



CrI.O.P.(MD) No.12051 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2022

CORAM:

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

CrI.O.P.(MD) No.12051 of 2022

and

CrI.M.P(MD) Nos.7621 and 7622 of 2022

1. Lucka,

2. Mary Rathina,

: Petitioners

Vs

1. State of Tamil Nadu represented by
The Inspector of Police,
Kadaiyalumodu Police Station,
Kanyakumari District.
(Crime No.108 of 2020
Pending PRC No.56/2021 in the
Court of learned Judicial Magistrate
No.1,Kuzhithurai)

2. Purusothaman,

: Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying
this Court to call for the records pertaining to the case in PRC No.56 of 2021
on the file of Judicial Magistrate No.1, Kuzhithurai, Kanyakumari District



Crl.O.P.(MD) No.12051 of 2022

and quash the same.

For Petitioners : M/s.Titus S,
For R1 : Mr.M.Sakthi Kumar,
Government Advocate (Crl.Side)

ORDER

This criminal original petition has been filed seeking to quash the charge sheet in PRC No.56 of 2021, on the file of learned Judicial Magistrate No.1, Kuzhithurai, Kanyakumari District.

2.The learned Counsel appearing for the petitioner submitted the petitioners are the Accused Nos.1 and 3 in PRC No.56 of 2021, on the file of learned Judicial Magistrate No.1, Kuzhithurai, Kanyakumari District. The petitioners have not practised any Allopathy Medicine in their Hospital. The case of the prosecution is that the petitioners had practised Allopathy Medicine and gave treatment to one Abinesh, who is the son of the defacto complainant. Because of the treatment administered by the petitioners, the deceased Abinesh died. Further, they hanged one a board bearing the name of one retired Doctor Ganesh M.B.B.S, in their clinic and thereby, cheated the



Crl.O.P.(MD) No.12051 of 2022

public to believe that they are competent to administer the Allopathy Medicine. In fact, they are not permitted and authorised to practice the Allopathy Medicine and the deceased Abinash was not treated in the petitioners' Hospital. But, the prosecution alleged that the deceased was treated in the petitioners' Hospital and because of maltreatment or improper treatment given by the petitioners, he died and thereby charged for the offences under Sections 294(b), 506(1), 419, 420, 304, 212 and 201 IPC and Section 15(3) of Indian Medical Council Act, 1956. All the allegations stated in the charge sheet as well as in the statement of the witnesses against the petitioners are false one. They never practised the Allopathy Medicine in their clinic and only on previous enmity, the defacto complainant lodged a complaint against the petitioners. Hence, he pleaded to quash the proceedings in PRC No.56 of 2021, on the file of the learned Judicial Magistrate No.1, Kuzhithurai, Kanyakumari District.

3.The learned Government Advocate (Crl.Side) submitted that based on the complaint lodged by the defacto complainant, alleging that on 30.08.2020, the defacto complainant's son was taken to the petitioners' Hospital for treatment and due to improper treatment, his son was died, for the same, the



CrI.O.P.(MD) No.12051 of 2022

case has been registered against the petitioners. After investigation, it was found that the petitioners administered Paracetamol 1cc injection and prescribed Allopathy Medicine. Because of administering the intra muscular injection, the deceased suffered Gas gangrene in his left thigh and due to mis-administration of medicine, he died. Further, he stated that the petitioners practised Allopathy Medicine and placed a board bearing the name of one retired Doctor Ganesh M.B.B.S to show that they are licensed to practise Allopathy Medicine and thereby cheated the public as though they are permitted by the Medical Council to practise Allopathy Medicine. Hence, the petitioners were prosecuted. The disputed fact i.e., whether the petitioners administered Allopathy Medicine to the patients or not has to be decided by the trial Court by let in the prosecution evidences. At this stage, it is inappropriate to quash the criminal proceedings in PRC No.56 of 2021, on the file of Judicial Magistrate No.1, Kuzhithurai, Kanyakumari District and pleaded to dismiss this petition.

4.The Hon'ble Supreme Court in **Indian Oil Corporation vs. NEPC India Limited and others [(2006)6 SCC 736]** laid down the principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal



Procedure to quash complaints and criminal proceedings, which are relevant for the present purpose are:-

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the



ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

5.I have considered the matter in the light of the submissions made by both the parties.

6.On perusal of records, it is seen that when the defacto complainant brought his son to the petitioners' Hospital for treatment, the petitioners



CrI.O.P.(MD) No.12051 of 2022

administered Paracetamol 1cc injection and prescribed Allopathy Medicine.

Because of administering the intra muscular injection, the deceased suffered from Gas gangrene in his left thigh and due to mis-administration of medicine, he died. Therefore, the case has been registered and on investigation, the respondent police found that the petitioners practised Allopathy Medicine and placed a board bearing the name of one retired Doctor Ganesh M.B.B.S to show that they are licensed to practise Allopathy Medicine and thereby cheated the public as though they are permitted by the Medical Council to practise Allopathy Medicine. Hence, the petitioners were prosecuted. Even though the witnesses stated that the petitioners administered Allopathy Medicine to them, the learned Counsel appearing for the petitioners denied the said statement. Hence, the factual defense i.e., whether the petitioners administered Allopathy Medicine to the patients or not, has to be decided by the trial Court.

7. On perusal of the charge sheet and the statement of witnesses shows that *prima facie* an offence and allegation made therein will have to be taken on the face value. If it could not be said that their prosecution would amount to an abuse of process of the Court, invoking inherent power, prior to the



CrI.O.P.(MD) No.12051 of 2022

commencement of trial and leading of evidence, to quash prosecution is not desirable. Power should be exercised only in exceptional cases. Hence, I find no merits in the Criminal Original Petition.

8.At this stage, the criminal proceedings in PRC No.56 of 2021, on the file of Judicial Magistrate No.1, Kuzhithurai, Kanyakumari District, cannot be quashed. Therefore, I find no merit in this criminal original petition and the same is dismissed. Consequently, the connected miscellaneous petitions are closed.

06.07.2022

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
lr



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CrI.O.P.(MD) No.12051 of 2022

V.SIVAGNANAM, J.

lr

To

1.The Inspector of Police,
Kadaiyalumodu Police Station,
Kanyakumari District.

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

CrI.O.P.(MD) No.12051 of 2022

06.07.2022