

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.10.2016

PRONOUNCED ON: 26.10.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.242 of 2011
and M.P. No.1 of 2011

Dr. Vijayakumar ... Petitioner/Single Accused

Vs.

1. State by:
the Inspector of Police
E-1, Mylapore Police Station
Chennai (Cr. No.773 of 2009)
2. The Inspector of Police - Team X
Central Crime Branch
Egmore, Chennai 600 008 ... Respondents/Complainants
3. R. Rusendrababu ... Respondent/Defacto
Complainant

Criminal Original Petition filed under Section 482, Cr.P.C.
seeking to call for the records in Crime No.773 of 2009 on the
file of the 1st respondent and quash the FIR.

For petitioner : Mr. K. Suresh Babu
for Mr. M. Balaji

For RR 1 & 2 : Mr. C. Emalias
Additional Public Prosecutor

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ORDER

This Criminal Original Petition has been filed seeking to
call for the records in Crime No.773 of 2009 on the file of the
1st respondent and quash the FIR.

2. On the complaint lodged by one Rusendra Babu, the third
respondent herein, the first respondent police registered a case

in Cr. No.773 of 2009 on 01.08.2009 under Section 420, IPC against Dr. Viajaykumar, for quashing which, the accused is before this Court.

3. In the FIR, the de facto complainant has alleged he had taken his wife to the petitioner for treatment for her back pain and the petitioner, collecting a sum of Rs.2 lakhs, gave a medicine, assuring the de facto complainant that it will cure his wife's ailment. Unfortunately, even after taking the said medicine for six months, the de facto complainant's wife did not recuperate and there was no sign of her suffering coming to an end. Hence, the FIR.

4. The learned counsel for the petitioner submitted that the petitioner is a qualified Siddha doctor and just because the de facto complainant's wife's ailment was not cured, it cannot attract provisions of Section 420, IPC. He further submitted that charging of professional fees is a prerogative of a professional and every practitioner is entitled to fix his own remuneration, depending upon the experience, expertise and goodwill he has earned in the field by virtue of his practice over the years and therefore, the petitioner cannot be prosecuted under Section 420, IPC.

5. The learned counsel for the petitioner placed strong reliance upon an unreported decision dated 13.08.2010 of this Court in Paramasivam vs. State, by Inspector of Police, Taluk Police Station, Krishnagiri District (Crl.O.P.No.4909 of 2008), wherein, a learned Single Judge of this Court has quashed the FIR against the petitioner therein by placing reliance upon the Circular Memorandum dated 15.06.2010 and 16.06.2010 issued by the Government and the interim order of injunction passed in W.P.M.P. No.10792 of 2006 in W.P. No.9691 of 2006 on 06.04.2006.

6. Per contra, the learned Additional Public Prosecutor submitted that the petitioner had cheated several innocent patients under the guise of curing their diseases and had collected huge sums of money from them.

7. This Court has given its anxious consideration to the rival submissions and perused the materials available on record.

8. Admittedly, the petitioner is not an Allopathy doctor. He claims himself to be a Siddha practitioner. It is not known what medicine he had given to the de facto complainant's wife. But, according to the de facto complainant, the petitioner has collected a sum of Rs.2 lakhs from him and had given a worthless medicine, which did not at all cure his wife.

9. In the considered opinion of this Court, there are sufficient materials for the prosecution to proceed against the petitioner and this is a matter in which a full-fledged investigation has to be conducted and it is premature for this Court to interfere under Section 482, Cr.P.C. and quash the FIR in the light of the law laid down by the Supreme Court in State of Haryana vs. Bhajan Lal, [1992 Supp. (1) SCC 335].

10. Coming to the reliance placed by the learned counsel for the petitioner upon the unreported decision of this Court in Paramasivam (supra), as already referred to above, the order of interim injunction granted in W.P.M.P. No.10792 of 2006 in W.P. No.9691 of 2006, had, inter alia, weighed in the mind of the learned Single Judge, while quashing the FIR as against the petitioner therein. But, now, the fact remains that the said writ petition itself, viz., W.P. No.9691 of 2006, has been dismissed by this Court by a detailed order dated 20.10.2016 by placing reliance upon the unreported decision dated 23.01.2007 in Civil Appeal No.336 of 2007 (Private Medical Practitioners' Association vs. The State of Tamil Nadu and others), wherein, the Supreme Court has conclusively sealed the claims of quacks in the following emphatic words and dismissed the appeal with costs quantified at Rs.50,000/-:

"Counsel for the parties have been heard.

Counsel for the Appellant Association contends before us that in view of the circular issued by the Ministry of Health and Family Welfare, Department of Health, Government of India, New Delhi, the State Government was bound to permit the appellants to practise in the modern medicines subject to the limitations contained in the letter reference no.Ref.No.V.11016/3/82/ME(P) dated 15.07.1986.

