IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.25420 of 2010
and M.P.No.1 of 2010

V.Murugan .. Petitioner/Sole Accused

vs.

State rep by
The Station House Officer
Vanur Police Station
Villupuram District .. Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the FIR in Cr.No.90 of 2010 on the file of the Station House Officer, Vanur Police Station, Villupuram District and to quash the same.

For petitioner : Mr.Najeeb Usman Khan
For respondent : Mr.C.Emalias,
Additional Public Prosecutor

RESERVED ON	PRONOUNCED ON
28.09.2016	21.10.2016

O R D E R

This petition has been filed to call for the records relating to the FIR in Cr.No.90 of 2010 on the file of the Station House Officer, Vanur Police Station, Villupuram District and to quash the same.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3. On the complaint lodged by Dr.S.D.Jeyakumar, Block Medical Officer, in-charge of the Primary Health Centre, Kiliyanur, the respondent police have registered a case in Cr.No.90 of 2010 on 09.06.2010 u/s 420 IPC, challenging which the petitioner is before this Court.

4. It is the case of the prosecution that based on the complaints received from the public, a team of officials of

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the District Medical Department, inspected "Nirmal Clinic" on 09.06.2010 and found that the petitioner was practising medicine without any basic degree. He was also treating patients and dispensing allopathy medicines. Hence, the FIR.

5. The learned counsel for the petitioner contended that the petitioner is a qualified medical practitioner and in support of his contention, he placed reliance on the copy of the Certificate enclosed in the typed set of papers.

6. On a perusal of the Certificate, it is seen that the said Certificate has been issued by the Private Medical Practitioners' Association of India and not by any statutory medical Council established under the Indian Medicine Central Council Act, 1970.

7. Further, the learned counsel placed reliance upon the various Circulars issued by the Government of India and also the interim order passed by this Court in WPMP No.10792 of 2006 in W.P.No.9691 of 2006 dated 06.04.2006 and submitted that, no action can be taken against the petitioner, in view of the injunction in his favour.

8. This Court, on 20.10.2016, by a detailed order, has dismissed W.P.No.9691 of 2006. The right of practitioners of other forms of medicine has been dealt with by the Supreme Court in Civil Appeal No.336 of 2007 [Private Medical Practitioners' Association v. The State of Tamil Nadu & others] and by order dated 23.01.2007 (unreported), the Supreme Court dismissed the claim of the appellant with heavy costs of Rs.50,000/-, the relevant portion of which would read as under:

> "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.

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> 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.
>
> .....
>
> 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/-"

9. That apart, this Court cannot go into disputed questions of fact in a quash petition u/s 482 Cr.P.C. Further, when the FIR prima facie discloses the commission of a cognizable offence, the same cannot be quashed, in the light of the law laid down by the Supreme Court in State of Haryana v. Bhajan Lal [AIR 1992 SC 604].

In view of the above, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1.The Station House Officer
Vanur Police Station
Villupuram District

2.The Public Prosecutor
High Court, Madras 600 104.

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CTR(CO)
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