

a jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the court.

b 24 In the present case, the son of the appellants has instituted a civil suit for the recovery of money against the first respondent. The suit is pending. The first respondent has filed the complaint against the appellants six years after the date of the alleged transaction and nearly three years from the filing of the suit. The averments in the complaint, read on its face, do not disclose the ingredients necessary to constitute offences under the Penal Code. An attempt has been made by the first respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence. The complaint filed by the first respondent against the appellants constitutes an abuse of process of court and is liable to be quashed.

d 25 For the above reasons, the appeal is allowed. The judgment of the High Court is set aside and the criminal proceedings arising from PCR 2116 of 2016 instituted by the first respondent against the appellants are quashed. We however clarify, that no opinion has been expressed on the merits of the pending civil suit filed by the son of the appellants for the recovery of money. The pending suit shall be disposed of in accordance with the law.

e **Result:-** Appeal allowed.

f **ABC 2019 (I) 309 SC**  
**ACQUITTAL & BAIL CASES**  
**SUPREME COURT OF INDIA**  
 (R. Banumathi & R. Subhash Reddy, JJ.)  
 Criminal Appeal No. 646 of 2010  
 (From Bombay High Court)  
 Decided On 6 February, 2019

g **DHARMENDRA & ANR.**

**- Appellant(s).**

**Versus**

h **STATE OF MAHARASHTRA**

**- Respondent(s).**

**Law Covered:- Maharashtra Medical Practitioners Act, 1961 – Sections 33 & 36 – Conviction under – Pointer witness –**

*Evidence of – does not inspire confidence – Depositions of other witnesses – material contradictions – the guilt of the appellants has not been proved beyond reasonable doubt – benefit of doubt – Acquittal. (Para 15)* a

**Facts:-** As per the case of the prosecution, the appellants herein were doing medical practice in their clinic. It was alleged that they were not holding any degree or diploma to do medical practice and they were also not having any certification for doing such practice under the provisions of the Act. It was further alleged that on receiving the information, Police Sub-inspector sent the pointer to the clinic of the appellants and they have treated the injuries suffered by the said pointer and applied bandage by receiving an amount of ` .50/- in the meantime, Police raided the said clinic of the accused and the accused was found with the pointer . Report was lodged and on the basis of that FIR was registered for offences punishable u/ss 33 and 36 of the Maharashtra Medical Practitioners (MMP) Act. b  
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The trial court convicted both the accused and sentenced them. Appeals filed before the appellate court were dismissed. Appeal before the High Court was also dismissed. The hon'ble Supreme Court acquitted the accused persons. d

**Held:-** In our considered view, the evidence of Yamuna Prabhakar Dekate PW-6 who was just a passerby and was called by the police as a pointer witness, does not inspire confidence and the conviction of the appellants ought not have been based on such evidence. Further, in the depositions of other witnesses there are material contradictions. By considering the totality of the evidence and the material on record, we are of the view that, the guilt of the appellants has not been proved beyond reasonable doubt and they are entitled to benefit of doubt. (Para-15) e  
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**Counsel:-** For Appellant(s): Mr. Lambat And Associates, Adv.

For Respondent(s): Mr. Nishant Ramakantrao  
Katneshwarkar, Adv.

### JUDGMENT

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**R.SUBHASH REDDY, J.:** - 1. This criminal appeal is filed, aggrieved by the judgment dated 22.01.2009 passed in Criminal Revision No.10 of 2009 by the High Court of Bombay, Nagpur Bench at Nagpur, whereby the High Court has upheld the orders in Criminal Appeal Nos.39 and 40 convicting the appellants for offences punishable h

under Sections 33 and 36 of the Maharashtra Medical Practitioners Act, 1961 [for short, 'the Act'].

