

MHTH120060342014



Presented on : 29.11.2014
Registered on : 29.11.2014
Decided on : 12.05.2022
Duration : 07Y.05M.13D

**IN THE COURT OF CIVIL JUDGE (J.D.), VASHI, NAVI MUMBAI.
AT : C.B.D., BELAPUR, DISTRICT-THANE
(Presided over by Smt.T.M.Deshmukh-Naik)**

R.C.C.No. 1543/2014

Exhibit No.100

State

Shri. Adinath Gavde, API
(Through Rabale Police Station)

... Complainant.

V/s.

1. Arvind Sridhar Yadav,

Age : 45 Years,
R/at : Sriramkrupa Society,
Row House No.12,
Sector NO. 02.
Airoli, Navi Mumbai.

2. Mr. Vivekanand Parshuram Honkeri,

Age : 37 Years,
R/at : Goodwill Society, 403,
Sector – 19, Airoli,
Navi Mumbai.

... Accused.

APPEARANCE :-

Ld. APP for State : Shri. Datrange.
Ld. Counsel for Accused no.1 : Adv. Shri. P.B.Mhatre.
Ld. Counsel for Accused no.2 : Adv. Shri.R.B.Mokashi.

**Offences punishable u/s. 420, 465, 467, 468, 471 r/w 34 of IPC
and u/s. 33 (1), 33(A) & 36 of Maharashtra Medical Practitioners
Act, 1961.**

: J U D G M E N T :

(Delivered on this 12th day of May , 2022)

1. Accused are facing trial for the offences punishable u/s. 420, 465, 467, 468, 471 r/w 34 of IPC and u/s. 33 (1), 33(A) & 36 of Maharashtra Medical Practitioners Act, 1961.

Brief facts of prosecution case are as under :-

2. It is the case of prosecution that, accused in furtherance of their common intention during period 6.6.2014 till 20.06.2014 are doing lab test in Pratima Clinic Diagnosis Center, Sector – 12, Srirang Society, Sector – 2, Airoli , Navi Mumbai. Complainant Raju Jairaj Rao is doctor by profession and is member of Maharashtra Association of Practicing Pathologist and Microbiologist Committee. Accused no.1 was aware that he is not entitled to put any abbreviation like Dr. prefixing or affixing their name which may indicate that he is doctor or medical practitioner, violate the provisions of law by prefixing abbreviation doctor without having qualification. He had also signed and issued report of lab test bearing his signature for which he is not qualified as DMLT Lab Assistant.

3. Accused no.2 was not registered medical practitioners of

Maharashtra Medical Council. He is permanent and full time lecturer at Karnataka at Al Amin Medical College, Karnataka State. In spite of that, the lab report issued from Pratima Clinic shown signature for accused no.2. Thus, it was alleged that the report was false and fabricated fraudulently prepared and thus accused cheated and breached trust of complainant and public.

4. On receipt of summons, the accused no.1 and 2 filed their appearance through their advocate.

5. After filing an appearance by the accused no.1 and 2, the charge under Section 420, 465, 467, 468, 471 r/w 34 of IPC and u/s. 33 (1), 33(A) & 36 of Maharashtra Medical Practitioners Act were framed against the accused no.1 and 2. The charge was read over and explained to the accused no.1 and 2 in vernacular . The accused no.1 and 2 however pleaded not guilty and claimed to be tried.

6. On the basis of the Charge as framed against the accused at exh. 8 , the following points arise for my determination and I have recorded my findings thereto for the reasons stated as under :-

<u>S.No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the complainant proves that during the period 06.06.2014 till 20.06.2014, at Pratima Clinic Diagnostic Center, 12, Sriram Society, Sector - 2, Airoli, Navi Mumbai , accused no.1 in furtherance of his common intention, on aforesaid mentioned period and place, cheated complainant / association / public by preparing and furnishing bogus documents and thereby committed offence punishable u/s. 420 r/w 34 of Indian Penal Code ?	... In the affirmative.
2	Whether the complainant proves that	... In the affirmative.

	<p>accused no.2 in furtherance of his common intention, on aforesaid mentioned period and place, working in Al Amin Medical College, Karnataka State, helped accused no.1 in starting the said Pratima Clinic and accused no.1 being aware of the fact that accused no.2 is not present in person in this jurisdiction , forged certain documents such as blood test reports of the patients and put forged signatures of accused no2 on said reports and pretended to show that accused no.2 is present in person and the said signatures are of accused no.2 , thereby committed fraud and thereby committed offence punishable u/s. 465 r/w 34 of Indian Penal Code ?</p>	
3	<p>Whether the complainant proves that accused no.1 in furtherance of his common intention, on aforesaid mentioned period and place, forged certain documents purporting to be a valuable document, and thereby committed offence punishable u/s. 467 r/w 34 of Indian Penal Code ?</p>	<p>... In the affirmative.</p>
4	<p>Whether the complainant proves that accused no.1 in furtherance of his common intention, on aforesaid mentioned period and place, forged certain document , intending that the document forged shall be used for the</p>	<p>... In the affirmative.</p>

