

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.18459 of 2010
and M.P.No.1 of 2010

G.Thabre Alam

.. Petitioner/Accused

vs.

State rep by
The Inspector of Police
B.4 Annadanapatti Police Station
Salem Town
Salem.

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records of the above FIR in Cr.No.664 of 2010 on the file of the respondent police and quash the same as illegal.

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 of the above FIR in Cr.No.664 of 2010 on the file of the respondent police and quash the same as illegal.

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.K.Prakasam that the petitioner is practising allopathy medicine without qualification, the respondent police have registered a case in Cr.No.664 of 2010 u/s 419, 420, 336 IPC and Section 15(2) of the Indian Medical Council Act, 1956, challenging which the petitioner is before this Court.

4. The learned counsel for the petitioner submitted that the petitioner is a qualified Siddha practitioner and in support of his submission, he placed reliance upon the Certificate enclosed in the typed set of papers.

5. 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 Councils established under the Indian Medicine Central Council Act, 1970.

6. Learned counsel relied upon the interim order that was granted 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.

7. Prima facie it is seen that the petitioner is not a qualified medical practitioner of any system of medicine, much less allopathy. He is merely a member of an association, which claims to have as its members, persons who are practising in Indian systems of medicine. Even for practising Indian systems of medicine like Ayurveda, Unani, Siddha etc., one should acquire the necessary qualification from an accredited University and enroll themselves in the concerned list maintained by the State Government, as envisaged by the Indian Medicine Central Council Act, 1970. This Court, on 20.10.2016, by a detailed order, has dismissed W.P.No.9691 of 2006. That apart, this issue has been gone into 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.

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/-"

8. 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)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Inspector of Police
B.4 Annadanapatti Police Station
Salem Town, Salem.

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

+ 2 ccs to MrNajeeb Usman Khan, Advocate SR.60094

Cr1.O.P.No.18459 of 2010

CTR(CO)
EU 30/11/16