

State Vs Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust and Others

Court: Madras High Court

Date of Decision: March 24, 2015

Acts Referred: Criminal Procedure Code, 1973 (CrPC) - Section 161, 173

Indian Medical Council Act, 1956 - Section 10(A), 19, 30, 33

Penal Code, 1860 (IPC) - Section 120B, 420, 468, 471

Hon'ble Judges: R. Mala, J.

Bench: Single Bench

Advocate: K. Srinivasan, Spl. Public Prosecutor (CBI cases), for the Appellant; I. Ilankumar, Advocates for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Mala, J.

These Criminal revisions arise out of the order dated 22.04.2014 in CrI. M.P. No. 4045, 4044, 4047, 4049, 4048 and 4046

of 2013 in C.C. No. 111 of 2012 on the file of the learned Chief Judicial Magistrate, Pondicherry.

2. For the sake of convenience, the respondents herein are referred to as A1, A2 and A4 to A7.

3. The case of the prosecution is as follows:

(i) On source information, the Superintendent to Police, CBI/ACB, Chennai had lodged an F.I.R. dated 28.04.2011 under RC MA 1 2011 A

0019 and after investigation, charge sheet has been filed against the respondents herein stating that the Trust represented by its Secretary (A1) had

submitted an application dated 24.08.2007 for grant of permission for increase in the intake of students in First Year MBBS course from 100 to

150 seats in Aarupadai Veedu Medical College and Hospital, Pondicherry.

(ii) Based on the said application, duly appointed Medical Council of India (hereinafter called as "MCI") Statutory Inspectors namely, Dr. C.A.

Desai along with Dr. Ramesh Mahadev Tambat and Dr. Nisha Marwah conducted the Inspector of the College on 27.04.2009 and 28.04.2009.

(iii) Further Accused No. 2 to 7 presented a list of 131 Doctors as Faculty and Tutors/Junior Resident who were working elsewhere and

projected them as though they were working in Aarupadai Veedu Medical College and Hospital, Pondicherry for the purpose of MCI inspection.

(iv) Thus A2 to A7 entered into a criminal conspiracy during the year 2009 at Pondicherry and other places to do an illegal act i.e., to cheat MCI

by using forged documents as genuine in order to get the permission for increase in intake of students in the first year MBBS from 100 to 150 in

favour of the Trust and all the accused had committed offences punishable under Sections 120B read with 420, 468 read with 471 IPC.

4. After filing charge sheet, A1, A2 and A4 to A7 filed discharge applications stating as follows:

(i) The CBI has failed to follow the procedure prescribed under Section 173 of Cr.P.C. and they have not filed a closure report against the MCI

Inspectors who are public servants while dropping their names from the F.I.R. dated 28.04.2011 which was on the file of the Special Court,

Pondicherry.

(ii) No suitable orders have been obtained by the CBI to close the case against the MCI Inspectors after given due notice to the de facto

complainant.

(iii) Ingredients of Sections 420 and 471 IPC are not made out. MCI has not taken any action against the respondents.

(iv) The pick and choose formula followed by the CBI is unknown to law. The prosecution shall follow the principle of doctrine of parity as

otherwise the whole proceedings are illegal and contrary to law.

5. The CBI has filed a detailed counter stating that the oral and documentary evidence collected during investigation clearly shows that the accused

persons had conspired to cheat the MCI in getting approval for increasing intake of students from 100 to 150 in Aarupadai Veedu Medical

College and Hospital, Pondicherry. The accused persons with dishonest intention had concealed material facts and thereby MCI inspectors were

deceived and induced to take into account doctors, who are not regular staff of the Medical College and as a regular staff of Aarupadai Veedu

Medical College. The oral and documentary evidence collected by the CBI prima facie reveals commission of offences by the accused which is

sufficient for framing charges.

6. The trial Court after hearing both sides allowed the discharge applications filed by the accused persons and discharged the accused from the

charges levelled against them, against which, the present revision petitions are preferred by the petitioner/CBI.

