



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.05.2020

DELIVERED ON : 02.06.2020

CORAM:

THE HONOURABLE **DR. JUSTICE G. JAYACHANDRAN**

CrI.O.P. (MD) No.12745 of 2016  
and CrI.M.P. (MD) Nos.6001 & 6002 of 2016

Singaraj

... Petitioner

Vs.

1. Inspector of Police,  
Vanniyampatti Police Station,  
Srivilliputhur Taluk,  
Virudhunagar District.  
(Ref.Cr.No.4 of 2015)

... Respondent/Complainant

2. Dr. Selvabaskar

... Respondent/Defacto Complainant

**PRAYER:** Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records and quash the proceedings in C.C. No.25 of 2016, pending on the file of the learned Judicial Magistrate No.II, Srivilliputhur.

For Petitioner : Mr.R.Anand  
for M/S.R.Nireshkumar

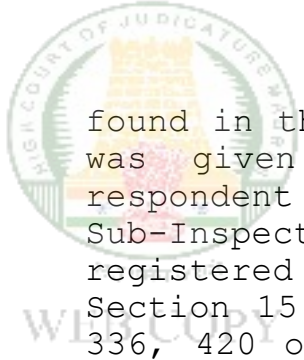
For R1 : Mr.S.Chandrasekar,  
Additional Public Prosecutor

For R2 : No Appearance

### **ORDER**

This petition is filed by the accused to quash the criminal proceedings pending against him on the file of the learned Judicial Magistrate No.II, Srivilliputhur in C.C.No.25 of 2016. The petitioner herein is the sole accused in the said criminal prosecution.

2. The charge against the petitioner is that on 10.01.2015 at about 01.00 p.m., Senior Residential Medical Officer of Government Hospital at Srivilliputhur on the instruction of the Deputy Director, Medical Services, Virudhunagar, had inspected the premises of the petitioner and found that he was practicing allopathy medicine without proper qualification. Allopathy medicines were



found in the premises and the same was seized. A written complaint was given by the Senior Residential Medical Officer to the respondent police narrating the above facts. On his complaint, the Sub-Inspector of Police, Vanniyampatti Police Station, has registered a case against the petitioner for the offence under Section 15(3) of the Indian Medical Council Act, 1956 and Sections 336, 420 of IPC and taken up the investigation. On completion of the investigation, he has filed the final report before the learned Judicial Magistrate No.II, Srivilliputhur. The learned Magistrate prima facie being satisfied, has taken the final report on file assigning C.C.No.25 of 2016 and caused notice to the petitioner to subject him for trial.

3.The petitioner herein, being aggrieved, has approached this Court invoking Section 482 of Cr.P.C., to quash the criminal prosecution on the ground that the petitioner is a Ayurvedic Medical Practitioner, duly registered in the Tamil Nadu Board of Indian Medicine. He is also the proprietor of Sri Govinda Madhi Medicals licensed to sell allopathy medicine. He is competent to practice ayurvedic medicine. As a owner of the medical shop with a licence to sell allopathy medicine, possession of allopathy medicine is not an illegal act. The investigating Officer without proper investigation, has taken the complaint given by the Senior Residential Medical Officer as gospel truth and had filed the final report without any investigation. Likewise, the learned Magistrate without applying his mind had mechanically taken the final report on file and had caused notice.

4.According to the learned counsel for the petitioner, the petitioner has not controverted any of the provision under which he is charged. There is no evidence placed by the prosecution to indicate that he was administering allopathy medicines to the patients posing himself as qualified allopathy medicine practitioner. To charge under section 336 of IPC, act of negligence and rashness ought to have been spoken by the witnesses. None of the statements of the witnesses recorded under Section 161 Cr.P.C., whisper about the rash and negligence on the part of the petitioner. To prosecute a person under Section 15(3) of the Indian Medical Council Act explicit act in contravention of sub-section (2) of Section 15 of Indian Medical Council is necessary. The case of the prosecution as found in the final report along with the statements of the witnesses read together, does not indicate any contravention. Therefore, even if the complaint and the final report are to be taken in entirety, it does not disclose any act of offence and will not end in conviction of the petitioner. Therefore, to prevent abuse of process of law, the prosecution against the petitioner has to be quashed.

