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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P. (MD) .No.2317 of 2015

and

M.P. (MD) No.1 of 2015

Dr.S.Asha Banu

..Petitioner

Vs.

1.The Sub Inspector of Police,
Thiruverumbur Police Station,
Thiruverumboor and Post,
Trichy District.

2.Dr.T.Balamurugan,
Chief Medical Officer,
Government Hospital,
No.1, Marys Nagar,
Malaikovil South,
Thiruverumboor,
Trichy..

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in the FIR in crime No.789 of 2014 on the file of the 1st respondent and quash the same.

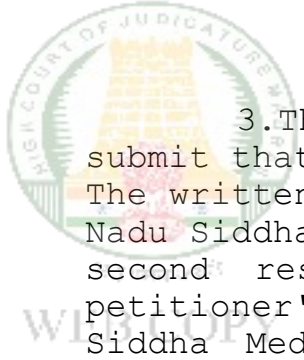
For Petitioners : Ms.L.Victoria Gowri

For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
G.A. (CrI. Side) for R1
No Appearance for R2

ORDER

This petition is filed to quash the FIR in crime No.789 of 2014 on the file of the 1st respondent registered for the offence under Sections 336, 420 of I.P.C. and Section 15(2), 15(3) of the Indian Medical Council Act, 1956.

2.The case of the prosecution as alleged by the second respondent is that the complainant is working as Chief Medical Officer in Government Hospital, Thiruverumboor, Trichy District at Thuvakudy. In the course of supervising the area of Kattur, Thiruverumboor with respect to quackery eradication, he came to understand that the petitioner, who is qualified in B.S.M.S. Is cheating the common public by dispensing allopathy medicines. Hence the complaint.



3. The learned counsel appearing for the petitioner would submit that the complaint is illegal and not maintainable under law. The written complaint has to be received from the Registrar of Tamil Nadu Siddha Medical Board for taking legal action. Furthermore, the second respondent has no jurisdiction to interfere with the petitioner's practise without any complaint from the Tamil Nadu Siddha Medical Board. The petitioner complied all norms and qualified medical degree holder and as such, he can practise by dispensing allopathy medicines. The degree of BSMS (Bachelor of Siddha Medicine and Surgery) is regulated by the Central Council of Indian Medicine. The petitioner enrolled herself as a Registered Medical Practitioner in the State of Tamil Nadu Siddha Medical Council, Chennai bearing registration No.560 dated 11.12.1998. Further, she would submit that the petitioner is practising in accordance with the Indian Medical Practitioners Professional Conduct, Etiquette and Code of Ethics Regulations and within the scope of the Central Council for Indian Medicine Act, 1970. She would further submit that by a circular dated 19.06.2010, bearing reference No.147472/Cr.IV(2)2010 issued by the Director General of Police, Chennai, the qualified practitioners of Siddha Ayurvedha and Unani Tibb, Homeopathy are eligible to practise respective systems with modern scientific medicine including surgery and gynaecology, obstetrics anaesthesiology, ENT, ophthalmology etc. based on the training and teaching. She would further submit that the Health and Family Welfare (IM 202) Department of the Government of Tamilnadu had notified in G.O.(Ms) No.248 dated 08.09.2010 that every Registered Medical Practitioners can practise with the modern scientific system of medicine. Therefore, she prayed for quashment of the FIR registered as against the petitioner.

4. Per contra, the learned Government Advocate (criminal side) would submit that the FIR cannot be quashed on its threshold and it has to be gone into in depth and also submitted that the investigation is going on. Therefore, he prayed for dismissal of the quash petition.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (criminal side) appearing for the first respondent and perused the materials available on record. Though notice has been served on the second respondent and his name also printed in the cause list, no one is represented on behalf of the second respondent.

6. Admittedly, the petitioner is a qualified Doctor having degree of Bachelor of Siddha Medicine and Surgery, which is placed under the second schedule of the Central Council of Indian Medicines Act, 1970. It is also a recognized medical degree for practising Indian Medicine as recognised by the Union of India and State Government of Tamil Nadu. Further, as per the memorandum dated 19.06.2010 bearing reference No.147472/Cr.IV(2)/2010 issued by the Director General of Police, Chennai, the qualified practitioners of Siddha Ayurvedha and Unani Tibb, Homeopathy are eligible to practise with modern scientific medicine.



7. The learned counsel appearing for the petitioner relied upon the judgment dated 02.11.2010 pronounced in a batch of CrI.O.P (MD) Nos.11994 to 11996, wherein, this Court has held as follows:

"10. The learned counsel appearing for the petitioners would cite the government order in G.O.Ms.248, Health and Family Welfare (IM 2-2), dated 08.09.2010, which is extracted here under for ready reference:

No.II(2)/HF/575/2010.- Whereas, the rights of practitioners of Indian System of Medicine are protected under Section 17(3)(b) of the Indian Medicine Central Council Act, 1970 (Central Act 48 of 1970);

And Whereas, as per Section 2(1)(3) of the said Act, "Indian Medicine: means the system of Indian Medicine commonly known as Ashtang Ayurveda, Siddha or Unani Tibb whether supplemented or not by such modern advances, as the Central Council of Indian Medicine may declare by notification from time to time;

