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Crl.R.C.No.347 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.347 of 2024

and

Crl.M.P.Nos.3219 and 3220 of 2024

Dr.Mohammed Mustafa Shariff,
S/o.Shiek Mehaboob

... Petitioner/A2

Vs.

State represented by
The Drug Inspector,
Tondiarpet-II Range,
Zone-I, Chennai – 600 006.

... Respondent

PRAYER: Criminal Revision Case has been filed under Sections 397 and 401 of Cr.P.C, praying to set aside the order passed in Crl.M.P.No.7804 of 2024 in C.C.No.427 of 2015 dated 14.12.2023 pending on the file of the XV Metropolitan Magistrate Court, George Town, Chennai and thereby discharge the petitioner.

For Petitioner : Mr.R.Narendran

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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ORDER

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This Criminal Revision Petition has been filed seeking to set aside the order passed in Crl.M.P.No.7804 of 2024 in C.C.No.427 of 2015 dated 14.12.2023 pending on the file of the XV Metropolitan Magistrate Court, George Town, Chennai.

2.The petitioner, who was arrayed as Accused No.2 in C.C.No.427 of 2015, filed a petition under Section 315 of Cr.P.C. in Crl.M.P.No.7804 of 2023 to examine himself as defence witness. The trial Court, by order dated 14.12.2023, dismissed the same as devoid of merits. Hence, the petitioner preferred the present revision.

3.The contention of the learned counsel for petitioner is that the petitioner at the time of advancing arguments found that he failed to mark the subsequent registration certificate issued by Tamil Nadu Board of Indian Medicine (TNBIM) and came to know that he produced the temporary



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Registration Certificate originally issued at the time of enrollment in Certificate No.AU26950 by TNBIM. Since all the registration earlier done under the TNBIM was subsequently segregated for the doctors qualified under the integrated medicines (being combined study of Unani and Modern medicines), they were directed to register afresh. Thereafter, the petitioner on his registration of medical practitioner in TNBIM, again, he was issued Registration Certificate No.0030 dated 13.05.2016. This document is a vital document to prove that on a wrong premise the case has been proceeded against the petitioner by the respondent/Drugs Inspector. The trial Court giving reasons that the petition is devoid of merits is not proper, since the certificates are public documents issued by the statutory authorities.

4.Further, in support of his contention, he referred to Tamil Nadu Government Gazette No.29 dated 20.07.2016, G.O(Ms).No.248, Health and Family Welfare (IM2-2) Department, dated 08.09.2010 and the Medical



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Registration Certificate issued by the TNBIM dated 21.02.2001, 13.05.2016 and other documents.

5.The learned Additional Public Prosecutor filed his counter and submitted that the previous registration certificate of the petitioner bearing Certificate No.AU26950 was issued by TNBIM on 21.02.2001 and the certificate bearing registration No.0030, produced along with the petition was issued on 13.05.2016. Further, this Certificate obtained after filing of the case. Hence, the petitioner cannot rely upon this document which has been obtained later. Further the petitioner not sent any representation about his registration and not taken any plea during the initial questioning but belatedly at the advanced stage of arguments he filed such petition to protract the proceedings. He further submitted that the case has been registered in the year 2015.



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6. He further referred to paragraph 2 of the counter, which reads as follows:

"2. It is humbly submitted that, in G.O. (Ms) No.248 dated 08.09.2010 of HEALTH AND FAMILY WELFARE (IM 2-2) DEPARTMENT,

"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 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.)".

Here it clearly shows that, Modern Scientific System of Medicine and it is not complete Allopathic medicine, which is clearly mentioned in 3rd Para of this G.O.

"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, anaesthesiology, 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"."



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7.Considering the submissions made and on perusal of the material available on record, it is seen that the petitioner/A2 filed a petition under Section 315 Cr.P.C. to give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial. Further the petitioner has come out of the veil of protection under Article 20(3) of the Constitution of India. Hence, cannot be denied for the reason that petition belatedly filed. It is an opportunity for the petitioner to bring in evidence, which is available with him to putforth his case. The trial Court would be benefited by the evidence of the petitioner to arrive at the just decision of the case.

8.In view of the above, the impugned order passed in Crl.M.P.No.7804 of 2024 in C.C.No.427 of 2015 dated 14.12.2023 by the learned XV Metropolitan Magistrate Court, George Town, Chennai is set aside and the petitioner is directed to be examined as witness in the above



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case. The petitioner is directed to get into the witness box and depose evidence on 11.03.2024 or any date thereafter, as fixed by the trial Court. The petitioner shall not be a reason for any delay.

9. With the above directions, this Criminal Revision Case is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

06.03.2024

Index : Yes/No

Internet : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

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Note: Issue order copy on 07.03.2024



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M.NIRMAL KUMAR, J.

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To

- 1.The Drug Inspector,
Tondiarpet-II Range,
Zone-I, Chennai – 600 006.
- 2.The XV Metropolitan Magistrate Court,
George Town, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

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