



Crl.O.P.(MD) No.14735 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2023

CORAM:

THE HONOURABLE **MR. JUSTICE K.K.RAMAKRISHNAN**

Crl.O.P.(MD). No.14735 of 2020

and

Crl.M.P(MD).No.6961 of 2020

Elisamma Manual

... Petitioner

Vs.

1.The Inspector of Police,
Devadanapatti Police Station,
Theni District.
(Crime No.484 of 2017)

2.Dr.V.Selvaraj M.B.B.S., D.C.H.,
Joint Director,
Medical and Rural Welfare and Family Welfare,
Theni now at Periyakulam.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C.

praying to call for the records pertaining to C.C.No.92 of 2020, on the
file of the learned Judicial Magistrate, Periyakulam and quash the same.

For Petitioners : Mr.C.Muthusaravanan

For Respondents : Mr.M.Muthumanikkam,
Government Advocate(Crl.Side)
for R1
: No representation for R2



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ORDER

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This petition has been filed to quash the proceedings as against the petitioner herein in C.C.No.92 of 2020 on the file of the learned Judicial Magistrate, Periyakulam.

2.The case of the prosecution is that on 10.10.2017, the Team headed by the second respondent conducted inspection in the Clinic, namely, “National Clinic” Devathanapatti Road situated in Periyakulam Taluk, Theni District and it was found that the petitioner was providing Allopathy treatment to the patients. It was further alleged that when she was interrogated by the second respondent with regard to the educational certificate, she replied that she did not have any certificate. Moreover, the name of the Doctor was displayed as Dr.Gurusamy, MBBS, MD on the name board of National Clinic. The allegation was that the woman petitioner was practicing without possessing valid qualification by indulging in Allopathy treatment to the general public. Hence, the petitioner was said to have committed the offence punishable under Sections 420 of IPC and Section 15(3) of the Indian Medical Council Act, 1956 for the medical practice and alleged possession of allopathy medicines. The final report was filed based on



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the FIR in Crime No.484 of 2017 and the same was taken on file in C.C.No.92 of 2020, on the file of the learned Judicial Magistrate, Periyakulam.

3. The learned Additional Public Prosecutor submitted that there was a reliable information that the petitioner provided allopathy treatment without any qualification. Hence, the second respondent and his team inspected the premises and found that without any educational qualification certificate, she was found in possession of allopathy medicine and the same was also recovered. The name board also contained the name of one Dr.Gurusamy, and therefore, the complaint was given and the same was registered for the above said offences. Therefore, she is not entitled for quashing of the proceedings.

4. This Court considered the rival submissions and perused the materials available on records.

5.The learned counsel for the petitioner has specifically raised the following points:

5.1.Under Section 15(2) of the Indian Medical Council Act, no



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person other than the medical practitioner can be enrolled on a State Medical Register.

5.2.As per Section 15(2) of the Indian Medical Council Act, it is the duty of the investigating agency to collect the materials to show that the petitioner was giving allopathy treatment to the private individuals. But in this case, the reading of the statements recorded under Section 161 of Cr.P.C., and the materials collected by the investigating agency, do not show that the petitioner was giving allopathy treatment to any person. In the absence of any material to substantiate the allegation that the petitioner was giving allopathy treatment to any person, the offence under Section 420 of IPC r/w 15(2) of the Indian Medical Council Act, is not made out.

5.3.According to the petitioner, she got the certificate from the Kolkatta Medical Board. In the said circumstances, the petitioner is designated as the alternative medical practioner and cannot be found fault with. Therefore, the offence under Section 420 of IPC is not made out. To constitute the offence under Section 420 of IPC, the petitioner should have given treatment by claiming herself as allopathy doctor. But, no such claim has been made by the petitioner.



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6. According to the petitioner, she got the Alternative Medical Council Certificate, Kolkata, which was a recognized one and there was no dispute regarding the above fact.

7. In this case, it is found that the petitioner is a registered medical practitioner and there have been no complaint from Indian Medical Association of any misconduct committed by the petitioner. No public also had given any complaint. In view of the same, continuation of the proceedings against the petitioner would amount to abuse of process of law.

8. In the result, this Criminal Original Petition stands allowed and the proceeding in C.C.No.92 of 2020, on the file of the learned Judicial Magistrate, Periyakulam is hereby quashed. Consequently, connected miscellaneous petition is closed.

30.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
sbn



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To
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1. The Judicial Magistrate,
Periyakulam.
2. The Inspector of Police,
Devadanapatti Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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