



Crl.O.P.No.20143 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :25.09.2024

Pronounced on :03.10.2024

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.20143 of 2024

and

Crl.M.P.Nos.11682 & 11683 of 2024

Tmt.S.Sindhu

.. Petitioner/Accused

/versus/

Tamil Nadu State represented by
Drugs Inspector,
Perambur Range,
O/o The Assistant Director of
Drugs Control, Zone-1,
DMS Campus,
Chennai 600 006.

.. Respondent/
Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C/Section 528 of BNSS 2023, to call for the records relating to the C.C.No.7138 of 2018 on the file of the learned X Metropolitan Magistrate, Egmore, Chennai and quash the same.



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For Petitioner :Mr.A.Velmurugan
For Respondent :Mr.K.M.D.Muhilan
Govt.Advocate (Crl.Side)

ORDER

The petitioner herein is the Bachelor of Siddha Medicine and Surgery (BSMS). She had duly registered with the Tamil Nadu Siddha Medical Council with Reg.No.3972 of 2012. She is running a clinic by name “People Care Clinic” which is affiliated to the Noble Hospital, Chennai. She is practising in Siddha Medicine with qualification and authorised. While so on 28.02.2017, an official from the Office of Assistant Director of Drugs Control inspected her clinic on the complaint alleged to have been sent by one Raghupathy. In the course of the inspection, Allopathy medicines were recovered from the clinic alleging that they are in contravention of the Drugs and Cosmetics Act, 1940. Private complaint by Drugs Inspector under Section 200 of Cr.P.C., for the offence punishable under Section 27(b)(ii) of Drugs and Cosmetics Act, 1940, filed.



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2. Challenging the complaint, the petition to quash filed stating the trial Court failed to apply its mind before taking cognizance. It has presumed that the petitioner is a quack Doctor unmindful of her qualification and the Government of Tamil Nadu a Notification in G.O.(Ms)No.248, Health and Family Welfare (IM 2-2) Department, dated 08.09.2010. The aid GO declares that every medical practitioner holding the qualification specified in the second, third or fourth schedule to the Indian Medicine Central Council Act, 1970 and Part III of the Schedule to the Tamil Nadu Siddha System of Medicine(Development and Registration of Practitioners) Act, 1997, are entitled to practise modern scientific system of medicine. Thus, the petitioner can prescribe Allopathy medicine. Therefore, she has not violated the Drugs and Cosmetics Act, 1940.

3. Referring the judgment of the Hon'ble Supreme Court in *S.Athilakshmi v. The State Rep.by the Drugs Inspector reported in [2023*



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LiveLaw (SC) 194], the learned counsel appearing for the petitioner submitted that being a registered practitioner in Siddha Medicine, possessing a small quantity of Allopathy medicine in her clinic will not amount to selling medicine and it is not an offence as per exception created under Schedule K read with Rule 123 of the Drugs Rules 1945. The reply of the petitioner to the show cause notice has not been properly understood by the complainant. When there is no criminal intention for possessing the drugs in the clinic, prosecuting a qualified Doctor is purely an abuse of process of law.

4. The learned Government Advocate (Crl.Side) appearing for the State submitted that under Rule 123 of the Drugs Rules, 1945, the drugs specified in Schedule K shall be exempted from the provisions of Chapter IV of the Act and Rules made thereunder to the extent and subject to the conditions specified in the schedule. Chapter IV of the Act deals with manufacture, sale and distribution of drugs and cosmetics. This Chapter is not applicable to Ayurvedic, Siddha and Unani drugs as per Section 33(A) of the Drugs and Cosmetics Act. However, it will



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squarely apply to the Allopathy drugs. During the course of inspection, large quantity of Allopathy drugs were found in the clinic of the petitioner premises. Hence, the show cause notice dated 27.12.2017 was caused to the petitioner for not possessing drugs license, which is in contravention to Section 18(c) of Drugs and Cosmetics Act. The reply of the petitioner was that the said Section will not attract and the show cause notice is vague and unintelligible allegation. Since the explanation was not satisfactory, the complaint filed under Section 200 of Cr.P.C., for contravening Section 18(c) of the Drugs and Cosmetics Act 1940, punishable under Section 27(b)(ii) of the Drugs and Cosmetics Act, 1940.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the Respondent.

6. The petitioner is a holder of BSMS Degree issued by Tamil Nadu Dr.MGR Medical University, Chennai. She has also duly registered her name under Tamil Nadu Siddha Medical Council. G.O.Ms.No.248,



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dated 08.09.2010 issued by Health and Family Welfare Department, which permits registered members of the Tamil Nadu Siddha Medical Council to practice Modern Scientific System of Medicine for the purpose of Drugs and Cosmetics Act. Therefore, adopting modern Scientific System of medicine by the petitioner is not prohibited. However, the prosecution is for storing Allopathy Drugs in her clinic. About 29 items of Allopathy drugs manufactured by different pharmaceutical companies with seal of physician's sample, 15 drugs with MRP and 3 used drugs were seized from the premises of M/s People Care Clinic, No.7/22, Janaki Raman Nagar, 1st Main Road, Sembium, Chennai-11.

7. Section 18(c) of the Drugs and Cosmetics Act, 1940 mandates storing for sale or for distribution, or sell or stock or exhibit or offer for sale or distribute any drug should be only with license issued for the said purpose. Section 27(b)(ii) provides penalty for contravening Section 18(c). The case against the petitioner is not for using modern scientific system, but for stocking and selling the drugs without license.



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Therefore, the judgment cited supra by the learned counsel appearing for the petitioner has no application to this case.

8. Hence, this Criminal Original Petition stands dismissed. However, since the case is of the year 2018, the learned X Metropolitan Magistrate is directed to dispose of the case as expeditiously as possible. Consequently, connected Miscellaneous Petitions are closed.

03.10.2024

Index:yes/no
Neutral citation:Yes/no
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To

1. X Metropolitan Magistrate, Egmore, Chennai.
2. Tamil Nadu State represented by Drugs Inspector,
Perambur Range, O/o The Assistant Director of
Drugs Control, Zone-1, DMS Campus, Chennai 600 006.
3. The Public Prosecutor, High Court, Madras.



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Dr.G. JAYACHANDRAN,J.

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