

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 07.08.2020	Pronounced on 02.09.2020
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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.16387 of 2015

and

M.P.No.1 of 2015

J. Krishnamoorthy
S/o.Jagannathan

...Petitioner/Accused

Vs.

State rep.by the Inspector of Police,
Vellore North Police Station,
Vellore.

..Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in Crime No.576 of 2012 under Section 417, 420 IPC r/w 15(ii), 15(b) of Indian Medical Council Act, 1956 dated 10.09.2012 on the file of the respondent and quash the same.

For Petitioner : Mr. N.S. Nandakumar

For Respondent : Mr. Prabakaran,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition is filed call for the records in Crime No.576 of 2012 under Section 417, 420 IPC r/w 15(ii), 15(b) of Indian Medical Council Act, 1956 dated 10.09.2012 on the file of the respondent and quash the same.

2. The case of the petitioner is that he is a Siddha system of Medical practitioner. He is a licenced manufacturer of Siddha Drugs under Form 25 D of Drugs and Cosmetics Act, 1940 and he is permitted to manufacture and distribute Siddha medicines under the name and style of Flex Pharma. The petitioner is carrying on the practice in Siddha and Homeopathy system of medicines in "Geetha Clinic", at ground floor of 3/1, Olde Munsif Court Street, Saidapet, Vellore in the rear side and upstairs of the premises, the petitioner's family residence is

situated. His two sons are also residing with them, who are qualified dental surgeons registered their name in Tamilnadu Dental Council under Dentist Act, 1948 and his two sons are also having consultancy in the same "Geetha Clinic".

3. Apart from having the separate clinics, petitioner's sons have consulting space in "Geetha Clinic" and used to keep few items of their pills, syringes, antibiotic vials as a first aid kit in the "Geetha Clinic". The petitioner registered his name with Tamilnadu Board of Indian Medicine on 14.11.1994 and subsequently after the enactment of Tamilnadu Siddha system of Medicine (Development and registration of practitioners) Act, 1997 registered his name on 04.09.1998 with Tamilnadu Siddha Council and have been periodically renewing the same. The petitioner is awarded the certificate of member of Homeopathy Medical Service for undergoing institutional training in Homeopathy by Homeopathy Tutorial College, Nellikuppam on 07.06.1969, which was the only institution available in the state of Tamilnadu in respect of Homeopathy system of medicine at that point of time.

4. The petitioner had registered his name as practitioner of Homeopathy Medicine in the year, 1972 under the Tamilnadu Homeopathy system of medicine and practitioners of Homeopathy Act, 1971. Thus as on date the petitioner was a qualified medical practitioner in Siddha and Homeopathy system of medicine in modern scientific system. The petitioner has been carrying on continuously with the practice of Siddha and Homeopathy medicine from 1969 onwards. The petitioner is a reputed practitioner in the Vellore town. Earlier to it, the petitioner was carrying on with his profession and his popularity simmering professional jealous and enmity had allured the allopathic medical practitioners. The respondent police is being used as a tool to brand the medical practitioners like the petitioner as quacks and started to harass the petitioner and like persons. Earlier a FIR was also registered against the registered medical practitioners all over the State randomly. The petitioner submits that in W.P.No.9648/2006, this Court had issued interim specific order dated 07.04.2006 which is extracted hereunder:-

"...There will be an order of interim injunction restraining the 4th respondent from interfering with the professional practice of such of those members of the petitioner's Association who hold valid registration certificate issued by the 3rd respondent council (Siddha Council) and till such time such registration continue to hold valid to practice as registered Siddha Medical Practitioners as prescribed under Section 2(1)(e) of the Indian Medicine Central Council Act, 1970 as

well as as per the notifications issued under the said Act dated 30.10.1996, 22.01.2004 and 19.05.2004. Notice."

5. The petitioner submits that periodical petitions have been filed by the individuals as well as associations and orders have been passed by this Court not to harass and to foist cases against the registered medical practitioners under Indian Medical System which is recognised. For violation of the order of this Court, Contempt Petition was filed in Cont.P.No.775 of 2010. During the pendency of the Contempt Petition, the respondent-State namely Director General of Police, brought to the notice of this Court about the Government letter in R.C.No.22715/Lm11(2) Health and Family Welfare Department dated 15.06.2010, which is extracted hereunder:-

"...I am also to inform that the High Court of Madras in its order, dated 05.01.2010 in W.P.No.22155 of 2009 and order dated 23.02.2010 in W.P.No.30259 of 2009 has directed to take action against the persons who are practicing medicine without any valid licence. The High Court Madras in its order dated 07.04.2006 in M.P.No.10746 of 2006 and W.P.No.9648 of 2006 has granted interim injunction restraining the Director General of Police from interfering with the professional practice of such of those members who hold valid Registration Certificate issued from the Tamil Nadu Siddha Medical Council.

