



Crl.OP.No.17325 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.17325 of 2023

and

Crl.MP.No.11218 of 2023

J.Janikiraman

... Petitioner

Vs.

1. State by:

The Inspector of Police,
Valavanur Police Station,
Villupuram District.

2. Dr.Kothai Rajeshwari,

W/o.Veteivel Sezhiyan,
Medical Officer, Government Hospital,
Valavanur, Villupuram District.

... Respondent

PRAYER: The Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to C.C.No.393 of 2022 in Cr.No.136 of 2020 pending on the file of the Judicial Magistrate-II, Villupuram Court, Villupuram District and quash the same.

For Petitioner : Mr.T.G.V.Ramanigopal

For Respondents : Mr.R.Vinoth Raja
: Government Advocate(Crl.Side)



CrI.OP.No.17325 of 2023

ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.393 of 2022 on the file of the Judicial Magistrate-II, Villupuram Court, Villupuram.

2. The case of the prosecution is that the second respondent/defacto complainant who is serving as a Medical Officer, Government Hospital, Valavanur, Villupuram District. Based on the instructions received from the Joint Director, Villupuram District, the second respondent has inspected the petitioner's/accused's Clinic at East Post Pondy Road, Valavanur, Villupuram District on 20.03.2020 and found that the petitioner having studied BEMS has been practising Allopathy Medicine. Further, Allopathy Medicines and the medical equipments from the petitioner's clinic was seized.

3. The further case of the prosecution is that the petitioner impersonated one Dr. Manikandan and using his registration number, has provided treatment to the local public. Thereby, the petitioner has no valid educational qualification to practice english medicine. Hence, the complaint.



CrI.OP.No.17325 of 2023

4. On the complaint lodged by the second respondent/defacto complainant, the first respondent registered an FIR against the petitioner in Cr.No.136 of 2020 for the offence punishable under Sections 419, 420 of IPC r/w 15(3) of Indian Medical Council Act, 1956. After completion of investigation, the first respondent filed a final report before the learned Judicial Magistrate-II, Villupuram and the same was taken cognizance in C.C.No.393 of 2022. To quash the said proceedings, the present petition has been filed.

5. The learned council for the petitioner submits that now the petitioner is not practicing English medicine, since the qualification of the petitioner is not recognised by any medical council to practice. On the date of inspection, nothing was seized from the petitioner and for the very same set of allegations in the year 2017, already, FIR was registered in Cr.No.24 of 2017 for the offences punishable under Section 420 of IPC and Section 15(3) of the India Medical Council Act, 1956 on 12.01.2017 and the same was been charge sheeted in C.C.No.323 of 2019 on the file of the Judicial Magistrate-II, Villupuram and it is pending.



CrI.OP.No.17325 of 2023

6. As per order of Ministry of Health and Family Welfare,

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Department of Health Research, Government of India dated 05.05.2010, there is no proposal to stop Naturo Electro Homeopathy Medicos of India from practicing the medicine of Electropathy/Electro Homeopathy or imparting education. Therefore, there is no ban to impart education in the medical stream of Electropathy/Electro Homeopathy and there is no ban on practice of Electropathy/Electro Homeopathy. . Infact, this Court also in batch of Writ Petitions in W.P(MD).Nos.10041 of 2017 etc batch dated 28.01.2023 held that the certificate issued by the Naturo Electro Homeopathy Medicos of India is not valid and the person who possesses the same is not eligible to practice in any stream of the medicine. Further, the request of recognition of Naturo Electro Homeopathy Medicos of India was also rejected by the Government of India for medicine. No permission can be granted to practice in the system of Naturo Electro Homeopathy Medicos of India as it is not recognized by the Government of India. Further, the Naturo Electro Homeopathy Medicos of India is not a authenticated statutory body to provide permission or certification to run institution to impart education of Naturo Electro Homeopathy Medicos of India which has no legal affirmation and the certificates issued by it has no legal validity. Further,



CrI.OP.No.17325 of 2023

by the communication dated 12.02.2018, the Tamilnadu Government

Medical council imparted that NEHM as a system of medicine itself does not stand recognized by the Central Government of India. However, now the petitioner has stopped practicing any stream of medicine.