7. Learned Special Public Prosecutor (CBI cases)/revision petitioner has submitted that A1 to A7 had entered into the conspiracy during 2009 at

Pondicherry and other places to do an illegal act that is to cheat the MCI using the forged documents as genuine in order to get the permission for

increase intake of students in the first year MBBS from 100 to 150 in favour of A1 Trust and pursuance of criminal conspiracy A2 Dr. S.V.

Dhanasekaran, the then Dean had dishonestly and fraudulently certified the faculty members of the Medical College and submitted false MCI

declaration forms by enclosing fabricated and false forged experience certificates and appointment orders and made them to appear as a regular

facilities before the Medical Council India and also made the said Doctors to appear before the MCI inspection held on 27th and 28th April 2009

as if the Medical College was having the required faculty members with nil deficiencies for the purpose of obtaining permission for admissions 150

MBBS seats. Therefore, the CBI after investigation, registered a case for offences under Sections 120B read with 420, 468 read with 471 IPC.

But the trial Court without considering the same held that ingredients of aforesaid offences have not been made out and discharged the respondents

from the charges levelled against them. Therefore, he prayed for allowing the revision petitions.

8. Resisting the same, learned counsel for the respondents raised the following defence:

(i) As per the document No. D09, Vinayaka Missions University has sent a letter for increasing MBBS seats from 100 to 150 in Aarupadai

Veedu Medical College and Hospital, Pondicherry. On 09.05.2009, the Secretary, MCI has sent a letter to the Secretary, Ministry of Health and

Family Welfare as follows:

An inspection for grant of letter of permission for the proposed increase of seats in Ist MBBS course from 100 to 150 at Aarupadai Veedu

Medical College and Hospital, Pondicherry has been carried out by the Council Inspectors on 27th and 28th April 2009. The inspection report is

placed before the Executive Committee for its consideration.

The Executive committee, MCI has passed the following order, which finds place in page No. 45 of the typed set of papers.

In view of the above, the Executive Committee of the Council decided to recommend to the Central Government not to issue letter of permission

for the proposed increase of seats in Ist MBBS course from 100 to 150 at Aarupadai Veedu Medical College and Hospital, Pondicherry under

Section 10(A) of the IMC Act, 1956.

(ii) As per the order passed by the Executive Committee, intake was not enhanced and hence, there is no wrongful loss to the Central Government

or MCI and no wrongful gain to the respondents/accused. Only MCI alone is a competent person to take action against the respondents if any

violations of rules and regulations committed by them as per Section 30 of the Medical Council Act. Further, the trial Court considered the

statement of witnesses Dr. C.A. Desai, L.W. 6/Dr. Ramesh Mahadev Tambat and L.W. 7/Dr. Nisha Marwah and came to the conclusion that

ingredients of Sections 120B read with 420 and 468 read with 471 IPC are not made out.

(iii) As per the decision reported in The Additional Superintendent of Police CBI Vs. G.B. Anbalagan, , wherein the learned Judge of this Court

held that in view of the statutory provisions of the Medical Council Act which is a self contained Act and when there are specific provisions in the

Act to deal with the misconduct committed by the Institution and if it submits fake/forged declaration forms, it would be improper to resort to

Section 420 of IPC altogether ignoring those provisions.

(iv) There is no prima facie case for framing charges against the respondents and hence, the trial Court considered all the aspects in proper

perspective and rightly discharged the accused from the charges levelled against them. Therefore, they prayed for dismissal of the revision

petitions.

9. Considered the rival submissions made on both sides and perused the materials available on record.

10. The case of the prosecution is as follows:

(i) On source information, the case has been registered against 15 named persons and unknown inspectors of MCI and unknown officials of

Ministry of Health and Family Welfare and Ministry of Human Resource Development, New Delhi on 28.04.2011 stating that A1 Trust had

submitted its application dated 24.08.2007 for grant of letter of permission for increase in intake of students in first year MBBS course from 100

to 150 seats in Aarupadai Veedu Medical College, Pondicherry under the signature of Prof. V.R. Rajendran. Based on this application, the MCI

inspectors headed by Dr. C.A. Desai with Dr. Ramesh Mahadev Tambat and Dr. Nisha Marwah conducted an inspection of the college on 27th

and 28th April 2009. A2 to A7 had presented the list of 131 doctors as faculty and Tutors/Junior Resident who were working elsewhere and

projected as though they were working in the Aarupadai Veedu Medical College for the purpose of MCI inspection.

