



Crl.O.P.(MD)No.11037 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **08.06.2023**

CORAM

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P.(MD)No.11037 of 2021
and Crl.M.P(MD).No.5640 of 2021

Kaliyammal

... Petitioner

Vs.

1.The State

Rep.by Inspector of Police,
Guziliamparai Police Station,
Dindigul District.

2.Dr.Ilango, MBBS,

Block Medical Officer,
Government Primary Health Centre,
Guziliamparai, Dindigul District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the proceedings in Crime No.523 of 2021 on the file of the first respondent and quash the FIR as abusive process of law.



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For Petitioner : No-appearance
For Respondents : Mr.E.Antony Sahaya Prabhakar
Additional Public Prosecutor
for R1
Mr.R.Aravind Raj for R2

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to the proceedings in Crime No.523 of 2021 on the file of the first respondent and quash the same.

2. The case of the prosecution is that on 29.06.2021, at about 12 noon, the second respondent conducted inspection at Kumar Clinic which was alleged to be run by the first accused and the second accused was working as a assistant in the said clinic. During the course of inspection, it is found that the first accused was giving treatment by providing allopathy medicines without any valid license either to practice or possess the said medicines. The second accused said to have assisted the said first accused. The first accused escaped from the scene of occurrence and the second accused even though available at the time of the inspection subsequently, she wen to toilet and escaped from the scene



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of the occurrence. Thereafter, the complainant and his team recovered all the medicines available in the clinic and lodged a complaint before the respondent police and the respondent police registered a case against the petitioner and A1 for the alleged offence under Section 420 IPC and 15(3) of the Indian Medical Council Act, 1956.

3.The petitioner/A2 filed this quash petition to quash the FIR. The learned counsel for the petitioner submitted that even as per allegation, the petitioner was working as Assistant to A1. Hence, no offence is made out against the petitioner. The learned counsel further submitted that there was no evidence collected during the investigation to substantiate the charge of A1 provided treatment to any persons. They only recovered allopathy medicines. A1 running the medical shop with proper license from the various department. In the Medical Shop, recovered medicines are available. Therefore, no offence is made out.

4.The learned Additional Public Prosecutor appearing for the first respondent, on instructions, would submit that now, a final report has been filed before the trial Court.



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5. Heard the learned counsel appearing for the petitioner, the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the second respondent.

6. The first accused was running a medical shop with proper Certificate which has been obtained from the local body. The second respondent and his team visited the medical shop. On seeing the team, both the accused persons left the place. Therefore, the present complaint has been made before the first respondent Police. The first respondent Police has registered a case for the alleged offence punishable under Sections 420 IPC and 15(3) of Indian Medical Council Act, 1956. Even as per the allegation, there is no averment that at the time of conducting the inspection, both the accused persons have given treatment to anybody. The first accused gave the explanation that she was conducting the medical shop after obtaining proper license. A2 was working in the Medical Shop. Except the recovery of the legally allowed medicines from the shop no other incriminative materials available against the petitioner namely, A2 to prosecute offence under Section In the said circumstances, this Court does not find any ingredient to constitute the



offences under Sections 420 IPC and 15(3) of Indian Medical Council Act, 1956.

7. Section 15(3) of Indian Medical Council Act, 1956 as follows:-

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



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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.]”

8.Since the learned Additional Public Prosecutor submitted that final report was filed, this Court called the final report and perused the final report. From the perusal of the final report, this Court finds no incriminating material to constitute the offence under Section 420 IPC and 15(3) of Indian Medical Council Act, 1956.

9.In order to constitute the offence under Section 15(3) of Indian Medical Council Act, 1956 there must be some material to substantiate the allegation that the A1 gave treatment to the any person. Not even hear say evidence collected by the Investigating Agency to substantiate the allegation of practicing the allopathy medicine by the first accused and the petitioner. Hence, without any material against the petitioner and the first accused that they are indulging in the act of medical practise as



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stated in the Indian Medical Council Act, this Court, finds merits in the contention of the learned counsel for the petitioner that no incriminating material available against the petitioner to continue the prosecution under the offence as stated above.

10.In view of the above, the proceedings in Crime No.523 of 2021 on the file of the first respondent and the consequential final report said to have filed before the jurisdictional Court are quashed insofar as the petitioner is concerned and accordingly, this Criminal Original Petition is allowed. Connected miscellaneous petition is closed.

08.06.2023

Index : Yes / No
Internet : Yes / No
ssb/dss

To

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2.Dr.Ilango, MBBS,

Block Medical Officer,
Government Primary Health Centre,
Guziliamparai, Dindigul District.

3.The Additional Public Prosecutor,

Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN,J

ssb/dss

Order made in
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Dated:08.06.2023