	purpose of cheating and thereby committed offence punishable u/s. 468 r/w 34 of Indian Penal Code ?	
5	Whether the complainant proves that accused no.1 in furtherance of his common intention, on aforesaid mentioned period and place, fraudulently used as genuine certain documents , which you knew at the time when used to be forged document and that you have thereby committed offence punishable u/s. 471 r/w 34 of Indian Penal Code ?	... In the affirmative.
6	Whether the complainant proves that accused no.1 , on aforesaid mentioned period and place, though his name not being registered in the register maintained under the Maharashtra Medical Practitioners Act, 1961 , pretended himself as a doctor and thereby committed offence punishable u/s. 33(1) of the Maharashtra Medical Practitioners Act, 1961 ?	... In the affirmative for accused no.1 and In the negative for accused no.2.
7	Whether the complainant proves that accused no.1 , on aforesaid mentioned period and place, though not a practitioner registered under any of the Acts referred to held appointments as medical officer and started Pratima Clinic Diagnostic Center , and thereby committed offence punishable u/s. 33(A) of the Maharashtra Medical	... In the affirmative for accused no.1 and In the negative for accused no.2.

	Practitioners Act, 1961 ?	
8	Whether the complainant proves that accused no.1, on aforesaid mentioned period and place, though not a practitioner registered under any of the Acts added the abbreviation 'Dr.' before his name, which implies that he held a degree, diploma, licence or certificate like award, though he did not actually held the same, and thereby committed offence punishable u/s. 36 of the Maharashtra Medical Practitioners Act, 1961 ?	... In the affirmative for accused no.1 and In the negative for accused no.2.
9	What Order ?	... As per final order.

: REASONS :

Oral Evidence of Prosecution :-

1. Dr. Rajeev Jayraj Rao, Complainant, P.W.1 at exh.24.
2. Dr. Prasad Prabhakar Kulkarni, P.W.2 at exh.34.
3. Dr. Durgaprasad Nandkishor Agrawal, P.W.3 at exh.68.
4. Shri. Adinath Ananta Gavade, P.W.4 at exh.74.

7. After recording of evidence of the prosecution, the accused no.1 & 2 were examined under Section 313 of the Code of Criminal Procedure, 1973. They had filed written statement at exh. 95 and 96. The defence of the accused is that of total denial and that they have been falsely implicated in the present case by the informant . They had also given written statement wherein they denied all the allegations levelled against them. The accused did not adduce any evidence in support of their defence.

AS TO POINT NO. 1 :-

8. Complainant i.e. P.W. no.1 deposed that he is member of Maharashtra Association of Practicing Pathologists and Microbiology. The association is registered association as Regn. No.- MAH/11167/Str. During survey of association they checked out authenticity of various laboratories (lab) at Navi Mumbai. From the documents produced by labs they had cross checked with the Maharashtra Medical Council regarding authenticity of permission of labs. At that time, they came across with a report issued by Dr. V.P.Honkeri and Dr. Arvind Yadav. The report shown degree of Dr. Honkeri as M.D. Path and degree of Arvind Yadav as B.Sc DMLT, N.D. It bears two signatures, one as Dr. Arvind Yadav and another as Dr. V.P.Honkeri.

9. The association enquired regarding the registration of Dr. Honkeri, they came to know that he is registered practitioner with the Indian Medical Council. However, he is not registered with Maharashtra Medical Council. His full name is Dr. Vivekanand Parshuram Honkeri, registered with Karnataka Medical Council. They came to know from website that he was working and appointed as full time Professor at 'Al Amin Medical College, Karnataka'. He was also residing there. After due enquiry with the college authority they came to know that since last 3 years Dr. Honkeri was acting as full time Professor. Thus, as per report in June – 2014 he was not at Navi Mumbai nor working here, but working as a Professor at Karnataka.

10. Dr. Arvind Yadav is not practicing as MBBS nor he is having any licence to practice as doctor and to give medicine. He is not registered as a doctor under Maharashtra Medical Practitioners Act, 1961. The person who had obtained dental counseling, ayurvedic , homeopathy or medical counseling can only be entitled for practicing as doctor.

11. He identified report dated 12.5.2014 issued from Pratima Clinic regarding urine test of Mahendra Karande. It is at Article 'A'.

12. He further deposed that to cross-examine the authenticity of the lab they sent Dr. Prasad Kulkarni as dummy patient to Pratima Clinical Diagnosis Center. Dr. Kulkarni represented himself as patient by name Shri. Moholkar. He got tested for random blood sugar . For that he has given sample of urine and blood. Accordingly, report issued on 20.06.2014. The report was same bearing signature of accused on letterhead of Pratima Clinic Diagnosis Center.

13. Thereafter, he had sent a letter to Maharashtra Medical Council for getting information that whether Dr. Honkeri is registered Medical Practitioner or not. They also asked the question whether accused can practice like accused. They had received answer from Medical Council, however, he handed over the same to police. It is at Article 'C'. Accordingly, Maharashtra Association of Practicing Pathologist and Microbiologists has filed the complaint to police. The complaint bears signature of Dr. Prasad Kulkarni, Dr. Ravindra Birajdar, Dr. Prakash Dive, Dr. Rarjiv Rao and Dr. Sandeep Yadav. It is at exh.26. Thereafter, the witness had filed FIR and recorded the statement as per exh.27 & 28.

14. The receipt of payment to Pratima Clinic is filed at Article 'D'. Report of Mahendra Karande dated 12.5.2014 is at Article E. The photographs of pathology is at Article 'F'.