(ii) A2 to A7 entered into the criminal conspiracy during 2009 at Pondicherry and other places to do an illegal act (i.e.) to cheat MCI by using

forged documents as genuine, in order to get the permission for increase in intake of students in the 1st year MBBS from 100 to 150 in favour of

A1 trust and in pursuance of the conspiracy A2/Dr. S.V. Dhanasekaran, the then Dean of Aarupadai Veedu Medical College had dishonestly and

fraudulently certified the genuineness of the faculty members in the declaration forms knowing fully well that they were not regular faculty of the

college. He also induced the staff of Aarupadai Veedu Medical College in preparing false documents to deceive the MCI. In pursuance of the

conspiracy A3/A. Shanmugasundaram, Chairman of A1 Trust and Chancellor of Vinayaka Mission's University, induced Dr. S.V. Soundararajan

to appear as a regular faculty in Aarupadai Veedu Medical College to cover up the shortage in faculty knowing fully well that Dr. S.V.

Soundararajan is doing private practice at Salem and further issued a fake appointment letter in favour of Dr. Sundararajan by giving a false

impression that the said Dr. Sundarajan is the faculty of Aarupadai Veedu Medical College and Hospital, Pondicherry, knowing fully well that the

said Dr. Sundararajan was not appointed as regular faculty and he was practicing at Madurai. In furtherance of criminal conspiracy Dr. A.S.

Ganesan (A4) issued fake appointment orders and promotion orders in respect of the doctors mentioned in the annexure list to deceive MCI,

knowing fully well that they were not regular staff on the said medical college. Similarly, in pursuance of the conspiracy Dr. A. Andappan (A5)

dishonestly arranged doctors show in the annexure by inducing them and produced them before the said MCI inspection with the intention to

deceive the MCI by giving the false impression that the doctors were regular staff of the medical college. In pursuance of the conspiracy Dr. K.

Jayapal(A6) issued two false experience cum relieving orders dated 31.03.2008 and 04.11.2008 in respect of Dr. S.D. Shahul Hameed knowing

fully well that Dr. Shahul Hameed had not worked in Vinayaka Mission's Kirupananda Variyar Medical College and Hospital, Salem as

mentioned in the said experience certificate to deceive the MCI during the inspection and in pursuance of the conspiracy Dr. K. Uthamalingam

(A7) deceived the MCI and issued false relieving order dated 29.09.2005 and experience certificate dated 02.09.2005 in respect of Dr. S.V.

Soundararajan knowing well that he had not worked in Vinayaka Mission's Kirupananda Variyar Medical College and Hospital earlier to cheat

MCI in order to get the permission for increase in intake of students in 1st year MBBS from 100 to 150.

(iii) The above acts on the part of the accused persons namely, M/S. Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical

Educational and Charitable Trust(A1), Dr. S.V. Dhanasekaran(A2), Shri. A. Shanmugasundaram(A3), Dr. A.S. Ganesan(A4), Dr. A.

Andappan(A5), Dr. K. Jayapal(A6) and Dr. K. Uthamalingam(A7) constitute commission of offences punishable under Sections 120B read with

420 and 468 read with 471 IPC. After investigation, CBI filed charge sheet on 12.07.2012.

11. Even though the trial Court has allowed the applications filed by the accused persons, this Court has to decide whether the impugned order

passed by the trial Court is sustainable and whether there is any prima facie case made out for framing charges? The trial Court after hearing both

sides came to the conclusion that there is no prima facie case for framing charges. Even though case has been registered against unknown officials

of the Ministry of Health and Family Welfare, New Delhi and unknown officials of Ministry of Human Resources and Development, New Delhi

and 15 named persons, charge sheet was filed only against seven persons.

