



*Crl.O.P.No.18863 of 2021
and Crl.MP.No.10374 of 2021*

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

CORAM:

THE HONOURABLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.No.18863 of 2021

and

Crl.MP.No.10374 of 2021

Dr.S.Sathik Basha

... Petitioner

-Vs-

1. The State rep. by
The Inspector of Police,
Thiruvannamalai Taluk Police Station,
Thiruvannamalai District.
(Crime No.880 of 2021)
2. Dr.M.Kannagi,
Joint Director of Health Service,
Thiruvannamalai, Thiruvannamalai District.

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, praying to call for the records relating to the FIR in Crime No.880 of 2021 on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.I.Calvin Jones

For Respondents : Mr.A.Damodaran

Additional Public Prosecutor for R1

R2-No Appearance



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ORDER

This Criminal Original Petition has been preferred to call for the records pertaining to the FIR in Crime No.880 of 2021 on the file of the first respondent police and quash the same as illegal.

2. On the complaint given by one Dr.M.Kannagi, who is the Joint Director of Health Service, Tiruvannamalai, that on 14.09.2021, when the above Joint Director of Health Services went for inspection at Nallavanpalayam village, she came to know that the petitioner, who is qualified in Homeopathic medicine, has been giving Allopathy treatment. On the basis of the above complaint, a case was registered against the petitioner for the offence under Sections 417 IPC and 15 of Indian Medical Council Act.

3. The learned counsel for the petitioner submitted that the petitioner is qualified as a Homeopathy Doctor by virtue of a degree awarded to him by Tamil Nadu Dr.M.G.R Medical University, Chennai. He also enrolled as a registered Medical Practitioner vide Registration No.2414 on 04.03.2008 under Tamil Nadu Homeopathy System of Medicines and Practitioners of Homeopathy Act, 1971. As per Section 17(3) (B) of the Indian Medicine



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Central Council Act, 1970, an institutionally qualified practitioners are eligible to practice respective system with modern scientific Medicine including surgery, Gynecology Obstetrics, Anesthesiology, ENT, Ophthalmology etc., based on the training and teaching. The petitioner rarely use Allopathy medicines along with Homeopathy treatment whenever required. It is a practice of police personnel to interfere with the registered medical practitioners, who are practicing other system of medicines like Ayurveda, Siddha, Unani Tibb etc. So a writ petition was filed for directions. Pending the writ petition, a Government letter in Letter No.22715/IM 2(2)/2010-4 dated 15.06.2010 has been issued. In the said Government order, a direction has been given to police not to interfere with the Homeopathy practitioners.

3.1. Even assuming that the petitioner was exclusively administering Allopathy medicines, the first respondent cannot interfere and register a case against him. Yet another Government order has been issued in G.O(Ms.)No.248, Health and Family Welfare Department, dated 08.09.2010, that every registered medical practitioner holding qualification specified in the II, III and IV schedule of Indian Medicine Central Council Act, 1970 and



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part III of the schedule of Tamil Nadu System of Medicine Act, 1997 and registered in the Medical Register of the State shall be considered as an eligible person to practice modern scientific system of medicine for the purpose of the Drugs and Cosmetics Act, 1940. Hence, in all probabilities, the action of the respondent in registering the case against the petitioner is illegal and unwarranted.

4. The petitioner is a qualified Homeopathy Doctor, who was awarded with a degree of Bachelor of Homeopathy Medicine and Surgery by the Tamil Nadu Dr.MGR University, Chennai. By virtue of the above qualification, he got himself registered under the Tamil Nadu Homeopathy System of Medicine and Practitioners of Homeopathy Act, 1971. Eventhough, the petitioner is a qualified Homeopathy Doctor, he is also entitled to practice Allopathy in terms of Section 38(8) of the Tamil Nadu Homeopathy System of Medicine and Practitioners of Homeopathy Act, 1971. For the purpose of clarity, the import of Section 38(8) of the said Act is extracted as under:-

"30(8) Notwithstanding anything contained in this Act or in any other law for the time being in force, all persons possessing any of the qualification specified in the Schedule



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who at the commencement of this Act are practicing both Homeopathy and Modern medicine shall be entitled to continue such practice."

