



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	23.08.2021
Date of Order	26.10.2021

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.9100 of 2020

and

Crl.MP(MD)No.4276 of 2020

Ramakrishnan

: Petitioner/A2

Vs.

1.The State through
Inspector of Police,
Thuckalay Police Station,
Thuckalay,
Kanyakumari District.
(Crime No.716 of 2020)

: 1st Respondent/Complainant

2.S.Ramesh,
Sub Inspector of Police,
Thuckalay Police Station,
Thuckalay,
Kanyakumari District.

: 2nd Respondent/De-facto
Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the FIR in Crime No.716 of 2020, dated 22.07.2020 for the alleged offences punishable under section 272 IPC and Section 15(3) of Indian Medical Council Act, 1956, pending on the file of the 1st respondent and quash the same as illegal as against the petitioner.

For Petitioner : Mr.K.Sivabalan
for Mr.G.Aravinthan
For Respondents : Mr.K.Sanjay Gandhi
Government Advocate (Crl. side)

O R D E R

This petition has been filed by the petitioner seeking quashment of the case in Crime No.716 of 2020 pending on the file of the 1st respondent as against him.



2.The case of the prosecution is that the 2nd respondent, who is the de-facto complainant, working as Sub Inspector of Police, attached to Thuckalay Police Station along with his team members on regular petrol duty near Ramanparambu, Pandarakulakarai, on 22.07.2020 at about 11.00 am, they saw the accused persons in that place and on seeing them, they tried to escape. On enquiry and check up their plastic bags, at that time, they found two bottles of Termin-Mephentermine Sulphate injunction IP, Mephentermine Sulphate injunction IP, Nandro-dev medicine and 29 empty medicine bottles and 125 syringes. On enquiry, they told that without any prescription issued by a Medical Consultant, they purchased the medicines for the purpose of using the customers coming to the Body Builders Gym. So, they were arrested on the basis of the complaint given by the 2nd respondent and a case in Crime No.716 of 2020 was registered for the offences under section 272 IPC and Section 15(3) of the Indian Medical Council Act, 1956.

3.Pending investigation, this petition came to be filed mainly on the ground that the offence under section 15(3) of the Indian Medical Council Act, 1956 is a non-cognizance offence and so also section 272 IPC is bailable in nature and the police namely the 1st respondent herein has no power to register a case and investigate the matter without prior permission from the concerned jurisdictional Magistrate Court.

4.Heard both sides.

5.Reading of the FIR shows that on the particular date of occurrence, this petitioner was found in possession of the above said medicines and syringes and he was not in possession of proper prescription issued by a Registered Medical Consultant. No doubt, since the petitioner was in possession of the above said medicines and syringes, a question that arises for consideration is that mere possession of the above said medicines and syringes will attract section 272 IPC and section 15(3) of the Indian Medical Council Act, 1956. It is the case of the prosecution that these articles are capable of endangering the human life.

6.Section 272 IPC reads as follows:-

"272.Adulteration of food or drink intended for sale.-Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which



may extend to six months, or with fine which may extend to one thousand rupees, or with both.

7.A reading of the above provision shows that the prosecution must show a prima facie ground that this petitioner adulterated any article of food or drink. The main ingredient is that this petitioner might have adulterated any article of food or drink, making it not fit for human consumption. So, the allegation against the petitioner does not attract the ingredients of the offence under section 272 IPC.

8.Moreover, as mentioned by the petitioner, it is non-cognizance offence, which the police has no right to investigate the matter without prior permission from the concerned jurisdictional Magistrate Court under section 154 of the Cr.P.C. Hence, in the absence of any permission, registration of the crime under section 272 IPC itself is illegal.

9.The next offence is section 15(3) of the Indian Medical Council Act, 1956, which reads as follows:-

15(3).Right of persons possession qualifications in the Schedules to be enrolled.-

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).

But this provision does not relate to the offence that has been alleged against this petitioner. So the 2nd provision, that has been mentioned in the FIR is not correct and if at all, the petitioner can be proceeded only for dealing with the drugs negligently and even for this purpose, it must be alleged that the drug, which was in the possession of the petitioner, either poisonous in nature or capable of endangering the human life. But there is no such allegation. So, the allegations mentioned in the FIR does not attract the offence mentioned in the FIR. Further, even it is considered that the offence under section 272 IPC attracts, it is barred by limitation, since the date of occurrence is stated to be 22.07.2020. Even after a lapse of one year, final report has not been filed, after completion of the investigation. So, I am of considered view that none of the ingredients of the offence mentioned in the FIR attracts any of the ingredients of the offence under section 272 IPC and Section 15(3) of the Indian Medical Counsel Act, 1956 as against this petitioner. So, the FIR is liable to be quashed.



10. Accordingly, this criminal original petition stands **allowed**. The FIR in Crime No.716 of 2020 pending on the file of the 1st respondent as against this petitioner is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO:-

1. The Inspector of Police,
Thuckalay Police Station,
Thuckalay,
Kanyakumari District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.ARAVINTHAN, Advocate (SR-32962[F] dated 28/10/2021)

Cr1.OP (MD)No.9100 of 2020
26.10.2021

PS (CO)
GC/PM(25.11.2021) 4P 4C