



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 05.03.2021

Delivered On : 08.04.2021

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.11991 of 2017

and

Crl.M.P.(MD)Nos.8248 & 8249 of 2017

V.Selvam ... Petitioner/Accused

Vs.

1.The Inspector of Police, ... 1stRespondent/Complainant
Aamathoor Police Station,
Virudhunagar District
Cr.No.83/2016.

2. Palaniyappan ...2ndRespondent/Defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the charge sheet in C.C.No.14/2017 on the file of the Judicial Magistrate Court NO.II, Virudhunagar and quash the same as illegal.

For Petitioner	: Mr.S.Mohamed Suhail for M/s.Ajmal Associates
For Respondent 1	: Mr.M.Ganesan Government Advocate (crl.side)
For Respondent 2	: Mr.M.Solaisamy

ORDER

This petition has been filed seeking for quashment of the charge sheet in C.C.No.14 of 2017 on the file of the Judicial Magistrate No.II, Virudhunagar.

2.The case of the prosecution before the trial Court is that the petitioner is the accused before the trial Court and on the instruction given by the District Collector, Virudhunagar, the defacto complainant and a Team was formed to nab quacks operating in the area and the Team inspected the petitioner's premises on 19.03.2016, at about 03.00 p.m. and the petitioner was found in possession of Allopathy medicines and prescribed tablets and



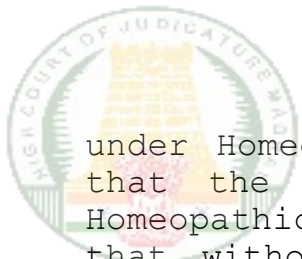
medicines, by claiming that he is a qualified Doctor, but he is not qualified in Allopathic medicine and so, he is liable to be punished for the offence under Section 420 I.P.C. and Section 15(1) of Indian Medical Council Act. Based upon the complaint given by the defacto complainant, the first respondent registered a case in Crime No.83 of 2016 under Section 420 I.P.C. and Section 15(1) of Indian Medical Council Act. The respondent police collected materials, recorded the statement of witnesses and filed the final report as stated above. Seeking quashment of the final report, the petitioner is before this Court by way of this Criminal Original Petition.

3. According to the petitioner, he is a qualified medical practitioner, having been awarded B.H.M.S. Degree by Tamil Nadu Dr. M.G.R. Medical University, Chennai and his Enrollment Number is 672, which is a registered Number. For the past 21 years, he is practicing medicine as per Section 17(3) B of the Indian Medicine Central Council Act, 1970 as a qualified medical practitioner with modern scientific medicine including Surgery, Gynecology, Obstetrics, Anesthesiology, ENT and Ophthalmology etc, based upon the training and teaching. He is not practicing in Allopathy medicines, but, along with Homeopathy medicine, he rarely used Allopathy medicines along with Homeopathy medicine for treatment.

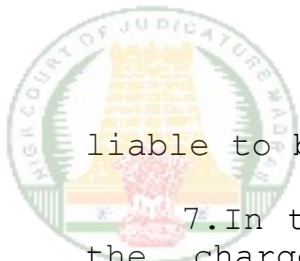
4. The Central Council of Indian Medicine Institution, New Delhi, has issued a notification in F.No.28-5/2014-A7(MM), dated 19.05.2004 by which, the qualified Medical Practitioners of Ayurveda, Siddha, Homeopathy and Unani are eligible to practice in the respective systems with modern scientific medicine including Surgery and Gynecology as stated above. Similarly, a Government in a letter No.22715/IM-II-2/2010, dated 15.06.2010, issued directions to the police officers, who indulged in registering a case and arrested the Indian Medical practitioners. The same notification was also extended to Homeopathy Medical practitioners in letter No. 22715/IM 2(2)/2010-4, dated 16.06.2010. So, as per the notification, the police have no right to interfere into the practice of the Medical Practitioner's practice. Similarly, the Director General of Police (DGP), Chennai, has also issued a Memorandum, dated 19.06.2010 to the police not to intervene into the Medical Practitioners' practice under the Indian Medicine Category.