15. It is appeared in cross-examination of this witness that he is also working as Professor from 09.00 a.m till 03.00. He is having his own 2 labs and visited there from 04.00 p.m to 10.00 p.m.. He is also acting as a Consultant to other hospitals. Ld. Counsel for accused invited my attention towards working style of this witness and submitted that it is not necessary for the pathologist to always be at pathology, therefore, the tests conducted at Pratima Clinic in absence of accused no.2 are not void or illegal.

16. It is further submitted that witness did not get any permission or authority from Medical Council in writing. There is no permission for seeking objection, therefore, the act of witnesses is not

legal.

17. Admittedly, witness is member of Maharashtra Medical Council. On perusal of the rules and regulations and provisions of Maharashtra Medical Council Act, nowhere it has been mentioned that any written permission or resolution is required to be granted. Further, it is settled law that any person can set the law in motion. Further, they are having authority to enquire the authenticity of labs working at Navi Mumbai in view of GR 7.2.00. Thus, the objection regarding written authority would not fatal to the prosecution case.

18. The witness is expert and he denies in his cross-examination that when a person is member of Medical Council of India, it is not necessary for him to register again to any other State to practice in that State. Thus, it is submitted by Ld. Counsel for accused that, as accused no.2 is registered practitioner under Indian Medical Council, it is not necessary for him to again get registered under Maharashtra Medical Council Act.

The Indian Medical Council Act, 1956 Amended Act (1964 1993 & 2001)

“Sec. 22 – Supply of copies of the State Medical Register -

Each State Medical Council shall supply to the Council 6 printed copies of State Medical Register as soon as may be after the commencement of this Act and subsequently, after the first day of April of each year, and each register of State Medical Council shall inform the Council without delay.”

“Sec. 23 – Registration in the Indian Medical Register – The Registrar of

Council on receipt of report of registration of person in State Medical Register or on application made in the prescribed manner by any such person enter his name in the inter medical register, provided that the registrar is satisfied that person possess a recognized medical qualification.”

“Sec.24 -

1. Removal of name from the Indian Medical Register – If the name of any person enrolled on a State Medical Register is removed there from in pursuance of any power conferred by or under any Law relating to medical practitioner for the time being in force in any State the counsel shall direct

the removal of name of such person from Indian Medical Register.

2. Where the name of any person has been removed from a State Medical Register on the ground of professional misconduct or any other ground except that he is not possessed of requisite medical qualification or where any application made by the said person for restoration of his name to the State Medical Registrar has been rejected, he may appeal in the prescribed manner as per rule to the Central Government and the decision be binding on State Government.”

“Sec. 15 -

1. Right of person possessing qualification in the Schedule to be enrolled – Subject to the other provision contained in this Act, the medical qualification include in schedule shall be sufficient qualification for enrollment on any State Medical Register.”

Same as provided in Sec. 25 -

“Sec. 25- No person other than medical practitioner enrolled on State Medical Register

(a) shall hold office as physician or surgeon or any other office in the government or institution or local or other.

(b) shall practice medicine in any State.

(c) shall be entitled to sign or authenticate a certificate required by Law or signed or authenticate by duly qualified medical practitioner.

(d) shall be entitled to give evidence as expert.

3. Any person who act in contravention of any provision of sub-sec. 2 shall be punished with imprisonment of one year or with fine which may extend to Rs.1,000/- or both.”

19. In this scenario I would also like to rely on the observation of Hon'ble Bombay High Court in case of **Nageshwar Basantrao Dubey V/s. Union of India and others on 22.12.2006 .**

Sec.17 (3A) of Maharashtra Act also provides that,

“A person who is enrolled on the register maintained under the Central Act but not enrolled on the register maintained under the Maharashtra Act shall on application be entitled to have his name entered in the register maintained under the Maharashtra Act and thus, it would give him the status of registered medical practitioner within the Sate of Maharashtra. In view of this, the practitioner. who are enrolled with other States like Bihar, Madhya Pradesh,

A.P., Rajasthan etc. may be entitled to practice in those States but merely on the basis of enrollment in those States or any one of them they cannot claim or right to practice in the State of Maharashtra. However, if they want to practice in Maharashtra either they will have to register with the Central Registrar or with State Registrar maintained under Maharashtra Act. It is difficult to accept that merely because the States in which they are enrolled allow them to vote, they should also be deemed to have registered with the Central Registrar. Even though the person does not hold recognized medical qualification as per Central Act, they may enroll to the State."

20. Thus, in the light of above-mentioned provisions and observation of Hon'ble High Court, from the testimony of this witness, it is proved that medical practitioner is required to be register one either Indian or Maharashtra Counsel. Therefore, he is found cogent and trustworthy as there is nothing major contradiction appeared on record.

21. Ld. Counsel for accused submitted that there is omission regarding act of Prakash Moholkar and payment of Rs.100/- in the Pratima Clinic. Hence, it is submitted that this omission amounts to contradiction. On perusal of testimony of this witness, it appears that he has stated before police how they had conducted the enquiry and find out commission of crime by accused. Accordingly, after getting report of Moholkar accused has been booked for offence.

22. Admittedly, the report and receipt of test has been issued by Pratima Diagnosis Center on the name of Prakash Moholkar. Hence, the scene of Prakash Moholkar has been established and therefore, this omission is not amount to contradiction. Hence, this witness inspires confidence of this Court.

