAR PREPARED ON 16/07.2010 AT 1030 A.M ANNEXURE E : A COPY OF THE MEDICAL DEGREE ISSUED BY THE IRKUTSK STATE MEDICAL UNIVERSITY DATED 28/06/2004 ANNEXURE F : A COPY OF THE COMPULSORY ROTATORY RESIDENTIAL INTERNSHIP CERTIFICATE ISSUED BY THE SUPERINTENDENT GOVT OF GENERAL HOSPITAL DATED 10/12/2012 ANNEXURE G : A COPY OF THE FMGE SCREEN TEST CERTIFICATE DATED 8/04/2011 ISSUED BY THE NATIONAL BOARD OF EXAMINATION. ANNEXURE H : A COPY OF THE CERTIFICATE ISSUED BY THE MEDICAL COUNCIL OF INDIA DATED 10/10/2013 ANNEXURE I : A COPY OF THE CERTIFICATE ISSUED BY THE TRAVANCORE COCHIN MEDICAL COUNCIL DATED 17/09/2011 RESPONDENT'S ANNEXURES NIL //True Copy//
P.A.to Judge Bb K. Ramakrishnan, J.

===== Crl.R.P.No.2456 of 2013
===== Dated this, the 07th day of November, 2014.

ORDER

Dissatisfied with the manner in which the charge has been framed, the accused in C.C.No.127/12 on the file of Judicial First Class Magistrate Court, No-V, Kozhikode has come before this court by filing this revision.

2. The case was taken on file on the basis of a police report filed in Crime No.505/10 of Feroke Police Station before the Judicial First Class Magistrate Court, No-V, Kozhikode.

3. The case of the prosecution in nutshell was that the revision petitioner who is working as a Medical Officer in Red Crescent Hospital, Chakkulam, Chunkam, Feroke without having necessary qualification and registration, but, making the belief that he is having that qualification induced CW7 and obtained the employment and treated the patients stating that he is having the required qualification, from 09.07.2010 to 16.10.2010 and thereby, he had committed the offence punishable under Section 420 of Indian Penal Code and Sections 38 and 39 of Travancore Cochin Medical Practitioners Act. After the final report was filed, the case was taken on file Crl.R.P.No.2456 of 2013 :

2. : as C.C.NO.127/12 by the learned magistrate for the above said offences.

4. When the revision petitioner appeared before the court below, the learned magistrate framed charge under Section 420 of Indian Penal Code and Sections 38 and 39 of Travancore Cochin Medical Practitioners Act as follows: "That you in between 09.07.2010 and 16.07.2010 practiced as a doctor without specified qualification in Red Crescent hospital, Chunkam and cheated case witness No.7 thereby you committed an offences punishable U/s.420 IPC, 38, 39 Travancore Cochin Medical Practitioners Act and within my cognizance." And I hereby direct that you be tried before me on the said charge." This is being challenged by the revision petitioner who is the accused in the court below.

5. Heard both sides.

6. The Counsel for the revision petitioner submitted that the very purpose of framing charge is to make known the actual accusations for which he will have to answer during trial. Further, Section 211 of Code of Criminal Procedure says that, each offence if there is named, charge must be framed by showing the particulars of the offence with a specified name Crl.R.P.No.2456 of 2013 :

3. : and if there is no specified name is provided, the ingredients of the offences has to be spelt out from the charge. If that is not done, it will cause prejudice to the accused.

7. Further, under the Travancore Cochin Medical Practitioners Act, qualification and registration are two independent things. So, the consolidated charge framed by the court below without specifying the ingredients is unsustainable in law and an opportunity has to be given to raise the contentions and court must be directed to frame appropriate charge in accordance with law is the contentions raised.

8. On the other hand, the learned Public Prosecutor submitted that the court has applied his mind and framed charge and the ingredients of offences have been mentioned and no prejudice has been caused.

