

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1731 OF 2002

Dr.(Smt.)Shubhada Motwani ...Petitioner
vs.
The State of Maharashtra & Ors.
...Respondents

Mr.S.C.Naidu i/b.C.R.Naidu, Advocate for the
petitioner
Mrs.M.M.Deshmukh, APP, for the State.
Mr.Jamdar, Advocate for Respondent No.4

CORAM : V.M. KANADE &
P.D. KODE JJ.

JUNE 12, 2014

P.C. :-

1. By this petition, which is filed under Article 226 of the Constitution of India, Petitioner has challenged section 7(1) of the Bombay Shops and Establishments Act, 1948. The petitioner is a medical practitioner who is duly registered under the provisions of Maharashtra Medical Council. Show cause notice was issued to the petitioner for not obtaining a license under the Bombay Shops and Establishments Act, 1948 and criminal prosecution was launched against her for contravention of Section 7(1) of the said Act.

2. Learned counsel appearing on behalf of petitioner has submitted that a medical practitioner cannot fall within the definition of commercial establishment since a doctor is providing services to the patients and the said activity therefore would not fall within the purview of commercial activity. It is submitted that prior to 1997 legal practitioners and medical practitioners were not included in the said definition of commercial establishment. However, by virtue of an amendment in 1997 all these professionals have been included in the said definition. It is submitted that the legal practitioners challenged the validity of the said amendment by filing a petition.

3. This Court was pleased to hold that the said amendment is *ultra virus* and struck down the inclusion of legal practitioners from the definition of commercial establishment.

4. It is also submitted that the Apex Court in ¹ "*Devendra M. Surti, Dr. vs. State of Gujarat*", also held that private dispensary of doctor is not commercial establishment. It is

1 AIR 1969 SUPREME COURT 63.

submitted that the judgment of the Apex Court therefore, applies to the facts of the present case.

5. We have heard the learned counsel for the petitioner and the counsel on behalf of the State. The Apex Court in "*Devendra M. Surti, Dr. vs. State of Gujarat*" (*supra*) has, after examining the provisions of the "Gujarat Shops and Establishments Act", which are identical to the provisions of Bombay Shops and Establishments Act, 1948 come to the conclusion that "*private dispensary of doctor is not commercial establishment*".

6. In our view, the ratio of the said judgment squarely applies to the facts of the present case. Similarly, the Division Bench of this Court, in "*Narendra Keshrichand Fuladi and Anr. vs. State of Maharashtra, The Maharashtra Law Journal 1985, page-1*" also has held that "*a legal practitioner having a office cannot be said to carry on commercial activity and would not fall within the definition of commercial establishment*". The ratio of both these judgments squarely applies to the present case.

7. In our view, therefore the amendment incorporating medical practitioners within the definition of commercial establishment will have to be held *ultra virus* and is accordingly struck down.

8. Criminal prosecution which has been initiated against the petitioner also, therefore is, quashed.

9. Petition is accordingly allowed in terms of prayer clause (a) and (b) and is disposed of.

(P.D. KODE, J.)

(V.M. KANADE, J.)