I am therefore to request you to instruct the Police Officers in the Districts not to intervene with the Practice of Registered Practitioners of Siddha, Ayurveda, Unani and Naturopaty who are registered in the Tamil Nadu Siddha Medical Council and Tamil Nadu Board of Indian Medicine. If any of these ISM Doctors are exclusively doing practice in Allopathy Medicine, names of these Doctors may be intimated to the Council and the Government for taking action against them under the Tamil Nadu Sidha System of Medicine (Development and Registration of Practitioners) Act, 1997 and Tamil Nadu Board of Indian Medicine Rules. The cases of the Doctors who are already under arrest may be reviewed with reference to the above clarification."

6. Further, the Principal Secretary to Government by proceedings dated 16.06.2010 has sent a letter to the Director General of Police. The Director General of Police has issued a circular memorandum dated 19.06.2010 to the Subordinates. Recording the Government Letter and Circular issued thereof

which has been reproduced and reported in 2010(4) CTC 798. The operative portion in paragraph 4 of the order is extracted hereunder:-

"In the light of the said Circular, it is imperative that no proceedings can be initiated against any of those registered practitioners in Siddha, Ayurveda, Homeopathy and Unani, who are eligible to practice irrespective of the respective system also with Modern Scientific Medicine including Surgery and Gynecology Obstetrics, Anesthesiology, ENT, Ophthalmology, etc. Such registration of the medical practitioners with Tamil Nadu Siddha Medical Council, Tamil Nadu Board of Indian Medicine and Tamil Nadu Homeopathy Medical Council as well as such of those qualified doctors who were recognised as such by the Madurai Kamaraj University and Tamil Nadu Dr. MGR Medical University who have been qualified respectively in the system of bachelor of Siddha Medicine and Surgery. If any action had been taken against such of those medical practitioners referred to above. It is needless to state that such action should be dropped forthwith pending further orders in the Writ Petition."

7. The Government realising the situation vagueness and the position of registered medical practitioner registered under the Tamil Nadu Siddha Medical Council, Tamil Nadu Unani Medical Council, Tamil Nadu Ayurvedic Medical Council, issued a notification under Rule 2(ee) (iii) of the Drugs and Cosmetics Rules, 1945 by G.O.Ms.No.248, Health and Family Welfare Department, dated 08.09.2010. which reads as follows:-

"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)(e) 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 word "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, gynecology and obstetrics, anesthesiology, 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, Immunization 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 qualifications specified in the second, third or fourth Schedule to the Indian Medicine Central Council Act, 1970 (Central Act 48 of 1970) and 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 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.)"

8. Thus, the Apex Court as well as this Court had given due recognition to the practitioners of Indian Medicine and they are no way less qualified to Allopathic Doctors and they have to be recognised and registered as medical practitioners. The importance of Indian System of Medicine was recognised, upheld and they were permitted to practice medicine in view of accommodation to the modern science. Further permitted to make use of modern advances in various sciences such as Radiology report, (Xray), Complete Blood Picture report, Lipids report, ECG, ect., for the purpose of practicing in their own system and prohibition of 15 (ii), 15(b) of Indian Medical Council Act, 1956 will not be attracted. Thus permitting persons to enroll on the State Register of Indian Medicine on the Central Register of Indian medicine to practice modern scientific medicine in any of its branches, unless that person is also enrolled on a State Medical Register, within the meaning of 1956 Act. Further, the Apex Court held the right to practice any profession or to carry on any occupation, trade or business is no doubt a fundamental right guaranteed under Article 19(i)(g) of the Constitution of India. Thus, it is held in the judgment that system of

medicines generally prevalent in India are Ayurveda, Siddha, Unani, Allopathic and Homeopathic. In the Ayurveda, Siddha and Unani systems, the treatment is based on the harmony of four humours, whereas in the Allopathic system of medicine, treatment of disease is given by the use of a drug which produces a reaction that itself neutralises a disease. In Homeopathy, treatment is provided by the like. Of the medical system that are in vogue in India, Ayurveda had its origin in 5000 BC and is being practised throughout India but Siddha is practised in the Tamil speaking areas of South India. These systems differ very little both in theory and practice. The Unani system dates back to 460-370 B.C, but that had come to be practised in India in the 10th century A.D. Allopathic medicine is comparatively recent and had its origin in the 19th century.

9. The learned counsel for the petitioner submits that in view of this Court in the Judgment in W.P.No.32308/2012, following the earlier judgments, the respondents are bound to drop further action in the FIR and therefore, in view of the inaction of FIR, the FIR is liable to be quashed. Further, the petitioner submits that in this case, there have been no complaint from any of the patients or any public stating that the petitioner had been practicing as a quack and thereby, affecting the health of general public. The petitioner herein is a registered practitioner under Indian System of Medicines registered in practice of Homeopathy and Siddha. In view of the above, the petitioner cannot be prosecuted. Despite, this Court had categorically stated that continuation of the criminal case against such registered medical professionals not to be entertained and continued, the respondent for ulterior motive had registered a case against the petitioner. Further, in support of this contention, he relied upon the judgments.

