

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

CRIMINAL REVISION No. 2597 of 2022

BETWEEN:-

**NITISHCHANDRA DHAR S/O SHRI KALIPAD, AGED
ABOUT 71 YEARS, OCCUPATION: NIL GRAM BEDA
THANA AAMDAGA NARTH 24 PARGANA BARASAT
KOLKATA AT PRESENT R/O INGORIYA ROAD, BANGALI
COLONY KE PAAS NAGDA (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ASHISH TIWARI, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION NAGDA
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI S. GUPTA, GA FOR THE STATE)

.....
***Heard on:18.08.2023
Delivered on:24.08.2023***
.....

*This revision coming on for hearing this day, the court passed the
following:*

ORDER

1. This criminal revision has been preferred under Section 397 read with Section 401 of Cr.P.C. by the petitioner being aggrieved by the judgement dated 22.04.2022 passed in CRA No.08/202 whereby the learned appellate Court i.e. ASJ, Nagda, District Ujjain has modified the order dated 22.02.2021 passed in Criminal Case No.235/2012 passed by JMFC, Nagda District Ujjain and modified the conviction and sentence of the petitioner awarded by the trial Court for the offence punishable under Section 24 M.P. Medical Council Act

and under Section 15 Medical Council of India Act and awarded one year and 06 months of R.I. with fine.

2. The learned appellate Court has only directed the petitioner to furnish the bail bond of Rs.10000/- to keep peace, maintain harmony in the vicinity as well as not to indulge in any criminal activity for a period of two years under Section 4 of the Probation of Offenders Act, 1958 in place of conviction and sentence awarded by the learned trial Court. However, vide the impugned judgment, the learned appellate Court also stipulated a condition that the petitioner **shall not indulge in any medical practice/profession in future.**

3. During the course of arguments, learned counsel for the petitioner submits that the learned trial Court as well as learned appellate Court have erred in considering the material evidence i.e. the medical certificates of the petitioner and has wrongly convicted or imposed the penalty and barred him from medical practice. It is further submitted that the petitioner is aged about 73 years and was duly running clinic on the basis of Medical Certificate having issued by Council of Electro Homeopathic System of Medicine. It is also submitted that the learned appellate Court has however modified the order of learned trial court, but wrongly stipulated that the petitioner shall not indulge in medical practice whereas, the learned trial Court is having no such powers to debar a doctor from medical practice and on being proper interrogation, such type of order/stipulation can be passed only by Medical Council or India. Hence, prays that the order of the learned trial Court may be quashed to that extent.

4. In support of his contention, counsel for the petitioner further placed reliance upon the judgment of Hon'ble Apex Court passed in the case of **Gostho Behari Das. vs. Dipak Kumar Sanyal & Others [2023 Live Law (SC) 577]**. It is further submitted that by passing the order of aforesaid

stipulation, the learned trial Court has infringed the right to practice any profession guaranteed under Article 19(1)(g) of the Constitution of India.

5. On the other hand, counsel for the respondent/State has supported the impugned judgement by submitting that the courts below have passed the orders in accordance with law and the punishment is also correct in view of the law.

6. I have heard the learned counsel for the parties and perused the record.

7. From the face of record, it is clear that that the judgment passed by the learned appellate Court is correct regarding conviction of the petitioner and the findings so arrived at by the learned appellate Court are well supported by the oral and documentary evidence. However, the aforesaid stipulation with regard to refrain the petitioner is now matter of contention.

8. On this aspect, the Hon'ble Apex Court in the case of **Gostho Behari Das (supra)** had dealt with the similar issue in present case and in para nos.7 and 8 observed as under:-

"7. The grant, regulation and suspension of the licence to practice medicine is governed by the National Medical Commission Act, 2019. it facilitates the maintenance of a medical register for India and enforces high ethical standards in regards of all aspects of medical services. A statutory body namely the National Medical Commission looks after the above-mentioned activities.

