



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD).No.3258 of 2015

and

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

Gibirial Khan

..Petitioner /Sole Accused

Vs.

1.State rep. by

The Inspector of Police,
Soolakarai Police Circle,
incharge Vachakarapatti Police Station,
Virudhunagar District,
crime No.18 of 2015.Respondent 1/Complainant

2.Annaraj

Inspector of Police,
Soolakarai Police Circle,
incharge Vachakarapatti Police Station,
Virudhunagar District. ..Respondent No.2/Defacto Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in S.T.C.No.99 of 2015 on the file of the Judicial Magistrate No.1, Virudhunagar and quash the same as illegal, violation of principles of law.

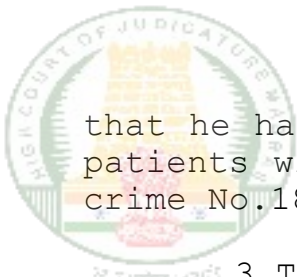
For Petitioner : Mr.G.Marimuthu

For Respondents: Ms.M.Anantha Devi,
Govt. Advocate (Crl. Side) for R1
Notice not served to R2

O R D E R

This petition is filed to quash the criminal proceedings in S.T.C.No.99 of 2015 on the file of the Judicial Magistrate No.1, Virudhunagar as against the petitioner, having been taken cognizance for the offence under Section 336 of I.P.C. read with 15(3) of Indian Medical Council Act, 1956 (amendment Act, 2006).

2.The case of the prosecution is that on 10.01.2015 at about 14.00 hours, the second respondent and his party made search and found that the petitioner/accused was treating patients without any valid registration. During enquiry, the petitioner/accused admitted



that he has been in the habit of giving allopathic treatment to the patients without any qualification. Hence, he registered a case in crime No.18 of 2015 for the offences as stated above.

3.The learned counsel appearing for the petitioner would contend that the petitioner is a registered Pharmacist and he registered his name before the Tamil Nadu Pharmacy Council, Madras. He underwent clinical experience certificate training before a Civil Assistant Surgeon. He is also a registered medical practitioner in Indo Allopathy system of medicine and it is needless to say that as per the said certificate of the petitioner, he is entitled to practice Indo Allopathy medicine to some extent.

4.Further, he would contend that the second respondent being a complainant, he himself investigated the case and recorded 161(3) of Cr.P.C. statements of witnesses and also filed the charge sheet. Therefore, it is directly hit under Section 157 of Cr.P.C. Further, the offence under Section 336 of I.P.C. read with 15(3) of Indian Medical Council Act, 1956 (amendment Act, 2006) are not at all attracted as against the petitioner. There are absolutely no materials to show that the petitioner endangering the life or personal safety of others and he practices medicine with registration. Therefore, he prayed for quashing the criminal proceedings as against the petitioner.

5.Per contra, the learned Government Advocate (criminal side) would submit that the petitioner is a Pharmacist and he has no qualification to practice in allopathic medicines. Further, the offences under Section 336 of I.P.C. read with 15(3) of Indian Medical Council Act, 1956 (amendment Act, 2006) are clearly made out as against the petitioner, since the petitioner without any valid licence and qualification has given treatment to the patients, which endangering the life or personal safety of others. Therefore, he prayed for dismissal of the quash petition.

6.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (criminal side) appearing for the State/R1 and perused the materials available on record.

7.Admittedly, on 10.01.2015 at about 14.00 hours, the second respondent and his parties made inspection on the petitioner's premises and found that the petitioner was treating the patients without any valid registration certificate and even without any qualification. Therefore, he lodged a complaint and registered the same in crime No.18 of 2015 by himself for the offences under Section 336 of I.P.C. read with 15(3) of Indian Medical Council Act, 1956 (amendment Act, 2006). Thereafter, he himself investigated the case and recorded the statements of witnesses under Section 161(3) of Cr.P.C., and after completion of the investigation, he filed the charge sheet as against the petitioner before the jurisdictional Magistrate. Therefore, it is clear that the complainant as well as the investigating officer in this case are one and the same.



8. In this regard, the learned counsel appearing for the petitioner relied upon the decision of the Hon'ble Supreme Court reported in 2018 Supreme (SC) 814 - Mohal Lal Vs. The State of Punjab, wherein, the Hon'ble Apex Court has held as follows:

"In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias of a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof."

9. In view of the judgment rendered by the Hon'ble Supreme Court of India, the same officer cannot be complainant as well as the investigating officer. The importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered necessary that the law in this regard be laid down with certainty. It will lead to abuse of powers and violation of Article 21 of Constitution of India. Therefore, it is not a fair investigation and it is a biased one. Therefore, the criminal proceedings as against the petitioner cannot be sustained.

10. Accordingly, this criminal original petition is allowed. The criminal proceedings in S.T.C.No.99 of 2015 on the file of the Judicial Magistrate No.1, Virudhunagar is quashed as against the petitioner. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CRL.SIDE)

/True Copy/

Sub Assistant Registrar(CS-IV)



To

1.The Judicial Magistrate No.1,
Virudhunagar.

2.The Inspector of Police,
Soolakarai Police Circle,
incharge Vachakarapatti Police Station,
Virudhunagar District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

• 1 CC TO M/S.G.M.LAW OFFICE IN SR No. 92693.

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and
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