

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.30595 of 2010 & M.P. No.1 of 2010

V. Shanmugam

Petitioner/Accused

vs.

The State represented by
the Inspector of Police
Anchetty Police Station
Anchetty
Krishnagiri District
Crime No.66 of 2010

Respondent/Complainant

Criminal Original Petition filed under Section 482, Cr.P.C.
seeking to call for the FIR in Crime No.66/2010 dated 11.06.2010
on the file of Anchetty Police Station and quash the same.

For petitioner : Mr.K.Rajendra Prasad

For respondent : Mr. C. Emalias
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to
call for the FIR in Crime No.66/2010 dated 11.06.2010 on the
file of Anchetty Police Station and quash the same.

2 On the complaint of one Iqbal, Sub-Inspector of Police,
the respondent police registered a case in Crime No.66 of 2010
on 11.06.2010 under Section 420 IPC read with Section 15 of the
Indian Medical Council Act against the petitioner, challenging
which, the petitioner is before this Court.

3 It is the case of the prosecution that on prior
intelligence, the police conducted inspection of the premises of
the petitioner and found that the petitioner, claiming himself
to be a Siddha doctor, was treating patients and dispensing
Allopathy medicines.

4 According to the petitioner, he is a qualified
practitioner of Siddha medicine, in support of which, he has
enclosed a certificate that has been issued by Private Medical

Practitioners Association of India. The petitioner placed further reliance on the interim order of stay dated 06.04.2010 passed by this Court in W.P.M.P. No.10792 of 2006 in W.P.No.9691 of 2006.

5 This Court, by a detailed order dated 20.10.2016, has dismissed W.P.No.9691 of 2016, by placing relying upon an unreported judgment dated 23.01.2007 in Civil Appeal No.336 of 2007 (Private Medical Practitioners Association vs. The State of Tamil Nadu and others), wherein, the Supreme Court has conclusively sealed the claims of quacks in the following emphatic words and dismissed the appeal with costs quantified at Rs.50,000/-:

"Counsel for the parties have been heard.

Counsel for the Appellant Association contends before us that in view of the circular issued by the Ministry of Health and Family Welfare, Department of Health, Government of India, New Delhi, the State Government was bound to permit the appellants to practise in the modern medicines subject to the limitations contained in the letter reference no.Ref.No.V.11016/3/82/ME(P) dated 15.07.1986.

We are in agreement with the view taken by the learned Single Judge in W.P. No.19448/2001 All India Association of Private Medical Practitioners (supra), following which the impugned judgment has been rendered and confirm the same.

For issuance of a writ of mandamus, a legal right has to vest in the person seeking the writ of mandamus. In the absence of any legal right, writ of mandamus cannot be sought for or granted by the Courts. Admittedly, members of the appellant-association are not qualified and registered with the State Medical Council. They cannot be permitted to practise either Modern Medicine or any other System of Medicine.

As per the Indian Medical Council Act, 1956 (Central Act 102 of 1956), no person can practise medicine without requisite qualification and registration with the concerned State Medical Council. Therefore, members of the Appellant-Association cannot either practise modern medicine or any other Indian System of Medicine.

It is not in doubt that only qualified and properly trained professionals are competent to man the medical treatment of the people. If the unqualified private practitioners like the members of the Appellant

Association are allowed to treat the patients even for minor ailments, we are afraid, it may endanger the lives of the people.

On a query put to counsel for the Appellant Association, whether the circular issued by the Central Government was statutory or binding on the State Government, it was fairly conceded by the learned counsel that the circular issued by the Central Government was neither statutory nor was it binding on the State Governments. Otherwise also, the State of Tamil Nadu has shown its inability to enforce the regularisation of unqualified and unregistered medical practitioners in the State, which was duly communicated to the Central Government vide letter (Ms.) No.342, Health dated 3rd March, 1980 for the reasons mentioned therein.

Since successive writ petitions being filed by the appellants on the same cause of action seeking the same relief, which had been rejected earlier, has resulted in sheer wastage of the precious time of the Court, we dismiss the appeal with costs, which is quantified at Rs.50,000/-.#

6 Further, the certificate that is relied upon by the petitioner has been issued neither by the Tamil Nadu Dr. MGR Medical University nor by any other recognised university.

7 In the light of the above, this is not a fit case to quash the FIR in the light of the law laid down by the Supreme Court in State of Haryana and others vs. Bhajan Lal and others [1992 Supp (1) SCC 335], as the complaint prima facie discloses commission of a cognizable offence, which has to be investigated by the police .

Resultantly, this Criminal Original Petition is dismissed. Connected M.P. is closed.

Sd/-

Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

To

1 The Inspector of Police
Anchetty Police Station
Anchetty
Krishnagiri District

2 The Public Prosecutor
Madras High Court
Chennai 600 104

+1 cc to Mr.K.Rajendra prasad,advocate,sr.62219.

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krd 1/12

Cr1.O.P. No.30595 of 2010



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