23. The another prosecution witness Prasad Prabhakar Kulkarni deposed that he contributed the investigation of association. He personally went to Pratima Clinic Diagnosis Center without disclosing his real identity. He represented himself by name Prakash Moholkar. He gave the blood and urine sample and paid fees accordingly. The receipt is at exh.36. He corroborated the testimony of P.W.1 regarding non-registration of accused no.1 and 2 at Maharashtra

Medical Council and their authority to issue lab test report.

24. During cross-examination Ld. Counsel of accused tried to shaken testimony of this witness, thereby they invited my attention towards admission that the person having DMLT Diploma are usually collecting sample at the laboratory and they had conducted the test over the sample. He admitted that in his absence his lab technician used to collect the sample. He also admitted that DMLT person can conduct the blood , urine and swab test. Admittedly, he has given sample of blood and urine. Therefore, it is submitted by Ld . Counsel of accused that the test conducted by accused no.1 in absence of accused no.2 is as per general practice.

25. In this context it appears in testimony of this witness that every report will be finalized only after his inspection and after he has verified all the tests conducted by lab technician. It is the case of prosecution that, accused no.2 is residing in the State of Karnataka, thus, he is not having any occasion to verify the test and its contents conducted by lab technician. In the light of this allegation, it appears that not a single evidence or suggestion brought by accused to show that accused no.2 though permanently and fulltime lecturer at the State of Karnataka have occasion to visit Pratima Diagnosis Center everyday or have an opportunity to come across the reports prepared by lab technician. Thus, it is seen that though the report appears to be signed by accused no.2 it has not been verified and authenticated by him. Under Maharashtra Medical Council Act the DMLT person is not entitled to open and conduct laboratory without MD Pathologist. Sec. 33 (2) Maharashtra Medical Practitioners Act, 1961 states that, if found that any diploma holder is running lab action will be taken against him. Same is mentioned at exh.54 i.e. Notification No. S11025/151/2002 MH/PMS/ Government of India Ministry of Health and family Welfar draft of Medical Council of India. G.R of Medical Education & Drugs Counsel of India is at exh. 55. Exh. 56 is draft of Medical Council of India dated 01.06.2001.

26. Ld. Counsel of accused invited my attention that this FIR has been lodged on 15.07.2014. Statement of this witness is recorded on 16.07.2014. Thus, delay caused to record his statement. This delay is delay to lodge the FIR. This is the mere witness and investigation officer can record the statement of witness after lodging FIR. Therefore, it does not fatal this case.

27. It appears in his cross-examination that he is professor at D.Y.Patil college working from 09.30 to 3.30. On 25.04.2021 he was also having duty at college. Therefore, it was suggested that actually he did not go to the lab and gave his blood and urine sample for test. However, he denied all the suggestions. Hence, issuing test lab report has been proved.

28. **It was suggested to the witness that the person who is fulltime employer is not entitled to do lab practice.** Witness replied that he has given undertaking to the college that his lab practice will not be affected over his job. It is also appeared that after job hours he used to visit and do work at personal lab. Thus, this suggestion from the defence counsel shown that they admitted that the act of accused regarding running the test lab inspite he is working at Karnataka is not as per rules and regulations of Medical Council of India and it does not fulfill the object of this rule to conducted test under supervision of MD, Physician. In case in hand, nothing brought on record to show that after job hours accused was having opportunity to verify the test report prepared at his lab. Mere statement at the time of 313 is not suffice.

29. Ld. Counsel invited attention of this witness towards exh.44 i.e. Diploma of DMLT of accused no.1. It is admitted that DMLT person can conduct the test and collect the sample of blood, urine and swab. It is admitted that Council of Natural Medical Lucknow is registered institution. Exh. 45 shown that the abbreviation Dr. prefixed to accused no.1. He is Naturopath and therefore, Council for Natural Medical Lucknow identified him as Dr. Arvind Sridhar Yadav.

30. In case of Kalkisimh Puleray Godsin while deciding his

application in 2001 Gujarat High Court has once again refused to recognize practitioner of Naturopathy in the State of doctors in 2001 by deciding the application. He wants to open an institution to impart education of nature practice. The court has noted a decade ago, "This would mislead the public and would be gross abuse to science of Naturopathy as well." The court observed that Center is considering the regulatory frame work for naturopathy and the discipline has been accepted as one of ayush system and there is no central regulation to regulate Naturopathy unlike in the case of Ayurveda Unani and Siddha , which are regulated by the Indian Medicine Center Council Act – (Reference - This news has been published in Time of India, 10.01.2011.)

31. Similarly, in Maharashtra Medical Practitioners Act, nowhere the Naturopathy has been recognized as medical practitioner. Here again I am taking help of observation of Hon'ble Bombay High Court in case of **Nageshwar Basantram Dubey V/s.Union of India and others, on 22.12.2006**, it was observed that-

"It was also made clear that they will not be entitled to be practice as medical practitioner, doctors etc. nor they are entitled to use any title like doctor or any abbreviations prefixing or suffixing their name which may indicate that they are doctors or medical practitioners. If they are violating provisions of law necessary action including prosecution may be followed as per the provisions of Maharashtra Medical Practitioners Act, 1961. The naturopathy is the practice without utilizing medicine."

