



W.P(MD)No.11988 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.11988 of 2020

and

W.M.P.(MD)No.10334 of 2020

Dr.R.Boominathan

... Petitioner

Vs.

The Registrar,
Tamilnadu Medical Council,
New No.914, Old No.569,
Poonamallee High Road,
Arumbakkam,
Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned memorandum issued by the respondent in his proceedings Reference No.TNMC/T.No.4628/2020, dated 02.09.2020 and quash the same as illegal, arbitrary and without jurisdiction.

For Petitioner : Mr.B.Saravanan
Senior Counsel
for Mr.D.Kirubakaran

For Respondents : Mr.C.Karthick



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ORDER

Heard the learned senior counsel appearing for the petitioner and the learned standing counsel appearing for Tamil Nadu Medical Council.

2. The petitioner challenges the impugned memorandum dated 02.09.2020 issued by the respondent calling upon the petitioner to offer his explanation to the twin charges framed against him. The impugned communication also notes that the Tamil Nadu Medical Council in its special business meeting held on 23.08.2020 had resolved to cancel the petitioner's name from the medical register, pending enquiry into the charges. When the writ petition was listed for admission on 18.09.2020, interim stay of the operation of the impugned order was passed.

3. The learned senior counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned communication and allow the writ petition as prayed for.

4. The respondent have filed their counter affidavit and the learned standing counsel took me through its contents. The learned standing counsel



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submitted that the impugned order is a mere charge memo and that the petitioner can very well appear before the Council and offer his explanation. According to him, interference is not warranted at this stage. He pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. The basic facts are not in dispute. The petitioner issued the medical certificate dated 10.03.2014 certifying that one Tmt.J.Fathima was found to have neck injury and she was advised 25 days absence from duty with effect from 10.03.2014. The medical history which forms part of the medical certificate reads as follows:-

“ I Dr.R.Boominathan, M.B.B.S after careful personal examination of the case hereby certify that Tmt.J.Fathima, B.T.Assistant, St.Mary's Girls Higher Secondary School, Devakottai is suffering from injury neck c hypertension and I consider that a period of absence from duty for 25 days with effect from 10.03.2014 is absolutely necessary for the restoration of her normal health.”

Based on the certificate, Fathima had filed a private complaint against one Indhumathi and Muthuganesan and it was taken on file in P.R.C.No.14 of 2015 on the file of the Judicial Magistrate, Devakottai. The accused filed CrI.O.P. (MD)No.3097 of 2016 to quash the said proceedings. The said Criminal Original Petition was allowed on 15.07.2019. The learned Judge after extracting the medical certificate and medical history verbatim noted as



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follows:-

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“13. There are over writings and corrections in the certificate dated 20.03.2014 and in fact, the same does not meet the guidelines, which are expected to be followed by the Doctors in medicolegal cases. Admittedly, Dr.Boominathan, who is said to have attended the medicolegal case on 10.03.2014, has not intimated the same to the nearby Police Station. The complainant has also not preferred any complaint before the concerned Police Station, though she is said to have visited the Police Station on 10.03.2014. The copy of the complaint dated 10.03.2014 has not been filed along with the complaint filed before the Judicial Magistrate Court, Devakottai.

14. Though the medical certificate was obtained on 20.03.2014, the complaint was filed only on 19.06.2015. The complainant, who is a 11 Teacher in Government School involved in the offences in Crime No.194 of 2014, wherein FIR has been registered on 10.03.2014. Her husband was also arrested. According to the petitioners, the complainant, in order to avoid the arrest, has obtained medical certificate for leave or extension or commutation of leave on 10.03.2014, as if she suffered injury in neck and hypertension and availed leave from department and she was on medical leave for nearly 3 days to avoid arrest in Crime No. 194 of 2014 and with this certificate, which she has obtained for availing medical leave, she has lodged this complaint against them / the victims in Crime No.194 of 2014. This is a glaring case, where the guidelines contemplated to maintain the registers as required by a Doctor, who attends medicolegal case has not been followed. Though the complainant had undertaken to produce the materials in respect of the treatment and other details before this Court, they had not furnished the same, though sufficient opportunity was provided.

15.The medical profession is considered to be a noble profession. Therefore, the Doctors have the highest responsibility in the society. The medical profession requires advanced education and training, which calls



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for continuous updating. At the same time, the Doctor has ethical and legal obligation and he needs to abide by the laws of the land, while discharging the duties. In medical profession, every Doctor would come across medico legal cases and the guidelines for recording the medico legal cases.