12. On perusal of the order passed by the trial Court, it reveals that the trial Court has considered the statement made by Dr. C.A. Desai on

11.01.2012, which runs as follows:

.... I had been doing the inspection of Infrastructure facilities and verification of declaration forms if time permits. Being a Regional MCI Inspector

based at Ahmedabad, I have been guiding the other MCI Inspectors who come occasionally. As regards to Oxygen supply and suction in 2009

when we went for increase in seats to 150, the college was required to make major modifications regarding Oxygen Supply and suction by

expanding the capacity of the causality. When we went for inspection, these modifications were not complete and so we had mentioned that these

facilities were not functioning. In 2004-2005, the Inspection for 100 Admissions, these facilities were adequate and existing at that time.....

13. Further, the trial Court has considered the statements made by L.W. 6/Dr. Ramesh Mahadev Tambat and L.W. 7/Dr. Nisha Marwah and

came to the conclusion that the statutory inspectors representing the MCI are the competent authority to inspect, verify the infrastructure facilities

and faculty requirements of the Medical Colleges as per the MCI Act and regulations.

14. During the MCI inspection conducted by the above said Statutory Inspectors on 27.04.2009 and 28.04.2009, a total of 347 faculties were

present and they were physically verified with their individual declaration form along with their original PAN card, degree certificates, Medical

Council Registration, Form 16 appointment/promotion orders dully signed by the faculties and all the 347 faculties were thoroughly

verified/accepted by the statutory inspectors.

15. On 09.05.2009, Secretary, MCI, sent a letter to the Secretary, Ministry of Health and Family Welfare as follows:

An inspection for grant of letter of permission for the proposed increase of seats in Ist MBBS course from 100 to 150 at Aarupadai Veedu

Medical College and Hospital, Pondicherry has been carried out by the Council Inspectors on 27th and 28th April 2009. The inspection report is

placed before the Executive Committee for its consideration.

The above para shows that the inspection report is placed before the Executive committee for its consideration and the Executive Committee, MCI

has sent a communication to the respondents, in which it was stated as follows:

In view of the above, the Executive Committee of the Council decided to recommend to the Central Government not to issue letter of permission

for the proposed increase of seats in Ist MBBS course from 100 to 150 at Aarupadai Veedu Medical College and Hospital, Pondicherry under

Section 10(A) of the IMC Act, 1956.

You are requested to submit the detailed point wise compliance (softcopy in C.D. also) with the documentary evidence in respect of the

deficiencies pointed out as above to the undersigned on or before 19th May, 2009 positively in person along with a demand draft worth Rs. 3

lakhs in favour of Secretary, Medical Council of India payable at Delhi.

16. The above letter shows that MCI has recommended the Central Government not to issue letter of permission for the proposed increase of

seats in Ist MBBS course from 100 to 150 seats at Aarupadai Veedu Medical College and also directed to submit a detailed point wise

compliance with documentary evidence on or before 19.05.2009 along with D.D. For Rs. 3 lakhs. So no permission was granted in enhancing the

strength. It is clear that there is no wrongful loss to the Central Government and no wrongful gain to the respondents.

17. Furthermore, the trial Court has considered the statements of L.W. 1 to L.W. 13 under Section 161 Cr.P.C. and held that all the statements of

witnesses are only general in nature and they are not specific with regard to overt acts and hence, no charge could be framed for the offence under

Sections 420 and 468 read with 471 IPC and therefore, the prosecution materials do not make out a case to charge the accused for the said

offences. In such circumstances, I am of the view, the trial Court came to the correct conclusion that there is no averment in the statement of the

witnesses that these accused have forged the said documents and filed it before the MCI Inspectors and hence, no prima facie evidence to frame

charges against the respondents under Sections 120B read with 420, 468 read with 471 IPC.

18. It is true, while framing charges, the Court need not look into the fact whether it is a fit case for conviction if prima facie material for framing

charge is sufficient to frame charge.

19. Learned counsel for the respondents/accused mainly focusing upon that the CBI has no power to register the case, as per Section 30 of the

MCI Act, if any violation of rules and regulations committed by the respondents, MCI alone is empowered to take action against them.

