

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.23102 of 2010

and

M.P.No.1 of 2010

K.Thimmarayappa

... Petitioner/Accused

vs.

1.The State rep. by Inspector of Police,
Soolagiri Police Station,
Soolagiri,
Krishnagiri District.
(Crime No.217 of 2010)

2.Dr.Udayarani,
Health Officer,
Government Hospital,
Soolagiri, Krishnagiri District.... Respondents/Complainant
(Impleaded the 2nd respondent as per the
order of this Court dated 17.04.2017 in
Crl.M.P.no.5462 of 2017 in Crl.OP.No.23102/2010)

Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., to quash the F.I.R in Crime No.217 of 2010 registered on 12.06.2010 against the petitioner for the offence under Section 420 of I.P.C r/w Section 15 of Indian Medical Council Act, 1956.

For Petitioner : Mr.K.Rajendra Prasad

For Respondents : Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl.Side)
No Appearance (for R2)

JUDGMENT

The sole accused has come up with the present petition to quash the F.I.R in Crime No.217 of 2010 registered on 12.06.2010 against the petitioner for the offence under Section 420 of I.P.C. r/w Section 15 of Indian Medical Council Act, 1956.

2.The case of the petitioner is that the Defacto Complainant is the Medical Officer of Government Primary Health Centre, Soolagiri. She gave a complaint that some persons in her area is practicing with modern medicine and treating patients without proper educational qualifications in and around Soolagiri Area. However the case of the petitioner is that he is practicing in the Allopathic system of medicine and he is a registered member of the Private Medical Practitioner Association and the said association is registered under the Societies Registration Act. Further, the case of the petitioner is that there are nearly about 2000 members in the association in Tamil Nadu only. The members of the association are possessing basic qualifications in Homeopathy, Unani or Siddha and some of them are qualified Pharmacists.

3.The further case of the petitioner is that the Government of India in order to regularize the service of the unqualified medical practitioners take effective steps. Further though the petitioner has been practicing modern medicine for a period of not less than 10 years immediately before an appointed day. so, the persons, like the petitioners may be allowed to continue their practice modern medicine with same restrictions and the same was accepted in the Rajaya Sabha. Apart from that by the notification of the Ministry of Health Department, Government of India dated 04.03.1978 and 15.01.1971 directed all the State Government and Union Territories to legislate State Acts for the enlistment of all the unqualified medical practitioners in the state. Accordingly the State of Punjab, Rajasthan, Uttar Pradesh, Kerala have regularized the service of the unqualified medical practitioner. In view of the same even in 1965, the Government of Tamil Nadu published a proposed bill. The statement of objects and reason given in the bill were to regularize the unqualified medical practitioners who have been in practice for a period of not less than 10 years, so as to allow them to continue the field altogether. This bill referred to select a committee, but which was subsequently not pursued as it was under the consideration of the India government to bring in a uniform law for his purpose.

4.Further, the petitioners association filed a Writ Petition before this Court in W.P.No.7402 of 1998 for the regularization of the practice. Apart from that the petitioner also brought to the notice of this Court about the contents of the F.I.R. According to the F.I.R the allegations is that some persons have given medical treatment as that of a doctor without having any prescribed medical qualifications. Further allegation is that is a chances to cause imminent danger. So, the petitioner submits that as per the F.I.R no allegation is made out against the petitioner. Hence, he sought for the quahsment of the First Information Report.

5.Per contra, the Inspector of Police attached with respondent police station namely Mr.Sambath filed his counter statement and denied the averments of the quash petition. Further, followed by the registration of F.I.R. the Sub-Inspector of Police examined the Defacto Complainant and one Mr.Govindaraj and one Mr.Krishnan and the case is under proper Investigation. Therefore, the case is under F.I.R. stage and only the investigation will reveal truthness of the F.I.R. Hence, he prayed for dismissal of the quash petition.

6.I heard Mr.K.Rajendra Prasad, learned counsel appearing for the petitioners and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the 1st respondent and there is no representation on behalf of the 2nd respondent and all the materials available on records are perused.

