

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.289 of 2018 and

Crl.M.P.No.3408 of 2018

Thangaraj

...Petitioner/Accused NO.2

Vs.

The Sub Inspector of Police,
Dharapuram Police Station,
Tiruppur District.
Crime No.12 of 2016

...Respondent/Complainant

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order dated 02.08.2017 made in C.M.P.No.5244 of 2016 in C.C.No.230 of 2016 by the learned Judicial Magistrate, Dharapuram.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.G.Harihara Arun Somasankar,
Govt. Advocate (Crl.Side)

ORDER

The criminal revision case has been filed against the order passed by the learned Judicial magistrate, Dharapuram, in C.M.P.No.5244 of 2016 in C.C.No.230 of 2016, dated 02.08.2017, dismissing the petition filed under Section 239 of Cr.P.C. seeking to discharge the petitioner herein.

2 The case of the petitioner is that he was charge sheeted along with the accused No.1, namely, his wife for offence under Section 15(3) of Indian Medical Council Act, 1956, and under Section 420 of IPC. FIR was registered against the first accused, namely, his wife and the petitioner herein being the second accused for running a clinic under the name of Beula Clinic at Chathiram and Dhasarapatti. According to the Police, both the accused were not registered medical practitioners and have not obtained any valid medical degree from the Authority concerned. After investigation, a final report was also filed by the police. At this stage, the present petition has been filed

by the second accused, the petitioner herein, under Section 239 of Cr.P.C. seeking to discharge from the offences charged against him. The trial Court after adverting to the evidences and materials placed on record, had dismissed the petition stating that there was absolutely no substance in the petition filed by the petitioner herein and there are enough materials to establish the charge against the petitioner herein. In fact, while dismissing the petition, the trial Court has followed the principles laid down in judgment in the case of R.Anbalagan Vs. State in CrI.R.C.Nos.953 & 954 of 2012 dated 18.06.2013.

3 The trial Court has given reasons for rejection of the petition, which appears to be well founded and well considered one, both in terms of application of legal principles as well as the factual materials. The reasons, as set forth by the trial Court, could be appreciated and for the said purpose, the same is extracted hereunder:

"This petition is filed by the petitioner who has been arrayed as Accused No.2 in the above case to discharge him on the ground that he is not the original accused and that a person named Thangaraj, S/o Saminathan who was conducting clinic at Dhasarapatti is the actual accused. The said Thangaraj S/o. Saminathan was having a clinic at Dasarapatty and the same is clearly mentioned in the FIR also and PW1 who had inspected the clinic of Dasarapatty Thangaraj had specifically lodged complaint against Dasarapatty Thangaraj. The daily Thanthi Paper News reveals that the Dasarapatty Thangaraj is the accused in this case. The photograph shows that the R.D.O. and PW1's inspection in the Dasarapatty Thangaraj's clinic. The daily Thanthi News Paper dated 07.11.2015 also produced herewith. The present person Thangaraj, S/o.Rajamanickam had no connection with the complaint and as well as the prosecution case and hence the petitioner to be discharged. The respondent has vehemently opposed the petition stating that the charges against the accused No.1 and 2 are U/s.15(3) of Indian Medical Council Act 1956 and U/s.420 of IPC and the final report was filed by investigating officer after due investigation and First Information report was filed against this accused No.2 and his wife accused No.1 on 06.01.2016. The accused No.1 was running a clinic under the name of beula clinic at Chathiram and Dhasarapatti. These accused No.1 and 2 are not registered medical practitioners and they have not obtained valid medical degree. That on 09.12.2015, the Joint Director, Health Department, Tiruppur got a written information from the rural Health Officer. These accused No.1 and 2 without obtaining medical

degree and proper license for keeping the drugs had practiced as doctor and attended the patients. On 17.12.2015 the joint director, JAO Drug Inspector and Dharapuram Police Inspector inspected the clinic conducted by accused 1 and 2 at Chathiram and Dhasarapatti and signed the property as stated in form 91. Investigation Officer after completing the legitimate investigation had filed the final report before this Hon'ble Court. At this stage this Accused no.2 has filed this vexatious application U/s.239 Cr.P.C. Further this accused No.2 Thangaraj, S/o. Rajamanikam is the original accused as per the final report filed by the investigation officer. The newspaper cannot be relied upon. The investigation officer had conducted a proper and legitimate investigation. Hence, prays to dismiss the petition.