20. At this juncture, it is appropriate to consider the following decisions of this Court:

(i) In The Additional Superintendent of Police CBI Vs. G.B. Anbalagan, , it read as follows:

25. In this case, the learned Special Judge should have considered that the similarly placed accused has been left out and the CBI has acted in a

pick and choose manner. In the final report, except stating that the investigation had not revealed that Dr. Ketan Desai had any knowledge of the

irregular faculty members in the strength of the College when the Medical Council of India accepted the report of the investigation team, it has not

been pointed out that in what respect the said conclusion is arrived at. The statement is very vague in nature and it only shows the partisan attitude

of the CBI. As the investigation has not been conducted fairly, such vitiated investigation would only lead to miscarriage of criminal justice.

....

....

....

32. Even accepting the Prosecution case on its face value, it only reveals violation of regulation framed by the Medical Council of India and they

cannot ex-facie give rise to a criminal liability, as such misconduct may give rise to refusal of permission/recognition for two consecutive academic

years.

33.....

34.....

35.....

36. More importantly, Clause 8(3) of the Establishment of Medical College Regulations, 1999 contemplates penal action in case any Institute is

found to have employed a teacher and submits a declaration form of such a teacher with fake/forged document. Sub clause (d) of clause 8(3)

reads as under:-

(d) Colleges which are found to have employed teachers with faked/forged documents:

It is observed that any Institute is found to have employed a teacher with faked/forged documents and have submitted the declaration form of such

a teacher, such an Institute will not be considered for renewal of permission/recognition for award of MBBS Degree/processing applications for

post graduate courses for two academic years i.e. that academic year and the next academic year also.

37.....

38. When a statute or the statutory body is not inclined to treat violation or lapses as an offence, no penal law can be invoked for the shortfalls in

the faculty and the submission of false declaration forms.

39. In this context, it is relevant to refer to the law laid down by the Constitutional Bench of the Honourable Supreme Court in Dr Preeti Srivastava

and Another Vs. State of M.P. and Others, wherein the Honourable Supreme Court at paragraph 57 has concluded as follows:--

In the case of Medical Council of India Vs. State of Karnataka and Others, a bench of three judges of this Court has distinguished the

observations made in Kumari Nivedita Jain (supra). It has also disagreed with Ajay Kumar Singh and Ors. v. State of Bihar and Ors (supra) and

has come to the conclusion that the Medical Council Regulations have a statutory force and are mandatory. The Court was concerned with

admissions to the M.B.B.S. Course and the Regulations framed by the Indian Medical Council relating to admission to the M.B.B.S. course. The

Court took note of the observations in State of Kerala Vs. Kumari T.P. Roshana and Another, to the effect that under the Indian Medical Council

Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate

their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under

the Act an overall vigilance by the Medical Council to prevent substandard entrance qualifications for medical courses. These observations would

apply equally to postgraduate medical courses. We are in respectful agreement with this reasoning.

40. In view of the statutory provisions of the Medical Council Act which is a self contained Act and when there are specific provisions in the Act to

deal with the misconduct committed by the Institution and if it submits fake/forged declaration forms, it would be improper to resort to Section 420

of IPC altogether ignoring those provisions.

(ii) In (2014) 3 MLJ (CrI.) 646 (State represented by CBI/ACB, Chennai v. M.K. Rajagopalan and another), in para-33 and 35, it is held as

follows:

33. When a statute or the statutory body is not inclined to treat violation or lapses as an offence, no penal law can be invoked for the shortfalls in

the faculty and the submission of false declaration forms.

35. In view of the statutory provisions of the Medical Council Act which is a self contained Act and when there are specific provisions in the Act to

deal with the misconduct committed by the Institution and if it submits fake/forged declaration forms, it would be improper to resort to Section 420

of IPC altogether ignoring those provisions.