5. The term "Modern Medicine" is defined under Section 2(8) and the same is as under:-

"2(8) "modern medicine" means modern scientific medicine commonly known as allopathic medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery."

6. Even as per Section 17(3) (B) of The Indian Medical Councils Act, 1971, an institutionally qualified practitioner is eligible to practice respective system with modern scientific medicine including surgery, Gynecology Obstetrics, Anesthesiology, ENT, Ophthalmology etc. But without being aware of the provisions of law, the registered practitioners of other systems of medicines namely Ayurveda, Siddha, Unani Tibb etc., were being disturbed by the police by implicating them in criminal cases by alleging that they are practicing Allopathy medicines. In view of the same, Doctors of other system have filed a writ petition to prevent them from disturbing their practice. In this regard, a Government letter in Letter No.22715/IM



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2(2)/2010-4 dated 15.06.2010 was written to the Director General of Police to instruct the police officers of the Districts not to intervene with the practice of medical practitioners of Ayurvedha, Siddha, Unani, Naturopathy etc., who are registered in the Tamil Nadu Siddha Medical Council and Tamil Nadu Board of Indian Medicine.

7. The impact of the above direction is that if an institutionally qualified medical practitioners of other system is practicing their own system along with Allopathy, they are not liable for violating the law governing their medical practice. Following the above Government letter, yet another clarification was also added in the same letter No.22715/IM-2-2/2010-4 dated 16.06.2010 by stating that the instructions given already is applicable to the registered medical practitioners under Homeopathy system also.

8. On 08.09.2010, a specific Government Order was also issued in G.O (Ms).No.248 and the same is as under:-

"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



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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, gynaecology 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, Immunisation 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



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Practitioners) Act, 1997 (Tamil Nadu Act 34 of 1997) and registered in the Medical Register of the 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)".

9. In view of the training and teaching given to the institutionally qualified practitioners, the usage of Allopathy medicines, which falls under the term "modern medicine" has been approved by the Law governing the Tamil Nadu Homeopathy System of Medicine and Practitioners of Homeopathy Act, 1971. The respondent police had registered the case against the petitioner unmindful of the above Act. In fact, the Government letter was issued to the Director General of Police to instruct the police not to intervene with the registered practitioners of Siddha, Ayurveda, Homeopathy and Naturopathy. It is deplorable that these type of cases are being registered unnecessarily.

10. The Act of the respondent in registering the case against the petitioner is not only violation of law, but also disobedience of various Government Orders given in this regard. No Court shall take cognizance of any offence punishable under the Tamil Nadu Homeopathy System of



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Medicine and Practitioners of Homeopathy Act, 1971 except on a written complaint given by the Registrar. Section 30 of the said Act reads as under:-

"30. Jurisdiction of criminal courts:- (1) No court shall take cognizance of any offence punishable under this Act except on complaints in writing made by the Registrar in this behalf.

(2) No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under this Act."

11. But in this case, a complaint has been given by a Joint Director of Health Services, who is not qualified to give a complaint against a Homeopathy Doctor in view of Section 30 of the Tamil Nadu Homeopathy System of Medicine and Practitioners of Homeopathy Act, 1971. Even though various legal safeguards have been made to regulate the registered practitioners of other systems of medicine other than Allopathy, the qualified practitioners of other system are put to task unnecessarily. In fact, the Director General of Police has issued a circular following the Government Letter No.22715/IM 2(2)/2010-4 dated 15.06.2010 and 16.06.2010 to all police officers of the State not to intervene with the practice of registered practitioners vide circular in RC.No.147472/Cr.IV(2)/2010 dated



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12. Unless a complaint is routed through the Registrar of Tamil Nadu Homeopathy Medical Council, no action ought to have been taken against the registered Homeopathy practitioners in view of Section 30 of Tamil Nadu Homeopathy System of Medicine and Practitioners of Homeopathy Act, 1971. Since the respondents have violated law and disobeyed Government Orders, Circulars and even previous judgements, I feel without any hesitation that the FIR is liable to be quashed.

13. In view of the above, the proceedings in F.I.R. in Crime No.880 of 2021 on the file of the first respondent police is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

23.09.2022

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To

1. The Inspector of Police,
Thiruvannamalai Taluk Police Station,
Thiruvannamalai District.
2. The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J,

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