The plea of this petitioner is that the person mentioned in the Complaint and F.I.R is namely one Thangaraj, S/o.Saminathan of Dasarapatti but this petitioner has been arrayed as accused. This petitioner is Thangaraj, S/o.Rajamanikam but the actual accused is Thangaraj, S/o.Saminathan and hence seeks discharge.

On perusal of the complaint Ex.P1, it is seen that the same is lodged against one Thangaraj of Dasarapatti. The father's name is not mentioned in the said complaint but only stated as Thangaraj of Dasarapatti. Whether the accused mentioned in the complaint and F.I.R namely Thangaraj, S/o.Saminathan and this petitioner namely Thangaraj S/o.Rajamanikam are different persons can be decided only after recording evidence and cannot be ascertained at this stage.

In the judgment "R.Anbalagan Vs State" in Criminal Revision Case Nos.953 and 954 of 2012 dated 18.06.2013 by our Hon'ble High Court in paragraph 31 it has been held as follows:

"The following guidelines emerged for a trial judge as per the ratio laid down by the Honourable Supreme Court:

1. The Court would find prima facie case against the accused that there is sufficient ground for proceeding against him.
2. The Court need not take up a roving enquiry or fishing enquiry at the stage of framing of charges.
3. The Court ought to discern a strong suspicion over the existence of facts constituting offence as against the accused.
4. There is no necessity for the Court to evaluate

the probative and evidentiary value of the materials nor oral evidence placed by the prosecution and see whether they would be adequate to convict the accused.

5. The Court is not at a duty at the intermediate stage to speculate whether allegations are true or false to direct discharge

accused no 1 and 2 had practiced as doctor and attend the patient So on 17.12.2015 the joint director, JAO drug inspector and Dharapuram Police Inspector inspected the clinic conducted by accused 1 and 2 at Chathiram and Dhasarapatti and signed the Property as stated in form 91

- 4) Investigation Officer after completing the legitimate investigation had filed the final Report before this Hon'ble Court.
- 5) At this stage this Accused no 2 has filed this vexatious application under Sec 239 Crpc this accused no 2 in Para 1 of his petition has stated that he is not the Original accused that some other person named Thangaraj, S/o Saminathan who was conducting clinic at Dhasarapatti is the actual accused it is not so. The investigation Officer and medical officer having inspected the place of occurrence and seized the property and arrayed him as an accused.
- 6) The Final report was filed by the Investigation officer. This accused no 2 Thangaraj, S/o Rajamanikam is the original accused as per the Final report filed by the investigation officer.
- 7) This Accused No 2 had stated in para 2 of his petition that newspaper reveals that he is not the original accused it is False. The newspaper cannot be relied upon.
- 8) This Accused No 2 had stated in para 3 of his petition that he had no connection with the Complainant as well as prosecution case the respondent police acted in Bias manner and infavour of the original Thangaraj, S/o Saminathan, The respondent police had conducted illegal and irregular investigation is false statement. The investigation officer had conducted a proper and legitimate investigation.
- 9) Hence this petition is not maintained and ought to be Dismissed by this Hon'ble Court."

From the above, it could be seen that the learned Magistrate has held that the petition is nothing but a vexatious application and there is no mistake in identity of the petitioner, since the police had clearly implicated the

petitioner for the alleged offence. The learned Magistrate has held that there was sufficient materials available for proceeding against the petitioner and his premise on which, the petition filed under Section 239 of Cr.P.C was absolutely baseless and unfounded.

4 This Court after taking into consideration of the relevant materials and the order passed by the trial Court, does not find any infirmity both in application of law and facts in rejecting the petition filed by the petitioner herein. As rightly held by the learned Magistrate that the petition filed under Section 239 of Cr.P.C. lacks in bona fides and does not merit for consideration at all, even for a second. In the said circumstances, the dismissal of the petition by the Magistrate cannot be interfered with by this Court.

5 For the above said reasons, this Court does not find iota of merit in the revision and hence the same is dismissed. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Dharapuram.
2. The Public Prosecutor, High Court of Madras.
3. The Sub-Inspector of Police,
Dharapuram Police Station,
Thiruppur District.9.32

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.82552

Crl.R.C.No.289 of 2018 and
Crl.M.P.No.3408 of 2018

SR(CO)
GSP(24/12/2018)