

(1989) 03 KL CK 0069

High Court Of Kerala

Case No: None

State of Kerala

APPELLANT

Vs

Dr. C.K. Bharathan

RESPONDENT

Date of Decision: March 21, 1989**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 106
- Penal Code, 1860 (IPC) - Section 415, 417, 511

Citation: (1989) CriLJ 2025**Hon'ble Judges:** K.T. Thomas, J**Bench:** Single Bench

Judgement

K.T. Thomas, J.

A medical practitioner holding M.B.B.S. degree falsely publicised that he has two more degrees M.R.C.P. and D.T.M. & H. This is the main allegation against the accused who faced a charge for the offence of cheating under the Indian Penal Code. The trial Magistrate acquitted the accused mainly on the ground that the prosecution has failed to prove that he does not have those two degrees.

2. Prosecution allegations can be summarised thus : Accused was running a Nursing Home at Chengamangalam by name Krishna Nursing Home. He exhibited a name board in which his name and degrees were shown as : "Dr. C. K. Bharathan, M.B.B.S. : M.R.C.P.; D.T.M. & H". He was holding out that he has those degrees by showing such credentials in the prescription slips issued to his patients. The Circle Inspector, who received a complaint from PW. 2 (who was a partner or associate of the accused in running the Nursing Home for a while), conducted a search of his house as well as the Nursing Home and seized the records and the name board displayed on the front portion of the Nursing Home. He interrogated a number of persons including the accused and then it was revealed that the accused does not have the degrees

M.R.C.P. and D.T.M. & H. The accused did not produce any such degree either before the Investigating Officer or in the trial court. Learned Magistrate found that the prosecution has not discharged its burden properly in this case. He observed that the investigators have not made any efforts to seek the help of Interpole or British Police. The following findings have been made by the learned Magistrate : "From the evidence adduced before court, I am satisfied that the prosecution has miserably failed to prove beyond shadow of doubt that the accused was not holding any of the higher degrees allegedly possessed by him. There is absolutely no evidence to show that the accused cheated anybody by personation or cheated any person as alleged against him".

3. Five persons who were treated by the accused deposed in the trial court that the accused had a good name as a Doctor, but they were not aware of his academic qualifications. None of them had any grievance regarding the course of treatment prescribed by the accused. All those five persons were declared hostile by the prosecution. However, one of them (PW. 11) admitted that Ext.P4 prescription slip was issued to him by the accused. Ext.P4 contains the letters denoting his credentials as M.B.B.S.; M.R.C.P.; D.T.M. & H. M.O. 1 is the name board exhibited in front of Krishna Nursing Home in which the accused served as a Medical Practitioner. The degrees M.R.C.P. and D.T.M. & H are inscribed in M.O. 1 next to the name of the accused besides his M.B.B.S. degree. Ext.P11 is the copy of the letter seized by the police from the house of the accused which is said to have been written by the accused himself. The signature in Ext. P11 is that of the accused There is not much of dispute about the authorship of Ext.P11. That document also shows that the accused used the degrees M.R.C.P. and D.T.M. & H along with his name to hold out that those degrees have been acquired by him. Thus, there can be no speck of doubt that the accused made it known to all concerned that he has those academic credentials. PW. 13 investigating officer has deposed in clear terms that the accused does not possess those degrees, except M.B.B.S.

4. When the accused was questioned u/s 313 of the Criminal P.C. he did not say that he, in fact, holds those degrees. His strategy appears to be one of subterfuge on that score. He did not produce any material to show that he had undergone any course in M.R.C.P. or D.T.M. & H at any time. Learned Magistrate obviously put the burden on the prosecution to prove that the accused does not have such degrees.

5. When the prosecution alleges that the accused does not have the academic credentials which he openly pretended to have, the burden of proving that he, in fact, possesses such degrees is on the accused. This is the purport of Section 106 of the Evidence Act which reads thus : "when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him". Illustration (b) to the said Section delineates its scope tersely. "A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him". If the burden is on the prosecution to prove the negative that the accused has never