5.The learned counsel for the petitioner would further submit that for the offence of cheating, there must be deception and inducement. In the absence of deception and inducement, the petitioner cannot be prosecuted for the offence under Section 420



IPC. Likewise, when there is no allegation of an act done by the petitioner which likely to endanger the life, Section 336 of IPC cannot be invoked. Referring certificate issued by the Tamil Nadu Board of Indian Medicine, Madras certifying the petitioner as a qualified medical practitioner in Ayurvedic Medicine, the learned counsel would submit that when the petitioner is qualified to administer Indian medicine, he cannot be labelled as "quack Doctor" and cannot be prosecuted.

6. In support of his submission, the learned counsel would also refer the letter issued by the Secretary to Government, Health and Family Welfare Department of Tamil Nadu issued on 16.06.2010 and G.O.Ms.No.248, dated 08.09.2010 wherein the Government on taking note that indiscriminating prosecution by the Police against the registered medical practitioner in Indian medicine for administering allopathy medicine, had requested the police department, if any qualified practitioner in Indian medicine found administering allopathy medicine, it should be indicated to the respective council for taken action against them and before taken penal action, respective council should be consulted.

7. Further, the learned counsel would also refer the judgment of the Hon'ble Supreme Court rendered in **Sunil Bharathi Mittal Vs. Central Bureau of Investigation** to emphasis that the Magistrate, who issued process under Section 204 Cr.P.C., against this petitioner, has not applied his mind and not recorded reason for issuing process. Pointing the seal of the Court while taking the final report on file, the learned counsel for the petitioner would state that cryptic order was passed without application of mind and therefore, the dictum laid down by the Hon'ble Supreme Court squarely apply to the case of the petitioner.

8. Per contra, the learned Additional Public Prosecutor representing the State would state that based on the complaint given by one Doctor Selvabaskar, Senior Residential Medical Officer, case was registered against the petitioner and investigation was taken by the Sub-Inspector of Police. It is incorrect to say that medical officer has investigated this case. In this case, kit of Mitpriestone & Misoprostal tablets, Dispovan Insulin Syringe, povidene Iaince Oinment USP, Genotable Eye Ear Drops BD venflon and kit used for allopathy treatment were found in the premises of the petitioner.

9. After recording the statements of the witnesses, the Investigating Officer has found that the cognizable offence has been committed by the petitioner and hence, filed final report under Section 173(2) of Cr.P.C. The learned Magistrate being satisfied that cognizable offence has been made out against the petitioner, has taken the final report on file and issued process. The final report contains list of witnesses and documents relied by the prosecution. The prosecution will be able to prove the statements of the witnesses recorded under Section 161 Cr.P.C., by examining the



witnesses on oath. There is every probability of convicting the accused / petitioner. Therefore, there is no material to entertain this petition.

10. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor.

11. The contention of the petitioner is that he is a qualified medical practitioner in Ayurvedic Medicine and therefore, he cannot be prosecuted for the offence under Section 15(3) of the Indian Medical Council Act. In support of his submission, the petitioner has enclosed the certificate alleged to have been given by the Tamil Nadu Board of Indian Medicine. This certificate indicates that the petitioner is qualified in ayurvedic system of medicine.

12. Indian Medical Council Act, 1956, has been enacted to regulate the medical profession right from admission to the institution upto mode of treatment. It mandates maintenance of All Indian Registers by the Medical Council of India, which should contain list of medical practitioner possessing the requisite qualification. This Act enables the persons with prescribed and recognised medical qualification to practice in Allopathy Medicine. Section 15(3) specifically prohibits persons from practicing allopathy medicine without been registered under this Act.

13. Admittedly, the petitioner herein is not a registered practitioner under the Medical Council of India as defined in the Section 2(b), 2(d) of the Act. The possession of the certificate issued by the Tamil Nadu Board of Indian Medicine will enable him to practice ayurvedic medicine and administer Ayurvedic Medicine only and not Allopathy Medicine. The communication of the Secretary, Health and Family Welfare Department dated 15.06.2010 which is relied by the petitioner categorically indicates that the institutionally qualified practitioners of Ayurveda, Siddha and Unani, who are registered in the Tamil Nadu Board of Indian Medicine, Chennai, are eligible to practice in the respective system with allopathy based on the training and teaching they had in the course. But they cannot exclusively use the Allopathy Medicine.

