

State Vs. Kochandy Ommen

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Court : Kerala

Decided On : Jan-19-1953

Reported in : 1953CriLJ1408

Judge : Koshi, C.J. and; G. Kumara Pillai, J.

Appellant : State

Respondent : Kochandy Ommen

Judgement :

1. The State has preferred this appeal against the judgment of the Division First Class Magistrate of Alleppey passed on 29.11.1951 in C.C. No. 131 of 1951 on the file of his Court acquitting the accused. The case was one started on a complaint filed by a Circle Inspector of Police as authorized by Government under Section 42, Travancore Medical Practitioners' Act, 1119 (Act 7 of 1119) for an alleged contravention of Section 39(1) of the said Act.

2. Section 39(1) of the Act runs thus:

No person other than a body or institution authorized under Section 38 shall confer, grant or issue any degree, diploma, licence, certificate or other document which is identical with or is a colourable imitation of any degree, diploma, license, certificate or other document granted by a body or institution authorized under Section 38.

3. Sub-section (2) of the section prescribes the punishment for the offence specified in Sub-section (1). Section 38 enacts as follows:

The right of conferring, granting or issuing in Travancore degrees, diplomas, licenses, certificates or other documents stating or implying that the holder, grantee or recipient thereof is qualified to practice any of the various systems of medicine, shall be exercisable only by such authority as Our Government may by institution in Our Government Gazette, and subject to such conditions and restrictions as it thinks fit to impose or authorize in this behalf.

The substance of the charge levelled against the accused was that an institution he conducted at Mavelikara under the name and style of 'Grace Medical Mission' was issuing a diploma known as C.S.G.M. to the successful candidates who pass out a course in Homoeopathy from that institution and that the diploma so granted was a colourable imitation of similar diplomas granted by bodies or institutions authorized under Section 38, Medical Practitioners' Act, 1119.

The accused contended that the diploma was granted by the 'All India Association of Homoeopathy and Naturopathy' Calicut, which was an association registered by the Societies Registration Act, 1860 (Act 20 of 1860), that he was not personally responsible for the said association granting the diploma and that the diploma granted by the said association was not a colourable imitation of any degree, diploma etc. granted by any authorized body or institution. The learned Division First Class Magistrate accepted these contentions and acquitted the accused. The State has now preferred this appeal.

4. On the evidence in the case the conclusion arrived at by the learned Magistrate would appear to us to be unassailable. The case must however in our opinion have failed, on a ground more fundamental than any mentioned in the judgment. There is no proof in the case that Government have by notification issued under Section 38, Medical Practitioners' Act, 1119 authorized any body or institution to issue degrees, diplomas etc. or that any authorized body is conferring, granting or issuing in Travancore degrees, diplomas, licenses, certificates or other documents as envisaged in Section 38 of which the impugned diploma can be said to be a colourable imitation. What is indictable under Section 39 is not the conferring,

granting or issuing degrees, diplomas, licenses etc. as such by unauthorized bodies or institutions but such bodies conferring, granting or issuing any degree, diploma, license or certificate or other document which is identical with or is a colourable imitation of any degree, diploma, license, certificate or other document granted by an institution authorized under Section 38. In the absence of proof that such authorized bodies or institutions exist and that such bodies or institutions confer degrees, diplomas etc., no question of any contravention of Section 39(1) can possibly arise or be made out.

5. When this aspect was pointed out Shri N. Kumaran Achan, the learned Public Prosecutor invited our attention to the Schedule appended to the Medical Practitioners' Act, 1119. The said Schedule sets out recognized qualifications under different systems of medicine for the purpose of registration. A reference to Section 22 will bear this out. We are unable to appreciate how that can do service as a notification issued under Section 38. Without evidence that Government have notified the bodies or institutions authorized to confer, grant or issue degrees, diplomas or licenses, etc., and that such authorized bodies do grant or confer or issue degrees or diplomas or licenses etc., the prosecution had no basis to found its case.

6. The lower Court was therefore right in acquitting the accused and we dismiss the appeal.