32. In case of **Ayurvedic Enlisted Doctor's Association, Mumbai V/s. State of Maharashtra & ors., MANU/SC/0312/2009**, wherein it is held that -

"A person whose name is included in the Central Register is entitled as a matter of right to practice in any part of India. Since the names of the appellants find place in the Bihar State Registers they are, as a matter of right , entitled to be included in the Central Register. It is submitted that the restriction imposed under the Central Act from practicing, unless names appear in the Central Register will be violative of Article 14 with reference to Section 33 of the Maharashtra Act, more particularly, the first proviso thereof, it is submitted that the State is empowered to permit any person to practice on certain criteria being fixed. With reference to Section 37 of the Maharashtra Act which has been deleted it is submitted that permission was given to those who were practicing in the rural areas, by deleting the section the permission has been taken out and such deletion is not sustainable in law. Even

though Sec. 37 has been deleted under the proviso to Sec. 33 the State Government can yet make provision for giving permission to persons like the appellants.”

“ So far as the claim that once the name is included in the register of a particular State there is a right to practice. In any part of the country is not tenable on the face of Section 29 of the Central Act. The right to practice is restricted in the sense that only if the name finds place in the Central Register then the question of practicing in any part of the country arise. The conditions under section 23 of the Central Act are cumulative. Since the appellants undisputedly do not possess recognized medical qualifications as defined in Sec. 2(1)(h) their names cannot be included in the Central Register. As a consequence, they cannot practice in any part of India in terms of Sec. 29 because of non-inclusion of their names in the Central Register. Section 17 (3A) of the Maharashtra Act refers to Sec. 23 of the Central Act relating to Central Register. Section 17(1) relates to the register for the State. In any event, it is for the State to see that there is need for having qualification in terms of Second and Fourth Schedule. The claim of the appellants is that they have a right to practice in any part of the country. In terms of Article 19(6) of the Constitution, reasonable restriction can always be put on the exercise of right under Article 19(g). In *Dr. A.K.Sabhpathy V/s. State of Kerala and others*, MANU/SC/0240/1992 : [1992]25 CR 653 the case related to Sec. 38 of the Travancore-Cochin Medical Practitioners Act, 1953. The Statue is almost in pari materia with provision to Section 33 of the Maharashtra Act. Though in that case the State Government had granted exemption , this Court observed that same cannot be granted. The State Act in that sense was repugnant to the Central Act in the background of Medical Council Act, 1956.”

33. In case of **Sukhakar s/o Sakhahari Tidke & ors. V/s. State of Maharashtra & another, decided on 24.04.2017**, it is held that, Hon'ble Apex Court by taking the support of observation of Hon'ble Bombay High Court in case of **Nageshwar Basantram Dubey V/s.Union of India and others, on 22.12.2006**, (discussed as above) decided case before them. It was observed that, in the light of the said judgment the person such as petitioner holding degree or diploma in Electropathy , Electro therapy are not entitled to practice Allopathy or claim to be medical practitioner, doctor etc.. Nor they are entitled to use any title like doctor or any abbreviation prefixing or suffixing which may indicate that they are doctors or medical practitioners and on such attempt they are liable to be prosecution for violation of procedure of Act of 1961.

34. Thus, it is clear observation of Hon'ble Apex Court that the Naturopathy person is not entitled to prefix abbreviation like doctor. Hence, he is not entitled to issue and verify any test lab report, as a doctor. The person doctor must be registered one as mention in

Ayurvedic Doctors Association case.

35. Now turning towards oral evidence of P.W.3 Dr. Durgaprasad Nandkishor Agrawal . He deposed that after they received doubtful reports from Pratima Clinic Diagnosis Center, doubt create, therefore, they went to the lab on 20.06.2014 and gave blood sample by the name of Moholkar in the lab. At this juncture, Ld. Defence Counsel submitted that P.W.2 and 3 both are claiming to be Moholkar. Thus, he submitted that doubt create on story of prosecution. It is further submitted that, accused has been falsely implicated. The motive and intention behind the false complaint is that accused are doing well business as compared to complainant and out of competition they have been falsely implicated.

36. This controversy is found in testimony of PW.2 & 3. Both are claiming that they went to Pratima Clinic Diagnosis Center by the name Moholkar. There is only one report on record by the name of Moholkar. In this context there is no any explanation given to prosecution regarding this controversy. Hence, Ld. Counsel submitted that this controversy creates doubt over the testimony of witness no. 2 & 3.

37. At this juncture, on perusal of testimony of P.W.1 it appears that they had sent P.W.2 to Pratima Diagnosis Center. Admittedly, that report had been issued by Pratima Diagnosis. Admittedly, accused no. 1 and 2 are conducting the business of Pratima Diagnosis. Admittedly, the reports bear signature by the name of accused no.1 and 2 . P.W.4 Investigation Officer also corroborated testimony of P.W.2 that P.W.2 went to Pratima Diagnosis for conducting the test. Thus, though there is contradiction in testimony of P.W.1 and 2 it is not sufficient to discard documents on record supported with oral testimony of other prosecution witnesses.

38. P.W.4 during investigation seized the documents regarding job of accused no.2 like salary certificate etc.. It appears during investigation that Dr. Honkeri is working professor since 2008 till he

has filed chargesheet. Accordingly, document had been exhibited from exh. 82 to 94.