7.It is the case of the petitioner that he is a private medical practitioner for the past 20 years and his registration Number is 4023. The Private Medical Practitioners Association of India certified that the petitioner is a member of the Private Medical Practitioner Association (Registered). The guidelines of the Private Medical Practitioners Association have disclosed as follows:

"Eventually the petition committee of the both the houses agreed unanimously that the members of this association should be given recognition with some restrictions. After that Hon'ble Supreme Court of India in its Historical judgment dated 08.10.1998 in the S.L.P.No.89 of 1987 filed by Rajasthan State Government and Rajasthan PMP Association said that the recognition of these members are justified, but it is a matter of distress, that the Central and State Governments have not given recognition to this members till date."

At this juncture the learned Counsel appearing for the petitioner has also referred the order passed in W.M.P.No.10792 of 2006 in W.P.No.9691 of 2016 of this Court, wherein an order of interim injunction is passed restraining the State Government and the Director General of Police from enforcing the penal provisions of the Indian Medical Council Act, 1956 and the Drugs and Cosmetics Act, 1940 in the case of the Unqualified Medical Practitioners of the Association in the State of Tamil Nadu in the pending Writ Petition in W.P.No.9691 of 2006.

8.Apart from that the F.I.R. under challenge is perused which has not disclosed the ingredients of the alleged offence under Section 420 of I.P.C and section 15 of Indian Medical Council Act, 1956. For the useful purpose those to provisions are set out here under:

Right of persons possessing qualifications in the Schedules to be enrolled.

Section 15. Right of persons possessing qualifications in the Schedules to be enrolled.

Subject to, the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register.

1. Subject to the other provisions contained in this Act, the medical qualifications included in the schedules shall be sufficient qualification for enrolment on any state medical register.

2. Save as provided in section 25, no person other than a medical practitioner enrolled on a state medical register.

a. shall hold office as physician or surgeon or any other office (by whatever designation called) in government or in any institution maintained by local or other authority.

b. shall practice medicine in any state.

c. shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner

d. shall be entitled to give evidence at any inquest or in any Court of law as an expert under section 45 of the Indian Evidence Act, 1872 on any matter relating to medicine.

3. Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both;

Section 420. of I.P.C

Cheating and dishonestly inducing delivery of property.-

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Of fraudulent deeds and dispositions of property"

9. From the close reading of the F.I.R, no offence is made out prima facie to register a case against the petitioner. More over the counter statement of the 1st respondent dated 10.02.2016 would show that in addition to the Defacto-Complainant two other witnesses alone are examined and even after the lapse of more than six years no attempt is made by the 1st respondent/complainant to file final report in the case. Therefore, it is made clear that there is a huge delay in completing the investigation and filing charge sheet.

10.The Defacto complaint has also imploded as 2nd respondent as per the order of this Court date 17.04.2017. All the records are perused, but in the considered opinion of this Court, no offence is made out as per the allegations leveled in the F.I.R. At the same time, the 1st respondent also failed to take up the investigation to reach out the finality, all these reasons would show keeping the F.I.R in pending, no useful purpose would be served. Moreover, as the F.I.R., does not disclosed any offence to attract the offence under section **420 of IPC*** and sec 15 of Indian Medical Council Act 1956, then the First Information Report will not be proceed further and the petitioner is entitle the relief.

11.Therefore, it is imperative on the part of this Court to quash the F.I.R. No.217 of 2010, on the file of the Soolagiri Police Station, Krishnagiri District. Accordingly, the same is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)
dt. 1.08.2017

Corrected as per order of this
court dated 11.08.2017 and made
in CrI.OP.No.23102/2010

Sd/-
Asst. Registrar (CO)
dt. 18.08.2017

/true copy/

Sub Asst. Registrar

vs
To

1.The State rep. by Inspector of Police,
Soolagiri Police Station, Soolagiri,
Krishnagiri District.

2.The Public prosecutor,
High court, Madras

To corrected order
to be substituted for
the order already
despatched on 3.8.2017
in CrI.Op.No.23102/10

+1cc to Mr.K.Rajendra Prasad,Advocate sr.25711

CrI.O.P No.23102 of 2010
and M.P.No.1 of 2010

VGII(co)
ss(1/8/2017)
Eu 18.08.17