

PRIVATE PRACTICE BY GOVERNMENT DOCTORS NO CRIMINAL OFFENCE: COURT

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

Private practice by a government doctor cannot be construed as a criminal offence, and at the most, departmental action can be taken against him or her, the Supreme Court has held.

In a big relief to government doctors, a Bench of Justices Markandey Katju and Gyan Sudha Misra said: "The demand for/receipt of fee while doing private practice by itself cannot be held to be illegal gratification as the same obviously is the amount charged towards professional remuneration. It would be preposterous, in our view, to hold that if a doctor charges fee for extending medical help and is doing that by way of his professional duty, the same would amount to illegal gratification as that would be against even plain common sense."

A government doctor doing private practice could not be booked under the Prevention of Corruption Act or the Indian Penal Code.

Writing the judgment, Justice Gyan Sudha Mishra said: "If a particular professional discharges the duty of a doctor, that by itself is not an offence but becomes an offence by virtue of the fact that it contravenes a bar imposed by a circular or instruction of the government. In that event, the act would clearly fall within the ambit of misconduct to be dealt with under service rules, but would not constitute [a] criminal offence under the Prevention of Corruption Act."

The Bench said the doctor's duty to treat patients was in the discharge of his/her professional duty and it could not be held a 'trade' constituting an offence under Section 168 of the IPC. If the medical professional acted contrary only to government instructions de hors any criminal activity or criminal negligence, his/her conduct would not constitute either an offence under the IPC or a case of corruption under the Prevention of Corruption Act.

However, "if it was alleged that the government doctor, while doing private practice, indulged in malpractice in any manner as for instance, took money by way of illegal gratification for admitting patients to the government hospital, or any other offence of a criminal nature like prescribing unnecessary surgery for the purpose of extracting money by way of professional fee and a host of other circumstances, the same would obviously be a clear case to be registered under the IPC as also under the PC Act."

In the instant appeals, Kanwarjit Singh Kakkar and Rajinder Singh Chawla challenged a Punjab High Court order refusing to quash a first information report which alleged that they were indulging in private practice while holding the post of government doctor.

Allowing the appeals, the Bench said that even as per the FIR, the doctors could be held to have violated only government instructions which themselves had not termed private practice 'corruption' under the Prevention of Corruption Act merely on account of charging of fee. In any event, it was a professional fee which, however, could not have been charged since doing so was contrary to government instructions.

The Bench quashed the impugned order and the FIRs against the two doctors.

END

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