

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.11.2019
CORAM:
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Cr1.RC.No.1038 of 2019

Thirumalai

...Petitioner

Vs.

The State Rep by its
Inspector of Police,
B1 Siva Kanchi Police Station,
Kancheepuram District.

...Respondent

Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the order passed by Judicial Magistrate No.1, Kancheepuram dated 09.01.2019 which is partly allowed and to allow the above criminal revision.

For Petitioner : Mr.B.Singaravelu

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

This petition has been filed seeking to set aside the order passed in CMP.No.1 of 2019 in Crime No.564 of 2018 on the file of the Judicial Magistrate No. I, Kancheepuram, dated 09.01.2019, partly allowing the petition for returning the certificate and dismissing the claim of return of key.

2. The brief facts of the case is that on the complaint given by the Joint Director of Health Service, Kancheepuram that the petitioner was practicing Allopathy medicine without any qualification, a case was registered by the respondent police in Crime.No.564 of 2018 against the petitioner for offences under Section 15 and 15 (3) of the Indian Medical Council Act, 1956. Based on the complaint, inspection was conducted and it was found that the petitioner was practicing allopathy medicine in violation of Rules of Indian Medical Council Act. The certificate and the prescription sheet were recovered from the premises at No.50/43, Kullappan street, Kanchipuram. The

respondent, after recovering the certificate, the prescription sheets and other medicines and after closing the premises, had handed over the key of the premises to the trial Court.

3. The petitioner had filed a petition in C.M.P.No.1 of 2019 seeking for return of the certificate and the key of the premises. The trial Court, by order dated 09.01.2019 partly allowed the petition, passed the order, returning the certificate and dismissing the claim in respect of return of key. Against which, the present revision has been filed.

4. The learned counsel for the petitioner would submit that the petitioner is a Indo-Allopathy Doctor registered in Indian Board of Alternative Medicine in Registration No. IBAM/RMP/21178 dated 08.11.1996 and he was practicing in and from the date of registration for the past 11 years in Kancheepuram District. He would submit that the petitioner has been practicing allopathy medicine and treating the patients in acupuncture method without any complaint from the patients. He would submit that because of business rivalry, a false complaint has been given, based on which, on 14.11.2017, the Joint Director of Health service conducted an inspection at his premises and based on the complaint, the case has been registered for offences under Section 15 and 15 (3) of the Indian Medical Council Act. He would submit that the petitioner is not a quack and he was practicing as per the mandate given to him by the Indian Board of alternative medicine. He would submit that the central council of Homoeopathy have sent a representation to the Health Department of Tamil Nadu to allow the Doctors practicing in Homoeopathy and Siddha medicine to use Stethoscope, B.P. Apparatus and Thermometer, which are the basic materials to diagnose the patient and use these apparatus in rare cases. He would submit that the petitioner cannot be prevented from continuing those practice in the above clinic and that he is entitled for return of key. He would submit that the trial Court without considering these aspect dismissed the petition.

5. The learned Additional Public Prosecutor would submit that the petitioner without obtaining necessary qualification had practicing allopathy in the premises and that based on the complaint given by the Joint Director of Health Service, the case has been registered against him. During the search conducted, prescription and allopathy medicine were seized from the premises. If the keys are returned to the petitioner, there is a possibility that the petitioner can continue with the office. He would further submit that the premises belongs to one Perumal Achari and he is a necessary party.

6. The learned counsel for the petitioner would submit that the petitioner undertakes that he will not practice in that area, the key is only required to hand over to Perumal Achari and that since the premises is locked, the petitioner is unnecessarily staying in that area and hence, he wants to return the key.

7. This Court is of the opinion that there is no necessity that the premises to be kept under lock and key without being used and that the petitioner also cannot be made to unnecessarily pay the rent without the premises being used and thereby key of the premises be handed over to the owner of the premises on a petition being filed by the petitioner impleading the owner of the premises. In view of the above, the revision is disposed of granting liberty to the petitioner to file a petition a fresh impleading the owner of the premises and on such petition being filed the trial Judge shall conduct due enquiry and hand over the keys of the premises at No.60, Rayappan Kuttai Street, Kancheepuram to its owner. With this observation, revision stands disposed of.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Judge,
Judicial Magistrate No. I,
Kancheepuram.
- 2.The Inspector of Police,
B1 Siva Kanchi Police Station,
Kancheepuram District.

- 2.The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.B.Singaravelu, Advocate sr.94021

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