9. As per prosecution case, from 09.07.2010 to 16.07.2010, the revision petitioner had practiced as a Doctor without specified qualification and registration and treated the patients making them to believe that he is a qualified Doctor and thereby, he had committed the above said offences.

10. Section 211 of Code of Criminal Procedure reads as CrI.R.P.No.2456 of 2013 :

4. : follows: "Contents of charge:- (1) Every charge under this Code shall state the offence with which the accused is charged. (2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only. (3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged. (4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge. (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case. (6) The charge shall be written in the language of the Court. (7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed." 11. In the decision reported in Vijayachandran Vs. CrI.R.P.No.2456 of

2013 :

5. : Superintendent of Police [2008 (3) KLT307, this court has held that any offence is committed on a particular day or during a period at a particular place or places in a particular manner, such details should be ascertained at least before framing charge and stated in the charge. It is a legal requirement also. A joint reading of Section 211 and 212 of the court reveals that the charge shall contain such particulars as to the time and place of the alleged offence and the person if any against whom or the thing if any in respect of which it was committed as or reasonably sufficient to give the accused notice of the matter with which he is charged. This requirement is mandatory and omission to mention the details not only violates mandatory provision of law, but, also causes prejudice to the accused. So, it is clear from the above decision and also Sections 211 and 212 of the Code of Criminal Procedure that separate charges must be framed for each offence stating the time, place and the ingredients of the offence which attracts the offence so as to give an indication to the accused, the nature of accusation which he will have to face. A compendious charge of all the offences alleged being framed without specifying the ingredients of each offence will Crl.R.P.No.2456 of 2013 :

6. : violate this provision of law and this will cause prejudice to the accused as well and such a practice has been deprecated by this court. On going through the charge framed, it will be seen that a compendious charge for the offence under Section 420 of Indian Penal Code and Sections 38 and 39 of Travancore Cochin Medical Practitioners Act have been framed by framing a single charge.

12. Section 38 of the Travancore Cochin Medical Practitioners Act prohibits persons from practicing without getting registered under the provisions of the Act as provided under Section 25 of the Act and contravention of this provision will attract penalty under Section 39 of the Act. Without qualification and non registration are different. A person may have qualification, but, without registration, he cannot practice. A person may have no qualification and no registration also and such persons are also not entitled to practice, but, they will stand in a different footing. That will have to be explicitly mentioned in the charge so as to make the

accused to understand the real accusations made against him which he has to face during trial. In this case, the case of the prosecution was that he had no required qualification and CrI.R.P.No.2456 of 2013 :

7. : also no registration as provided under the Travancore Cochin Medical Practitioners Act and without those two things, he had practiced as a Doctor during a particular period, thereby, he had committed the offence under Section 420 of Indian Penal Code and also under Sections 38 and 39 of the Travancore Cochin Medical Practitioners Act. But, a reading of the present charge will not show all these particulars. So, under the circumstances, there is some force in the submission made by the Counsel for the revision petitioner that the charge framed is not proper and that has to be set aside and it must be sent back to the court below for the purpose of framing proper charge after hearing the Counsel for the defence. So, the revision is allowed and the charge in the form now framed is set aside and the matter is remitted to the court below for framing proper charge after hearing the defence taking into account the principles laid down in the decisions (cited supra) and also in accordance with Sections 211 and 212 of Code of Criminal Procedure. Considering the fact that the case is of the year 2012, the enquiry for framing charge must be completed within a period of one month from the date of receipt of this order or within one month from the date on CrI.R.P.No.2456 of 2013 :

8. : which this court directs the parties to appear before the court below whichever is earlier. Parties are directed to appear before the court below to enable the court below to expedite the case as expeditiously as possible. Parties are directed to appear before the court below on 08.12.2014. Office is directed to communicate this order to the court below immediately. The interim order granted as per order in CrI.M.A.No.9073/13 is vacated and the petition is dismissed. Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge

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