39. In view of oral evidence on record it is crystal clear that accused no.2 is pathology MD working as fulltime lecturer at Al Amin College, Karnataka . There is not a single suggestion that he was having regular visit at Pratima Diagnosis and therefore, check out the test conducted by lab technician. Admittedly, they both were not registered with Maharashtra Medical Council. Ld. Counsel has also relied on Government Resolution dated 26.05.2016. It is submitted by Ld. Counsel of accused that by resolution dated 26.05.2016, the resolution dated 24.05.2016 has been cancelled. The resolution dated 24.05.2016 is regarding DMLT practitioner. It was mentioned in the notification that they are only lab technicians. Therefore, they are not entitled to run independent lab.

40. On perusal of Government Resolution dated 24.05.2016 it reveals that it has been published by Medical Education and Medicine Department. It was mentioned that in rural area DMLT person and duly qualified person are entitled to conduct the test and therefore, the previous government resolution is stayed for sometime who is duly qualified person. In case of Kamla Patel V/s. State of M.P & others , decided on 13.01.2003, it is specifically stated that diploma in medical lab technology is qualification of lab technician and therefore, such person cannot practice. Laboratory Technician cannot run pathology lab independently and can work as lab technician in the laboratory.

41. Requirement - Mandatory rule for lab technician is to possess matriculation with Diploma in lab techni with two years experience and educational qualification required for promotee, technical arsi in diploma in lab technician with 5 years service in grade then Senior Technical Assistant.

42. Further, the Resolution dated 24.05.2016 is applicable to rural area. However, Navi Mumbai is urban area having Navi Mumbai Municipal Corporation. Hence, the stay is not extended for accused.

43. Hon'ble Apex Court as discussed above clearly mention that DMLT person is not entitled to issue the report unless and until verified and signed by MD Pathologist. There is not a single suggestion regarding this, nor even at the time of statement of recording 313 accused has put forth this defence that only DMLT person is entitled to run lab and issue report. Hence, the upshot of above discussion is that, accused no.1 is not entitled to prefix abbreviation "Dr." inspite of that he used it at the time of issuing report.

44. It is also proved that accused no.2 is full time working as a Professor at Al Amin College. Thus, neither the test in Pratima Diagnosis Center had been conducted under his supervision nor he is having occasion to supervise work of accused no.1. It is crystal clear that, accused no.2 is not 'superman' or 'spiderman' who will reach Navi Mumbai daily to observe and verify the process adopted by accused no.2. It is observed that the test conducted and receipt of payment issued on 20.06.2014 filed at exh.51 and report also issued on 20.06.2014 filed at exh.36 In this scenario the doubt also created how the original signature of accused no.2 appeared on the report.

45. The various notifications discussed above and the observation of Hon'ble Apex Court shown the purpose to harvest the crop of bogus labs in the city of Navi Mumbai. For that purpose , government empowered the anti squad to take action by G.R dated 07.02.2000 produced at exh. 49. Both the accused are conducting Pratima Diagnosis Center. Thus, common intention appeared for all the offences.

46. The oral and documentary evidence before me sufficiently indicate intention of dishonesty on the part of accused persons to induce any person deceived to deliver money. For that purpose they had signed a report with the knowledge that it was not prepared under observation or after verification of accused no.2 and with the knowledge that accused no.1 is not having authority to sign over it. Hence, I answer point no.1 in affirmative.

AS TO POINT NO.2 :-

47. The ingredients of Sec. 465 are as follows :-

1. It is prepared false document.
2. Did it with false meaning of written instrument for the purpose of fraud or deceit.
3. The document was prepared dishonestly or fraudulently.
4. He did it with intention of causing wrongful gain to someone and wrongful loss to another.

48. As discussed above, the dishonesty of accused has been proved. There is doubt created over signature of accused no.2 and it is proved that accused no.1 is not having authority as a doctor to sign over it. The very intention of accused is to gain money from the patients who approached to the lab. Automatically it results wrongful loss to a patient who is having right to get diagnosis his disease , test from lawfully qualified person. Hence, I answer point no.2 in the affirmative.

AS TO POINTS NO.3 , 4 & 5 :-

49. The ingredients of Sec. 467 are as follows :-

1. Accused committed forger.
2. He did so by preparation of forged document in the manner provided in Sec.463, 464 of IPC.

50. Accused had prepared the lab report knowingly not authorized and not proper verification and caused the patient to part with his money. They dishonestly signed over the document, hence, offence u/s. 467 of IPC is proved. As per Sec. 468 of IPC used that document for the purpose of cheating and as per Sec. 471 of IPC dishonestly uses the document which he knew that not authorized to issue. Accused no.1 & 2 in furtherance of their common intention committed all these crimes. Hence I answer points no.3 4 & 5 in the affirmative.

AS TO POINT NO.6, 7 & 8 :-

51. I have already discussed the oral and documentary evidence

brought on record in point no.1. The latest position and case law on this point has already been discussed in issue no.1. Therefore, instead of repeating all these, here, I am only reproducing the legal provision and reasoning accordingly.

Sec. 33 (1), Sec. 33(A) & Sec. 36 of Maharashtra Medical Practitioners Act, 1961 reads as under :-

“Sec. 33 (1) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any Court, no person other than a medical practitioner whose name is entered in--

(i) the register maintained under this Act, or

(ii) the register or the list prepared and maintained under the Bombay Homoeopathic and Biochemic Practitioners Act, 1959 or under any other law for the time being in force in relation to the qualifications and registration of Homoeopathic or Biochemic Practitioners in any part of the State, or

(iii) the register prepared and maintained under the Maharashtra Medical Council Act, 1965, or

(iv) the Indian Medical Register prepared and maintained under the Indian Medical Council Act, 1956 shall practice any of medicine in the State

Provided that, the State Government may, by notification in the Official Gazette, direct that subject to such conditions as it may deem fit to impose and the payment of such fees as may be prescribed by Rules, the provisions of this section shall not apply to any class of persons, or to area, as may be specified in such notification.