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2. The appellants herein were prosecuted for the offences punishable under Sections 33(2) and 36(2) of the Act and sentenced to suffer RI for two years and to pay a fine of Rs.2,000/-. It is the case of the prosecution that the appellants herein were doing medical practice in their clinic at Hansapuri Road at Nagpur. It is alleged that they were not holding any degree or diploma to do medical practice and they were also not having any certification for doing such practice under the provisions of the Act. It is alleged that on receiving the information, Police Sub-inspector Kamalnayan attached to Tahsil Police Station on 16.04.2004 at about 5:00 p.m. sent the pointer PW-6 Yamuna Prabhakar Dekate to the clinic of the appellants herein and they have treated the injuries suffered by the said pointer and applied bandage by receiving an amount of Rs.50/-. The said Yamuna Prabhakar Dekate was examined as PW-6. Further, it is the case of the prosecution that PW-9 - Kamalnayan - along with the police staff raided the said clinic of the accused and the accused was found with PW-6 Yamuna Prabhakar Dekate. During the raid, one of the employees PW-8 - Sangita was found in the clinic. The prescription alleged to have been given by the appellants was seized under the seizure panchnama being Ex.32. Thereafter PW-9 - Kamalnayan - lodged a report under Ex.39 at Tahsil Police Station. On the basis of that report, FIR Ex.40 was prepared and Crime No.3143 of 2002 was registered against the appellants herein for offences punishable under Sections 33 and 36 of the Act.

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3. For the aforesaid offences, the appellants were tried by the court of JMFC, Nagpur and on behalf of the prosecution, 9 witnesses were examined and documentary evidence was adduced. The trial court, i.e., Judicial Magistrate First Class, Court No.4, Nagpur, by judgment dated 16.04.2004, convicted both the accused and sentenced them to undergo RI for two years and also to pay a fine of Rs.2,000/- for the offence punishable under Section 33(2). They were further sentenced to pay a fine of Rs.1000/- for the offence punishable under Section 36(2) of the Act.

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4. Aggrieved by the above said conviction and sentence imposed, the appellants herein have filed appeals being Criminal Appeal Nos.39 and 40 of 2004 before the appellate court, i.e., Additional Sessions Judge, Nagpur, who, by judgment dated

24.12.2008, dismissed the appeals. As against the dismissal of the appeals, the appellants carried the matter by way of Criminal Revision No.10 of 2009 which also ended in dismissal by order dated 22.01.2009 passed by the High Court of Bombay, Nagpur Bench. a

5. We have heard the learned counsel for the appellants and also the learned counsel appearing for the State of Maharashtra.

6. Among the other witnesses, the prosecution has examined Ramesh PW-1, occupant of a shop in front of the appellants' clinic; Deepika PW-3 - daughter of the landlord; Prashant PW-4 - son of the landlord; Mohd. Shafi PW-5, owner of the neighbouring shop and Sangita PW-8, employee engaged by the appellants in their clinic. b

7. In their deposition, PW-5 Mohd. Shafi and PW-8 Sangita, have deposed that the appellants used to practice medicine in their clinic. The trial court, mainly relying upon the evidence of Yamuna Prabhakar Dekate (PW-6) and the documentary evidence, i.e., prescription chit being Ex.32, held that the prosecution has proved the guilt of the appellant-accused on the practice of medicine without possessing valid degree or diploma or permission from the Maharashtra Government and held that they are liable for punishment for the sections they were charged with. c

8. According to the appellants, they are running a medical shop with valid licence in the premises. According to them there was a dispute between them and the landlord with regard to eviction of the appellants from the premises where they were running medical shop. It is the case of the appellants that at the behest of the landlord a false case has been foisted against the appellants in order to evict them. d

9. Learned counsel for the appellants has contended that the evidence of the accused-appellants has not been properly appreciated by the courts below and the findings, recorded by the trial court as affirmed by the appellate court and the High Court, are perverse and run contrary to evidence on record. e

10. On the other hand, learned counsel appearing for the respondent-State has submitted that, the appellants have been practicing in Medicine posing themselves as doctors, without possessing valid degree and/or licence, as contemplated under the provisions of the Act. As such, having regard to the oral and documentary evidence on record, the trial court has rightly convicted the appellants and imposed the sentence, same is confirmed by the f

a appellate court and the High Court. It is submitted that in view of the concurring findings, there is no good ground made out by the appellants warranting interference with the judgment of the trial court, as confirmed by the appellate court and the revisional court.

