



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.4793 of 2019
and
Crl.MP(MD)No.2947 of 2019

Thangavanangamudi ... Petitioner/A1

Vs.

1.The Superintendent of Police,
Theni District, Theni.

2.The Inspector of Police,
Kadamalaikundu Police Station,
Theni District.
(Crime No.634 of 2018)

... Respondents/Complainants

3.The Joint Director,
Medical and Rural Health Services,
Periyakulam,
Theni District.

4.The Assistant Collector, (Trainee),
Theni District, Theni. ... Respondents/Defacto Complainants

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to CC No.24 of 2019 pending on the file of the Judicial Magistrate, Andipatti and quash the same.

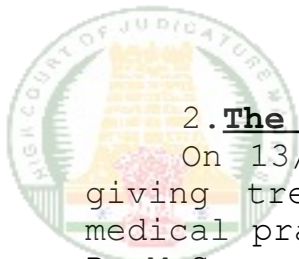
For Petitioner : Mr.T.Lajapathi Roy
for Mr.A.Balaji

For Respondents : Mr.SS.Madhavan
Government Advocate
(Criminal side)

O R D E R

The petition has been filed seeking quashment of the case in CC No.24 of 2019 pending on the file of the Judicial Magistrate, Andipatti.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The case of the prosecution in brief:-

On 13/11/2018 at about 01.00 pm, the accused person was found giving treatment to the public as if he is properly qualified medical practitioner. So on the basis of the complaint given by one Dr.M.Saraswathi, attached to Periyakulam Medical Department, a case in Crime No.634 of 2018 was registered for the offences under sections 417, 420 IPC and section 15 of the Indian Medical Council Act, 1956. On the basis of the above said complaint, investigation was undertaken and after completing the formalities of investigation, final report has been filed and it was taken cognizance in CC No.24 of 2019 by the Judicial Magistrate, Andipatti.

3. Seeking quashment of the same, this petition came to be filed by the petitioner on the ground that the said Vivekananda Hospital is run by a Trust called 'Social Welfare and Educational Development Organization (SWEDO) and the petitioner is the Managing Trustee of the above said Trust. As a Trustee, he was discharging his function and he is not practising medicine as mentioned in the complaint and the hospital is run by the Trust by employing qualified medical practitioners.

4. Heard both sides.

5. The Trust, which is run by the petitioner is known for its integrity and serving the public, especially the downtrodden people in the hilly area. The complaint has been given by the Health Department Official as if this petitioner was practising allopathy medicine and he was also found in possession of drugs, which expired and also tools for identifying the gender of the foetus.

6. A counter affidavit has been filed by the second respondent stating that on 13/11/2018, the third respondent along with other persons conducted inspection in the clinic and at that time, they were found in possession of medicines and kits for aborting the pregnancy. During the course of the above said inspection, documents and drugs have been recovered, which in-turn handed over to the Investigating Officer for the purpose of investigation. After completing the investigation, final report has been filed. It is also stated that the petitioner is also involved in Crime No.23 of 2011 and he was also convicted. But to show the conviction of the petitioner in the previous case, no document has been produced by the 3rd respondent.

7. The learned counsel appearing for the petitioner would submit that except this case, no other case has been registered against the petitioner's Trust. In the typed set of papers, the Certificate of Registration of the Hospital is produced, which is dated 25/05/2016 and the licence period expired, on 22/06/2020, which means that during the subsistence of the above said licence period, the present complaint came to be registered.



8.By filing the additional typed set of papers, the petitioner has produced the Renewal Certificate of Registration of the Hospital, which is dated 10/02/2020. The licence period is extended upto 09/02/2025 from 10/02/2020. So, it is seen that the hospital was properly registered under the provisions of the Tamil Nadu Clinical Establishments (Regulation) Act, 1997 and Rules framed thereunder. So the contention on the part of the prosecution that it is an unregistered and unauthorized clinic is not correct on record. It is also seen that the Investigating Officer has not taken care to see, whether the hospital is recognized one or not. It appears that a case has been registered on the information that has been furnished by the Trainee District Collector to the Director of Rural Health Department and the concerned authority inspected the hospital and found some irregularities. She has also lodged a complaint with the Tamil Nadu Medical Council against the medical practitioners, who were attending the hospital as Visiting Doctors. Some of the irregularities have been mentioned in the complaint and most of the irregularities were found, while preparing the case sheet of the patients. Explanation has been called for from the Visiting Doctors, including the Medical Officer in-charge of the Vivekanandha Hospital and Mr.P.Elangovan is one of the Trustees of the hospital. All of them have submitted their explanation to the Medical Council on various dates. Further development is not known. These documents show that in respect of the irregularities, proper action has been taken and enquiry was undertaken by the Directorate of Rural Health Services, Theni District. So it is for the Medical Council to proceed against the Medical Practitioners and this will not cloth any criminal liability on the Medical Practitioners. It can be termed only as misconduct or irregularity, as the case may be, for which as mentioned earlier, only disciplinary action can be initiated against the Medical Practitioners.

9.At no stretch of imagination, these irregularities can be called as criminal offences. Reading of the final report shows that no proper care has been taken by the Investigating Officer to verify the ground realities. He has recorded statements of two so called patients and filed a final report stating that there was cheating and violation of the Indian Medical Council Act, 1956.

10.From the documents produced, it is seen that the drugs licence has been obtained scan centre was duly certified and licensed. So it is very unfortunate that the Trust, which is maintaining the hospital with a sole purpose of servicing the downtrodden people has been booked for no reason. Absolutely, no criminality can be attached. The question of cheating may also not arise.

11.Section 15 of the Medical Council Act, reads as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>



"15. Right of persons possessing qualifications in the Schedules to be enrolled.-1 [(1)] Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register. 2[(2) Save as provided in section 25, no person other than a medical practitioner enrolled on a State Medical Register,-

(a) shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

(b) shall practise medicine in any State;

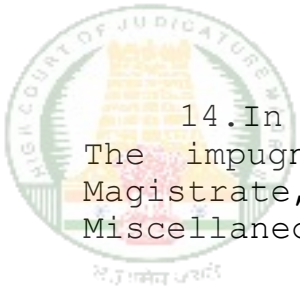
(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872 (1 of 1872) on any matter relating to medicine.

(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.]"

12.The allegation against this petitioner is that he is not having proper qualified certificate for running the hospital or for practising medicine. Absolutely, no evidence is available on record to show that this petitioner was practising allopathy medicine.

13.As mentioned earlier, the petitioner is only a Trustee and he is holding office for managing the hospital. Except that, he has no role in supplying medicine advice or treating the patents. As mentioned earlier, only two of the witness statements have been recorded by the Investigating Officer in a bald manner. As mentioned earlier, without properly verifying all the records, final report has been filed. So the initiation of the criminal prosecution itself is not proper and if it is allowed to continue, then it will amount to punishing the Charitable Institution, which cannot be



14. In the result, this criminal original petition is **allowed**. The impugned CC No. 24 of 2019 on the file of the Judicial Magistrate, Andipatti is quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/06/2022

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 Judicial Magistrate,
Andipatti.
2. The Superintendent of Police,
Theni District, Theni.
3. The Inspector of Police,
Kadamalaikundu Police Station,
Theni District.
4. The Joint Director,
Medical and Rural Health Services,
Periyakulam,
Theni District.
5. The Assistant Collector, (Trainee),
Theni District, Theni.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.OP(MD)No.4793 of 2019
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