14. The specific case of the prosecution is that the petitioner herein with 12<sup>th</sup> std qualification practicing Allopathy Medicine posing himself as qualified Doctor in Allopathy. To substantiate their case they have seized allopathy medicine kits from the premises of the petitioner. Statements of the witnesses been recorded by the Investigating Officer. Based on evidence final report had been laid and the learned Magistrate had taken cognizance.

15. In the said circumstances, as pointed out by the learned Additional Public Prosecutor if the facts found in the statements are proved by the prosecution in the manner known to law, the case will end in conviction for violating Section 15(3) of the Indian



Medical Council Act, which reads as under:

15.(3)Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both.

The word "Medicine" mentioned in Section 15(2) is defined in Section 2(f) of the Act, which reads as under:

"medicine" means modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery;

16.From the final report, this Court finds that recovery of kit of Mitpriestone & Misoprostal tablets, Dispovan Insulin Syringe, povidene Iaince Oinment USP, Genotable Eye Ear Drops BD venflon and kit used for allopathy treatment has been spoken by the witnesses. Seizure mahazar is in support of the said statements. As far as sections 420 and 336 IPC, though there is no public witnesses, to say about cheating and negligence by the petitioner, the statement of the defacto complainant probabilises the necessary ingredients for Section 420 and 336 IPC. This is matter for trial and responsibility of the prosecution to prove the necessary ingredients beyond reasonable doubt. The worthiness of the deposition to be recorded by the Magistrate cannot be predicted at this stage.

17.Regarding the ingredients for offences under Sections 420 and 336 IPC, it is appropriate to refer the judgment of the Hon'ble Supreme Court reported in **1996 (4) SCC 332 (Poonam Verma Vs. Ashwin Patel and others)**, which reads as follows:

42.Negligence has many manifestations-it may be active negligence, collateral negligence, comparative negligence, concurrent negligence, continued negligence, criminal negligence, gross negligence, hazardous negligence, active and passive negligence, wilful or reckless negligence or negligence per se, which is defined in Black's law Dictionary as under:

"Negligence per se-Conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes".

43.A person who does not have knowledge of a particular system of medicine but practises in that system is a quack and a mere pretender to medical knowledge or skill, or to put it differently, a charlatan.



18. The learned counsel for the petitioner finally relied upon judgment of the Hon'ble Supreme Court rendered in **Sunil Bharathi Mittal Vs. Central Bureau of Investigation** and would submit that the Magistrate has not applied his mind before taking cognizance of the case and had issued the process mechanically. The facts of the case referred aroused in 2G spectrum scam investigation wherein the Directors of Telecom Company were arrayed as accused. When the Special Judge took cognizance of the offence and proceeded by issuing summons against the Directors, the same was questioned by the Directors. In the said context, Hon'ble Supreme Court, has observed as under:

*"48. Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegation, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the Court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not."*

19. Regarding issuance of summons the Hon'ble Supreme Court has observed as follows:

*...Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.*

*52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is*



unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.

The learned counsel for the petitioner referring the seal found in the final report would state that it is cryptic in nature and there is no application of mind by the Magistrate before taking cognizance.

20. The seal and words written by the Magistrate in the final report examined. The words found in the seal and the signature of the Magistrate ordering issuance of summon to the accused provide adequate indication that the material placed before him were perused and he prima facie satisfied to proceed with trial. When there is material to proceed with trial, mini trial summarily cannot be conducted under Section 482 Cr.P.C.

21. For the reason stated above this Court finds that the materials collected during the investigation provide prima facie material to proceed with trial. Hence, this criminal original petition is dismissed with a direction to the learned Judicial Magistrate No. II, Srivilliputhur to complete the trial in C.C.No.25 of 2016, preferably, within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar (CS)

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To

1.The Judicial Magistrate No.II, Srivilliputhur.

2.The Chief Judicial Magistrate,  
Virudhunagar at Srivilliputhur.

3.The Inspector of Police,  
Vanniyampatti Police Station,  
Srivilliputhur Taluk,  
Virudhunagar District.

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

Crl.O.P. (MD) No.12745 of 2016

02.06.2020

NR(11.06.2020) 8P 5C