5. Heard both sides and materials available on records perused.

6. It is very unfortunate that it was of repeated circulars, orders and notifications issued by the Government and as well as the High Court still for the Homeopathy Medical Practitioner, who prescribes Allopathy Medicine, they are also continuing treatment along with Allopathy medicine. The petitioner enclosed a copy of B.H.M.S. Degree awarded by the Tamil Nadu Dr. M.G.R. Medical University, Chennai and he has also given the registration number



under Homeopathic Medical Council Act. So, it is clear on record that the petitioner is a qualified Medical Practitioner under Homeopathic Category. Now, the allegation against the petitioner is that without proper education and training, he is practicing in Allopathy Medicine and he was found in possession of Allopathy Medicine. In the complaint also, it is stated he has prescribed such medicine to the patient. According to the prosecution, it is nothing but cheating and a violation of Section 15(1) of Indian Medical Council Act. The point which has been raised in this petition is no more *res integra*. A group of Medical Practitioners under the Indian Medicine System challenged the police action against them in W.P.(MD)Nos.7678 of 2010 batch., [Tamil Nadu Siddha Medical Graduates' Association Vs. Indian Medical Association represented by his Chairman and others reported in 2011 (2) CTC 203]. The issue in that case was whether the qualified Medical Practitioners under the Indian Medicine System were prevented by the police on the ground that they are not entitled to practice Allopathy System of Medicine. A contention was raised by the petitioner is that as per Section 17 of Indian Medicine Central Council Act, 1970, a notification was issued by Central Council of Indian Medicine in notification No.8-5-96, A4(MM), dated 30.10.1996, by which, it was clarified that the Institutional qualified practitioners of Indian System of Medicines Ayurvedic, Homeopathic and Unani are eligible to practice Indian System of Medicine and Modern Scientific Medicine including Surgery, Gynecology, Obstetrics, Anesthesiology, ENT and Ophthalmology, based on the training and teaching. This contention was accepted by this Court and after going through the various provisions operating in the field came to the conclusion that if at all any mal-practice is committed by a registered Medical Practitioner, only the Act which govern the particular Medical Practitioner can be invoked for taking action and police action should not lie. More over, the State Government has also issued a circular, dated 15.06.2010, directed the aggrieved individual to approach the respective Medical Council and the Government for taking appropriate action against that particular Medical Practitioner and this judgment is followed by this court in a number of judgments, namely, Dr. Surendran Vs. The Inspector of Police, Karur Police Station and another in Crl.O.P.(MD)No.21807 of 2013, by its order, dated 18.04.2018. T. Mathivanan Vs. The State of Tamil Nadu rep. by the Inspector of Police, Thathaiyengarpet Police Station and another in Crl.O.P.(MD)No.14345 of 2015, by its order, dated 24.10.2018 and T.Maria Antony Vs. The State rep. by the Sub Inspector of Police, Uthumalai Police Station, in Crl.O.P.(MD)No.12919 of 2013, by its order, dated 06.03.2018. In all these cases, it has been categorically held that police cannot register a case against the registered Medical Practitioners and only the concerned Medical Council is empowered to take action. So, from the facts narrated above, the case of cheating, violation of Indian Medical Act are not available and attracted and so, the final report filed against the petitioner before the trial Court is



liable to be quashed.

7.In the result, this Criminal Original Petition is allowed and the charge sheet in C.C.No.14 of 2017 on the file of the Judicial Magistrate No.II, Virudhunagar is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Judicial Magistrate No.II,
Virudhunagar.

2.The Inspector of Police,
Aamathoor Police Station,
Virudhunagar District

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

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-15753[F] dated
09/04/2021)

Crl.O.P. (MD)No.11991 of 2017
08.04.2021

AS(24.05.2021) 4P 5C