(2) Any person, who acts in contravention of any of the provisions of sub-section (1) shall, on conviction, be punished,--

(a) for the first offence, with rigorous imprisonment for a term which shall not be less than two years but which may extend to five years and with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees; and

(b) for a second or subsequent offence, with rigorous imprisonment for a term which may extend to ten years and with the fine which may extend to ten thousand rupees:

Provided that, when the contravention is continued after the order of conviction, a further fine which may extend to five hundred rupees, for each day of continuation of such contravention, may be imposed.)”

“Sec. 33 (A) Notwithstanding anything contained in any law for the time being in force no person, who is not a practitioner registered under any of the Acts referred to, [in Section 33] shall, after the commencement of this Chapter, hold any appointment as

(a) physician , surgeon, or other medical officer, in any hospital, infirmary or dispensary not supported wholly by voluntary contribution;

(b) medical officer of health of any local authority;
(c) teacher in medicine, surgery or midifery in any public institution.
(2) Any person, who contravenes the provisions of sub-section (1) shall, on conviction ,
| be punished,-
(a) for the first offence, with rigorous imprisonment for a term which shall not be less
than two years but which may extend to five years and with fine which shall not be
less than two thousand rupees but which may extend to ten thousand rupees; and
(b) for a second or subsequent offence, with rigorous imprisonment for a term which
may extend to ten years and with the fine which may extend to ten thousand rupees:
Provided that, when the contravention is continued after the order of conviction, a
further fine which may extend to five hundred rupees, for each day of continuation of
such contravention, may be imposed.)”

“Sec. 36. (1) No person shall add to him name, any title, description, letters or
abbreviations which imply that he holds a degree, diploma, licence or certificate or any
other like award as his qualification to practice any system of medicine unless, -
(a) he actfully hods such degree, diploma, license or certificate or any other like
award; and
(b) such degree, diploma, license or certificate or any other like award -
(i) is recognized by any law for the time being in force in India or in part thereof, or
(ii) has been conferred, granted or issued by a body or institution referred to in sub-
section (1) of section 35, or
(iii) has been recognized by the Medical Council of India, or
(iv) has been recognized by the Central Council of Indian Medicine.
(2) Any person, who contravenes the provisions of sub-section (1) shall, on conviction,
be punished with rigorous imprisonment for a term which shall not be less than one
year but which may extend to three years and with fine which shall not be less than
one thousand rupees but which may extend to five thousand rupees; and when the
contravention is a continuing one, with further fine which may extend to two hundred
rupees for everyday during which such contravention continues after conviction for the
first such contravention.”

52. Considering the legal provision Clause (iv) of Sec.33 of Maharashtra Medical Practitioners Act, 1961 provides that – a person registered under the Indian Medical Register, prepared and maintained under the Indian Medical Council Act, 1956 is entitled to practice any system of medicine in the State.

53. Admittedly, accused no.2 is registered practitioner under Indian Medical Council Act. Hence, he is not guilty u/s. 33(1), 33(A) & 36 of Maharashtra Medical Practioners Act, 1961. On the other hand, accused no.1 is not registered under Maharashtra / Indian Medical Practitioners Act. Further, Naturopathy is not recognized as medical

practice under Maharashtra Medical Practitioners Act, 1961. The practice of Naturopathy is originally practice without medicine. Thus, though this therapy is used to cure any diseases, however, till the time it has not been medically recognized. Therefore, as discussed above, in various case laws Hon'ble Apex Court also not recognized Naturopathy practitioner as a doctor. Hence, I answer point no. 6 to 8 in the affirmative for accused no.1 and in the negative for accused no.2.

54. Hence, I stop here, to hear both the accused on the point of sentence.

55. Ld. Counsel for accused submitted that they want to elaborately argue on the point of sentence. For that purpose they require time for one day. Accordingly, time is given of one day and matter is posted on 12.05.2022.

Vashi.

Date :- 12.05.2022 .

(T.M.Deshmukh-Naik)

Civil Judge J.D & J.M.F.C, Vashi

56. Today, on 12.05.2022 both the accused appeared alongwith their Ld. Counsels. Ld. Counsel for accused no.1 and accused no.1 submitted that , it is their first offence. Nothing brought on record to show that any harm caused to any of the patient. The accused will not repeat their mistake in future. Therefore, benefit of Probation of offenders Act be granted to accused.

57. Accused no.2 and his counsel submitted that , the accused is well qualified and law abiding person. Now he shifted to Navi Mumbai. He has also taken permission from Municipal Corporation, Navi Mumbai to practice. He is having social status. The deterrent would justifiable only by giving admonition, hence, they prayed for benefit of Sec. 3 & 4 of Probation of Offenders Act.