16.The Doctor Mr.Boominathan, also claims to be Government Gazetted Medical Officer, must have known the basic principle to intimate the Medicolegal Cases to the nearest Police Station, but he has not done so in this case. Therefore, this Court is of the view that the certificate issued by Dr.Boominathan of Sri Baalamurugan Nursing Home, without following due procedures in recording the Medicolegal Cases, is not having any legal sanctity to act upon.

17.Admittedly, this complaint has been filed by way of private complaint and in the strength of the medical certificate issued by Dr.Boominathan, after 1 year and 3 months. If this type of complaint can be entertained with such medical certificate, it would ruin the entire criminal justice system and therefore, this complaint is liable to be quashed and accordingly, the proceedings in PRC No.14 of 2015 on the file of the Judicial Magistrate, Devakottai is hereby quashed.

18. Registry is directed to mark a copy of this order to the Medical Council of Tamil Nadu and to the Secretary, Health Department for appropriate action as against the Doctor who has issued the above mentioned certificate, without following the guidelines for handling the medicolegal cases and also for issuing necessary circular to the Registered Medical Practitioners with the guidelines in handling the medicolegal cases.”

Based on the said direction, the medical council passed a special resolution on 23.08.2020 following which the impugned charge memo came to be issued.

If the council had issued a mere charge memo, then the learned standing



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counsel would be right in his contention that the petitioner's rights have not been infringed as such. But in the present case, the council had not only resolved to issue the charge memo, but also to cancel the entry of the petitioner's name in the register maintained by the council. In other words, the petitioner has to necessarily discontinue his professional practice till he is exonerated. Therefore, the impugned proceedings do have a serious civil consequence for the petitioner and I hold that this writ petition is not only maintainable but the petitioner is justified in filing this writ petition. The moot question that calls for consideration is whether this Court would be justified in interfering in the matter.

6. As rightly pointed out by the learned senior counsel appearing for the petitioner, the quash petition was filed by the accused in P.R.C.No.14 of 2015 on the file of the Judicial Magistrate, Devakottai. The private complainant Fathima was the sole respondent in the said criminal original petition. The petitioner was nowhere in the picture. He had not been impleaded in the quash proceedings. The petitioner had been severely censured and castigated. A direction had been given to the authorities for initiating disciplinary action against the petitioner. I am clearly of the view that before doing so, the petitioner ought to have been put on notice. When the proceedings of the



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courts blow are put to challenge before the High court, if the High Court wants to pass strictures against the concerned judicial officers or investigation officers or any other person concerned, they will have to be formally put on notice. The Hon'ble Supreme Court in the decision reported in **2001 (1) SCR 959** had held that if an judicial officer is censured behind his back, such remarks will have to be expunged. This is because, any order passed in violation of the principles of natural justice is a nullity. It is for this reason I am constrained to interfere. If the respondent council had taken action independently against the petitioner, then, I would not have interfered. But that is not the case. The council had taken such a serious view of the matter only for the reason that the Hon'ble High Court had issued direction. Section 39 of Cr.P.C reads as follows:-

“39. Public to give information of certain offences

(1) Every person, aware of the Commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely: —

(i) sections 121 to 126, both inclusive, and section 130 (that is to say offences against the State specified in Chapter VI of the said Code);

(ii) sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);

(iii) sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification);

(iv) sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc);

(v) sections 302, 303 and 304 (that is to say, offences affecting life);



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(va) section 364A (that is to say, offence relating to kidnapping for ransom, *etc*);

(vi) section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);

(vii) sections 392 to 399, both inclusive, and section 402 (that is to say, offences of robbery and dacoity);

(viii) section 409 (that is to say, offence relating to criminal breach of trust by public servant, *etc*);

(ix) sections 431 to 439, both inclusive (that is to say, offence of mischief against

property); (x) sections 449 and 450 (that is to say, offence of house-trespass);

(xi) sections 456 to 460, both inclusive (that is to say, offences of lurking house-trespass); and

(xii) sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes) shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such Commission or intention;

(2) For the purposes of this section, the term "**offence**" includes any act committed at any place out of India which would constitute an offence if committed in India".

The said provision would cover medical professionals also. If a medical practitioner comes across the medico-legal case, he is obliged to intimate to the jurisdictional police if any of the categories mentioned in Section 39 are attracted. The case on hand does not fall within any of the categories set out in Section 39 of the Act. Besides, it appears to be rather trivial in nature.



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7. For these reasons, the impugned communication is set aside. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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