acquired such degrees, prosecution has to cite and examine at least three persons from England (One from London, another from Glasgow and the third from Edinburgh since M.R.C.P. is a post-graduate degree awarded by the Medical Faculties functioning in those centres) with reference to registers and documents maintained in such centres during the past two decades at least. Section 106 of the Evidence Act is intended to obviate such drudgerous exercise and to meet exceptional cases in which it would be almost impossible or at least disproportionately laborious and expensive for one side to establish facts which are "especially" within the knowledge of the otherside. In [Shambu Nath Mehra Vs. The State of Ajmer](#), the Supreme Court has pointed out while dealing with illustration (b) to Section 106 that "Section 106 must be considered in a commonsense way; and the balance of convenience and the disproportion of the labour that would be involved in finding out and proving certain facts balanced against the triviality of the issue at stake and the case with which the accused could prove them, are all matters that must be taken into consideration". It would be preposterous to suggest that the prosecution should have embarked upon the laborious course of bringing persons from three foreign Universities to prove a negative point. It would be a simple task for the accused, if he actually holds those degrees, to prove it by production of the diploma or degree or any such document. The maximum which the prosecution can be expected to prove in such cases is to show that the accused used those degrees openly and to the knowledge of the public so as to make them believe that he is the holder of such degrees; and the further fact that the enquiry revealed that the accused does not possess such degrees. Of course when the prosecution makes the allegation which is of a negative nature, the court must be satisfied that the allegation is made bona fide. In this case, the investigating officer after conducting the investigation including interrogation of the accused, made the allegation that the accused does not have those degrees. I have no doubt in my mind that the burden is on the accused to prove that he, in fact, has those degrees. The accused has obviously failed to discharge the burden that he holds the degrees M.R.C.P. and D.T.M. & H. Hence the presumption that he does not have those degrees stands un rebutted. By holding out to the patients that he is the possessor of such special medical qualifications he has practised deception in order to induce the patients to consider him as a specialist.

6. Learned Counsel contended that the aforesaid act of the accused is not sufficient to amount to the offence of cheating inasmuch as there is no evidence that any patient has been actually induced to believe that the accused is the holder of such degrees. The offence of cheating as defined in Section 415 of the Indian Penal Code involves intentional inducement of any person fraudulently or dishonestly by deceptive means to do anything which he would not do if he were not so deceived. If the act of the accused is likely to cause damage or harm to that person in body or mind, the offence of cheating is complete. Illustration (c) given under the definition of cheating is this : "A, by exhibiting to Z a false sample of an article, intentionally

deceives Z into believing that the article corresponds with the sample and thereby dishonestly induces Z to buy and pay for the article. A cheats". The illustration fits in a case where a person exhibits fake or bogus credentials to deceive the patients into believing that the person has acquired those degrees. He thereby dishonestly induces the patients to approach him under that belief. If any patient approaches him believing that he is a specialist, there is likelihood of harm being caused to his body or mind because the person has no such specialisation as held out by him. Even assuming that there is no evidence in this case to show that any patient had approached the accused under such belief, it has to be examined whether the act of the accused would amount to attempt to cheat,

7. Learned Counsel alternatively contended that the act of the accused would, at the most, amount to preparation and not attempt. Section 511 of the Indian Penal Code comes into play when a person in attempting to commit an offence "does any act towards the commission of the offence".

8. The question whether an act amounts to attempt or merely preparation, in some cases, depends upon the surrounding circumstances. In order to constitute attempt, first there must have been an intention to commit the offence, second some act must necessarily have been done towards the commission of the offence and third such act must be proximate to the intended result. The measure of proximity is not in relation to time and action but in relation to intention. ([State of Maharashtra Vs. Mohd. Yakub and Others](#), . Attempt begins where preparation ends. Having intended to commit the offence, he must have done an act towards its commission having made preparations. Such an act need not be the penultimate act towards the commission of that offence, but an act done during the course of committing that offence [Sudhir Kumar Mukherjee and Sham Lal Shaw Vs. State of West Bengal](#), . Attempt to commit an offence, therefore, can be said to begin where the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence, If the accused had made the name board with the questioned degrees, or if the accused got the prescribed slips printed describing himself as holder of such degrees, perhaps, such acts would any have reached the stage of preparation. But when he released such prescription slips to others or when he exhibited such name board for others to read, he crosses the stage of preparation and transgresses into the realm of attempt.

9. The upshot of the above discussion is the finding that the accused had committed the offence u/s 511 read with Section 417 of the Indian Penal Code. I, therefore, set aside the order of acquittal and convict him for the aforesaid offence.

10. It is distressing, if not alarming, that the medical field is progressively getting adulterated with fake degree holders, if the newspaper reports have credence. There may be practical difficulties for the authorities to effectively filter the medical practitioners to pick out counterfeit physicians and surgeons, for, such steps may

involve causing harassment to genuine and qualified medical practitioners. But the country can ill afford to dispense with the operations to weed out bogus degree holders in medical field since it involves life and health. Normally deterrent sentence is warranted to scare bogus degree holders practising medicine. But in this case there is one relieving factor. The accused has the basic degree M.B.B.S. to practise medicine. I am, therefore, inclined to show some amount of leniency to him. At the same time the sentence should not be a flee bite experience to him. Considering all aspects, I sentence the accused to pay a fine of Rs. 5,000/- (Rupees Five thousand only). In default of payment of fine, he is directed to undergo rigorous imprisonment for 45 days. Appeal is disposed of in the above terms.