In the above decision, it was held that clause 8(3)(1) of the Establishment of Medical College Regulations, 1999, deals with the grant of permission

to establish a New Medical College, which is given below:

8(3)(1) The permission to establish a Medical College and admit students may be granted initially for a period of one year and may be renewed

on yearly basis subject to verification of the achievements of annual targets. It shall be the responsibility of the person to apply to the Medical

Council of India for purpose of renewal six months prior to the expiry of the initial permission. This process of renewal of permission will continue

till such time the establishment of the medical College and expansion of the hospital facilities are completed and a formal recognition of the Medical

College is granted. Further admissions shall not be made at any stage unless the requirements of the Council are fulfilled.

The Central Government may at any stage convey the deficiencies to the applicant and provide him an opportunity and time to rectify the

deficiencies.

Provided that in respect of (a) Colleges in the stage upto II renewal (i.e. Admission of third batch):--

If it is observed during any regular inspection of the Institute that the deficiency of teaching faculty and/or residents is more than 30% and/or bed

occupancy is <60% such an Institute will not be considered for renewal of permission in that academic year.

(d) Colleges which are found to have employed teachers with faked/forged documents:--

If it is observed that any Institute is found to have employed a teacher with faked/forged documents and have submitted the declaration form of

such a teacher, such an Institute will not be considered for renewal of permission/recognition for award of MBBS Degree/processing the

applications for postgraduate courses for two academic years i.e. That academic year and the next academic year also.

However, the office of the Council shall ensure that such inspections are not carried out at least 3 days before upto 3 days after important religious

and festival holidays declared by the Central/State Government.

(4) Failure to seek timely renewal of recognition as required in sub clause (a) supra shall invariably result in stoppage of admissions to the

concerned Undergraduate Course of MBBS at the said Institute.

(emphasis supplied)

Thus, it is clear that Medical Council of India is a body which has its own code of conduct to be followed while granting approval or

recommending for renewal. The shortfall in faculties and submissions of fake/forged documents would only disentitle the Institution from getting

renewal of permission. Also, the errant medical Doctors would be dealt with accordingly by the Medical Council, whereby the names of defaulters

can be removed from the State Medical Register, thus debarring them from engaging themselves in the profession. Also, the Medical Council of

India Act provides for withdrawal of recognition granted to such College as per Section 19 of the Act. Nowhere it is stated either in Medical

Council of India Act or the regulations that such violation would result in penal consequences.....

The above two decisions came after the impugned order was pronounced by the trial Court. Admittedly, no S.L.P. has been filed against the

judgment of this Court in The Additional Superintendent of Police CBI Vs. G.B. Anbalagan, and State Vs. M.K. Rajagopalan, .

21. Considering the facts and circumstances of the case along with the decisions, I am of the view, the trial Court considering the rules and

regulations and enactment of Medical Council of India, Establishment of Medical College Regulations, 1999, came to the correct conclusion that

violation of any regulations formulated by MCI shall not create criminal liability against the accused and hence, ingredients of Sections 120B read

with 420, 468 read with 471 IPC have not been made out. Further, the trial Court has rightly come to the conclusion that act or omissions alleged

to have been committed by the accused are only violations of regulations framed by the MCI as per Section 33 of the Indian Medical Council Act.

They are not offences as per the procedure established by law and criminal liability shall not be fastened on the accused for those violations. The

MCI which is the statutory body empowered to take action for violation of regulations and therefore, the prosecution before the Court of law shall

not be maintainable. In my considered opinion, the trial Court examined the materials placed on record on threadbare after referring to the

statements recorded from various witnesses and decided to discharge the accused persons, which is justified.

22. Under the above circumstances, I am of the view, no prima facie case has been made out for framing charges. The trial Court has rightly

discharged the accused persons/respondents herein from the charges levelled against them by passing well reasoned order, which does not warrant

any interference. Therefore, the revision petitions filed by the CBI deserve to be dismissed and they are hereby dismissed.

23. In fine, the Criminal Revision Petitions are dismissed by confirming the order dated 22.04.2014 in CrI. M.P. No. 4045, 4044, 4047, 4049,

4048 and 4046 of 2013 in C.C. No. 111 of 2012 on the file of the learned Chief Judicial Magistrate, Pondicherry.