

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2018

CORAM:

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

Crl.O.P. No.10674 of 2018 & Crl.M.P. Nos.5466 and 5467 of 2018

Sumathi

Petitioner

vs.

State represented by its
Inspector of Police
Attayampatti Police Station
(Cr. No.399/2017)

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records in C.C. No.271 of 2017 pending on the file of the Judicial Magistrate No.IV, Salem, Salem District and quash the same.

For petitioner : Mr. S. Suresh

For respondent : Ms. Kritika Kamal P.
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been preferred seeking to call for the records in C.C. No.271 of 2017 pending on the file of the Judicial Magistrate No.IV, Salem, Salem District and quash the same.

2.1 On prior information that an unqualified person is running a clinic styled "Vinayaka Clinic", a team of officers headed by Dr. Helen Kumar, Medical Officer, Government Hospital, Nainampatty, Salem District, inspected the said clinic on 19.09.2017 around 10.50 a.m. and found the petitioner giving allopathic treatment to patients. During enquiry, it came to light that the petitioner was only a qualified nurse and does not possess any valid medical degree.

2.2 Hence, on the complaint of Dr. Helen Kumar, a case in Cr.No.399 of 2017 was registered under Section 15(3) of the Indian Medical Council Act, 1956 and Section 420 IPC and the petitioner was arrested. The petitioner was produced before the Judicial Magistrate No.IV, Salem and was remanded to custody.

2.3 The petitioner filed a bail application and in the bail proceedings, one Dr. R. Sekar appeared and filed an affidavit stating that he is the Proprietor of Vinayaka Clinic and that he had gone out on some assignment, leaving the petitioner in the clinic and at that time, the police had conducted raid and arrested the petitioner as if she was running the clinic.

2.4 On the strength of his representation, the petitioner was granted bail. However, the police have completed the investigation and filed a charge sheet in C.C. No.271 of 2017 before the Judicial Magistrate No.IV, Salem under Section 15(3) of the Indian Medical Council Act, 1956 and Section 420 IPC, challenging which, the petitioner has preferred this petition.

3 Heard Mr. S. Suresh, learned counsel for the petitioner and Mrs.Kritika Kamal P., learned Government Advocate (Crl. Side) appearing for the respondent - State.

4 The learned counsel for the petitioner submitted that the petitioner was admittedly a nurse and she had never projected herself as a qualified medical practitioner nor had she treated any patient. He contended that the premise in which Vinayaka Clinic is functioning is taken on rent by Dr.Sekar; that it is Dr. Sekar who is running the clinic; that the petitioner was a nurse in the said clinic and that a false case has been foisted by the police against the petitioner.

5 Per contra, the learned Government Advocate (Crl. Side) invited the attention of this Court to the statement of a witness by name Dhanam who has stated that she used to frequently visit Vinayaka Clinic and take treatment under the petitioner.

6 The learned counsel for the petitioner fairly conceded that any observation in the bail order is not conclusive and that it cannot have any binding effect in this case.

7 Since disputed question of fact cannot be gone into in a petition under Section 482 Cr.P.C., this Criminal Original Petition is liable to be dismissed.

8 The learned counsel for the petitioner submitted that the petitioner's presence before the Trial Court may be dispensed with.

9 Acceding to the aforesaid submission made by the learned counsel for the petitioner, the petitioner is directed

to surrender before the Trial Court within a period of two weeks from the date of receipt of a copy of this order and on her surrender, she shall be released on bail under Section 436, Cr.P.C. on the same day on she executing a bond for Rs.10,000/- with two sureties. Thereafter, her presence before the Trial Court shall be dispensed with on condition that, she shall be present for receiving the charge sheet, for answering the charge, at the time of questioning under Section 313, Cr.P.C. and at the time of passing the judgment. She shall also file an affidavit of undertaking before the Trial Court that she will not dispute her identity and that the counsel named by her in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (Cr1.) 288]. If she adopts any dilatory tactics, it is open to the Trial Court to insist upon her presence and remand her to custody, as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If, thereafter, she absconds, the trial Court shall direct registration of an FIR against her u/s 229-A IPC.

10 Further, the Trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order, provided the petitioner cooperates.

In the result, this Criminal Original Petition stands dismissed with liberty to the petitioner to raise all the points before the Trial Court. Connected Cr1.M.P. 5466 of 2018 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Inspector of Police
Attayampatti Police Station
Salem District
- 2 The Judicial Magistrate No.IV
Salem
Salem District

3 The Public Prosecutor
Madras High Court
Chennai - 600 104.

+1cc to Mr.S.Suresh, Advocate, S.R.No.25273

Cr1.O.P. No.10674 of 2018

KJI (CO)

RRK (25/04/2018)



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