b 11. Having heard learned counsel for the parties, we have perused the judgment of the trial court, as confirmed by the appellate and the revisional court and other material placed on record.

c 12. Though the prosecution has examined number of witnesses, the key witness is Yamuna Prabhakar Dekate who was examined as PW-6 and who is the pointer witness. In her evidence, Yamuna Prabhakar Dekate has stated that when she was passing on the road of Gandhi Bagh, police called her to be a panch witness and also told her that they wanted to apprehend the bogus doctor. According to PW-6, the Police asked her to go into the said hospital/clinic of the appellants. She has further stated that she went to the clinic and found that Shweta appellant- accused no.2 was sitting d there. She has further stated in her deposition that when she told appellant-accused no.2 that she has some injury, Shweta appellant-accused no.2 applied some medicine on her hand and also applied bandage to her injury by receiving an amount of Rs.50/- towards the fees and gave the prescription chit being Ex.32.

e 13. If we closely consider the deposition of PW-6, in her cross-examination, she has stated that she had no injury on her hand. When she was not having any injury on her hand, it is unbelievable that the appellant-accused no.2 would still apply medicine on her and also put bandage. It is pertinent to note that even prescription chit Ex.32 f which is stated to have been issued by the appellants has not been proved in accordance with law. In the seizure panchnama prepared for seizure of Ex.32 the seizure memo does not contain name of the medicine said to have been applied to the hand of PW-6 nor was the bandage seized.

g 14. In the cross-examination of Ramesh PW-1, a suggestion was put to him that he was deposing at the instance of his landlord, by name, Shobha Suryawanshi with whom appellants had a dispute with regard to their tenancy. Rajesh PW-2 is declared hostile. Deepika PW-3 is none other than the daughter of the landlord. Prashant PW-4 is none h other than the son of the landlord. In the cross-examination, a suggestion was put to PW-3 and PW-4 that they are deposing against the accused in view of the dispute about the tenancy of the shop which

the accused had taken on rent for running medical shop. Further, Deepika PW-3 stated in clear terms that the accused never told her that the appellants were practising as doctors. Further, Mohd. Shafi PW-5, in his cross-examination, has admitted that the board, put up by the accused-appellants, of the clinic was displayed as a bone setter. a

15. In our considered view, the evidence of Yamuna Prabhakar Dekate PW-6 who was just a passerby and was called by the police as a pointer witness, does not inspire confidence and the conviction of the appellants ought not have been based on such evidence. Further, in the depositions of other witnesses there are material contradictions. By considering the totality of the evidence and the material on record, we are of the view that, the guilt of the appellants has not been proved beyond reasonable doubt and they are entitled to benefit of doubt. As we are of the view that the findings recorded by the courts below run contrary to the evidence on record, the impugned judgment is liable to be set aside. Accordingly, the conviction recorded and sentence imposed on the accused- appellants is hereby set aside and this appeal is allowed. Bail bonds executed by the appellants stand discharged. b  
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**Result:-** Appeal allowed.

ABC 2019 (I) 314 SC  
ACQUITTAL & BAIL CASES  
**SUPREME COURT OF INDIA**  
(R. Banumathi & R. Subhash Reddy, JJ.)  
Criminal Appeal Nos. 1115 of 2010  
With  
Criminal Appeal No.1116 of 2010  
With  
Criminal Appeal No.1119 of 2010  
(From Madhya Pradesh High Court)  
Decided On 19 February, 2019 e  
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**BALVIR SINGH & ORS.**

*- Appellant(s).*

*Versus*

**STATE OF MADHYA PRADESH**

*- Respondent(s).*

**Law Covered:-** (A) Indian Penal Code, 1860 – Sections 302 & 341 r/w 34 – Conviction under – murder by gunshot – Co- h

April 2019