58. I am giving thoughtful consideration to the submission of both the accused and their Ld. Counsels. It appears from record that both the accused are well educated and know all the pons and cons of

law. Therefore, when the State makes the rule that only DMLT person is not entitled to run the lab independently but there should be qualified MD Physician accompanied with him and the report should be issued only after proper examination and verification by MD Physician, accused in furtherance of their common intention decided to go by the rules. Technically, it was shown that the MD Physician i.e. accused no.2 is accompanied with accused no.1. However, actually accused no.2 is practicing in Karnataka, as a full-time professor.

59. The very purpose and object of Health Ministry and department of medical to frame these rules are to avoid toying public health. However, the white colored criminals like accused used their intelligence to go by these rules only to grab money from common man. Thus, this is clear case of cheating, fraud, forgery and violater of medical practice not only on the complainant but with the public at large. The crime has been committed with full knowledge and dishonest intention. Hence, accused are not entitled for benefit of Probation of Offenders Act nor for any leniency. Hence, in view of my findings to the above-mentioned points, in answer to point no.9 I hereby proceed to pass the following order :

: ORDER :

1	The accused no.1 Arvind Sridhar Yadav and no.2 Vivekanand Parshuram Honkeri shall stand convicted under Section 248(2) of the Code of Criminal Procedure, 1973 of the offence punishable 420 r/w 34 of IPC and they are sentenced to suffer simple imprisonment for 6 months each and to pay fine of Rs.25,000/- each. In default, they shall suffer further simple imprisonment for 2 months each.
2	The accused no.1 Arvind Sridhar Yadav and no.2 Vivekanand Parshuram Honkeri shall stand convicted under Section 248(2) of the Code of Criminal Procedure,

1973 of the offence punishable 465 r/w 34 of IPC and they are sentenced to suffer simple imprisonment for 1 year each and to pay fine of Rs.25,000/- each. In default, they shall suffer further simple imprisonment for 2 months each.

3 The accused no.1 Arvind Sridhar Yadav and no.2 Vivekanand Parshuram Honkeri shall stand convicted under Section 248(2) of the Code of Criminal Procedure, 1973 of the offence punishable 467 r/w 34 of IPC and they are sentenced to suffer simple imprisonment for 1 year each and to pay fine of Rs.25,000/- each. In default, they shall suffer further simple imprisonment for 2 months each.

4 The accused no.1 Arvind Sridhar Yadav and no.2 Vivekanand Parshuram Honkeri shall stand convicted under Section 248(2) of the Code of Criminal Procedure, 1973 of the offence punishable 468 r/w 34 of IPC and they are sentenced to suffer simple imprisonment for 1 year each and to pay fine of Rs.25,000/- each. In default, they shall suffer further simple imprisonment for 2 months each.

5 The accused no.1 Arvind Sridhar Yadav and no.2 Vivekanand Parshuram Honkeri shall stand convicted under Section 248(2) of the Code of Criminal Procedure, 1973 of the offence punishable 471 r/w 34 of IPC and they are sentenced to suffer simple imprisonment for 1 month each and to pay fine of Rs.25,000/- each. In default, they shall suffer further simple imprisonment for 2 months each.

6 The accused no.1 Arvind Sridhar Yadav shall stand convicted under Section 248(2) of the Code of Criminal Procedure, 1973 of the offence punishable u/s. 33 (1) of Maharashtra Medical Practitioners Act, 1961 and he

is sentenced to suffer rigorous imprisonment for 2 years and to pay fine of Rs.10,000/- . In default, he shall suffer further simple imprisonment for 2 months.

- 7 The accused no.2 Vivekanand Parshuram Honkeri shall stand acquitted under Section 248(1) of the Code of Criminal Procedure, 1973 of the offence punishable u/s. 33 (1) of Maharashtra Medical Practitioners Act, 1961.
- 8 The accused no.1 Arvind Sridhar Yadav shall stand convicted under Section 248(2) of the Code of Criminal Procedure, 1973 of the offence punishable 33(A) of Maharashtra Medical Practitioners Act, 1961 and he is sentenced to suffer rigorous imprisonment for 2 years and to pay fine of Rs.10,000/- . In default, he shall suffer further simple imprisonment for 2 months .
- 9 The accused no.2 Vivekanand Parshuram Honkeri shall stand acquitted under Section 248(1) of the Code of Criminal Procedure, 1973 of the offence punishable 33(A) of Maharashtra Medical Practitioners Act, 1961.
- 10 The accused no.1 Arvind Sridhar Yadav shall stand convicted under Section 248(2) of the Code of Criminal Procedure, 1973 of the offence punishable 36 of Maharashtra Medical Practitioners Act, 1961 and he is sentenced to suffer rigorous imprisonment for 2 years and to pay fine of Rs.10,000/- . In default, he shall suffer further simple imprisonment for 2 months .
- 11 The accused no.2 Vivekanand Parshuram Honkeri shall stand acquitted under Section 248(1) of the Code of Criminal Procedure, 1973 of the offence punishable 36 of Maharashtra Medical Practitioners Act, 1961.
- 12 All the imprisonment sentences shall run concurrently.
- 13 Both the accused shall surrender their bail-bonds.

14	A copy of judgment be given to both the accused free of cost.
	Dictated and Pronounced in the Open Court.

TRUPTI
MUKUND
DESHMUKH
NAIK

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DESHMUKH
NAIK
Date: 2022.05.13
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Vashi.

Date :- 12.05.2022 .

(T.M.Deshmukh-Naik)

Civil Judge J.D & J.M.F.C, Vashi