We are in agreement with the view taken by the learned Single Judge in W.P. No.19448/2001 All India Association of Private Medical Practitioners (supra), following which the impugned judgment has been rendered and confirm the same.

For issuance of a writ of mandamus, a legal right has to vest in the person seeking the writ of mandamus. In the absence of any legal right, writ of mandamus cannot be sought for or granted by the Courts. Admittedly, members of the appellant-association are not qualified and registered with the State Medical Council. They cannot be permitted

to practise either Modern Medicine or any other System of Medicine.

As per the Indian Medical Council Act, 1956 (Central Act 102 of 1956), no person can practise medicine without requisite qualification and registration with the concerned State Medical Council. Therefore, members of the Appellant-Association cannot either practise modern medicine or any other Indian System of Medicine.

It is not in doubt that only qualified and properly trained professionals are competent to man the medical treatment of the people. If the unqualified private practitioners like the members of the Appellant Association are allowed to treat the patients even for minor ailments, we are afraid, it may endanger the lives of the people.

On a query put to counsel for the Appellant Association, whether the circular issued by the Central Government was statutory or binding on the State Government, it was fairly conceded by the learned counsel that the circular issued by the Central Government was neither statutory nor was it binding on the State Governments. Otherwise also, the State of Tamil Nadu has shown its inability to enforce the regularisation of unqualified and unregistered medical practitioners in the State, which was duly communicated to the Central Government vide letter (Ms.) No.342, Health dated 3rd March, 1980 for the reasons mentioned therein.

Since successive writ petitions being filed by the appellants on the same cause of action seeking the same relief, which had been rejected earlier, has resulted in sheer wastage of the precious time of the Court, we dismiss the appeal with costs, which is quantified at Rs.50,000/-."

Ergo, the unreported judgment of this Court relied upon by the learned counsel for the petitioner can hardly be of any avail to the petitioner.

11. However, if, during investigation, it is found that the petitioner is a truly qualified Siddha doctor and that the medicine given by him had not worked out on the de facto complainant's wife, it is needless to state that he cannot be prosecuted in this case.

Resultantly, this Criminal Original Petition is dismissed with the above observation. Connected M.P. is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

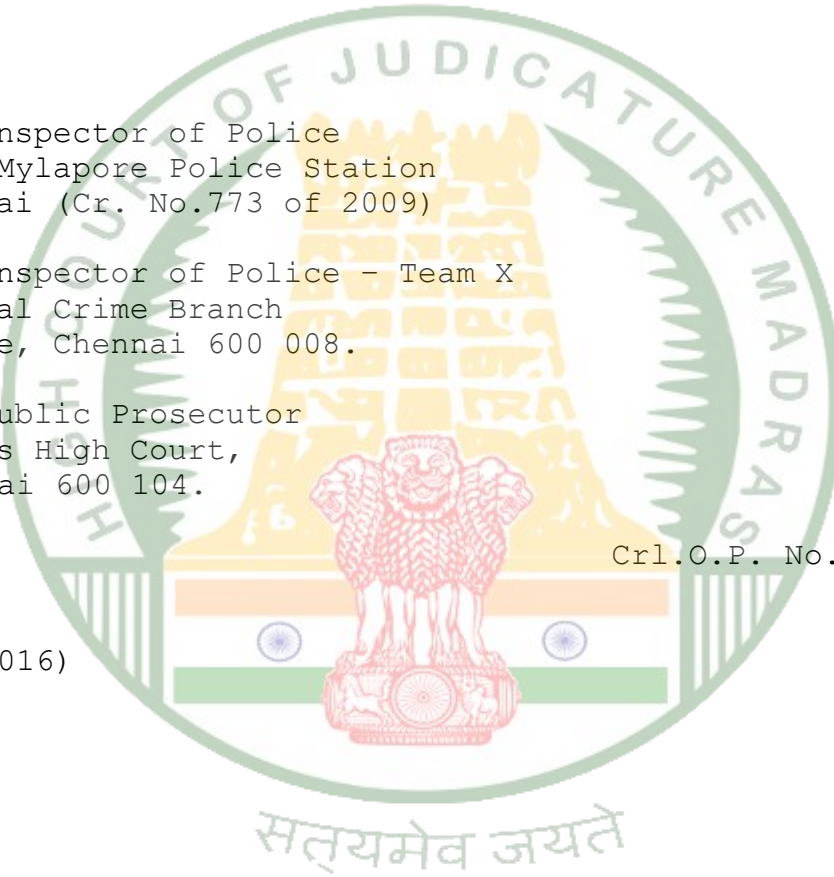
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To

1. The Inspector of Police
E-1, Mylapore Police Station
Chennai (Cr. No.773 of 2009)
2. The Inspector of Police - Team X
Central Crime Branch
Egmore, Chennai 600 008.
3. The Public Prosecutor
Madras High Court,
Chennai 600 104.

Crl.O.P. No.242 of 2011

PVS (CO)
CA(23/11/2016)



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