10. The learned Additional Public Prosecutor submits that in this case there was specific information that the petitioner was practicing Allopathy. Hence, check was made in the petitioner's Clinic who was running a clinic in the name of "Geetha Clinic" practicing Allopathy medicine, wherein the petitioner is not a qualified Allopathic Doctor who is not trained to administer injection and prescribed Allopathy medicine. During the seizure, from the clinic, several Allopathic tablets, 5nos of syringe and needles were seized. The petitioner could not give any valuable explanation, for acquiring expertise in usage of these Allopathic medicine. Hence, the case came to be registered. The petitioner claiming to be a registered medical practitioner in Siddha and Homeopathy had been practicing only Allopathic medicine and violating the Indian Medicine Council Act. Hence, a case came to be registered. Due to the above Criminal O.P., further investigation in this case could not be conducted. He further

submits that though this Court as well as the Government and the Director General of Police had given direction and circular that no proceedings can be initiated against any of the practitioners of Siddha, Ayurvedha, Homeopathy and unnani, who are eligible to practice irrespective of the respective system also with modern scientific medicine including Surgery and Gynecology Obstetrics, Anesthesiology, ENT, Ophthalmology, etc.

11. It does not preclude are the investigating agencies if satisfied and able to establish that the persons are masquerading as doctors, then the question of pressing into service anti quackery act will come into play. It will enable them to take action against such person and to prosecute them. Hence, the respondent police have got ample power to proceed against the quacks. Hence, objected for the quash petition.

12. Considering the rival submission and on perusal of the materials, it is seen that the petitioner has obtained certificate from Homeopathy Tutorial College at Nellikuppam in the year, 1969 and the Tamil Nadu Homeopathy Council had given him a certificate in certificate No.1250 in the year, 1977, the licence in Form-25 - D to manufacture for sale of Siddha drugs in favour of petitioner as proprietor of Flex Pharma from the year 1988 by the State Drugs Controller. The petitioner has also obtained Siddha medical registration certificate from Tamilnadu Siddha Medical Council in the year, 2000 and his certificates are renewed periodically in both Tamil nadu Homeopathy Council and Siddha medical Council. The circular in R.C.No.1474472/Cr.IV(2)/2010, issued by the Director General of Police, reads as follows:-

"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 Allopathy 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, Anesthesiology, ENT, Ophthalmology, etc., based on the training and teaching.

(2) Hence all Commissioners of Police/Inspectors General of Police, Deputy Inspector General of Police and 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."

13. Following the same, the Government had issued G.O.Ms.No.248 dated 08.09.2010, wherein it has declared that every registered medical practitioner holding the qualification specified in Schedule to the Indian Medicine Central Council Act, 1970 and to the Tamilnadu Siddha System of Medicine (Development and Registration of Practitioners) Act, 1997 as a persons practicing the modern scientific system of medicine for the purpose of Drugs and Cosmetics Act, 1940. It is to be seen that the Apex Court has held, non Allopathic Doctors to prescribe Allopathy drugs sold across the counter for common ailments. The Indian System of Medicines, generally provided in India, Ayurveda, Siddha, Unani, Alopahy and Homeopathy are recognised. The petitioner is a registered medical practitioner of Homeopathy and Siddha. The Government by its order dated 16.10.2010, directed the police not to take action against the Indian System Medicine or Doctors and by the Government Circular it is specifically directed that no proceedings can be initiated against any of those registered practitioners in Siddha, Ayurveda, Homeopathy and Unani who are eligible to practice irrespective of the respective system, with Modern Scientific Medicine including Surgery and Gynecology Obstertrics, Anesthesiology, ENT, Ophthalmology, etc.

14. This Court had held that as per G.O.Ms.No.248 issued by the Health and Family Welfare Department, dated 08.09.2010 permitting the registered Indian Medical Science Doctors, prescribing even Allopathic Medicine. Further, the Apex Court had held that the Indian Medical Association as a guild Association of Allopathic Medical practitioners if aggrieved by any misconduct committed by other medical professionals governed by other system of medicines, they can make complaints to their professional bodies under which those professionals are registered, as they have valid licence and can find different remedies. It is only in case where they are able to establish that persons masquerading as Doctors, then the question of pressing into service anti quackery act will come into play. It will enable them to take that person to be prosecuted by legal methods.

15. In this case, it is found that the petitioner is a registered medical practitioner in Siddha and Homeopathic Medicines and there have been no complaint of any misconduct committed by the petitioner from Indian Medical Association. No public had given any complaint. In view of the same, continuation of the proceedings against the petitioner would amount to abuse of process of law.

16. In the result, Criminal Original Petition is allowed and the case in Crime No.576 of 2012 on the file of the respondent police is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Vellore North Police Station,
Vellore.
2. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.N.S.Nandakumar,Advocate Sr.No. 28921

CrI.O.P.No.16387 of 2015 and
M.P.No.1 of 2015

PP(CO)
RV(22/09/2020)