And Whereas, the Central Council of Indian Medicine in its Notification F.No.28-5/2004-AY (MM), dated the 19th May 2004, has clarified that the ward "Modern Advances" in clause (e) of Section 2(1) of the said Act as advances made in the various branches of modern scientific medicine in all its branches of internal medicine, surgery, gynaecology and obstetrics, anaesthesiology, diagnostic procedures and other technological innovation made from time to time and declare that the courses and curriculum conducted and recognized by the Central Council of Indian Medicine are supplemented with such modern advances;

And Whereas, the Central Council of Indian Medicine has improved and strengthened the syllabus of Indian Medicine by including subjects with regard to National Programmes like National Malaria Eradication programmes, Tuberculosis, Leprosy, Family Welfare Programme, Reproductive and Child Health Programme, Immunisation Programme, AIDS, Cancer, etc: Now, Therefore, under sub-clause (iii) of clause (ee) of Rule 2 of the Drugs and Cosmetics Rules, 1945, the Governor of Tamil Nadu hereby declares every registered medical practitioner holding the qualification specified in the second, third or fourth Schedule to the Indian Medicine Central Council Act, 1970 (Central Act 48 of 1970) and



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Part III of the Schedule to the Tamil Nadu Siddha System of Medicine (Development and Registration of Practitioners) Act, 1997 (Tamil Nadu Act 34 of 1997) and registered in the Medical Register of the State maintained under the aforesaid Acts, as a person practicing the modern scientific system of medicine for the purposes of the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940).

11. He would also cite the circular memorandum dated 19.06.2010 issued by the Director General of Police, Chennai, which is also extracted here under for ready reference:

R.O.C.No.14742/
Cr.IV(2)/2010

Office of the
Director General of Police,
Chennai - 600 004.

Dated:19.06.2010.

CIRCULAR MEMORANDUM

Sub : Indian System of Medicine - Police action against qualified Indian Medicine Doctors - Instructions -issued - Regarding.

Ref : Govt. Lt.No.22715/IM.II(2)/Health Family Welfare Department dt.15.06.2010 & 16.06.2010.

In the reference cited, the Government have stated that the Police Department in the course of their action against the Quacks has inspected the clinics run by the registered medical practitioners in Siddha, Ayurveda, Homeopathy and Unani and arrested some of them as if they had practiced Appopathy System of Medicine. The Government have informed that as per section 17(3) B of the Indian Medicine Central Council Act, 1970 the institutionally qualified practitioners of Siddha, Ayurveda and Unani Tibb Homeopathy are eligible to practice respective systems with modern scientific medicine including Surgery and Gynecology, Obstetrics, anaesthesiology, ENT, Ophthalmology etc. Based on the training and teaching.

2)Hence all Commissioners of Police/Inspectors General of Police, Deputy Inspectors General of Police and



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Superintendents of Police are requested to instruct the Police Officers in the Cities and Districts not to intervene with the practice of registered practitioners of Siddha, Ayurveda, Unani, Homeopathy and Naturopathy, who are registered in the Tamil Nadu Siddha Medical Council, Tamil Nadu Board of Indian Medicine and Tamil Nadu Homeopathy Medical Council. If any cases of the Doctors who are already under arrest may be reviewed with reference to the above clarification.

3) The letter from the Health & Family Welfare Department at 15.06.2010 is enclosed for perusal.

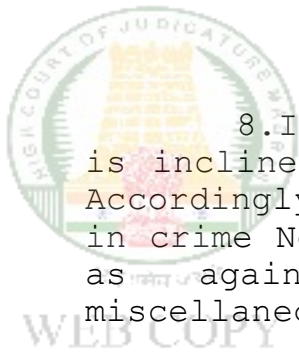
4) The instructions should be scrupulously followed.

As such a cumulative reading of all the above government order and the communications would amply make the point clear that the police should not interfere with the practise of the siddha practitioners, who are having B.S.M.S. Qualification, either suo motu or based on some complaints given by public. If at all, there are persons, who are aggrieved by the conduct of such medical practitioners, they have to petition the Tamilnadu Siddha Medical Council or the Director of Health services and the interference of the police in such matters would demoralise the qualified practitioners of the Indian Systems of Medicine.

12. The learned Government Advocate (criminal side) would submit that there are certain cases, which were initiated at the instance of Medical Officer and Private individuals and the police is investigating with them.

13. I would like to point out that in the light of the above, the police personnel are not bound to interfere in such matters and such registrations of the cases and investigation are per se against law and that affects the morale of the qualified B.,S.M.S. Doctors and such police practice should be deprecated in unmistakable terms."

The above said decision is squarely applies to the case of the present case. Further, when the Government Orders and the police Circular are there to practise the registered medical practitioners with modern scientific medicine, the petitioner cannot be prosecuted. Therefore, the FIR registered as against the petitioner has no legs to stand further.



8. In view of the considered opinion of this Court, this Court is inclined to quash the FIR registered as against the petitioner. Accordingly, this criminal original petition is allowed and the FIR in crime No.789 of 2014 on the file of the 1st respondent is quashed as against the petitioner herein. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The Sub Inspector of Police,
Thiruverumbur Police Station,
Thiruverumboor and Post,
Trichy District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/s.L.Victoria Gowri, Advocate, SR.No.89921

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and
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