7. In this regard, it is relevant to extract the provision under Section 17(3) of Indian Medical council Act.

17.Nothing contained in sub-section (2) shall affect,

(a) the right of a practitioner of Indian Medicine enrolled on a State Register of Indian Medicine to practise Indian medicine in any State merely on the ground that, on the commencement of this Act, he does not possess a recognised medical qualification;

(b) the privileges (including the right to practise any system of medicine) conferred by or under any law relating to registration of practitioners of Indian medicine for the time being in force in any State on a practitioner of Indian medicine enrolled on a State Register of Indian Medicine;

(c) the right of a person to practise Indian medicine in a State in which, on the commencement of this Act, a State Register of Indian Medicine is not maintained, if, on such commencement, he has been practising Indian medicine for not less than five years;

(d) the rights conferred by or under the Indian Medical Council Act, 1956 (102 of 1956) [including the right to practise medicine as defined in clause(f) of



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CrI.OP.No.17325 of 2023

Section 2 of the said Act], on persons possessing any qualifications included in the Schedules to the said Act.

(4) 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.

Therefore, there is no offense made out as against the petitioner under Section 15(3) of Indian Medical Council Act, 1956.

8. In so far as the offence to attract the offense under Section 420 of IPC, it is relevant to extract the provisions under Section 420 of the Penal Code as follows :-

420. Cheating and dishonestly inducing delivery of property — Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

To constitute an offence under Section 420 of IPC , the ingredients are as follows :-

(i) A person must commit the offence of cheating



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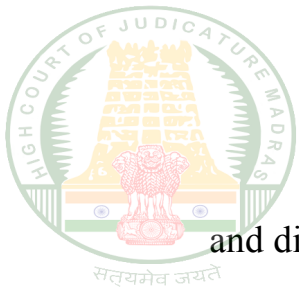
CrI.OP.No.17325 of 2023

under Section 415 and

(ii) *The person cheated must be dishonestly induced to (a) deliver property to any person or (b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.*

Cheating is an essential ingredient for an act to constitute an offence under Section 420 of IPC.

9. It is also relevant to rely upon the judgment made by the Honourable Supreme Court of India in the case of *M/s. Indian Oil Corporation Vs. NEPC India Limited and others* reported in (2006) 6 *SCC 736*, held that the civil liability cannot be converted into criminal liability and it is necessary to take notice of a growing tendency in business circle to convert purely civil dispute to criminal case. This is obviously on account of prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lender/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of immediate settlement. Any effort to settle civil disputes and claim which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated



and dishonoured.

WEB COPY 10. In the case of ***G.Sagar Suri Vs. State of Uttar Pradesh*** reported in ***2000 (2) SCC 636***, the Honourable Supreme Court of India held as follows:-

“It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence, criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

11. It is relevant to rely upon the land mark Judgment of the Hon'ble Supreme Court of India in the case of ***State of Haryana and others Vs. Bhajanlal and others*** reported in ***1992 Supp (1) SCC 335***, in which, the Hon'ble Supreme Court of India has laid down the following categories of instances wherein inherent powers can be exercised in order to secure the ends of justice as follows:-

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;



WEB COPY



CrI.OP.No.17325 of 2023

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for



CrI.OP.No.17325 of 2023

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Therefore, there is no offense made out as against the petitioner under Section 420 of IPC.

12. In view of the above discussion, the present complaint is a clear abuse of process of law and it cannot be sustained as against the petitioner and liable to be quashed.

13. Accordingly, the proceedings in C.C.No.393 of 2022 on the file of the learned Judicial Magistrate-II, Villupuram is hereby quashed and the Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

21.04.2025

Vv

To

1. The Judicial Magistrate-II, Villupuram
2. The Inspector of Police, Valavanur Police Station, Villupuram District.
3. The Public Prosecutor, High Court of Madras, Chennai.



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Crl.OP.No.17325 of 2023

G.K.ILANTHIRAIYAN, J.

Vv

Crl.O.P.No.17325 of 2023

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21.04.2025



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CrI.OP.No.17325 of 2023