8. A perusal of the provisions of this Act as well as the now repealed, Medical Council Act, 1956 shows that the power to punish a registered medical practitioner for "misconduct" rest exclusively with the body envisaged under this Act. The Act itself provides for

an exhaustive, complete mechanism to revoke the licence of a registered practitioner for professional misconduct. The same maybe done after holding an inquiry and complying with the principles of *audi alterum partem*."

9. Further, the relevant provisions of Article 19 of the Constitution of India is reads as under:-

19. Protection of certain rights regarding freedom of speech, etc-(1) All citizens shall have the right:-

(a).....

(g) to practice any profession, or to carry on any occupation, trade or business.

10. In view of the aforesaid constitutional provisions the order passed by the learned appellate Court regarding aforesaid stipulation as to debar the petitioner from medical practice, is against the Fundamental Rights and hence, it is perverse. Virtually, the learned appellate Court cannot stipulate such type of condition that *prima facie* appears to not a just and proper and also infringing the rights to practice and profession guaranteed under **Article 19(1)(g) of Constitution of India**.

11. However, in light of the settled law, National Medical Commission is the only competent authority to revoke licence to a registered practitioner for misconduct. Certainly, the learned appellate Court has to send the judgement to National Medical Commission and it shall be decided by the Commission concerned whether ban should be imposed against the petitioner or not, but such type of stipulation cannot be imposed by the Court itself.

12. In view of the aforesaid elaborate discussion, while dealing with the sentence and conviction, such type of stipulation is certainly in violation of fundamental rights of the petitioner, hence, in view of the settled position of law the revision petition is partly allowed and the impugned judgement 22.04.2022 passed in CRA No.08/202 whereby the learned appellate Court i.e. ASJ, Nagda,

District Ujjain, is set aside *qua* the stipulation of the condition that the petitioner shall not indulge in any medical practice/profession in future. The remaining part of the impugned judgement is hereby affirmed.

13. It is made clear that the petitioner shall be entitled for medical practice in Electro Homeopathic System of Medicine under the respective issued by Council of Electro Homeopathic System of Medicine.

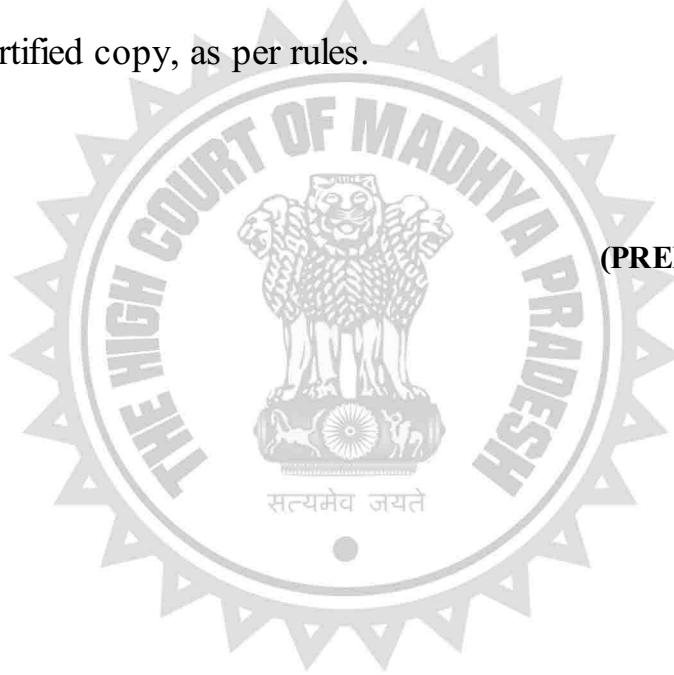
14. With the aforesaid, the petition stands allowed and disposed off.

15. A copy of this order be sent to the learned trial Court for information.

Pending application, if any, stands closed.

Certified copy, as per rules.

amit



(PREM NARAYAN SINGH)
JUDGE